

State of Tennessee

Held at The Court House in the City of Clarksville and County of Montgomery and State aforesaid on the second Monday it being the 14th day of January One thousand Eight Hundred & Sixty Seven, the time appointed by law for holding the Court for the County aforesaid present and presiding the Hon. Jas A Campbell Judge.

Thomas Ramey the high Sheriff of Montgomery County returned into Court the State writ *Venire Facias* which with the endorsement is in words & figures as follows to-wit

Venire,

State of Tennessee Montgomery County
To The Sheriff of said County
You are hereby commanded to
Summon in district

No "1" A Johnson and Jas Marshall

No "2" Jas B Johnson and W. Norworthy

No "3" J. H. Mills and J. L. Killebrew

No "4" R. J. Fletcher

No "5" A. W. Johnson and J. Smith

No "6" C. C. Collins and Isaac Peterson

(21)

No "7" D. L. Smith and Green Carr.

No "8" Geo. P. Allen. and R. B. Fletcher

No "9" C. Frederick.

No "10" E. S. Williams

No "11" G. C. Halliburton and J. M. Bailey

No "12" W. M. Atkins T. McCulloch & D. Dick Jr

No 14 D. Barnes

No 15. A. Rinehart and W. Hewitt

No "16" R. D. Phillips

No "17" J. M. Smith and C. Trotter

No "18" Frank Smith and A. J. Doyle

No "19" W. H. Dilling and A. J. Meyers

No "20" W^m Allen Jr

To serve as Jurors at The January Term
of The Circuit Court to be held in The
City of Clarksville on The second
Monday in January 1867.

W. C. Newell Clerk

Sheriffs Issued 26th Oct 1866

Return

This Juror list Executed in full
except R. B. Fletcher in District No "4"

T. Ramsey Sheriff

And for good and sufficient reasons
J. N. Mills R. B. Fletcher, D. L. Smith
and Green Carr. were excused and
J. Trotter R. Morrow, J. N. Scott, S. B.
Herring and Thomas Mills were
substituted in their stead.

And out of The Jurors so Summomed

(3)

as aforesaid The Court proceeded to
according to law to impanel a grand
jury to serve as such at this term of Court
when were chosen the following named
persons to-wit. Thomas M. Cullock
H. B. Riggins H. M. Atkins. R. Morrow
W. Norworthy. J. H. Bailey B. C. Collins
J. S. Killibrew J. T. Scott. J. M. Smith
W. C. Allen S. B. Hemming and David
Dick Jr. of whom the Court appointed
Thomas M. Cullock foreman, who with
the other jurors aforesaid being duly
elected tried, sworn, and charged to
inquire in and for the County of Mont-
gomery retired to consider of indictments
D. Brown a constable of the County
was sworn to take charge of the
Grand Jury at this term of the Court.

Thursday 24th January 1867

Court met according to adjourn-
ment, present and presiding the
Hon. Jas. A. Campbell Judge.

State

vs Bigamy

Indictment

The Grand Jury

Solomon M. Reynolds returned into Court

a Man of Color in a body with a

Bill of Indictment

against Solomon M-Reynolds, which
with the endorsements thereon is in
words and figures as follows to wit

State of Tennessee Montgomery County
Circuit Court January Term 1867

The Grand Jurors for the State
upon their oaths present that
Solomon M-Reynolds was on the
17th day of January 1867 in the
State and County aforesaid guilty
of Bigamy, by marrying living
and cohabiting with Betsey Eding-
ton as man and wife - he having
at the same time, been previously
married, and having a wife living
and not divorced, against the peace
and dignity of the State

J. E. Rice Atty Genl.

Endorsements A True Bill. Thos M-Cullack Foreman
Deephie Elder. Eliza Elder. Jane Elder
Dick Elder and S. M. Merry sworn
in open Court and sent before the
Grand Jury to testify on this Bill of
Indictment January 1867

J. W. Williamson Clerk

Whereupon it is considered by the
Court that a Capias issue.

Verdict. This day came the Atty Genl in behalf
 of Jury of the State and the Defendant in
 Custody of the Sheriff was brought to the
 bar who upon his being arraigned and
 charged, Pleads not guilty to the indictment
 against him and for his trial puts himself
 upon the Country, and the Atty Genl doth
 the like. And thereupon the Sheriff of
 Montgomery County, returned into Court
 a lawful panel of Jurors Citizens of Mont-
 gomery County, from whom were chosen
 the following named parties Jurors to wit
 C. T. Hagood, S. Doc, Jas. M. Morrison
 J. M. Rice, W. H. Powell, B. G. Harper
 Geo. Frank, R. H. Hyatt, W. D. Colshaw
 W. M. Bergain, J. C. Franklin and J. S.
 Hale, who were duly elected tried and
 sworn the Truth to speak upon the issue
 joined, took their seats in the Jury Box.
 And it appearing to the Court that
 there is not time to finish the trial
 of this cause to-day by consent of
 parties. The cause is continued until
 tomorrow morning.

The Court met according to ad-
 journment resumed and Residing
 the Hon. Jas. A. Campbell Judge &c.
 Wednesday Jan'y 30th 1867.

(7) This day came again the Attorney
Verdict General in behalf of the State and
continued The Defendant was brought to the Bar
of the Court in custody of the Sheriff
And thereupon came again the Jury
heretofore impaneled in this cause
who upon their oaths do say that they
find the Defendant guilty as charged
in the indictment against him, and
assess that he be imprisoned in the
Penitentiary of the State at hard labour
for the period of Two Years. The Defen-
dant was there remanded to Jail to
await the Judgment of the Court.

