State v. Negro Will, 18 N.C. 121 (1834)

THE defendant was indicted for the murder of one Richard Baxter, and on the trial before his honour Judge DONNELL, at Edgecombe, on the last Circuit, the jury returned the following special verdict, viz.

"That the prisoner Will, was the property of James S. Battle, and the deceased, Richard Baxter, was the overseer of said Battle, and entrusted with the management of the prisoner at the time of the commission of the homicide: that early in the morning of the 22nd day of January last, on which day the killing took place, the prisoner had a dispute with slave Allen, who was likewise the property of said Battle, and a foreman on the same plantation of which the deceased was overseer: that the dispute between the prisoner and the said Allen, arose about a hoe which the former claimed to use exclusively on the farm on account of his having helved it in his own time; but which the latter directed another slave to use on that day. That some angry words passed between the prisoner and the foreman, upon which the prisoner broke out the helve, and went off about one fourth of a mile to his work, which was packing cotton with a screw: that very soon after the dispute between the prisoner and the foreman, the latter informed the deceased of what had occurred, who immediately went into his house: that while the deceased was in his house, his wife was heard to say, "I would not my dear," to which he replied in a positive tone of voice, "I will:" that in a very short time after this, the deceased came out of his house to the place where the foreman was, and told him that he, the deceased, was going after the prisoner, and directed the foreman to take his cowhide and follow after him at a distance; that the deceased then returned into the house and took his gun, mounted his horse and rode to the screw, a distance of about six hundred yards, where the prisoner was at work: that the deceased came up within twenty or twenty-five feet of the screw, without being observed by the prisoner; dismounted and hastily got over the fence into the screw yard: that the deceased with his gun in his hand walked directly to the box on which the prisoner was standing engaged in throwing in cotton, and ordered the prisoner to come down: that the prisoner took off his hat in an humble manner and came down: that the deceased spoke some words to the prisoner, which were not heard by any of the three negroes present: that the prisoner thereupon made off, and getting between ten and fifteen steps from the deceased, the deceased fired upon him: that the report of the gun was very loud, and the whole load lodged in prisoner's back, covering a space of twelve inches square: that the wound caused thereby might have produced death: that the prisoner continued to make off through a field and after retreating in a run about one hundred and fifty yards in sight of the deceased, the deceased directed two of the slaves present to pursue him through the field, saying, that "he could not go far;" that the deceased himself laying down his gun, mounted his horse, and having directed his foreman, who had just come up to pursue the prisoner likewise, rode round the field and headed the prisoner: that as soon as the deceased had done this, he dismounted, got over the fence and pursued the prisoner on foot: that as soon as the prisoner discovered he was headed, he changed his course to avoid the deceased, and ran in another direction towards the wood: that after pursuing the prisoner on foot two or three hundred yards, the deceased came up with him, and collared him with his right hand: that at this moment the negroes ordered to pursue the prisoner were runing towards the prisoner and the deceased: that the prisoner had ran before he was overtaken by the deceased five or six hundred yards from the place where he was shot: that it was not more than six or eight minutes from the time of the

shooting, till the slaves in pursuit came to where the prisoner and deceased were engaged: that in a short time the said slaves came up, and being ordered by the deceased, one of them attempted to lay hold of the prisoner, who had his knife drawn, and the left thumb of the deceased in his mouth: that the prisoner struck at said slave with his knife, missed him and cut the deceased in his thigh. That in the scuffle between the prisoner and deceased, after the deceased overtook the prisoner, the deceased received from the prisoner a wound in his arm which occasioned his death; and that the deceased had no weapons during the scuffle. That soon after, the deceased let go his hold on the prisoner, who ran towards the nearest woods and escaped: that the deceased did not pursue him, but directed the slaves to do so: that the deceased soon recalled the slaves, and when they returned the deceased was sitting on the ground bleeding, and as they came up the deceased said, "Will has killed me; if I had minded what my poor wife said, I should not have been in this fix." That besides the wound on his thigh, the deceased had a slight puncture on his breast, about skin deep, and a wound about four inches long, and two inches deep on his right arm above his elbow, which was inflicted by the prisoner, and which from loss of blood occasioned his death, and that he died on the same day in the evening: that the prisoner went the same day to his master, and surrendered himself: that the next day, upon being arrested and informed of the death of the deceased, the prisoner exclaimed, " Is it possible!" and appeared so much affected that he came near falling, and was obliged to be supported. That the homicide and all the circumstances connected therewith took place in Edgecombe county.

