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Breach by Violence: The Forgotten History of Sharecropper Litigation in the Post-Slavery South

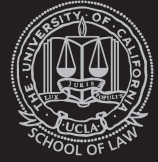
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ABSTRACT

This Article uses private law as a lens and a guide to excavate an unfamiliar story about labor and racial violence in the post-slavery south. It is the story of farmers like Colonel Bishop, whose landlord attacked him in the middle of the night in an effort to coerce him into breaching his contract. Violent breaches of contract such as these were not uncommon in the post-slavery south. Indeed, historians have thoroughly documented the violence in this period. Yet much less is known about the doctrinal implications of this violence, particularly in the context of private law. Even less explored are the ways that the ordinary, vulnerable, and marginalized farmers who experienced these breaches bravely sought redress in one of the few legal avenues available to them: private common law claims.

Consequently, this Article reckons with the role of labor violence in the post-slavery south, cataloging both the phenomenon of breach by violence as well as farmers' extraordinary efforts to remedy these breaches with private law. To that end, this Article documents and analyzes a set of cases that has never been considered systematically. These twenty-four cases, arising between the end of the Civil War and the start of the Great Depression, show how sharecroppers and tenant farmers who were denied benefits under their contracts, and who had been assaulted, forcibly evicted, and robbed, were seeking legal remedies in the language of private law. As a dataset, this group of cases is a new window into the history of both private law and civil rights.

This Article offers two insights into this underexplored history. First, in a context such as the Jim Crow south—where neither criminal law nor civil rights legislation were able to protect vulnerable claimants, actions rooted in private common law rights could offer a partial remedy. Second, although private law was many plaintiffs' last best option for receiving redress, certain private law doctrines may themselves have been complicit in the violence that permeated the Jim Crow south. Ultimately, this history suggests that private law may be a central actor in the story of the law's relationship to violence.



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INTRODUCTION

On July 29, 1920, Colonel Newton Bishop, a forty-five-year-old, Black sharecropper was nearly killed by a mob of white men.¹ Earlier that evening, a neighbor had knocked on Bishop's door asking for help. The neighbor claimed that his family was trapped in a car that had driven off the road. Bishop agreed to help rescue them.

When Bishop reached the road, he was ambushed. A man with a white cloth over his head—Bishop's landlord, Lee Bussell—aimed a shotgun at him. Bussell ordered Bishop to put his hands in the air before covering Bishop's face and beating him. Bishop prayed and begged for his life. He was beaten and shot twice in the head before managing to escape his attackers. For weeks after the attack, Bussell continually threatened to kill Bishop. On multiple occasions Bussell drove past Bishop's home and threatened further assaults unless Bishop moved off the land.² Bussell also prevented Bishop and his family members from harvesting the cotton they had grown. Instead, he sought to hire laborers to conduct the harvest, with the ultimate intention of charging the cost of labor to Bishop.

Unlike most sharecroppers in his position, Colonel Bishop took the extraordinary and courageous step of taking his abusive landlord to court. Perhaps even more extraordinarily, Bishop won, both at trial and on appeal. He won the right to gather the crops as his original contract had stipulated. In addition, the court prohibited Bussell from interfering in the harvest and appointed a receiver to manage both the harvest and the settling of accounts.³

At first blush, this victory seems to speak to the law's power to protect even the most marginalized plaintiffs. Whites' violence against Black Americans largely went unpunished in this time period, and countless Black women, men, and children were attacked and murdered as a result. By contrast, in this instance the law *did* hold someone accountable. The Georgia Supreme Court condemned Bussell's behavior and issued an order for protection and mediation. Winning this case was undoubtedly a victory for Bishop and his family.

Nevertheless, Bishop's victory was a distorted version of legal success. Yes, Bishop was protected from Bussell's violence as well as allowed to settle his

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1. Bussell v. Bishop, 110 S.E. 174, 175 (Ga. 1921). Bishop also had a physical disability that left him without the use of his left arm. This would have made it harder for him to defend himself, a fact that his attackers were likely hoping to take advantage of. *See id.*
 2. *Id.* (describing the attack in detail).
 3. *Id.* at 176.

accounts. But the cost of this protection and mediation was deducted from *Bishop's* profits. This means that Colonel Bishop's remedy cost Lee Bussell nothing more than what Bussell was already obligated to pay according to the terms of their sharecropping contract.⁴ In essence, the court minimized the amount that Lee Bussell's violence cost Lee Bussell.

Many of the legal mechanisms that should have protected Bishop against or mitigated Bussell's wrongdoing—be it public law (such as criminal law and civil rights legislation) or private law (such as property or tort law)—exacted little social or economic cost from either Bussell or the broader planter community. Even though Bussell's premeditated violence and subsequent assaults were crimes, he was never arrested or prosecuted for committing them.⁵ The Thirteenth Amendment's prohibition on involuntary servitude, which had recently been used to overturn southern peonage laws, did not apply to violent efforts to expel someone from service.⁶ Segregation was constitutional, and civil cases challenging racial discrimination and disenfranchisement faced dismal odds of success in state and federal courts.⁷ And as a sharecropper, Colonel Bishop did not actually own the crops he was growing or have any rights to the home in which he was living.⁸ This meant that Bishop could not sue Lee Bussell for theft, and, technically, did not

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4. In a way, the remedy was a perverse form of expectation damages. Bussell tried to induce Bishop to breach, and when that failed, the court's response was a legal remedy that put both parties in the position they would have occupied had no coercive violence occurred.
 5. Crimes against Black Americans were rarely prosecuted and even more rarely led to conviction. See, e.g., KIDADA E. WILLIAMS, *THEY LEFT GREAT MARKS ON ME: AFRICAN AMERICAN TESTIMONIES OF RACIAL VIOLENCE FROM EMANCIPATION TO WORLD WAR I* (2012). Conversely, Blackness itself was criminalized, meaning that Black Americans regularly faced brutal punishments for minor, or fictitious, legal infractions. See C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH, 1877–1913*, at 212, 321–49 (1971) (describing the “new codes of White Supremacy”); DAVID M. OSHINSKY, “WORSE THAN SLAVERY”: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE (1997); see also SARAH HALEY, *NO MERCY HERE: GENDER, PUNISHMENT, AND THE MAKING OF JIM CROW MODERNITY* 8 (2016) (describing the “gendered racial terror” experienced by Black women who were imprisoned during this time period).
 6. The Supreme Court narrowly interpreted the Reconstruction Amendments, thus allowing many of the worst elements of Jim Crow to remain beyond their reach. See *infra* Subpart I.B for a discussion of these decisions.
 7. Notably, private actors' violations of the Fourteenth Amendment were outside of the federal government's jurisdiction. See *The Civil Rights Cases*, 109 U.S. 3, 23 (1883); *Hodges v. United States*, 203 U.S. 1, 14 (1906); see also *infra* Subpart I.B.
 8. Few Black Americans were able to acquire or keep the land that the U.S. government had once promised them. See SHARON ANN HOLT, *MAKING FREEDOM PAY: NORTH CAROLINA FREEDPEOPLE WORKING FOR THEMSELVES, 1865–1900* (2000); JULIE SAVILLE, *THE WORK OF RECONSTRUCTION: FROM SLAVE TO WAGE LABORER IN SOUTH CAROLINA, 1860–1870* (1994); SAIDIYA V. HARTMAN, *SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA* (1997); DYLAN C. PENNINGROTH, *THE CLAIMS OF KINFOLK AFRICAN AMERICAN PROPERTY AND COMMUNITY IN THE NINETEENTH-CENTURY SOUTH* (2003); VANN WOODWARD, *supra* note 5.

even have the right to exclude others from the premises (in layman’s terms, he could not legally prevent Bussell from entering his home).⁹ Taken together, these different legal realities created a best-case scenario wherein even after succeeding in court, Colonel Bishop still bore the cost of the violence committed against him.

Southern Black agricultural workers like Colonel Bishop suffered at the intersection of a “racial and economic caste system.”¹⁰ The majority of scholarship about these systems examines them within the rubric of public law.¹¹ This Article uses the lens of private law to provide new insights into this history of racial and economic exploitation.¹² By analyzing oral histories, archival case files, newspaper articles, census data, as well as twenty-four published appellate decisions, this Article recovers a forgotten history of sharecroppers’ and share-tenants’ use of private law to remedy violent breaches of their contracts.

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9. Lack of land ownership meant that Black agricultural workers did not have access to the more robust legal protections that property rights could provide, such as the right to protect one’s home and the fruits of one’s labor, and if necessary, to do so with violence. Of course, even with property rights, Black Americans could not defend themselves without fear of reprisal. *See, e.g., WILLIAMS, supra note 5.*
 10. RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 52 (2007). For a discussion of race and racism explicitly as a caste system, see ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENTS* (2020). *See also* sources cited *infra* note 14.
 11. There is an extensive literature on the relationship between public law and the racial and economic exploitation of Black Americans. *See, e.g.,* MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2011); GOLUBOFF, *supra* note 10; ROBERT J. KACZOROWSKI, *THE POLITICS OF JUDICIAL INTERPRETATION: THE FEDERAL COURTS, DEPARTMENT OF JUSTICE, AND CIVIL RIGHTS, 1866–1876*, at 116–139 (1985); MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 61 (2004); MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936–1961* (1994); C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1955).
 12. In so doing, I build on the work of other scholars of antiblack discrimination and private law. *See, e.g.,* RICHARD R.W. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW AND SOCIAL NORMS* (2013); ELIZABETH A. HERBIN-TRIANT, *THREATENING PROPERTY: RACE, CLASS, AND CAMPAIGNS TO LEGISLATE JIM CROW NEIGHBORHOODS* (2019); MELISSA MILEWSKI, *LITIGATING ACROSS THE COLOR LINE: CIVIL CASES BETWEEN BLACK AND WHITE SOUTHERNERS FROM THE END OF SLAVERY TO CIVIL RIGHTS* 93 (2018) [hereinafter MILEWSKI, *COLOR LINE*]; PENNINGROTH, *supra* note 8; KIMBERLY M. WELCH, *BLACK LITIGANTS IN THE ANTEBELLUM AMERICAN SOUTH* (2018); Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707 (1993); Melissa Milewski, *Reframing Black Southerners’ Experiences in the Courts, 1865–1950*, 44 L. & SOC. INQUIRY 1113 (2019) [hereinafter Milewski, *Reframing*]; Myisha Shuntez Eatmon, *Public Wrongs, Private Rights: African Americans, Private Law, and White Violence During Jim Crow* (Sept. 2020) (Ph.D. dissertation, Northwestern University) (on file with author). Although not in direct conversation, this scholarship also complements the work of legal theorists John Goldberg and Benjamin Zipursky, who argue that the right to civil recourse is central to both American constitutional law, and American legal thinking more broadly. JOHN C. P. GOLDBERG & BENJAMIN C. ZIPURSKY, *RECOGNIZING WRONGS* 30 (2020).