Wednesday Morning January 30th 1867
Motion for The Defendant in this cause by
New Trial Attorney entered a motion for a new
trial and in arrest of Judgment,

February 1st 1867
Judgment This day came again the Attorney
General in behalf of the State, and The
Defendant in custody of the Sheriff was
again brought to the Bar of the Court
and the Motion heretofore entered in
this cause for a new trial, and in arrest
of Judgment is by the Court overruled
And the Defendant was asked if he

had anything further to say why the
 Judgment of The Court in accordance
 with The Verdict of The Jury should not
 be pronounced against him, nothing
 said. Whereupon it is considered by
 The Court, that The Defendant be
 conveyed by The Sheriff to Nashville
 there to be confined in The Penitentiary
 of The State of Tennessee at hard labor
 for The period of Two Years, commencing
 from the 30th day of January
 1867. That he be and is hereby rendered
 infamous, and incompetent
 to exercise The right of franchise
 or hold office, or testify in any of The
 Courts in The State of Tennessee.
 And that he pay The costs expended
 in this behalf, for which Execution
 issue. To all of which The Defendant
 excepts, and tenders his Bill of
 Exceptions, which is signed and
 sealed by The Court, and ordered
 to be made a part of The record
 and The Defendant prays an
 Appeal to The Supreme Court now
 sitting at Nashville, which upon
 his entering into bond and security
 for his appearance before The Supreme

had anything further to say why the
Judgment of the Court in accordance
with the Order of the Jury should not
be pronounced against him, nothing
being. Whereupon it is ordered by
the Court that the Defendant be
conveyed by the Sheriff to Nashville
there to be confined in the Penitentiary
of the State of Tennessee at hard labor
for the term of five years, commencing
from the 30th day of January
1867. That he be and he is hereby ordered
direct infamously, and contemptuously
to exercise the right of franchise
or hold office or hold any of the
Courts in the State of Tennessee.
And that he pay the costs expended
in this behalf for which execution
now. To all of which the Defendant
objects, and under his bill of
exceptions which is argued and
overlaid by the Court and order
to be made a part of the record
and the Defendant prays an
appeal to the Supreme Court and
sitting at Nashville, which appeal
his petition will find and awarding
for his appearance before the Supreme

191 Court in the sum of One Hundred Dollars The same is allowed, And the Defendant then appeared with W. C. McReynolds and W. T. McReynolds as his securities, and entered into bond in the sum of One Hundred Dollars conditioned as above.

Appeal We Solomon McReynolds W. C. -
12nd McReynolds and W. T. McReynolds
acknowledge ourselves bound and
indebted to the State of Tennessee
in the penal sum of One Hundred
Dollars for the payment of which
we bind ourselves, our heirs, Executors
and Administrators jointly, severally,
firmly by these presents

The Condition of the above obligation
is such that whereas the said Solomon
McReynolds, has been indicted and
tried before the Circuit Court of
Montgomery County for and found
guilty of Bigamy, and sentenced
by the Court to imprisonment for
Two years, in the Penitentiary of the
State of Tennessee at hard labor, in
accordance with the Verdict of the
Jury, from which Judgment the
said Solomon McReynolds has prayed

in appeal to The Supreme Court now sitting at Nashville. Now if said Solomon Reynolds shall make his appearance before the said Supreme Court now sitting at Nashville and there and there answer the State in the charge of "Bigamy" aforesaid and do not depart the Court, without leave then this obligation to be void, otherwise to remain in full force and effect.

Given under our hand this 31st day of January 1867

S. W. M. Reynolds

W. B. M. Reynolds

N. T. M. Reynolds.

Evidence The State introduced Deaphie Elder (a woman of color) who proved that Defendant was married to her daughter Eliza Elder sometime in 1856 in Montgomery County Tennessee; that they stood upon the floor and joined their right hands and were married by a Ford Martin a slave of Widors Martins. Ford was a preacher. Defendant and Eliza agreed in the presence of the witnesses present to take each other as husband and wife. They were

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both slaves at the time, and had the consent of their owners to the marriage. Eliza had several children by Defendant but one of whom is now living. Defendant from that time on lived with and cohabited with Eliza, calling her his wife, and she child his child, and she calling him her husband up to the 17th of January 1867, when Defendant was married to Betty Edington.

The State then read the following writing to wit:

Marriage License
State of Tennessee Montgomery County
To any Minister of the Gospel
having the care of souls, or any Justice
of the Peace for said County, Greeting
You or either of you are authorized
to solemnize the rite of Matrimony
between Solomon McReynolds and
Betty Edington; the said Solomon
McReynolds having given Bond and
Security agreeably to Law act of the
General Assembly in such case
made and provided. Given under
my hand at Office in the City of
Clarksville on this 17th day of
January 1867. W. B. Russell Clerk

When the State introduced a colored man by the name of Liverpool-Napoleon Merry, who proved that he solemnized the rite of Matrimony between the Defendant and Betsy Edgington, by authority of the foregoing license on the 17th day of January 1867. and made the following return on the back thereof Viz, I certify that I solemnized the rite of Matrimony between Solomon McKinnolds and Betsy Edgington on the 17th day of January

S. N. Merry M.A.
Said S. N. Merry proved that he was a regularly ordained Minister of the Gospel. And this was all the proof in the cause

Charge of The Judge charged the jury as follows
The Court to wit

Before the revolution began the status of the Negro was well understood. He was sold in the market like other property. There was no restraint imposed on account of husband and wife, parent or child. In fact the relation of husband and wife was not required by the Statutes

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in any event or under any circumstances of the slave male and female by their agreement contracted the relation and in their own way entered into it, it was only permitted to promote domestic order, and to further pecuniary interest or as an act of kindness. It was not an Alliance binding upon the slave creating it, and not in the least binding upon the master permitting it, or even advising or bringing it about. The slave upon his part could at any time abandon the Alliance, and the master could disregard, and neither one of them be questioned as to their action in the matter. The slave could at any time have as many wives as he chose; there was no law of the land offended by it. He might cohabit to a great extent without legal restraint in fact if we look alone to the Statute law the relation of husband and wife hardly existed. But now the same law of marriage imposed upon the white race with all its penalties and protection, is imposed upon and extended to the black race. And its administration is the same as to both races.