"But whether upon the whole matter aforesaid the said Will be guilty of the felony and murder in the said indictment specified and charged upon him, the said jurors are altogether ignorant, and pray the advice of the Court thereupon. And if upon the whole matter aforesaid, it shall appear to the Court that he is guilty of the felony and murder wherewith he stands charged, then they find him guilty. If upon the whole matter aforesaid, it shall appear to the Court, that he is not guilty of the murder aforesaid charged upon him by said indictment, then the said jurors upon their oaths aforesaid, do say, that the said Will is not guilty of the murder aforesaid, as the said Will has for himself above in pleading alleged, but that the said Will is only guilty of feloniously killing and slaying the said Richard Baxter." Upon this special verdict, his honour gave judgment that the prisoner was guilty of murder, and pronounced sentence of death; whereupon the prisoner appealed to the Supreme Court.

Justice Gaston:

... The crime charged is that of murder at common law. By that law, murder is described to be, "when a person of sound mind and discretion, killeth any reasonable creature in being, with malice aforethought;" and the inquiry in this case, is, whether upon the facts found, the law adjudges that the killing was committed with malice aforethought. If it so adjudge, then the prisoner was rightfully convicted of murder; if it do not so adjudge, then he was guilty of that felonious and unlawful homicide, which it terms manslaughter. This term, malice aforethought, is not restricted to the case of direct malevolence to the unfortunate victim of violence, but is extended to all those cases where the fatal act is not the result of a sudden transport of passion, which may be regarded as incident to human infirmity, but is characterised by wickedness, and manifests a depraved heart, regardless of the rights of others, and fatally bent on mischief. Where there is no explanation of the motive, the law can attribute the deed only to this wicked

disposition, as it will not presume the existence of what does not appear. But where the facts connnected with the transaction show a motive--an immediate cause for the act done--the law assigns the deed to that motive, the effect to its immediate cause, and will not lightly admit, that it was the consequence of any preconceived purpose.

The prisoner is a slave, and, at the time of this transaction, was under subjection to the deceased, who was an overseer, employed by the master of the prisoner for superintending the management of his plantation. A complaint of some act of petulance and impropriety having been made to the deceased against the prisoner, the deceased formed a resolution of punishment or violence, the precise nature of which does not appear. From his positive reply to his wife's dissuasion; from his directing the foreman to follow with a cowhide, and from his taking a gun with him, it must be inferred that his primary intent was to inflict corporal chastisement on the prisoner, and that he also purposed, in some event which he deemed not unlikely to occur, to shoot the prisoner. Upon arriving within twenty or twenty-five feet, he called to the prisoner, who was engaged at his labour, and who immediately approached the deceased in a respectful manner, near enough to hear a communication of his purpose. The prisoner, on learning it, made off, and when distant between ten and fifteen steps, the deceased fired upon him, lodged the whole load in the prisoner's back, and inflicted a wound likely to occasion death. The prisoner fled, was headed by the deceased, turned to fly in an opposite direction, was overtaken by the deceased, and by several negroes, who had been ordered in pursuit, struggled to avoid the arrest, used his knife to cut himself free, and in the struggle inflicted with the knife two wounds, one on the thigh, the other on the arm, the latter of which proved mortal. The whole transaction from the time of the shooting until the fatal struggle, did not last more than six or eight minutes.