The archival evidence supports two primary, and somewhat contradictory, conclusions about private law and racial violence. On the one hand, the twenty-four appellate decisions, which are collected together here for the first time, illustrate the promise of private law for victimized farmers, many of whom succeeded on their legal claims. By contrast, however, the oral histories, news reports, and other archival evidence demonstrate how enormously dangerous these lawsuits could be for plaintiffs—whose efforts to advocate for their private rights risked provoking retaliatory violence.

Colonel Bishop's harrowing experience and second-rate legal win exemplify the simultaneous promise and insufficiency of private law for victims of racial and labor violence. The laws were stacked against Bishop, yet he was still able to invoke his private contract rights and secure a modicum of redress. For many, especially the employer-assailant Lee Bussell, Bishop's win likely came as a surprise—it directly countered the conventional wisdom that the southern “laws were made for the white man.”¹³

This Article proceeds in three Parts. Part I situates the laws and norms of sharecropping within the broader socio-legal context of the post-slavery south. In particular, it describes the most common kinds of violent encounters that sharecroppers and tenants had with their landlord-employers, illustrating that Colonel Bishop's experience of violence was not an outlier. It also shows why the sources of law one might expect to intervene on behalf of these victims of violence—civil rights legislation, criminal law, and property law—were unavailing. Of course, it was not only Black sharecroppers and tenants who faced planters' violence and economic exploitation. Although the worst parts of the southern agricultural system were designed to control Black laborers, this system, once established, harmed more than just Black people.¹⁴ Many of the plaintiffs in the appellate cases discussed in this Article were not Black, but

13. Interview by S.S. Taylor with Henry Banner, *in* 2 SLAVE NARRATIVES: A FOLK HISTORY OF SLAVERY IN THE UNITED STATES FROM INTERVIEWS WITH FORMER SLAVES: ARKANSAS NARRATIVES PART I, at 104–05 (Fed. Writers' Project of the Works Progress Admin. for the State of Ark. ed., 1941), <https://memory.loc.gov/mss/mesn/021/021.pdf> [<https://perma.cc/UWA2-8SHP>].

14. This phenomenon, wherein whites experience harm as a result of antiblack practices, speaks to the veracity of one of black feminist theory's central tenets: that it is only by attending to the oppression experienced by those at the “bottom” of the social hierarchy that we can truly understand how intersecting systems of oppression impact all people. *See, e.g.*, Combahee River Collective, *The Combahee River Collective Statement* 264–74 *in* HOME GIRLS, A BLACK FEMINIST ANTHOLOGY (Barbara Smith, ed., 1983); Kimberly Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Harris, *supra* note 12; PATRICIA HILL COLLINS, BLACK SEXUAL POLITICS (2005); JENNIFER NASH, BLACK FEMINISM REIMAGINED: AFTER INTERSECTIONALITY (2019).

experienced similar forms of violence and similar levels of success in the courts. These cases brought by non-Black plaintiffs are best understood as a window into the social and legal terrain facing Black croppers and tenants, who likely had similar or worse experiences of violence and were likely to face greater racial animus in the courtroom.

The remaining Parts narrate the promise and limitations of private law for remedying southern racial and economic violence. Part II explains how private common law doctrine enabled some sharecroppers and share-tenants to win their cases against their violent landlord-employers. These successful cases shed light on what happened when vulnerable and marginalized farmers turned to the courts to seek justice at a time when the southern legal system was particularly hostile to civil rights claims and claims of racial discrimination. For the Black plaintiffs especially, these suits indicate an awareness of, and perhaps a demand for, the legal rights that had been promised by emancipation.

Yet, it is not only the wins that are instructive. Part III turns to the limitations and downsides of these private common law claims, both in terms of legal remedies and real-world consequences. Certain features within private law created doctrinal obstacles for plaintiffs who were seeking redress for violence. These doctrinal obstacles only compounded the real-world challenges of winning a case in the Jim Crow south. And as a result, certain harms—notably violent breaches of contract—often were not cognizable as harms within the language of the law.

I. UNDERSTANDING SOUTHERN AGRICULTURAL VIOLENCE

Violence permeated the lives of southern sharecroppers and tenants. Violent altercations regularly occurred between farmers and other workers, neighbors, community members, merchants, and even family members.¹⁵ Yet it was violence

15. Historians, anthropologists, sociologists, and economists have documented and sought to explain the violence experienced by southern agricultural workers in the late nineteenth and early twentieth centuries. *See, e.g.*, DAVID E. BERNSTEIN, *ONLY ONE PLACE OF REDRESS: AFRICAN AMERICANS, LABOR REGULATIONS, AND THE COURTS FROM RECONSTRUCTION TO THE NEW DEAL* (2001); GILBERT C. FITE, *COTTON FIELDS NO MORE: SOUTHERN AGRICULTURE, 1865–1980*, at 5 (2009); NEIL FOLEY, *THE WHITE SCOURGE: MEXICANS, BLACKS, AND POOR WHITES IN TEXAS COTTON CULTURE* (1997); HARTMAN, *supra* note 8; GERALD JAYNES, *BRANCHES WITHOUT ROOTS: GENESIS OF THE BLACK WORKING CLASS IN THE AMERICAN SOUTH, 1862–1882* (1986); ROBIN D.G. KELLEY, *HAMMER AND HOE: ALABAMA COMMUNISTS DURING THE GREAT DEPRESSION* (2015); THEODORE ROSENGARTEN, *ALL GOD’S DANGERS: THE LIFE OF NATE SHAW* (1974); IDA B. WELLS-BARNETT, *THE ARKANSAS RACE RIOT* (1920); WILLIAMS, *supra* note 5; NAN ELIZABETH WOODRUFF, *AMERICAN CONGO: THE AFRICAN AMERICAN FREEDOM STRUGGLE IN THE DELTA* (2003); STEWART E. TOLNAY & E.M. BECK, *A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882–1930* (1995). In addition, labor violence in general was

between agricultural workers and their landlord-employers that threatened some of the most far-reaching consequences for workers. Crops, wages, homes, personal property, and even the land itself were taken from many sharecroppers and tenants by force. What is more, few formal legal interventions were made to better protect agricultural workers. Instead, as Subpart I.B outlines, southern planters shaped contract and property law to their benefit, whereas criminal law, the Reconstruction Amendments, and civil rights legislation were largely unavailing for workers who experienced violence.

A. Violent Ends to Agricultural Contracts

A multiplicity of factors, many of which were beyond a sharecropper's or tenant's control, could incite a landlord's violence. It could be triggered by a disagreement over approaches to farming, accounting, or personal conduct.¹⁶ Sometimes a landlord-employer decided he would rather rent to, or farm with, someone else and used violence to effect this contractual change.¹⁷ Others, like Colonel Bishop's landlord-employer, Lee Bussell, used violence as a means of stealing profits from sharecroppers and tenants.¹⁸ Many of these landlords were repeat players, earning themselves a reputation for routinely running their

common during this time period. See SCOTT MARTELLE, *BLOOD PASSION: THE LUDLOW MASSACRE AND CLASS WAR IN THE AMERICAN WEST* (2007); DAVID R. ROEDIGER & ELIZABETH D. ESCH, *THE PRODUCTION OF DIFFERENCE: RACE AND THE MANAGEMENT OF LABOR IN U.S. HISTORY* (2012); ZARAGOSA VARGAS, *LABOR RIGHTS ARE CIVIL RIGHTS: MEXICAN AMERICAN WORKERS IN TWENTIETH-CENTURY AMERICA* (2005); JOHN FABIAN WITT, *THE ACCIDENTAL REPUBLIC: CRIPPLED WORKINGMEN, DESTITUTE WIDOWS, AND THE REMAKING OF AMERICAN LAW* (2004); Philip Taft & Philip Ross, *American Labor Violence: Its Causes, Character, and Outcome*, in *VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES*; 1 A REPORT TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE 221–301 (Hugh Davis Graham & Ted Robert Gurr eds., 1969).

16. See, e.g., *Allen v. Bannister*, 97 So. 820, 821 (Ala. 1923) (describing how during an argument, landlord pointed a gun at share-tenant and threatened to kill him if he stayed or returned to the land); *Walker v. Rogers*, 273 S.W. 439, 439–40 (Ky. 1925) (describing how a landlord shot a share-tenant in the back after a disagreement over who was supposed to pay for the tobacco beds). The tenants and landlords in both of these cases were white.

For ease of reference, the cases listed in all footnotes are organized alphabetically by state, and then in reverse chronological order.

17. See, e.g., *Beck v. Kah*, 136 S.E. 160, 160–61 (Ga. 1926) (detailing how out-of-state landlord returned and attempted to eject the tenant from the premises so that landlord and his family could live on the property exclusively); *Roberson v. Allen*, 66 S.E. 542, 542 (Ga. Ct. App. 1909) (depicting how after five months of cultivating the land, share-tenant's landlord rented part of it to someone else; when the landlord notified the tenants of the change, he told them that if they continued to use the pasture, "he would kill their stock").
18. See *infra* Subparts I.A.2–I.A.3 for a discussion of how violence was used to expropriate profits.

workers off the land before paying them.¹⁹ And while agricultural workers of all races experienced a range of violence at the hands of their landlord-employers, Jim Crow made Black workers acutely vulnerable to violence.²⁰

1. Defining Sharecropping and Tenancy

As an initial matter, a brief description of the differences and similarities between sharecroppers and tenant farmers will help contextualize the violence described below. In a standard sharecropping agreement, the sharecropper provided his or her labor in exchange for a home on the landowner's premises and a portion of the proceeds of the crop after harvest. Instead of paying cash wages at regular intervals, sharecropping allowed landowners to defer payment for an entire agricultural season.²¹ Sharecroppers received their money when the planters did, after the crops had been harvested and sold. Tenancy agreements, by contrast, created a landlord-tenant relationship rather than an employer-employee relationship. Tenants held title to the crops and would pay rent to their landlords. Tenants also tended to provide their own tools and supplies, unlike sharecroppers. In addition to having title to the crops, tenants had a possessory right to the land for the period of time stipulated in their lease. This possessory right—which sharecroppers did not have—gave tenants the right to exclude their landlords from the premises. Tenancy was undoubtedly a better legal and economic position.