It is well to notice, that as to the white

race it would not be insisted, there is
 any law, or that such a law could be
 created, to compel a marriage, or to de-
 clare a man and woman, man and
 wife, when in fact before the enactment
 of the law, or at the time of its enact-
 ment, they were not, and had not
 for this end and purpose contracted.
 It may be the Legislature might
 enact that upon condition parties
 cohabiting would accept each other
 as man and wife, they would thereby
 be such in law without law or ceremony.
 The Legislature might go further perhaps
 and enact, that if persons continued to
 to cohabit for a given time such cohabit-
 ation would be conclusive evidence
 of such acceptance of each other as of
 husband and wife. At common law
 the creation of man and wife was a
 matter of contract each had to accept
 the other and this was all that was
 necessary; of course this like any
 other contract was a subject of dispute
 in which want evidence of agreement
 was necessary. But under our Statute
 law more is required, than a mere
 contract, and agreement.

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The marriage must be solemnized and the parties must respectively declare in the presence of a minister or a proper officer, that they take or accept each other as man and wife. But it certainly must be amended that the innovation the Statute made upon the common law only related to the white race. And as to slaves they were without the benefit of any law upon the subject, common or statute; and in a condition of perfect independence, and so remained until they were by the revolution brought within the purview and compass of the penal Statute laws of marriage. They are now undoubtedly within it.

The black man heretofore a slave cannot have more than one wife or cohabit in defiance of the law of the land. The law of bastardy and all the law of lewdness apply alike to both races. But the great question now determined, was the black man and woman who desired to be man and wife, and lived together as such before the institution of their bondage was removed

in point of fact married parties.

If we look only to the Statute we must determine they were not. But how is it at Common Law? Can the Common Law be applied? were they at Common Law man and wife? They certainly were and it may be said the Statute do not negative this proposition; perhaps do not even embarrass it; for the reason that the Legislature in making an innovation upon or addition to the Common Law provided only for the white race, leaving the Slave unnoticed. It has been already said Slaves were left without any law on the subject. Common or Statute. This condition also has been glanced at. From this we gather that whatever might have been the Common Law and the Slaves abstract rights under it, still as slavery existed, it did not afford any protection. Owing to the system all remedies were withheld, and there were no penalties or obligations imposed upon the Slave. All the elements of law which entered into the marriage right afforded nothing to the Slave.

The relation of man and wife is a

171 legal union among the slaves was ignored or not in force under the slave system in any respect whatever. and although the slave man and woman might have been man and wife under the common law still such was the force of the statute and custom that the benefits of the common law could not be reached, could not be made available.

The Court is of opinion that notwithstanding the changes made upon the law of marriage by statute, still if a man of color, a slave, and a woman of color, a slave, in fact contracted the relation of husband and wife and entered into the relation, they were at common law such, but in such a condition that all the benefits of the common law protecting the relation were withheld by statute and customs, and all penalties were withheld for a violation of the marital vows, and consequently there was no remedy to enforce the mutual observance of the relation. They were so to speak man and wife in a nudity. They were denied of all remedies and of all protection in

The relation still one was the husband
 and one the wife. For, ever since and
 before the negro was made a slave the
 right of marriage has existed and
 good at common law without the
 intervention of Statute; and it may
 be observed that as to the slave
 the right of marriage was never
 prohibited, only its protection not
 secured by law. Slaves under all
 circumstances contracted and entered
 into the relation. And in every instance
 if it was not an alliance bridging
 them under the master by Statute or
 custom, it was nevertheless an alliance
 and not an illegal one. The Alliance
 did not offend the common law, but
 had its approbation, and because of
 overpowering interest could give no
 remedy. The Alliance in fact did not
 offend any law. all that was want-
 ing was a remedy for its protection.
 For illustration; If A executes his note
 to B for one thousand dollars. a contract
 is made, and the relation of debtor and
 creditor is created, but because the law
 by its provisions founded in public
 policy, bars a remedy by lapse of time

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"A" cannot recover on the contract. This is not because the contract is illegal or the relation of debtor and creditor was not created at the time; it is only because the law gives no remedy. The law has a reason for not giving a remedy. One is among other things that claims may not become state. The law had a reason for not giving a remedy to protect the relation of man and wife among slaves. The reason was that to protect the relation or afford remedies for this purpose, was incompatible with a state of slavery such as existed. The slave was held by the sanction that other personal property was held, and therefore the owner power over the slave was absolute. This was the law, and the law in giving this right, necessarily withheld protection to the slave as a husband and as a wife. But this did not make their marriage illegal, any more than the promissory note would have been. It only denied them of legal cause of complaint, and a means of redress. The husband could not claim the society of his wife independent of the will of the master.