Had this unfortunate affair occurred between two freemen, whatever might have been their relative condition, the homicide could not have been more than manslaughter. Take the case of a master and apprentice, where the latter flies to avoid correction, which the master has a right to inflict. If the master were to shoot at him, engage in hot pursuit, overtake him, and in the immediate struggle, the master was killed; the deed could not be attributed to downright wickedness, but to passion suddenly and violently excited, to that ““ fervor brevis” which leaves not to the mind the calm exercise of its faculties, and which the law must regard, not indeed as excusing the act, but as extenuating the degree of guilt. If an officer, armed with the authority of the law to arrest one who has committed a misdemeanor, were, upon the culprit's flying to avoid an arrest, to use his authority with the same circumstances of outrage, and the like result had happened, the crime would not be murder, but manslaughter only. (1 Hawkins, ch. 13, sect. 63, 64, 65. Foster, ch. 2. sect. 2. 1 East, Homicide, sect. 70-86.) It must be admitted, however, that the relation which exists between the owner or temporary master, and his slave, is in many respects strikingly dissimilar from that which the law recognises between a master and his apprentice, or between any two freemen of whom one may have the right to arrest, imprison, or even chastise the other. Unconditional submission is the general duty of the slave; unlimited power, is in general, the legal right of the master. Unquestionably there are exceptions to this rule. It is certain that the master has not the right to slay his slave, and I hold it to be equally certain that the slave has a right to defend himself against the unlawful attempt of his master to deprive him of life. There may be other exceptions, but in a matter so full of difficulties, where reason and humanity plead with almost irresistible force on one side, and a necessary policy,

rigorous indeed, but inseparable from slavery, urges on the other, I fear to err, should I undertake to define them. The general rule is, that which has been before declared. There is no legal limitation to the master's power of punishment, except that it shall not reach the life of his offending slave. It is for the legislature to remove this reproach from amongst us, if, consistently with the public safety, it can be removed. We must administer the law, such as it is confided to our keeping.

...

Unconditional submission is the general duty of the slave. Un limited power, is, in general, the legal right of the master. But this does not authorise the master to kill his slave, and the slave has a right to defend his life against the unlawful attempt of his master to take it.

It is not necessary on this occasion to determine, (and we would avoid all unnecessary inquiries,) whether the power of an overseer is as unrestricted as that of the master. All of us agree, that in the case before us, he had an unquestionable right to judge of the offence which had been committed by the prisoner, and to inflict such chastisement, as, according to the usages of discipline, and his sound discretion, was proper to enforce subordination. Upon the special verdict, we see no fact from which it can legally be inferred, that his primary purpose was to do more. He was acting then, within the limits of his rightful authority, when he summoned the prisoner to him, and announced his resolution; and the act of the prisoner in attempting to evade punishment was a breach of duty. This act, however, was not resistance nor rebellion, and it certainly afforded no justification nor excuse for the barbarous act which followed. Had the prisoner died of the wound which the overseer inflicted, the latter would have been guilty of manslaughter at least,--probably of murder. The offence of shrinking from menaced punishment, called for no such desperate corrective; the deed was the more strongly impressed with the character of cruelty, as it was preceded by no warning to the fugitive, and it was too probable that it had been deliberately contemplated and eventually resolved on, before the attempt to escape. Had the prisoner, previously to the shooting, resisted an arrest, and, in the course of the struggle, inflicted the mortal wound on the deceased, there is no doubt that his crime in legal contemplation, must have been murder. Nothing had then occurred which could have excited in any but a cruel and wicked heart, in a heart fatally resolved on illegal resistance, at whatever risk of death or great bodily harm to others, a passion so violent and so destructive in its consequences. It is not to passion, as such, that the law is benignant, but to passion springing from human infirmity. But after the gun was fired, all must see that a vast change was effected in the situation of the prisoner; and that new and strong impulses to action must have been impressed upon his mind. Suffering under the torture of a wound likely to terminate in death, and inflicted by a person, having indeed authority over him, but wielding power with the extravagance and madness of fury; chased in hot pursuit; baited and hemmed in like a crippled beast of prey that cannot run far; it became instinct, almost uncontrollable instinct to fly; it was human infirmity to struggle; it was terror or resentment, the strongest of human passions, or both combined, which gave to the struggle its fatal result; and this terror, this resentment, could not but have been excited in any one who had the ordinary feelings and frailties of human nature. But will the law permit human infirmity to extenuate a homicide from murder to manslaughter, in any case where the slayer is a slave, and the slain is the representative of his master? Will it allow

in such a case any passions, however common to human beings, and however strongly provoked into action, to repel the allegation of malice?

If a slave resists his master, previous to any attempt on the part of the latter to take his life, and he afterwards kills his master, he is guilty of murder.