There were two main kinds of tenancy, however—share-tenancy and cash-tenancy—which meant that the legal category of tenancy hosted a hierarchy as well. Rent was the primary differentiator between these two kinds of tenancy. Both share-tenants and cash-tenants paid at the end of the season, but share-tenants paid with a share of the crop, and cash-tenants paid a pre-determined dollar value. Often, this was paid in cash (hence the name, cash-tenant). Sometimes, however, cash-tenants paid rent by providing crops equal to the

19. *Allen*, 97 So. at 821 (noting the landlord had a “bad reputation in the neighborhood [that] shed some light on the due weight to be attached to this threat”); see also FOLEY, *supra* note 15; WELLS-BARNETT, *supra* note 15.

20. For a discussion of the differential treatment of Black, white, and Mexican sharecroppers and tenants on Texas cotton plantations, see, for example, FOLEY, *supra* note 15.

21. For former slaveowners, this annual system of payment helped address the “scarcity of money” that existed in the postbellum South. JAYNES, *supra* note 15, at 225 (quoting Thomas S. Watson). Emancipation had deprived former enslavers of their primary form of collateral—enslaved women, men, and children. The resulting credit crisis meant that cash-poor planters could no longer get short-term loans that would allow them to pay weekly or monthly wages. See, e.g., *id.*; VANN WOODWARD, *supra* note 5, at 181–88 (describing the system of debt and credit that took hold after the Civil War).

dollar-value of their rent. In other words, cash-tenants, regardless of whether they paid in cash or crops, knew exactly how much their rent would cost in dollars at the time they signed the contract. Share-tenants, by contrast, only knew the proportion of the crops that they would have to turn over to their landlords. Thus, unlike cash-tenants, the monetary value of a share-tenant's rent could vary significantly depending on a crop's market price. In this way, share-tenants were similar to sharecroppers, whose wages were indexed to crops' market prices. The similarities between share-tenancy and sharecropping could make it challenging for workers, landlords, and courts to tell the two apart.²²

Regardless of the difference between sharecropping and tenancy, and as the Parts below will illustrate, sharecroppers and tenants were both vulnerable in one important way: Their livelihoods and their homes were intertwined. All sharecroppers, and most tenants, lived on the land that they farmed. This means that if a sharecropper or tenant were forced out of one, they necessarily lost the other as well. To put it differently, for most sharecroppers and tenants, the planter with whom they contracted was functionally their landlord *and* employer, even if they technically were *either* the landlord (of tenants) *or* the employer (of sharecroppers).

2. Everyday Violence

What, then, accounted for the ubiquity of violence perpetrated by landlord-employers against tenants and croppers? One reason was the landlord-employer's overbearing management style. Most planters closely supervised the sharecroppers and tenants with whom they contracted. They desired complete obedience and they were willing to obtain this obedience with violence.²³ In some of the earliest post-slavery sharecropping agreements, micromanagement was written into the contract itself. As one landlord wrote in an 1882 agreement, "[w]ork of every description... [is] to be done to my satisfaction, and must be done over until I am satisfied that it is done as it should be."²⁴ Contracts would often include granular details, such as which crops could

22. These challenges will be discussed in greater depth *infra* in Subpart II.A.

23. Landowners who lived out of state, or who owned large tracts of land, would regularly employ overseers or plantation managers in order to make sure workers were being appropriately monitored. Foley, *supra* note 15, at 70.

24. *A Sharecrop Contract (1882)*, THIRTEEN, <https://www.thirteen.org/wnet/historyofus/web07/features/source/docs/C04.pdf> [<https://perma.cc/JQ2Z-6KK6>]. In the earliest of the appellate cases considered here, *Smith v. Summerlin*, 48 Ga. 425 (1873), the contract stipulated that the sharecropper would plant the crops "as directed by the said [landlord], being left to [the landlord's] discretion." *Id.* at 427.

be grown for personal use, whether a sharecropper could own guns or purchase alcohol, and how a sharecropper was supposed to interact with the employer's agent or family.²⁵

Even as the form of sharecropping and tenancy contracts changed over the late nineteenth and early twentieth centuries, planters' management styles remained a constant.²⁶ It did not matter if the contract was oral rather than written, or vague rather than detailed, croppers and tenants were closely supervised under a constant threat of violence. For example, William Gordon—who worked as a sharecropper as a child in the late 1920s—stated that he could “still remember a man riding around on a horse with a gun on his hip. He was the overseer and *you never argued with him about anything*.”²⁷ To argue was to risk being hurt, or worse—an eight-year-old Gordon once walked past the body of a man who had been killed for having “some words with the overseer.”²⁸ Similar experiences can be found in many sharecroppers' and tenants' oral histories.²⁹

Indeed, close supervision created many opportunities for interpersonal friction, which could easily escalate to violence. Several of the appellate decisions considered in this Article were the result of such incidents.³⁰ For example, in one

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25. As written in one contract, croppers were required to engage with “respects [sic] or civility.” Rosser H. Taylor, *Post-Bellum Southern Rental Contracts*, 17 AGRIC. HIST. 121, 123–28 (1943) (providing examples of several sharecropping contracts from the Reconstruction period, at least one of which was for both Black and white croppers).
 26. During Reconstruction, many Black Americans' sharecropping contracts were negotiated and written by Freedmen's Bureau agents. See, e.g., JAYNES, *supra* note 15, at 72; SAVILLE, *supra* note 8, at 110; Claude Elliott, *The Freedmen's Bureau in Texas*, 56 SW. HIST. Q. 1, 2–4 (1952). After the Bureau's dissolution, however, the majority of southern sharecropping and tenancy contracts tended to be “vaguely expressed, oral agreement[s].” FOLEY, *supra* note 15, at 87.
 27. *Interview With William Gordon, Interview A-0364, Southern Oral History Program Collection (#4007)*, DOCUMENTING THE AM. S. (Jan. 19, 1991), https://docsouth.unc.edu/sohp/playback.html?base_file=A-0364&duration=01:24:03 [https://perma.cc/9EXL-8YY3] (emphasis added).
 28. *Id.*
 29. Former sharecropper S.J. Farrar explained that “[y]ou just had to take the landowner's word for what was left and be thankful to get it, to have that.” *Interview With Samuel James (S. J.) and Leonia Farrar, Interview K-0652, Southern Oral History Program Collection (#4007)*, DOCUMENTING THE AM. S. (May 28, 2003), https://docsouth.unc.edu/sohp/playback.html?base_file=K-0652&duration=01:29:20 [https://perma.cc/DD9V-S7RQ]. As sharecropper turned singer John Handcox put it, “[i]f you ask the planter for your right, you might as well spit in his face and ask for a fight.” John L. Handcox, *Planter and the Sharecropper*, YOUTUBE (June 7, 2015), https://www.youtube.com/watch?v=4fcFq8kvn84&ab_channel=JohnL.Handcox-Topic [https://perma.cc/KA23-ENAR].
 30. *Allen v. Bannister*, 97 So. 820 (Ala. 1923) (depicting a disagreement that escalated to a threat of gun violence); *Howton v. Mathias*, 73 So. 92 (Ala. 1916) (describing a disagreement over accounting); *Melton v. Allen*, 278 S.W. 1095 (Ky. 1925) (describing a disagreement about who owned tobacco); *Walker v. Rogers*, 273 S.W. 439 (Ky. 1925) (illustrating a disagreement over

Kentucky case, the landlord and tenant got into an argument after the landlord refused to pay six dollars for some tobacco plants that he had asked the tenant to purchase. After the argument, the landlord went home, retrieved his shotgun, and shot the tenant in the back.³¹

To be clear, planters' overbearing, post-slavery management style was a direct legacy of slavery. Enslavers (or the overseers that they hired) regularly used violence to extract as much labor as possible from their enslaved labor force.³² Threats of violence, surveillance, and vicious punishment were central techniques for managing enslaved laborers and they were often conducted with precision and managerial acumen. As historian Caitlin Rosenthal has documented, some enslavers "meted out lashes in precise relation to picking."³³ Thus, the violence that sharecroppers and tenants faced mere decades after slavery's end was not simply the result of individual planters' decisions to rely upon violent managerial styles. Rather, these individuals' violence is best understood as the consequence of dissolving a violent system of forced labor.

3. Accounting Violence

There was one time of year, however, when disagreements—and by extension, planters' violent attacks—were most likely to occur: during end-of-season accounting. Planters routinely manipulated account books so that sharecroppers and tenants received nothing, or next to nothing, for the year.³⁴ As one tenant put it, "[y]ou never saw how much cotton was ginned, nor how

payment for tobacco); *Pellifigue v. Judice*, 98 So. 244 (La. 1923) (detailing a disagreement about buying Liberty bonds); *Yarbrough v. Brookins*, 294 S.W. 900 (Tex. Civ. App. 1927) (detailing a disagreement about farming methods); *Foster v. Roseberry*, 81 S.W. 521 (Tex. 1904) (depicting a disagreement about how to plant the onions and when to harvest the peas).

31. *Walker*, 273 S.W. at 439–40. For a more in-depth discussion of this case, see *infra* Subpart II.C.

32. CAITLIN ROSENTHAL, *ACCOUNTING FOR SLAVERY: MASTERS AND MANAGEMENT* 96–100 (2018).

33. *Id.* at 97.

34. VANN WOODWARD, *supra* note 5, at 181 (explaining that landlords and merchants could decide the prices for which crops were sold, and that croppers rarely received close to market value for their crops). The value of sharecroppers' and share-tenants' share came down to the planter's word about the sale price. See also KELLEY, *supra* note 15, at 40 ("[L]andlords usually gave their tenants the year's lowest price for their cotton and held on to the bales until the price increased, thus denying the producer the full benefits of the crop.").