neither could he claim the society of his children against the master, still they were his children and their mother his wife, and so will the Common Law recognize them. To have given protection to the slave in these matters, would have reduced him to property of a qualified character. He was made the absolute property of the master and therefore he could have no protection in the marriage relation. This would have been impossible. One would have been incompatible with the other. Both could not have stood together. For instance, prior to the revolution had the free negro been sold into Slavery and "A" had purchased a man and wife they would have become his absolute property and for this reason could not have claimed protection in their relation of husband and wife. for this would have impaired "A"'s dominion over property he derived from the State without restrictions or conditions, still this would not have divorced these slaves. They would as before their bondage remained man and wife. Devoid of all protection as such. To further illustrate

(21) say: a negro man and his wife had gone into voluntary servitude, would this act have divorced them? Certainly not: they would have annulled themselves of all protection as man and wife. But the suggestion is made by counsel that there could not have been any marriage at common law, for the reason that the slave could not contract. It is true as a general proposition he could not make a binding agreement any contract that he might have made to be enforced had to be adopted by his master. But this rule of law cannot be extended to what might be termed his natural right to contract with a slave woman to take her as his wife, if she would accept him as her husband. This was a moral contract and at common law legal, and not incompatible with Slavery, only the remedy was. The contract was not only moral but rested upon a Divine injunction. The common law required no solemnization, no license. The Statutes as to Slaves never required license or solemnization but left them to contract at common law. There was no prohibition against it. Yet by force of custom they could

abandon the contract and enter into
 another alliance. Hence if a slave hus-
 band voluntarily abandoned his wife
 and entered into another alliance his
 first wife was at liberty to do likewise
 and vice versa. This brings us to the 5th
 Section Chapter XL of the act of 1865-6
 which enacts that all free persons of
 color who were living together as hus-
 band and wife (it might have read
 as husband and wife at common law)
 and their children legitimately entit-
 led to an inheritance etc. Now since
 the whole system of slavery is over-
 turned, and the Statutes never having
 required the slave to observe its rules
 and regulations, but left them to marry
 at common law, subject to the claim of
 the master over them as unconditional
 property, they are now bound to an
 observance of their common law marriage
 and cannot now treat it as a marriage
 at will. since they are protected in
 the relation by the law of the land.
 No individual can hereafter marry
 in Tennessee at common law - Chapter
 38. Sec 1st enacts that persons of color
 shall hereafter obtain license etc.

(23)

They must marry now under the Statute. If it be admitted that negroes in their slavery were not husbands and wives by virtue of their acts and claims as such. The late acts of the Legislature comes in and makes legal the act of the parties in taking each other as man and wife. There is no hardship in this no violence. It is only making good in law what the parties by their own voluntary Contract, and acceptance and practice have done, all in their power to make good. If they have done their part, and all necessary to make a common law marriage, and it was not legal at the time when made and when they became free, it is now by virtue of the late legislation made legal. The law accepts the parties in the character they relate to each other. It seals their desire and their act with the seal of the law. So if the Defendant at the bar, had contracted the matrimonial relation, he should have hailed it as a blessing and the crowning of his domestic happiness - the late act of the legislature - It legalized what he had intended his marriage. By virtue of his freedom and the act he had his

wife without conditions. If she act bound the Defendant it bound his wife also. If he contracted to take her as his wife and she contracted to take him as her husband and they lived together as such. There is no force or coercion in the act of the Legislature declaring their marriage good under the State. As the law now stands a marriage contracted between a white man and woman of mixed blood to the third generation inclusive. But suppose said parties should so contract and marry according the forms of the Statute. The marriage it is true would be void. But if while they were living in this relation the Legislature was to declare the marriage valid, would it not be so? This would make good and valid their intention, would carry out their purpose and desire legally to be husband and wife. And certainly the parties could not complain.

And as if the Defendant done all he could he may have lived with his wife and lived with her as such. He cannot complain because the law finally comes to his protection and

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makes good his purpose to be a husband. Counsel have remarked upon Custom. As to this it may be held that by Custom the slave marriage was good at Common law. but by force of Custom was treated as a marriage at will, binding so long only as it suited the interest or Caprice of the three parties interested to wit - The master the husband and the wife. So a marriage of this kind existing and not abandoned by the parties prior to the annulling of the Slave system is no longer one at will. but by operation of law is binding. This may seem curious law and so it is. but no more curious law than was the Custom or practice which gave rise to it.

On the whole quantum of the duty if the proof shows the Defendant had prior to his freedom contracted a marriage with a woman of his color and lived with her as her husband in other words ^{that} the two lived together as man and wife they are now legally such. and if the Defendant has married another woman while his wife he may first have married was living he is guilty as charged in the indictment.

The proof to sustain the indictment must be clear and certain or rather entirely ^{thoroughly} unsatisfactory. If it falls short of this you will acquit the Defendant.

The Jury found the Defendant guilty as charged in the indictment and assigned the period which he shall serve in the Penitentiary of the State to two years. The Defendant moved the Court for a new trial which was overruled.

He then moved in arrest of judgment which was likewise by the Court overruled. Whereupon the Defendant tendered his Bill of Exceptions to the Judgment of the Court overruling his motion for a new trial and his motion in arrest of Judgment which is by the Court signed, sealed and ordered to be made a part of the Record.

John Alex Campbell *clerk*
Judge &c.