In considering these questions, it may not be unimportant to remember, that passion, however excited, is not set up as a legal defence, or excuse for a criminal act. To kill a man in a sudden fury is as much a crime, as to slay him because of personal malevolence, or of a general hostility to the human family. No one has a right to yield to passion the dominion over judgment and conscience, and an illegal act of violence becomes in no respect lawful, by being committed during a voluntary overthrow of reason. But the law in its salutary chastisement of vicious and imperfect beings, endeavours to temper rigour with benignity, and visits with greater or less severity a violation of its injunctions, accordingly as it traces such violation to more or less atrocious motives, indicating more or less of human depravity or human frailty. The prisoner's traverse extends to the whole charge contained in the indictment, and his right to impel the averment of malice, is but a right to be tried, before he is convicted. If the entire charge be sustained, he is then guilty, as charged; if the allegation of malice be not sustained, he is guilty only of the residue of the matter charged.

The law, which holds, that passion springing from ordinary frailty, is not malice, has also undertaken to designate what provocation or excitement, may or may not rouse passions in minds infirm, although not malignant. This undertaking to give greater precision to its rules, so far as it has been successful, has been effected by the labours of wise and good men, continued through a long series of ages, and is evidenced by adjudications in the numerous, or rather innumerable cases of homicide which the annals of human crime present. The secondary rules thus ascertained and authoritatively enforced, are as obligatory upon the conscience of Judges as the primary rule itself. They explain the primary rule, limit its extent, show its application, and restrain the exercise of a vague discretion. Some causes of passionate excitement are termed " legal provocations," while others have been declared not to be " legal provocations." This term must not be understood to mean that a man has a legal right to be provoked, but only that the law regards certain offensive acts as provocations, while it refuses to consider others as such. The latter, though provocations in common parlance, are not provocations in a legal sense, and therefore not comprehended in the phrase of "legal provocations." When a case of homicide happens in which the fact of provocation occurs, and the legal character of that fact has been settled by precedents, the judicial duty is comparatively plain. But where the legal character of the fact has never before been settled, it then becomes one of vast responsibility, and often of no little difficulty. The principle to be extracted from former adjudications must then be diligently sought for, and prudently applied. In most of the cases where passion has been viewed as mitigated by infirmity, it has been called into action by injuries which the law punishes as crimes against the community. A man is assaulted, and in a transport of passion kills the assailant; or an individual who has committed an offence short of felony, is arrested or attempted to be arrested by an officer without a lawful warrant, or with unlawful violence, and in the struggle kills the officer, the injuries of the deceased, which the law regards as provocations, are misdemeanors, and as such the subjects of criminal prosecution. Is it the criterion which discriminates ordinary

from malignant passion, that the former is excited by offensive conduct amounting to a breach of the public law? If it be, then can the prisoner's guilt be alleviated into manslaughter? The overseer had indeed inflicted a wound which might have proved mortal, but it did not terminate in death. Had the overseer lived he could not have been indicted for the deed; for however criminal his intent, the criminal act was not consummated. If he could not have been indicted for the act, can this act be termed a legal provocation?

On deliberate reflection, the Court is satisfied that this is not the criterion. The law does not regard certain acts as provocations because they are indictable, but in many cases it makes certain acts indictable because they are provocations, and may occasion the shedding of human blood. There are legal provocations for which an indictment will not lie. There are indictable injuries which are not legal provocations. A libel is not only a civil injury, but a public offence, yet the law will not consider it a provocation extenuating the slaying of the libeller into manslaughter, although the deed may have been committed in the first gust of passion. Adultery is not an indictable offence, yet of all the provocations which can excite man to madness, the law recognises it as the highest and the strongest.

It is not the criterion of a “legal provocation” that the offensive act must be an indictable offence.