In *Hartley v. Ford*, the sharecropper Leroy Ford testified that his cotton was worth five cents more per pound than his landlord Isaac Hartley sold it for. Ford was represented by the firm Bratton & Bratton of Little Rock, the same firm that was representing the croppers involved in the Elaine Massacre. 215 S.W. 626, 626 (Ark. 1919). This case was heard by the Arkansas Supreme Court on October 27, 1919, only a few weeks after more than 200 sharecroppers in Phillips County had been murdered for trying to organize around contract rights. WOODRUFF, *supra* note 15, at 84. The court makes no mention of the violence.

much he got for it, nor how much it was worth nor nothing. They would just tell you you wasn't due nothing."³⁵ In addition, white landlords would sometimes have their wives or daughters negotiate the seasonal accounting. If a Black man objected to the accounting, "the landlord could accuse him of 'insulting a white woman.'"³⁶ This accusation could easily be grounds for lynching. Consequently, croppers and tenants faced a difficult choice when it came time to settle up: They could either dispute the accounting and risk their landlord-employers' ire, or accept that they had farmed for an entire year and had nothing to show for it. In other words, they had to weigh the risk of a landlord's violence against the guarantee of economic hardship.

Manipulating the accounting was not the only way that planters expropriated sharecroppers' and tenants' profits. Some landlord-employers did so by taking (or keeping) the crops outright, or by running the tenant or cropper off the land and forcing them to leave the crops behind.³⁷ Some even had a reputation for harassing sharecroppers and tenants. During one trial, several witnesses for the tenant-plaintiff—and even one of the defendant's own witnesses—testified that the

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35. Interview by Samuel S. Taylor with Anthony Taylor, *in* 2 SLAVE NARRATIVES: A FOLK HISTORY OF SLAVERY IN THE UNITED STATES FROM INTERVIEWS WITH FORMER SLAVES: ARKANSAS NARRATIVES PART VI, at 259, 262 (Fed. Writers' Project of the Works Progress Admin. for the State of Ark. ed., 1941), <https://memory.loc.gov/mss/mesn/026/026.pdf> [<https://perma.cc/27CR-8E9L>].
 36. In response, some Black families would instead have wives negotiate as a "defensive measure." KELLEY, *supra* note 15, at 36; *see also* E.M. Beck & Stewart E. Tolnay, *A Season for Violence: The Lynching of Blacks and Labor Demand in the Agricultural Production Cycle in the American South*, 37 INT'L REV. SOC. HIST. 1 (1992) (describing the seasonality of violence against Black farmers).
 37. *See, e.g.*, Allen v. Bannister, 97 So. 820 (Ala. 1923) (describing incident of being run off land, profits withheld); Howton v. Mathias, 73 So. 92 (Ala. 1916) (describing incident of being run off land and crops, mule, and wagon appropriated); Beck v. Kah, 136 S.E. 160 (Ga. 1926) (illustrating incident of being run off land, house and land appropriated); Bussell v. Bishop, 110 S.E. 174 (Ga. 1921) (illustrating incident of profits withheld and prevented from completing harvest); Smith v. Summerlin, 48 Ga. 425 (1873) (detailing incident of being run off land after harvest, profits withheld); Curtis v. Cash, 84 N.C. 41 (1881) (illustrating incident of tobacco stolen by a group of men, including landlord); Sullivan v. Calhoun, 108 S.E. 189 (S.C. 1921) (describing incident of being run off land, crops harvested, and profits withheld); Yarbrough v. Brookins, 294 S.W. 900 (Tex. Civ. App. 1927) (detailing incident of run off land and crops appropriated); Rhoades v. Pointer, 243 S.W. 583 (Tex. Civ. App. 1922) (detailing incident of being run off land, profits withheld); Barnett v. Govan, 241 S.W. 276 (Tex. Civ. App. 1922) (detailing incident of being run off land and crops appropriated); Crews v. Cortez, 113 S.W. 523 (Tex. 1908) (illustrating incident of being run off land and crops appropriated); Foster v. Roseberry, 81 S.W. 521 (Tex. 1904) (detailing incident of being run off land, crops harvested, and profits withheld); Tignor v. Toney, 35 S.W. 881 (Tex. Civ. App. 1896) (describing incident of being run off land and crops appropriated); Malone v. Scott, 40 Tex. 460 (1874) (describing incident of being run off land and crops appropriated).

landlord had a reputation for having trouble with his tenants. According to one witness, this trouble included “running [the tenants] off.”³⁸

4. The High Cost of Breach of Contract

Planters stood to gain from coercing sharecroppers and tenants to abandon the premises and breach their contracts. Under the “entire contract” doctrine, any laborer who abandoned a contract before its term was up also forfeited the right to receive back wages for labor that had already been performed.³⁹ Planters could save a lot of money by making it look like a sharecropper or tenant breached the contract first. The breach would release the landlord-employer from any obligation to pay the sharecropper or tenant their share of the profits. To be clear, coercing a breach of contract would not have been legal, but proving that one had been coerced into breaching was not easy to prove in court either.⁴⁰

Coerced breaches of contract could be especially harmful to Black laborers, who, well into the twentieth century, were also held criminally liable for breaching contracts in all southern states.⁴¹ At least one landlord explicitly sought to benefit from this doubled vulnerability. The landlord coerced a sharecropper to breach by whipping him, kept the entire harvest for himself, and then subsequently prosecuted the sharecropper for having breached his contract.⁴² Ultimately, the state appellate court held that being whipped was sufficient justification to abandon a contract, but only after a trial court had first convicted the sharecropper of “cheating and swindling.”⁴³

38. Trial Tr. at 26, *Allen*, 97 So. 820. For a more in-depth discussion of *Allen*, see *infra* Subpart II.C. See also WELLS-BARNETT, *supra* note 15; FOLEY, *supra* note 15.

39. John Fabian Witt, *Rethinking the Nineteenth-Century Employment Contract, Again*, 18 L. & HIST. REV. 627, 632–33 (2000) (describing the “entire contract doctrine” as well as the “varied and unpredictable” case law surrounding it).

40. See *infra* Subpart I.B for more on the failure of criminal law to help remedy acts of labor violence like coercive breaches.

41. These laws were declared unconstitutional by the Supreme Court in 1911 in *Bailey v. Alabama*, 219 U.S. 219 (1911). Nevertheless, the criminalization of breach continued in some states for years after *Bailey*. A similar law remained on the books in Mississippi until 1927. NEIL R. McMILLEN, *DARK JOURNEY: BLACK MISSISSIPPIANS IN THE AGE OF JIM CROW* 144, 367 n.119 (1990).

42. *Tennyson v. State*, 84 S.E. 988, 988 (Ga. Ct. App. 1915).

43. *Id.*

5. Violence Inflected by Prejudice

Of course, profit was only one possible motivation for planters' violence. Xenophobia, classism, racism, and misogyny influenced many planters' actions, and evidence of these prejudiced ways of thinking and acting can be found in the language used in legal briefs, trial testimony, and contemporaneous news coverage of the cases. In one case, an overseer admitted during his deposition that he would "feel like killing" any Black person that decided to sue him.⁴⁴ In both this statement, as well as several others, the overseer used racial slurs to refer to Black people. That this defendant would readily admit to such a perspective during a legal proceeding—and with such language—suggests a belief in the banality of racist violence. And it belies a culture wherein violence against Black Americans was not only tolerated but was also rarely legally rebuked.

Poor whites and European immigrants were not exempt from planters' prejudiced ways of thinking either. Poverty decreased the reputational value of whiteness, which meant that being poor often also meant being treated as less deserving of the benefits of whiteness. Many European immigrants were also inconsistently treated as white in the late nineteenth and early twentieth centuries.⁴⁵

In addition to racism, classism, and anti-immigrant sentiment, planters' violence could also be gendered. Black women and poor white women were vulnerable to planters' sexual violence. From the era of slavery onward, Black women had been represented and understood as the opposite of the white, feminine ideal. As Saidiya Hartman and numerous other historians and Black feminist theorists have demonstrated, representations of Black women as promiscuous seductresses helped to reinforce a belief that Black women were always sexually available.⁴⁶ This belief was used to justify countless acts of sexual

44. *Yarbrough v. Brookins*, 294 S.W. 900, 903 (1927). In a different case, a landlord, who ran a tenant off the land with threats of violence, referred to the tenant as an "n-word" multiple times during his testimony. Trial Tr. at 33, *Howton v. Mathias*, 73 So. 92 (Ala. 1916).

45. *Walker v. Rogers*, 273 S.W. 439 (Ky. 1925) (detailing that a landlord's legal strategy was largely about discrediting the tenant's reputation); *Pellifigue v. Judice*, 98 So. 244 (La. 1923) (describing a French immigrant targeted by landlord); see also FOLEY, *supra* note 15; MATTHEW FRYE JACOBSON, *WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE* (1998); SARAH M.A. GUALTIERI, *BETWEEN ARAB AND WHITE: RACE AND ETHNICITY IN THE EARLY SYRIAN AMERICAN DIASPORA* (2009).

46. HARTMAN, *supra* note 8. There is large body of literature on sexual violence experienced by Black women and its relationship to the ideology of slavery. See, e.g., HALEY, *supra* note 5; LAURA F. EDWARDS, *GENDERED STRIFE AND CONFUSION: THE POLITICAL CULTURE OF RECONSTRUCTION* (1997); DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997); DEBORAH GRAY WHITE, *AR'N'T I A*

violence against Black women. Although none of the appellate cases considered here involve sexual violence against Black women, cases of this nature can be found in the Freedmen's Bureau's records.⁴⁷

Ideals of white womanhood were not solely harmful to Black women. Poor white women were often seen as existing beyond the boundaries of these ideals.⁴⁸ As a result, they could find themselves similarly vulnerable to sexual violence. In one of the cases of sharecropper and tenant litigation considered here, a sharecropper's wife (who was white) was sexually assaulted while she was home alone with her daughter.⁴⁹ She did not initially tell anyone about the assault because she knew that accusing her landlord of assault could put her family's home and livelihood at risk. As she explained in her testimony, "[m]y husband was cropping [sic] on the shares, & his crop was there and we had no where else to go."⁵⁰

In sum, it is little wonder white landlords engaged so freely in violence during this period. When it comes to motivations for violent behavior, few individual forces are as powerful as cultural expectations of violence, economic opportunism, racism, and sexism. Black sharecroppers in the post-Civil War period had to contend with all of these factors.