State of Tennessee
Montgomery County } I Jas W Williamson
Clerk of the Circuit
Court for said County do hereby certify
that the foregoing is a true and correct
Transcript of the Record and Proceedings
of the Court in the Cause of the

1271 State of Tennessee against Solomon
 M. Reynolds as the same appears of
 Record and on file in my office
 In testimony whereof I hereunto set
 my hand and affix the seal of the
 Court at Office in Clarksville
 This 22^d day Oct 1867

Jno W. Williams Clerk

Bill of Cost

Clerk Fees

Filing Indictment	25-
Enrolling Do	25-
Docketing	10
Capias & Order	100
Filing Plea	25-
12 Subpoenas	120
Ferry & Order	75
Motion for new trial	25-
Do in arrest of judgment	25-
Judgment final	75
Do for Cost	25-
Motion for appeal	25-
Bill Cost on Docket	50
Bill Cost on Execution	25
Execution & Order	65
Transcript Record	625
Seal of Court	50, 1320
Shff J. C. Read 5 Subpoenas	125-
" " 1 Capias	100 225-

(28)	Shiff T Ranney Juny	15	15
	" D Brown 1 Spa	25	25
	Wtly Gen L. E. Rice		1000

\$2635

Deity Jas W. Williamson Esq

4

Colonel W. H. Hays
No 3. Hays
Record
State. Hays

Find 3 Dec 1867

State & 10 Cents

of Hays

Entered 118

Find

Find 10 Cents

of Hays

(Ex. 118.985)

State of Tennessee

To the Clerk of the Circuit Court of Montgomery County, Tenn.

Whereas it has been suggested to the Court that in the case of *Rich Salmon McKays* against the State of Tennessee sent up to this Court there is Diminution and the Court thereupon ordered a Certiorari to issue &c

You are therefore hereby commanded to cause to be made a more full and perfect record in said cause and certify the same to this Court by the next term to commence at the Capital at Nashville on the 1st Monday, it being the 2nd day of December next. And have you then and there this Writ and show how you have obeyed the same.

Witness my hand & the Seal of our said Supreme Court at Office in the Capital at Nashville on this the 30th day of August 1867 and of the Independence of the United States the 91st year

J. P. G. Hays
Clerk

2 - 10 C^{ts}

Solomon Melleswells
vs } Clerk
The State of Tennessee

Issued 30th August 1867
Came to hand
Sept 5th 1867 &
Executed by making
the contents known
this 5th Sept 5/867
Jordan K. Hulet D^y Shiff

State of Tennessee Montgomery County
Circuit Court January Term 1867

Be it remembered that at the
Circuit Court began and held for the County
of Montgomery on the second Monday in
January, it being the time appointed by

State of Tennessee Montgomery County
Circuit Court January Term 1867

Be it remembered that at the
Circuit Court began and held for the County
of Montgomery on the second Monday in
January, it being the time appointed by
Law for the holding of said Court in the
City of Clarksville at the Court House
the following proceedings were had, to wit:

State	{	State of Tennessee
vs		Montgomery County
Solomon McReynolds		Circuit Court
(Man of Color)		January Term 1867

Indict-
ment The Grand Jurors for the State upon
their oaths present, that Solomon
McReynolds was on the 17th day of January
1867 in the State and County aforesaid
guilty of Bigamy by marrying living
and cohabiting with Betsy Edgington as
man and wife, he having at the same time
been previously married, and having a wife
living and not divorced - Against the Peace
and Dignity of the State,

J E Rice
Atty Genl

Evidence - "A True Bill"

Thos McCulloch Foreman of Grand Jury
Delpha Elder Eliza Elder Jane Elder Dick Elder
and L N Merry, sworn in open Court and
sent before the Grand Jury to testify on this Bill
of Indictment Jan 1867

J N Williamson Clerk

State of Tennessee

To the Sheriff of Montgomery County Greeting
You are hereby commanded to take ^{of} ~~Sal~~
McReynolds and him safely keep, ~~except~~
you have his body before the Court House in the

Capias

~~Circuit Court~~ ^{for} ~~at the Court House in the~~
City of Clarksville, there and then to
answer the State of Tennessee on a Bill
of Indictment found against him by
the Grand Jury for "Burgary".
Him fail not and have there and
there this writ. Witness J. W. Williamson
Clerk of our said Court at office in the
City of Clarksville the 2^d Monday in
January 1867 and 9th Year of the
Independence of the United States

J. W. Williamson Clerk

Sheriff Spent 24th January 1867

Returned Executed the 25th January 1867 by arresting
the Defendant and carried him into
Court

J. C. Read Clerk
Waiting on Court

Verdict of the Jury This day came the Attorney Genl in
behalf of the State, and the Defendant in
Custody of the Sheriff was brought to
the bar, who upon his being arraigned and
charged. Pleads not guilty to the indictment
against him, and for his trial puts himself
upon the country. And the Atty Genl doth the
like, and thereupon the Sheriff of Montgomery
County returned into Court a lawful -

(3)
Panel of Jurors. Citizens of Montgomery
County from whom were chosen the following
named parties Jurors to wit E T Hagood
S Lee James M Morrison J M Rice. W H
Powell B G Harper J W Grant R W
Hyatt H S Colishaw W M Orgain J E
Franklin & J L Hale, who were duly
elected tried and sworn the truth to speak
upon the issue joined, took their seats in the
Jury box, and it appearing to the Court there
is not time to finish the trial of this cause to
day. By consent of parties the cause continued
until the morning morning.

2^d day.

This day came again the Atty Genl in
behalf of the State and the Defendant
was again brot to the bar of the Court in
custody of the Sheriff. And thereupon
came again the Jury heretofore impaneled
in this cause, who upon their oaths do say
they find the Defendant guilty as
charged in the Indictment against
him, and afix that he be imprisoned
in the Penitentiary of the State at hard
labor for the Period of Two Years. The
Defendant was then ordered to fail to
await the Judgment of the Court.