If the law were, from a policy well or ill conceived, to make it an indictable offence to call a man a liar, the rule would yet remain “that words of reproach, how grievous soever, are not a provocation sufficient to free the party killing from the guilt of murder.” If, on the contrary, it should declare no assaults indictable, which did not cause actual bodily harm, to spit in another's face would remain as it is, a provocation. Consistently with good sense, can this be the criterion? The circumstance that adequate punishment will be inflicted by law, ought rather to make the sufferer more patient under wrong, while the belief or the knowledge that human laws afford no redress, is calculated rather to exasperate resentment, to augment terror, and to perplex and distract reason. The application of such a criterion to cases like the present, would lead to extraordinary results. The inquiry is, with what disposition was the fatal act done. That disposition must depend on the then exciting causes. Events subsequently happening and which it was not given to man's sagacity to foresee, certainly did not, and could not operate either to increase or lessen excitement. Yet accordingly as this unknown contingency shall eventuate, the law, proudly styled the perfection of reason-- determines on the disposition with which a preceding act was done! If the wound, apparently mortal, proves mortal, and the negro dies, then he killed the overseer in a moment of human infirmity; for the act of the deceased which led to it was an indictable offence. But if it please the Author and Preserver of life to raise him from the bed of death, then his act was not prompted by passion, but instigated by malice. If he lives, he is a murderer, but if he die he was not. Often the law, in its mercy, withholds from a criminal act, which, because of some happy casualty wholly independent of the will of the wrong-doer, has not been completed, the full rigour of its punishment; but if, in our code of criminal law, there be any case in which an unlawful intent is by a subsequent casualty aggravated into a purpose of deeper atrocity, it has escaped our observation.

What, then, is the true principle which characterises the various adjudications on the

subject of provocation and excited passion? I am compelled to say, that no other is to be found, but what is contained in the primary rule itself, applied from time to time by wisdom and experience, to cases as they occurred, until in a vast majority of the cases that can occur, the existing tribunals of justice find a safe guide in the undisputed decisions of their predecessors. Where they have not this guide, they are bound to act, as those acted, who had no precedent to direct them. We have no adjudged case that determines this question, or presents us with a precise rule by which to determine it. The case of the State v. Mann, 2 Dev. Rep. 263, does not bear upon the question. It decides, indeed, that the master or temporary owner is not indictable for a cruel and unreasonable battery of his slave. None could feel more strongly the harshness of the proposition, than those who found themselves obliged to declare it a proposition of law. Not that they for one moment admitted that cruelty was rightful, but they found no law by which to ascertain what was cruelty in the master, so as to render it punishable as a public offence. Resistance, therefore, on the part of the slave to the battery of his master cannot be legally excused, although such battery may be unreasonable; but the degree of its criminality that decision cannot aid us to ascertain. The case of the State v. Mann, at the same time pronounced, what was indeed beyond question, that the law protects the life of the slave against the violence of his master, and that the homicide of a slave, like that of a freeman, is murder or manslaughter. An attempt to take a slave's life is then an attempt to commit a grievous crime, and may rightfully be resisted. But what emotions of terror or resentment may, without the imputation of fiendlike malignity, be excited in a poor slave by cruelty from his master that does not immediately menace death, that case neither determines, nor professes to determine. In the absence, then, of all precedents directly in point or strikingly analogous, the question recurs; if the passions of the slave be excited into unlawful violence, by the inhumanity of his master or temporary owner, or one clothed with the master's authority, is it a conclusion of law, that such passions must spring from diabolical malice? Unless I see my way clear as a sunbeam, I cannot believe that this is the law of a civilised people and of a Christian land. I will not presume an arbitrary and inflexible rule so sanguinary in its character, and so repugnant to the spirit of those holy statutes which "rejoice the heart, enlighten the eyes, and are true and righteous altogether." If the legislature should ever prescribe such a law--a supposition which can scarcely be made without disrespect, it will be for those who then sit in the judgment seat to administer it. But the appeal here is to the common law, which declares passion not transcending all reasonable limits, to be distinct from malice. The prisoner is a human being, degraded indeed by slavery, but yet having "organs, dimensions, senses, affections, passions," like our own. The unfortunate man slain was for the time, indeed, his master, yet this dominion was not like that of a sovereign who can do no wrong. Express malice is not found by the jury. From the facts, I am satisfied as a man, that in truth malice did not exist, and I see no law which compels me as a judge to infer malice contrary to the truth. Unless there be malice, express or implied, the slaying is a felonious homicide, but it is not murder.