B. Law's Failure in the Face of Violence

Constitutional and criminal law facilitated planters' violence against sharecroppers and tenants. Planters who attacked agricultural workers on

WOMAN?: FEMALE SLAVES IN THE PLANTATION SOUTH (1999); DEIRDRE COOPER OWENS, *MEDICAL BONDAGE: RACE, GENDER, AND THE ORIGINS OF AMERICAN GYNECOLOGY* (2017); JENNIFER L. MORGAN, *LABORING WOMEN: REPRODUCTION AND GENDER IN NEW WORLD SLAVERY* (2004); CHRISTINA SHARPE, *MONSTROUS INTIMACIES: MAKING POST-SLAVERY SUBJECTS* (2010); ROBYN WIEGMAN, *AMERICAN ANATOMIES: THEORIZING RACE AND GENDER* (1995); PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (2d ed. 2002); GLENDA ELIZABETH GILMORE, *GENDER AND JIM CROW: WOMEN AND THE POLITICS OF WHITE SUPREMACY IN NORTH CAROLINA, 1896–1920* (2d ed. 1996); JAYNES, *supra* note 15; SAVILLE, *supra* note 8; Hortense J. Spillers, *Mama's Baby, Papa's Maybe: An American Grammar Book*, 17 *DIACRITICS* 64 (1987); Hazel V. Carby, *Policing the Black Woman's Body in an Urban Context*, 18 *CRITICAL INQUIRY* 738 (1992).

47. 3:2 FREEDOM: A DOCUMENTARY HISTORY OF EMANCIPATION, 1861–1867, at 561 (René Hayden et al. eds., 2013) ("In addition to the whippings and beatings that remained a threat for all freedpeople, teenaged girls and adult women had reason to fear the sexual violence that had been endemic to slavery and did not end with its demise.").

48. GILMORE, *supra* note 46, at 106.

49. *Ragsdale v. Ezell*, 35 S.W. 629 (Ky. 1896); see also *The Ezell Case Again*, HOPKINSVILLE KENTUCKIAN, June 1, 1897, at 1 (describing the verdict for the plaintiff as a "great surprise" and stating that "Mr. Ragsdale's friends are confident he will eventually win a victory in what has been a very troublesome piece of litigation").

50. Trial Tr. at 14, *Ragsdale*, 35 S.W. 629.

their land could do so safe in the knowledge that they were unlikely to be prosecuted and even less likely to be convicted, especially when their victims were Black. Additionally, the U.S. Supreme Court's narrow interpretations of the Reconstruction Amendments effectively gutted the Constitution's ability to serve as an avenue for racial or economic justice.⁵¹

In addition, after slavery ended, the southern planter class changed the laws of contract and property that governed sharecropping and tenancy.⁵² These changes both ensured that sharecropping arrangements did not upend white planters' authority over Black laborers, as well as increased planters' general control over their workers. Moreover, by limiting sharecroppers' and tenants' property rights, these legal changes circumscribed private law's ability to provide an avenue of redress.

1. Criminal Law

Owning the crops gave landlords a powerful legal defense in cases of violence: Protecting their private property. The use of violence to protect one's property has a long history in the common law.⁵³ Tied directly to the cultural importance of "home," Anglo-American law has protected an individual's right to use force in defense of their dwelling place since at least 1505.⁵⁴ In the post-slavery south, this right to defend one's home sometimes included defending the crops.⁵⁵ In practice, this meant that a landlord could use force to prevent a sharecropper from removing any of the crops the sharecropper had harvested.⁵⁶

In *Parrish v. Commonwealth*, the Virginia Supreme Court used this reasoning to overturn the conviction of a landlord who had murdered a sharecropper.⁵⁷ In *Parrish*, as in many of the twenty-four cases considered here,

51. For a more in-depth discussion see notes 68–74 and associated text, *infra*.

52. SAVILLE, *supra* note 8 at 125–27.

53. See, e.g., Daniel J. Sharfstein, *Atrocity, Entitlement, and Personhood in Property*, 98 VA. L. REV. 635, 639 (2012). In contemporary scholarship—and public discourse—this history is commonly invoked with respect to the castle doctrine and stand your ground laws.

54. D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255, 260 (2006).

55. The buildings where harvested crops were housed could be located within a landlord's curtilage. See, e.g., *Parrish v. Commonwealth*, 81 Va. 1, 4 (1884). In addition, after the Civil War ended, southern states passed criminal trespass laws with "harsh penalties" in a deliberate attempt to control the Black labor force as well as keep "[B]lack people off white land." Brian Sawers, *The Right to Exclude From Unimproved Land*, 83 TEMP. L. REV. 665, 683 (2010).

56. Harold D. Woodman, *Post-Civil War Southern Agriculture and the Law*, 53 AGRIC. HIST. SOC'Y 319, 333 (1979).

57. *Parrish*, 81 Va. at 8–9. The Court held that Alexander Parrish was acting in defense of his property during a dispute with A.J. Mitchell, a sharecropper on his land. As a "mere employe[e] or cropper," Mitchell had no rights to the land or in the crops. *Id.* at 7. As historian

what started as a disagreement between a sharecropper and landlord over the landlord's accounting, ended in violence.⁵⁸ The sharecropper (and freedman) Andrew Mitchell was attempting to retrieve corn that he believed rightfully belonged to him when his white landlord, Alexander Parrish, fired a shotgun in Mitchell's direction. Mitchell was hit and died shortly thereafter. Although the trial court found Parrish guilty of murder, on appeal, the Virginia Supreme Court reversed this conviction.⁵⁹ According to the court, as a "mere...cropper," Mitchell was "entitled to nothing" until his landlord had sold the crops and been "fully reimbursed" for any money that Mitchell owed him.⁶⁰ By contrast, the landlord Parrish had the right to use force to defend his property—the building where the crops were being housed had the same "privileges and the protection" as Parrish's own home.⁶¹ Moreover, because the incident occurred at night, the court suggested that Parrish had the right to kill Mitchell "with impunity."⁶² The court's determination that Mitchell was a cropper was central to its reasoning. Because Parrish—and not Mitchell—had a property interest in the crops, Parrish's use of force was justifiable.⁶³

Jeffrey R. Kerr-Ritchie has written, "the crop belonged to the landlord . . . and its protection by the landlord was legally guaranteed by any means necessary." JEFFREY R. KERR-RITCHIE, *FREEDPEOPLE IN THE TOBACCO SOUTH: VIRGINIA, 1860–1900*, at 170 (1999).

It has been suggested that the Virginia Supreme Court in *Parrish* was not necessarily supporting a broad "defense of property," but rather that the court determined that the landlord's actions were justified on the grounds that the employee was committing actions that would have amounted to burglary or attempted burglary. In its opinion, however, the Court describes the right to defend one's person and property as a right "founded in the law of nature," that is "guaranteed to all men by the law of the land," and which is "indefinite in its extent." *Parrish*, 81 Va. at 12, 10, 13. To be sure, the particular circumstances of the *Parrish* case undoubtedly informed the court's perception of the necessity of the landlord's use of lethal force. Nevertheless, by repeatedly invoking natural law, the *Parrish* court suggests that its decision about the broader right to defend one's home, as opposed to merely being a decision on the specific facts of this particular case.

58. See, e.g., *Howton v. Mathias*, 73 So. 92 (Ala. 1916); *Rhoades v. Pointer*, 243 S.W. 583 (Tex. Civ. App. 1922); *Smith v. Summerlin*, 48 Ga. 425 (1873) (describing how a sharecropper requested account settlement, and the landlord threatened to kill him).
59. Interestingly, in addition to the discrepancy between the trial court and supreme court dispositions, the Virginia Supreme Court decision itself was hardly unanimous, as a 3–2 decision.
60. *Parrish*, 81 Va. at 7.
61. *Id.* at 12 (citing 4 WILLIAM BLACKSTONE, COMMENTARIES *225).
62. *Id.* at 13 (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES *224).
63. Although the *Parrish* court did not explicitly differentiate between the right to protect one's property and the right to protect one's dwelling, the language used in the opinion tends to characterize the right to protect one's home as a stronger version of the right to protect one's property generally. Cf. *Parrish*, 81 Va. at 12–13 ("The true principle upon which rests our right of defending either our persons or our goods is this: the law of nature does not oblige us to give them up when any one has a mind to hurt them or take them from us . . ."), with *id.* at 12 ("We come now to consider the extent to which appellant was justified in going to defend his person

Criminal law was particularly hostile to Black Americans. Many scholars have documented the ways that the criminal legal system was uniquely punitive and unfair to Black defendants, especially in the south.⁶⁴ Black defendants rarely had adequate legal representation, had little time to prepare for trial (if they had any time at all), and received longer and harsher sentences than white defendants convicted of similar crimes.⁶⁵ In addition, because many southern laws were written to criminalize Black life, whites were able to use criminal law to achieve goals that would otherwise be accomplished through civil suits.⁶⁶ Under these laws, breaching a contract was a criminal offense, as was unemployment. So, too, were behaviors like “using ‘obscene language’” and “‘selling cotton after sun set.’”⁶⁷ Some whites did not even need to call upon these racially specific laws to use criminal law to their advantage. In one striking case uncovered by legal historian Melissa Milewski, a tenant farmer brought a civil suit against his landlord for crops owed and the landlord responded by swearing out a criminal complaint against the tenant for “larceny of cotton seed.”⁶⁸ The tenant ended up being imprisoned in an asylum—twice—as a result.⁶⁹ Southern criminal law’s hostility to Black defendants combined with whites’ ability to weaponize criminal law to their advantage meant that Black sharecroppers and tenants could easily end up being the ones punished for the violence committed against them.

2. Civil Rights Laws

Beginning in the 1870s, the Supreme Court narrowed the protections that the Reconstruction Amendments and Civil Rights Legislation should have afforded to sharecroppers and tenants who had been violently exploited by their landlord-

and property The tobacco house was in Parrish’s curtilage, and it had therefore all the privileges and the protection of the capital or dwelling-house.”).

64. See, e.g., DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2008); HALEY, *supra* note 5; RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* (1997); HARTMAN, *supra* note 8; KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010); OSHINSKY, *supra* note 5; IDA B. WELLS-BARNETT, *THE RED RECORD: TABULATED STATISTICS AND ALLEGED CAUSES OF LYNCHING IN THE UNITED STATES* (Project Gutenberg 2005) (1895), <https://www.gutenberg.org/files/14977/14977-h/14977-h.htm> [<https://perma.cc/JBN6-ZX8G>].

65. Milewski, *Reframing*, *supra* note 12, at 1116–26.

66. These laws were racially neutral on their face, but as Douglas Blackmon and others have documented “it was widely understood that these provisions would rarely if ever be enforced on whites.” BLACKMON, *supra* note 64, at 53. See, e.g., sources cited in *supra* note 64.