Motion for The Defendant in this cause by Atty returned
non trial & Motion for non trial and for arrest of Judgment

Judgment of the State and the Defendant in custody of
of the Court. The Sheriff, was again brought to the bar of the
Court. And the motion heretofore returned

in this case for a new trial and in arrest of judgment is by the Court overruled. And the Defendant was asked if he had anything further to say why the judgment of the Court in accordance with the verdict of the jury should not be pronounced against him. Nothing said. Whereupon it is considered by the Court, that the Defendant be conveyed by the Sheriff to Nashville there to be confined in the Penitentiary of the State of Tennessee, at hard labor for the period of two years commencing from the 30th day of January 1867 that he be and is hereby rendered infamous and incompetent to exercise the rights of franchise or hold office or testify in any of the Courts in the State of Tennessee and that he pay the costs expended in this behalf, for which execution issue to all of which the Defendant excepts and returns his bill of exceptions which is signed and sealed by the Court and ordered to be made part of the record and the Defendant prays an appeal to the Supreme Court, now sitting at Nashville which upon his entering into bond and security for his appearance before the Supreme Court in the sum of One hundred Dollars, the same is allowed, and the Defendant then appeared with H. O. M. Reynolds and H. S. M. Reynolds as his securities and entered into bond in the sum of One hundred dollars conditioned as above.

(5)

The Solomon McReynolds H O McReynolds
& H S McReynolds acknowledge our-
selves bound and indebted to the State
of Tennessee in the penal sum of One
Hundred Dollars for the payment of
which we bind ourselves our heirs
Executors and administrators jointly
severally firmly by these presents.

The condition of the above obligation is
such, that whereas the said Solomon
McReynolds has been indicted and tried
before the Circuit Court of Montgomery
County for and found guilty of Bigamy
and sentenced by the Court to imprison-
ment for two years at hard labour
in the Penitentiary of the State of Ten-
nessee, in accordance with the verdict of
the Jury from which judgment the
said Solomon McReynolds has pray-
ed an Appeal to the Supreme Court
now sitting at Nashville. Now if the
said Solomon McReynolds shall make
his appearance before the said Supreme
Court now sitting at Nashville and there
and there answer the State in the charge
of Bigamy aforesaid and do not depart
the Court without leave. Then this obliga-
tion to be void otherwise to remain in
full force and effect. Given under
our hand this 31st day of January 1867

S H McReynolds

H O McReynolds

H S McReynolds

Evidence. The State introduced Delpha Elder, (a woman of color) who proved that Defendant was married to her daughter Eliza Elder sometime in 1856 in Montgomery County Tennessee. That they stood upon the floor and joined their right hands, and were married by a Fred Martin a slave of Widas Martin. Fred was a preacher. Defendant and Eliza agreed in the presence of the witnesses present to take each other as husband and wife. They were both slaves at the time and had the consent of their owners to the marriage. Eliza had several children by Defendant, but one of whom is now living. Defendant from that time on lived with and cohabited with Eliza calling her his wife and the child his child and she calling him her husband up to the 17th January 1867, when Defendant was married to Betsey Edgington. The State then read the following writing to wit:

"Marriage License"

State of Tennessee Montgomery County
To any Minister of the Gospel having
the care of Souls, or any Justice of the
Peace for said County, Greeting,
You or either of you are authorized to
Solemnize the Rite of Matrimony
between Solomon McKennolds and
Betsey Edgington, he the said Solomon

McReynolds, having given bond
and security agreeably to law enacted
of the General Assembly in such cases
made and provided. Given under my
hand at office in the City of Clark-
sville this 17th day of January 1867
W E Howell Clerk

Here the State introduced a colored man
by the name of Liverpool Napoleon
Merry, who proved that he solemnized
the rite of matrimony between Solomon
and Betsey Edgington by authority of the
furnishing license on the 17th day of January
1867. And made the following return
on the back thereof viz-

I certify that I solemnized the rite of
Matrimony between Solomon McReynolds
and Betsey Edgington on the 17th day of
January L N Merry M. P.

Said L N Merry proved that he was
a regularly ordained Minister of the
Gospel. And this was all the proof in
the cause.

Charge of the Court The Judge charged the Jury as follows.
to-wit

Before the revolution began the status
of the negro was well understood. He was
a slave and under the law bought and
sold in the market like other property.
There was no restraint imposed on account
of husband and wife, parent or child. In
fact the relation of husband and wife
was not required by the Statute in any
event or under any circumstances.

of the slave male and female by their agreement
 contracted the relation and in their conveyance
 entered into it. It was only permitted to pro-
 mote domestic order, and to further pecuniary
 interest, or as an act of kindness. It was not
 an alliance binding upon the slave creating
 it, and not in the least binding upon the
 master permitting it, or even advising or
 bringing it about. The slave upon his part
 could at any time abandon the alliance,
 and the master could disregard and neither
 one of them be questioned as to their action
 in the matter. The slave could at any time
 have as many wives as he chose; there was
 no law of the land offended by it. He might
 cohabit to a great extent without legal restriction
 to; in fact, if we look alone to the Statute law
 the relation of husband and wife hardly
 existed, but now the same law ^{of marriage} imposed
 upon the white race, with all its penalties
 and protection, is imposed upon and exten-
 ded to the Black race, and its administra-
 tion is the same as to both races. It is well
 to notice that as to the white race it could
 not be resisted; there is any law, or that
 such a law could be created to compel
 a marriage, or to declare a man and
 woman man and wife, when in fact
 before the enactment of the law, or at
 the time of its enactment they were
 not and had not for this end and pur-
 pose contracted. It may be the Legislature
 might enact, that upon condition parties