67. BLACKMON, *supra* note 64, at 99.

68. Milewski, *Reframing*, *supra* note 11, at 1119 (describing the case of Jesse Jackson).

69. *Id.*

employers. In theory, the Thirteenth and Fourteenth Amendments, as well as the Civil Rights Acts of 1866, 1870, and 1875, protected the labor freedom of sharecroppers and tenants, which included their “right to make and enforce contracts,” and “purchase, lease, sell, hold, and convey real and personal property.”⁷⁰ And in theory, the Amendments and statutes protected all sharecroppers and tenants equally, regardless of race. In practice, however, the Supreme Court’s jurisprudence limited the Amendments’ and statutes’ ability to intervene in either the exploitative behavior of landlord-employers, or the discriminatory state laws that enabled them.

Most damaging for sharecropper and tenant plaintiffs were the Court’s decisions in the *Slaughter-House Cases* (1873), *The Civil Rights Cases* (1883), and *Hodges v. United States* (1906), each of which limited the racial and economic harms that federal public law could protect against.⁷¹ In the *Slaughter-House Cases*, the Court interpreted the Thirteenth Amendment as a race-specific protection whose “obvious purpose” was to forbid the remnants of “African slavery.”⁷² This meant that only situations that very closely resembled the dynamics of U.S. racial slavery fell within the amendment’s protection. For the Court, Mexican peonage was more likely to be void under the Thirteenth Amendment than the statute at issue in the *Slaughter-House Cases*, which limited the freedom of white butchers.⁷³ *The Civil Rights Cases*, decided ten years later in 1883, further narrowed the race-specific harms covered by the Thirteenth Amendment and, by extension, the Civil Rights Act of 1875. According to the Court, “[m]ere discriminations on account of race or color” were not enough to receive the Thirteenth Amendment’s

70. U.S. CONST. amends. XIII, XIV; Civil Rights Act of 1866, ch. 31, 14 Stat. 27; Civil Rights Act of 1870, ch. 114, 16 Stat. 140; Civil Rights Act of 1875, ch. 114, §§ 3–5, 18 Stat. 336, 337; see also Lea S. VanderVelde, *Labor Vision of the Thirteenth Amendment*, 138 U. PA. L. REV. 437 (1989).

71. *Slaughter-House Cases*, 83 U.S. 36, 81 (1872) (describing the equal protection provision of the Fourteenth Amendment as “clearly a provision for that race [Black Americans] and that emergency, [and] that a strong case would be necessary for its application to any other”); *The Civil Rights Cases*, 109 U.S. 3, 17 (1883) (explaining that the Constitution only protects against “State aggression” and not “the wrongful act of an individual, unsupported by any [state] authority, [which] is simply a private wrong”); *Hodges v. United States*, 203 U.S. 1, 19 (1906) (explaining that it was not the “intent of the [Thirteenth] Amendment to denounce every act done to an individual which was not wrong if done to a free man, and yet justified in a condition of slavery”).

72. 83 U.S. at 69; see also GOLUBOFF, *supra* note 10, at 18; KACZOROWSKI, *supra* note 10; Richard L. Aynes, *Constricting the Law of Freedom: Justice Miller, the Fourteenth Amendment, and the Slaughter-House Cases*, 70 CHI.-KENT L. REV. 627, 635 (1994).

73. In the Court’s words, “[w]e do not say that no one else but the negro can share in this protection If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void.” 83 U.S. at 72.

protection.⁷⁴ In addition, the Court held that the Fourteenth Amendment did not reach harms inflicted by private individuals because they were “simply a private wrong” and not a violation of civil rights.⁷⁵

Finally, in *Hodges v. United States* the Court held that even private wrongs that intentionally interfered with Black workers’ contract rights were beyond the scope of the Thirteenth Amendment. With language similar to that found in *The Civil Rights Cases*, the Court explained that “no mere personal assault or trespass or appropriation operates to reduce the individual to a condition of slavery.”⁷⁶ Taken together, these decisions dramatically limited Congress and federal courts’ ability to protect and enforce civil rights.

In addition, federal prosecutors and courts narrowly enforced the one set of Supreme Court cases—the Peonage Cases—that should have expanded protections for vulnerable croppers and tenants. In these two cases—*Bailey v. Alabama* (1911) and *United States v. Reynolds* (1914)—the Court overturned two different Alabama laws that had been used to coerce Black laborers and conscript them into a system of forced labor.⁷⁷ Specifically, *Bailey* invalidated an Alabama statute that had been primarily used to criminally prosecute Black laborers who breached their contracts.⁷⁸ And *Reynolds* invalidated a law that allowed the state to “hire” out people convicted of petty crimes—who were disproportionately Black—to private individuals who agreed to pay their fines.⁷⁹ In both cases, the Court held that these statutes violated the Peonage Act of 1867.

Yet, in spite of these decisions—which ostensibly strengthened the federal government’s protection against peonage—many of the coercive, exploitative labor relationships that persisted on farms across the south were beyond the reach of the federal government’s protection. Only when there had been “compulsory service based upon the indebtedness of the peon to the master” would there then be federal jurisdiction.⁸⁰ According to the Department of Justice’s understanding

74. *The Civil Rights Cases*, 109 U.S. at 25; see also GOLUBOFF, *supra* note 10, at 19–20; HARTMAN, *supra* note 8, at 165–67.

75. *The Civil Rights Cases*, 109 U.S. at 17.

76. *Hodges v. United States*, 203 U.S. 1, 18 (1906); see also GOLUBOFF, *supra* note 10, at 19.

77. *Bailey v. Alabama*, 219 U.S. 219 (1911); *United States v. Reynolds*, 235 U.S. 133 (1914).

78. GOLUBOFF, *supra* note 10, at 144; KLARMAN, *supra* note 10, at 233–34; Benno C. Schmidt, Jr., *Principle and Prejudice: The Supreme Court and Race in the Progressive Era, Part 2: The “Peonage Cases”*, 82 COLUM. L. REV. 646 (1982).

79. 235 U.S. at 142.

80. Letter from Nugent Dodds, Assistant Attorney General, Department of Justice to Roy Wilkins, Assistant Secretary, NAACP (Sept. 10, 1931), in NAACP FILES, PEONAGE, LINCOLN COUNTY, GA., MAR. 30–DEC. 1, 1930 (Library of Congress).

of this definition, sharecroppers and tenants whose landlord-employers assaulted them, stole from them, and threatened to kill them, were not peons.⁸¹

Simply put, the Supreme Court's post-Civil War jurisprudence prevented the Reconstruction Amendments and early Civil Rights Legislation from ever fully living up to their promise.⁸² As Risa Goluboff has documented, it would not be until the 1940s, and the legal changes wrought by the Great Depression and World War II, that the Department of Justice and the National Association for the Advancement of Colored People (NAACP) could robustly advocate for the economic and civil rights of southern Black agricultural laborers.⁸³

3. Private Law

In addition to the bleak criminal law and civil rights law landscape for sharecroppers and tenants, the southern planter class changed the laws governing sharecropping and tenancy in ways that also restricted private law's ability to provide redress. The most significant of these changes was legally defining sharecropping as an employment relationship, rather than as partnership or tenancy (as it had been characterized historically).⁸⁴ By the late 1890s, nearly all southern states' supreme courts and legislatures had declared that sharecroppers were employees.⁸⁵ As employees, sharecroppers were only

81. Letter from Walter F. White, Assistant Secretary, NAACP to Jesse O. Thomas, Field Secretary, National Urban League (Oct. 4, 1920), in NAACP FILES, PEONAGE, FEB. 1911–DEC. 14, 1920 (Library of Congress).

82. For more on the unfulfilled promise of the Reconstruction Amendments, see Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 54–71 (2019).

83. GOLUBOFF, *supra* note 10, at 51–80.

84. Woodman, *supra* note 56, at 325–326. Interestingly, there is a tension within Woodman's own writing about the extent to which the sharecropper classification was new. Nearly twenty years after publishing his initial article on southern agricultural law, Woodman instead argued that the "landlord cropper relationship was not based on new legislation in the postbellum South, nor was it the result of judge-made law arbitrarily imposed by post-emancipation courts intent on protecting landowner interests." HAROLD D. WOODMAN, *NEW SOUTH—NEW LAW: THE LEGAL FOUNDATIONS OF CREDIT AND LABOR RELATIONS IN THE POSTBELLUM AGRICULTURAL SOUTH* (1995). Cf. Woodman, *supra* note 56, at 325–26 ("Although tenancy had existed in both North and South before the Civil War and continued after the war, the cropper relationship was confined to the South and was, with one possible exception, a postwar institution. Sharecropping became the South's new peculiar institution, a unique form of wage labor that grew up on the war-created debris of the old peculiar institution.").

Nevertheless, the scholarly consensus—with which I agree—is that the system of land tenure that existed in the post-slavery south emerged in response to the specific demands and concerns of postbellum southern agriculture and former enslavers. See, e.g., JAYNES, *supra* note 15, at 211–23; SAVILLE, *supra* note 8, at 125–27.

85. Tennessee was the one exception. Initially, state law maintained a distinction between Black and white croppers, wherein Black croppers were treated as employees and white croppers were tenants in common. This racial distinction eventually fell away, and in 1871, the

entitled to the proceeds from their share of the crop, not the crops themselves. Practically this meant that a sharecropper could never sue his or her landlord for crop theft.⁸⁶ Instead, if a landlord withheld proceeds from the crops, or ran a sharecropper off the land before harvest, that sharecropper could only sue to enforce the contract or a laborer's lien.⁸⁷ Unfortunately, laborer's liens were weaker legal claims than property rights, and of the cases considered here, only one sharecropper brought an action under a laborer's lien.⁸⁸

Tennessee Supreme Court held that all croppers, regardless of race, were to be treated as tenants in common. Donald L. Winters, *Postbellum Reorganization of Southern Agriculture: The Economics of Sharecropping in Tennessee*, 62 AGRIC. HIST. 1, 5–7 (1988).

86. Women also worked as sharecroppers. See *infra* Part III for a discussion of *Tignor v. Toney*, 35 S.W. 881 (Tex. Civ. App. 1896), a case with a Black woman plaintiff.

87. Enacted during Reconstruction, laborer's lien laws were designed to help freedpeople whose share of the crop had been withheld. In general, the term "lien" describes the legal right or interest that a creditor (or in other words, the lender) has in the property of the debtor (the person doing the borrowing). Similarly, a laborer's lien gives a worker a legal right to, or interest in, (a lien) in the property of their employer up to the value of their labor. For sharecroppers, these liens gave croppers a right to the crops that was equal to the value of their labor. Woodman, *supra* note 56, at 333–35.