(9)
cohabiting would accept each other as
man and wife. They would thereby
be such in law, without license or
cerimony. The Legislature might go
further perhaps, ~~that~~ and enact that
if persons continued to cohabit for a given
time, such cohabitation would be conclusive
evidence of an acceptance of each other as
husband and wife. At common law the creation
of husband and wife was a matter of contract
each had to accept the other, and this was
all that was necessary. Of course this like any
other contract was a subject of dispute in
which event, evidence of the agreement was
necessary. But under our Statute law more
is required, than a mere contract and agreement.
The marriage must be solemnized, and the
parties must respectively declare in the
presence of a minister, or a proper officer
that they take or accept each other as man
and wife. But it certainly must be ascertained
that the provision the statute made upon the
common law only related to the white race
and as to slaves they were without the bene-
fit of any law upon the subject, common or
statute, and in a condition of perfect in-
dependence, and so remained until they
were by the revolution brought within the
purview and compass of the general statute
laws of marriage. They are now undoubtedly
within it. The black man heretofore a
slave cannot have more than one wife
or cohabit in defiance of the law of the
land. The law of bastardy and all the

law of husband and wife apply alike to both races. But the great question now to determine was the black man and woman, who claimed to be man and wife, and lived together as such before their introduction of their bondage was removed, in point of fact married parties. If we look only to the statute we must determine they were not. But how is it at common law? Can the common law be applied? What they at common law man and wife? They certainly were and it may be said, that the Statute does not negative this proposition; perhaps do not even enbarap it: for the reason that the Legislature in making an innovation upon or addition to the common law provided only for the white race leaving the slave unnoticed.

It has already been said Slaves were left without any law on the subject common or statute. His condition also has been glanced at. From this we gather that whatever might have been the common law, and the slaves at strict rights under it, still as slaves it did not afford any protection. Owing to the system all remedies were withheld and there were no penalties or obligations imposed upon the slave. All the elements of law, which entered into the marriage right afforded nothing to the slave.

The relation of man and wife is a

The relation of man and wife is a legal one, among the slaves was ignored or not in force under the slave system in any respect whatever; and although the slave man and woman might have been man and wife under the common law, still such was the force of statute and custom, that the benefits of the common law could not be reached could not be made available.

The Court is of opinion that notwithstanding the changes made upon the law of marriage by statute, still if a man of color a slave and a woman of color a slave, in fact contracted the relation of husband and wife and entered into the relation, they were at common law such, but in such a condition that all the benefits of the common law protecting the relation were withheld by statute and custom. And all penalties were withheld for a violation of the marital vows, and consequently there was no remedy to enforce the mutual observance of the relation. They were so to speak man and wife in a state of nudity. They were deprived of all remedies and of all protection in the relation, still one was the husband and one the wife. For ever since and before the negro was made a slave the right of marriage has existed and good at common law, without the intervention of statutes; and it may be observed, that as to the slave, the right

of marriage never was prohibited, only
 its protection not secured by law.
 Slaves under all circumstances contract-
 ed and entered into the relation. And
 in every instance, if it was not an
 Alliance binding upon him and the
 master. By statute or custom, it was
 never the up an Alliance. And not
 an illegal one. The Alliance did not
 offend the common law, but had
 its approbation. And because of over-
 powering interest, could give no
 remedy. The Alliance in fact did
 not offend any law. All that was want-
 ing was a remedy for its protection.
 For illustration: If A executes his note
 to B for One Thousand Dollars. A
 contract is made, and the relation
 of debtor and creditor is created, but
 because the law by its provisions found-
 ed in public policy bars a remedy
 by lapse of time, A can not recover on
 the contract. This is not because the
 contract is illegal or the relation of
 debtor and creditor was not created
 at the time; it is only because the law
 gives no remedy. The law has a reason
 for not giving a remedy. One is among
 other things, that slavery may not
 become state. The law also had a reason
 for not giving a remedy to protect
 the relation of man and wife among
 slaves. The reason was, that, to protect

with slavery, and a "bad purchase" a
 mean and evil. They would have become
 his absolute property, and for this
 we could not have drawn product
 or their relation of his land and soil;
 for they would have appeared as "domestic
 property" in the domestic market. Still
 they would not have changed their status,
 they would as before their bondage remain
 alien and evil. Domestic of all proper
 this answer. So further illustration, say,
 a negro man and his wife had gone
 into voluntary servitude, would this act
 have divorced them? Certainly not;
 they would have domestic relations
 of all product as man and wife.
 But the suggestion is made by some
 that this could not have been any
 measure of American law, for the man
 the slave could not contract. At this
 as a general proposition he could not
 make a binding agreement (except
 that he might have made to be
 enforced, but to be upheld by his master
 but this rule of law cannot be extended
 to what might be termed his natural
 right to contract with a slave owner
 to take his wife or child, if she would accept
 him as her husband. This was a mere
 contract, and of American law legal
 and not incompatible with slavery
 only the remedy was, the contract was

13th

The relation of affric amiable for
this purpose, incompatible with
a state of slavery, such a contract
the slave was held by the same laws
that they possess property and have
and therefore the average power over the
slave was absolute. This was the law
and the law in giving this right
necessarily with the protection of the
slave as a free land or as a contract
But this will not make their ownership
illegal, any more than the property
will make their being, if only a matter
them of legal cases of complaint
and a means of ending the hostility
could not claim the security of his
with independent of the state of
the making: whether or not he claims
the security of his children against the
master, still they own his children
and their mother his wife, and even
the owner can separate them
to have given protection to the slave
three masters, would have ordered
him to property of a qualified character
act. It is no matter the absolute property
of the master, and therefore he
could have no protection in the ownership
relation. This would have been incompatible
with the other, both could not have done
together, for neither party to the
relation, had the free negro himself

transfer of American law. Chapter Eight
 Eight Sect 1st in acts that become of law
 thereafter shall stand in the same way
 must be any law under the statute.
 of it is admitted, that negroes in their
 slavery were not free persons and were
 by virtue of their acts, and claims as
 such, the late acts of legislation require
 in and make legal the act of the parties
 in taking each other as man and wife.
 there is no hardship in this, no violence,
 of no injury, no injury, no law what
 the parties by their own voluntary consent
 and assistance and practice have done
 all in their power to make good.
 of doing them and their part and all
 necessary to make a common law among
 ago. And it was not legal at the time
 persons made, and acting as persons free
 it is now by virtue of the late legislation
 made legal. The law accepts the parties
 in the character they relate to each other
 of equal free persons and their act with
 the act of the law. So if the defendant
 at the bar had embraced the plaintiff
 relation, he should have held it as a
 step in, and the governing of his degree
 the happening, the late act of the legis-
 lature. At legislation what he had entered
 at his marriage, by virtue of his free
 man and the act, he had himself
 without consideration. Of the act, he must
 the defendant of himself also.

not only moral but political upon a

large measure.

The American law requires no solemnization

in being, the State as to slave owners

requires being solemnized, but

refers to contract of American law

there was no prohibition against it, if by

force of custom they could abrogate the

contract and enter into another alliance

where of a slave has been voluntarily

abandoned his wife and children with

another alliance, his first wife was at

belong to the liberators and over upon

the marriage to the 5th section Chapter X

of the Act of 1865-6, which reads that all

free persons of color who were living together

as husband and wife (it ought have read as

husband and wife at common law) within

State in a state of slavery are hereby de-

clared to be man and wife (it ought have

read by State as well as at common law)

and their children legitimated by statute

to an inheritance etc. Now since the

not a copy line of slavery is introduced

and the State never having required

the State to observe its rules and regulations

but left them to many of common law

except the claim of the master over them

no more and since property they are now

bound to an observance of their common law

marriage, and cannot deny that it is a

marriage at will, since they are bound

in the relation by the law of the land.

The individual can never be necessary and

(47)
If he contracted to take her as his wife
and she contracted to take him as her
husband, and they lived together as
such. There is no force or authority in the
Act of the Legislature declaring their
marriage good under the State. As the
law now stands, a marriage contracted
between a white man and woman
of mixed blood to the third generation
inclusive. But suppose said parties
should so contract and marry accord-
ing to the forms of the Statute? The mar-
riage it is true would be void, but if
while they were living in this relation
the Legislature was to declare the
marriage valid, would it not be so?
This would make good and valid their
intention, would carry out their purpose
and desire, legally to be husband and wife.
And certainly the parties could not complain.
And so if the Defendant does all he could
he may have lived with his wife, his wife
and lived with her as such, he cannot com-
plain because the law kindly comes to
his protection and makes good his purpose
to be a husband. Counsel have remarked
upon custom. As to this it may be held
that by custom the slave marriage was
good at common law. But by force of
Custom, was treated as a marriage at
will, binding so long only as it suited
the interest or caprice of the three parties
interested to wit, the master the hus-
band and the wife. So a marriage

of this kind existing and not abandoned by the parties prior to the annulling of the slave system, is no longer one at will, but by operation of law, rendering this may seem curius law and so it is, but no more curius than was the custom or practice which gave rise to it.

On the whole gentlemen of the Jury if the proof shows the Defendant had prior to his freedom contracted a marriage with a woman of his color and lived with her as ~~his~~ husband. In other words that the two lived together as man and wife. They are now legally such. And if the Defendant has married another woman while his wife, he may have first married was living, he is guilty as charged in the indictment. The proof to sustain the indictment must be clear and certain or rather entirely and thoroughly satisfactory. If it falls short of this you will acquit the Defendant.

The Jury found the Defendant guilty as charged in the indictment and assessed the period which he should serve in the Penitentiary of the State to two years. The Defendant moved the Court for a new trial which was overruled. He then ~~there~~ moved in arrest of Judgment which was likewise by the Court overruled.

Whereupon the Defendant tenders

This Bill of Exceptions to the Judgment
of the Court overruling his motion for a
new trial and his motion for arrest
of Judgment, which is by the Court
signed, sealed and ordered to be made
a part of the record.

John Alex Campbell *Ques*
Judge 80.

State of Tennessee
Montgomery County. I, Jas W Williamson Clerk
of the Circuit Court for
said County do hereby certify that the foregoing
is a true and correct Transcript of the records and
the ~~proceedings~~ proceedings of the Court in the Cause of
the State of Tennessee against Solomon M Reynolds
as the same appears of record and on
file in my Office, In testimony thereof I have
unto set my hand and affix the Seal of Court
at office in Clarksville the 11 day March 1867
Jas W Williamson CLK

Deeds Book	
Att fees	11 95
State Tax	3 50
Shff L & Reed	2 25
Pranny	15
Att Genl & Rice	10 00
Total	\$27.85

J W Williamson CLK

MS 13 4 1869

W. L. C.

W. L. C. 3rd March
W. L. C. 3rd March
W. L. C. 3rd March

W. L. C.

In the presence of W. L. C.

W. L. C. 3rd March

W. L. C. 3rd March

W. L. C. 3rd March

W. L. C.

W. L. C. 3rd March

W. L. C. 3rd March