Laborers' liens were relatively weak enforcement mechanisms, however, because they were subordinate to most of a landlord's other debts and were unenforceable if a sharecropper did not fulfill his contract, regardless of how much of the work had already been completed. *Id.* Woodman writes that courts "consistently ruled against landlords who unlawfully forced their tenants and croppers to abandon the land and crops." *Id.* at 334. Courts' treatments of these cases, however, clearly did not prevent landlords from trying to force tenants or croppers off their land. *Id.* at 335 n.35.

88. This case, *Smith v. Summerlin*, is also the earliest case of the twenty-four and is based on a written sharecropping agreement signed in 1870 in Georgia. 48 Ga. 425 (1873). In *Summerlin*, a freedman named Moses Summerlin brought an action on a laborer's lien for \$508.75 and won \$113.18 plus legal costs. At the time of the contract (1870) and the case's final appeal (1872), Georgia was in the tail end of Reconstruction. This means Summerlin may have had the assistance of the Freedmen's Bureau when dealing with his landlord-employer. Indeed, one of the most common cases heard by Bureau agents was that of freedpeople having been run off the land without being paid. Sara Rapport, *The Freedmen's Bureau as a Legal Agent for Black Men and Women in Georgia: 1865–1868*, 73 GA. HIST. Q. 26, 33 (1989). Regardless of whether the Bureau helped Summerlin directly—agents often acted as freedpeople's "next friend" in state courts—the existence of the Bureau's internal adjudicatory process likely bolstered the idea that Black rights should and could be vindicated by the legal system. *Id.* at 47. For a more in-depth discussion of *Summerlin*, particularly in relation to Black-white litigation during Reconstruction, see MILEWSKI, COLOR LINE, *supra* note 12, at 103–08.

Summerlin is also the only case with a Black plaintiff heard prior to the Freedmen's Bureau's withdrawal from the south in my sample of twenty-four cases. This makes sense for several reasons. First, the Freedmen's Bureau's adjudicatory process was much faster than that of local courts, which made a big difference when the dispute was over wages. Second, the Freedmen's Bureau was also friendlier to Black plaintiffs: Agents allowed plaintiffs to argue their cases in their own words, trials were less formal, and agents would collect witness affidavits for complainants. According to one study of contract complaints heard by Georgia Bureau agents between 1865 and 1868, Black complainants won the majority of their cases. Rapport, *supra*, at 34.

Employment status limited sharecroppers' private rights in another important way: By denying sharecroppers' rights to the homes in which they lived. Instead, sharecroppers' homes were merely a condition of their employment, and they only had a "right . . . to ingress and egress on the property"—rather than a right to the land itself.⁸⁹

This meant that sharecroppers whose employers forced them out of their homes could only challenge this behavior in court with a breach of contract claim. Legally, the forced removal of a sharecropper from his or her home was not considered a tort (such as the tort of wrongful eviction). Thus, even if a sharecropper succeeded in proving breach of contract, the damages would be limited to the value of the contract—punitive damages were off the table.⁹⁰

In addition, because their dwellings were merely a condition of employment, sharecroppers could not legally prevent their employers from entering their homes. In other words, a sharecropper's employer could never be found to have legally trespassed in a sharecropper's home. Planters always had the legal right to enter sharecroppers' homes, with or without their permission.

Yet even tenants—who did own the crops and had a possessory interest in their homes—could find themselves with limited property rights. The creation of crop liens and expansion of landlord liens stripped away some of the property benefits that tenancy contracts afforded tenants.⁹¹ These lien laws gave a landlord who provided supplies to tenants a statutory lien on the tenant's share of the crops equal to the value of the supplies that had been advanced. Though many tenants provided their own supplies, many others could not. Once a landlord had a lien on the crops, a tenant then needed the landlord's permission to remove or sell any of the crops that were secured by the lien.

To be clear, tenancy still afforded greater access to property claims than sharecropping did. Although lien laws limited a tenant's ability to sue her landlord for conversion, they did not impact a tenant's right to exclude her landlord from her home. This means that even those tenants whose property rights had been limited by the expanded lien laws were better positioned than sharecroppers.

89. *Brown v. Johnson*, 12 S.W.2d 543, 545 (Tex. 1929) (adopting judgement of Texas Court of Civil Appeals).

90. For more on the unavailability of punitive damages for breach of contract, see Subpart III.B *infra*.

91. Some crop lien laws were passed as early as 1866 (Alabama and Georgia) and 1867 (Mississippi and North Carolina). Woodman, *supra* note 56, at 327 n.14. Many state courts expanded the scope of these liens by broadening the scope of the property covered by the lien and lengthening the lien's duration. Courts' expansive interpretations of lien laws helped landlords "keep their borrowers in debt and preserve their lien to cover old as well as new debts." *Id.* at 332.

Unlike sharecroppers, tenants could always bring trespass claims against their landlords. And unlike the breach of contract claims that many sharecroppers were limited to bringing, trespass claims (along with other torts) gave plaintiffs the option of receiving punitive damages.

This Part has detailed the many ways that the law failed to protect sharecroppers and tenants from violent landlord-employers. Nevertheless, agricultural workers were not entirely without options. For some, legal claims based on private rights—especially those rooted in contract and property—became a way to attain redress. These plaintiffs believed that the southern legal system was a viable option, in spite of the challenges and risks that accompanied bringing these suits.

II. THE UNEXPECTED ROLE OF PRIVATE LAW

This Part focuses on litigation brought by some of the most vulnerable agricultural workers: sharecroppers and share-tenants. As Subpart I.B explained, even though all sharecroppers and tenants were at risk of landlords' violence, it was sharecroppers and share-tenants—tenants who paid rent in a share of the crop—who faced the most obstacles in the courtroom. The laws of sharecropping granted sharecroppers fewer property rights as compared to tenants, thus limiting the kinds of legal claims they could bring against their landlords. And due to the outward similarities between sharecropping and share-tenancy it was often difficult for courts, and even the parties themselves, to distinguish between the two agricultural relationships. As a result, individuals who believed themselves to be share-tenants could find themselves facing the same legal disadvantages as sharecroppers.

Prior to the start of the Great Depression, there were at least nineteen different cases brought by either a sharecropper or share-tenant who had experienced landlord violence that reached a state's court of last resort. Another five cases were heard by a state court of appeals. These twenty-four cases were heard in eight former slave-states—Alabama, Arkansas, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Texas.⁹²

92. See *infra* Appendix B for more information on all of the cases. The case table provides the case name, year of the contract in dispute, state, a brief description of the violence that occurred, the race of the litigants (based on Census data), and the outcome of the trials and appeals. In addition to the published appellate decisions, I was able to find the archival case files for twelve of the twenty-four cases, listed below. The following cases are listed first by state, then reverse chronologically from there: *Allen v. Bannister*, 97 So. 820 (Ala. 1923); *Howton v. Mathias*, 73 So. 92 (Ala. 1916); *Walker v. Rogers*, 273 S.W. 439 (Ky. 1925); *Melton v. Allen*, 278 S.W. 1095 (Ky. 1925); *Ragsdale v. Ezell*, 35 S.W. 629 (Ky. 1896); *Curtis v. Cash*, 84 N.C. 41 (1881); *Sullivan*

These appellate cases provide insight into what the best-case scenario looked like in sharecropper and tenant litigation.⁹³ Sharecroppers and share-tenants were among the most vulnerable agricultural laborers. Nevertheless, they succeeded in the majority of the trials and appeals considered here. Indeed, these wins are likely why these cases are available in the published record in the first place. Planters, who were generally better resourced than sharecroppers and tenants, would have been more easily able to appeal decisions that did not come out in their favor. By contrast, many cases that went to trial and were won by planters were likely never appealed. Consequently, sharecroppers' and tenants' successes are almost certainly overrepresented among the appellate cases.⁹⁴ Given that a doctrinal analysis of appellate cases can only ever provide a partial picture of how the law was being mobilized in court, the image created by these cases is best understood as the upper limit of private law's ability to remedy labor and racial violence.

These twenty-four cases reveal a complicated relationship among property, contract, and tort claims. No one source of law was categorically superior to the other, and there was no single best theory of litigation. The reasons for this are two-fold. First, plaintiffs' claims were heavily fact-dependent. Whether a cause of action under contract, property, or tort law was the best path forward depended on the nature of the contract as well as the nature of the violence. Second, the social realities of the southern agricultural world allowed landlords to better wield the law to their advantage, which in turn shaped the legal arguments that plaintiffs

v. Calhoun, 108 S.E. 189 (S.C. 1921); *Hillhouse v. Jennings*, 60 S.C. 392 (1901); *Foster v. Roseberry*, 78 S.W. 701 (Tex. Civ. App. 1904); *Tignor v. Toney*, 35 S.W. 881 (Tex. Civ. App. 1896); *Crews v. Cortez*, 113 S.W. 523 (Tex. 1908); and *Malone v. Scott*, 40 Tex. 460 (1874).

93. The arguments in this Part are primarily based on an analysis of twenty-four civil suits that sharecroppers and share-tenants brought against violent landlord-employers. Nineteen reached their state's supreme court, two of them more than once. The violent methods used in these breaches include death threats, threats of bodily harm, threats of imprisonment, brandishing a gun, theft, property damage, forcible ejection from the property, being run off the land, sexual assault, other physical assaults, and malicious prosecution. In the majority of incidents—nineteen out of twenty-four—croppers and share-tenants experienced multiple types of violence. By including both speech acts and physical actions in this definition of violence, I build upon the work of Black feminist theorists such as Patricia Williams, Hortense Spillers, and Patricia Hill Collins, all of whom have explored the “action/speech dichotomy” with respect to racial violence. See generally Patricia Hill Collins, *The Tie That Binds: Race, Gender and US Violence*, 21 *ETHNIC & RACIAL STUD.* 917, 923 (1998); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991); Spillers, *supra* note 46, at 68 (“We might concede, at the very least, that sticks and bricks *might* break our bones, but words will most certainly *kill* us”). See also, Robert Cover, *Violence and the Word*, 95 *YALE L.J.* 1601, 1610 (1985) (offering an alternative, expansive definition of violence).

94. In addition, disputes over relatively small sums of money would have been heard by justices of the peace, whose records would have been separate from those kept by state courts. LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH* 26 (2009).

could successfully bring. Landlords generally had more social and economic capital at their disposal than the workers they employed. Consequently, they could afford better lawyers, bring more appeals of their cases, and receive more of the benefit of the doubt from juries. This was even truer in cases with Black plaintiffs and white landlords. Nevertheless, and as the Parts below will illustrate, state courts remained open to the claims levied by victims of violence, occasionally with surprising results.

A. Winning Property Claims by Proving the Contract

In each of the twenty-four appellate cases considered here, the plaintiffs and defendants were in a contractual relationship before they were in a violent one. At minimum, the violence was a violation of the duty of good faith and fair dealing that contracting parties have toward one another.⁹⁵ For many, a landlord's violence also violated individuals' rights to their crops and their homes. Consequently, each instance of landlord violence necessarily interfered with the victim's contractual rights.

For this reason, the nature of the parties' contractual relationship was often crucial in determining the appropriate remedy for a landlord's violence. And because of this centrality, contractual terms and interpretations were often contested at trial and on appeal.⁹⁶ As a result, succeeding against violent landlords in court often meant that sharecropper- and tenant-plaintiffs had to prove that their understanding of the contract was the correct one.

The legal distinction between sharecropping and tenancy relationships was particularly important.⁹⁷ While both tenants and sharecroppers could sue for the tort of assault and battery, only tenants could bring the property-based tort claims

95. See Daniel Markovits, *Good Faith as Contract's Core Value*, in PHILOSOPHICAL FOUNDATIONS OF CONTRACT LAW 272–93 (Gregory Klass et al. eds., 2014); Harold Dubroff, *The Implied Covenant of Good Faith in Contract Interpretation and Gap-Filling: Reviling a Revered Relic*, 80 ST. JOHN'S L. REV. 559, 564–65 (2006) (tracing the history of the duty of good faith to the second half of the nineteenth century).

96. *Beck v. Kah*, 136 S.E. 160 (Ga. 1926) (dispute over whether contract was for share-tenancy or employment); *Curtis*, 84 N.C. 41 (dispute over whether contract was for share-tenancy or co-partnership); *Hillhouse v. Jennings*, 38 S.E. 596 (S.C. 1901) (dispute over whether the contract was for share-tenancy or employment); *Walker*, 273 S.W. 439 (dispute over existence of contract); *Foster*, 78 S.W. 701 (dispute over whether contract was for share-tenancy or employment); *Malone*, 40 Tex. 460 (dispute over whether the number of hands to be hired should be treated as a term of the contract).

97. These laws of sharecropping and tenancy were unique to the South. Tenancy in common was more “commonly employed in the North and West.” Andrew Wolkoff, *Possession and Power: The Legal Culture of Tenancy in the United States, 1800-1920*, at 3 (2015) (Ph.D. dissertation, Rutgers University) (on file with author).

of conversion and forcible eviction.⁹⁸ This meant that even if a sharecropper and tenant had the same experience of landlord violence—say, being violently run off the land and denied access to the crops or their proceeds—only the tenant would be able bring a tort action for the loss of his crops and home. A sharecropper would have to bring a breach of contract claim.⁹⁹ But since punitive damages were (and continue to be) unavailable for breach of contract in most states, the maximum amount that a sharecropper could receive for this violent breach of contract would always be less than a tenant's conversion and trespass claim for the same act of violence.¹⁰⁰

1. Ambiguous in Practice

In spite of how important it was to distinguish between sharecropping and tenancy relationships, sometimes it was nearly impossible to do so. This was largely because sharecropping and tenancy often shared outward similarities. Thus, even when parties agreed on a contract's terms, it could still be unclear whether the contract created a sharecropping or tenancy arrangement.

More precisely, it was sharecroppers and share-tenants—tenants who paid their rent in a share of the crop, rather than in cash—who were the most difficult to tell apart. Both groups lived on the property where they worked and had incomes that were limited to a percentage of the crops. In addition, share-tenancy was only one step above sharecropping in the southern agricultural hierarchy, which meant that sharecroppers who moved up the hierarchy were most likely to

98. As discussed *supra* in Subpart I.B.3, this is because southern courts and legislatures designated sharecroppers to be employees. As employees, croppers did not own the crops that they grew and did not have a possessory interest in their homes. Instead, sharecroppers were entitled to the proceeds from the crops, rather than owning the crops outright. This would have prevented sharecroppers from claiming conversion because in order to bring a claim of conversion—meaning, a claim that one's property has been taken without permission or cause—one must first own the property in question. In addition, because a sharecropper's living space was merely a benefit of their employment, once that employment had been terminated, the sharecropper no longer had a right to remain on the premises. In order to claim that one has been forcibly or unlawfully evicted however, one must also have a legal right to inhabit the premises at the time that the lawsuit is initiated. Unfortunately for sharecroppers, living on the premises was considered a benefit of employment, but not a legal right that they could turn to the courts to protect.

99. Sharecroppers and tenants alike would have also been able to bring tort claims for assault and battery. In practice, however, these tort claims of assault and battery were likely riskier for already vulnerable plaintiffs, given the heightened moral valence that would have accompanied these particular tort claims. See *infra* Subpart II.C for a more in-depth discussion of the assault and battery claims.

100. As the name suggests, punitive damages (also known as exemplary damages) are monetary damages that are assessed in order to punish a defendant for outrageous conduct and/or to deter them from committing similar acts in the future.

progress to share-tenancy.¹⁰¹ If they also chose to remain on the same land, then they would have had both sharecropping and share-tenancy contracts with the same landlord-employer, increasing the likelihood for confusion.

In addition, the expanded crop lien laws to which tenants were subjected—discussed in Subpart I.I.B *supra*—narrowed the distinction between sharecroppers and tenants. Neither sharecroppers nor tenants who were encumbered by their landlords' crop liens could sell the crops without their landlords' permission. In the words of one North Carolina court, in payment disputes between workers and landlords "it has now become immaterial whether the producer of the crop is a cropper or a tenant."¹⁰²

2. Ambiguous Terms

From a formal legal point of view, the distinction between sharecropping and share-tenancy should have been uncomplicated.¹⁰³ Yet, over the course of the late nineteenth and early twentieth centuries, agricultural contracts were less likely to be written down, which increased the likelihood of contractual indeterminacy. But even written contracts could be ambiguous about the legal relationship they were creating. As a result, for many landlords and laborers, the difference between share-tenancy and sharecropping was a matter of perspective.¹⁰⁴

The written contract in *Foster v. Roseberry* is one such example. According to the court, the contract was "ambiguous in its terms and uncertain as to whether it . . . [was] a rental . . . or . . . a hire and employment [contract]."¹⁰⁵ The contract did not use the words sharecrop, cropper, tenant, rental, lease, hire, or employment. And the legal obligations that the contract created contained elements common to both sharecropping and share-tenancy contracts. As in most sharecropping relationships, the landlord-employer agreed to provide the supplies, tools, and stock. In addition, and consistent with sharecropping, the

101. See, e.g., Lee J. Alston & Kyle D. Kauffman, *Competition and the Compensation of Sharecroppers by Race: A View From Plantations in the Early Twentieth Century*, 38 EXPLS. ECON. HIST. 181, 182–84 (2001); FOLEY, *supra* note 15; JAYNES, *supra* note 15; Woodman, *supra* note 56.

102. *State v. Austin*, 31 S.E. 731, 732 (N.C. 1898). North Carolina was unique among southern states in that it formally abolished the distinction between tenants and croppers and treated both as sharecroppers. Woodman, *supra* note 56, at 325 n.10. Although other states did not venture so far as to eliminate the formal distinction between sharecropping and tenancy, the expansion of lien laws functionally eroded the distinction between the two.

103. See generally Woodman, *supra* note 56.

104. As Woodman has written, legislatures and courts "create[d] the legal basis for a new dominant agricultural class based on a peculiarly southern free-labor system." *Id.* at 321.

105. Charge of the Court at 114, *Foster v. Roseberry*, 78 S.W. 701 (Tex. Civ. App. 1904).

tenant-cropper was entitled to a portion “of the profits” from the stock and the crops, rather than being owners of the stock and crops themselves.

Yet, the contract in *Foster* also provided the laborer with the kind of autonomy and authority that would have been more appropriate for a share-tenant rather than a cropper. The laborer agreed to “cultivate” the land, “look after all the stock” as well as “care for the place.”¹⁰⁶ To be sure, both sharecroppers and tenants were subjected to landlords’ close supervision. Nevertheless, tenancy was still associated with greater autonomy for both tenants and landlords. And although the landlord in *Foster* was providing supplies—as one would in a sharecropping arrangement—the laborer was supplying “all necessary implements to *run the farm*.”¹⁰⁷ Such managerial control was ordinarily associated with tenancy or outright land ownership, not sharecropping.

3. Contingent Remedies

Given the contract’s ambiguity, it should come as no surprise that the *Foster* court described the case as primarily “grow[ing] out of the intent or meaning of a contract.”¹⁰⁸ To be clear, as with the other cases considered here, *Foster* was initiated by a landlord’s violence—here, the landlord used death threats and “force of arms” to oust the plaintiff from the land.¹⁰⁹ Nevertheless, the plaintiff’s cause of action relied upon the plaintiff’s interpretation of the contract—that it was a contract for tenancy—just as much as the nature of the landlord’s violence. Only if the plaintiff were a tenant, would the landlord’s repossession of the plaintiff’s property have been unlawful, as a violation of the rights created by the tenancy contract.

106. *Foster v. Roseberry*, 78 S.W. 701 (Tex. Civ. App. 1904), *certified question answered*, 81 S.W. 521, 522 (Tex. 1904) (providing the full text of the contract in opinion of interlocutory appeal)

107. *Id.* Both the plaintiff and the defendant in *Foster* were white. In his trial testimony, the plaintiff referred to himself as not “having been in this country long.” Statement of Facts at 30, *Id.* Because the case took place in Texas, Roseberry’s whiteness increases the chances that the contract was one for tenancy. But race was a weak predictor of agricultural status. To be sure, there were significantly more white landowners than Black landowners, and significantly fewer white wage workers than Black wage workers. In the case of sharecropping and tenancy however, the racial trends were far less clear, varying across region and over time. See, e.g., Alston & Kauffman, *supra* note 101, at 183 tbl.1; FOLEY, *supra* note 15. Proportionally, more Blacks were sharecroppers, but in terms of absolute numbers, the majority of sharecroppers in several regions of the South were white. *Id.* at 66–67 tbl.7 (providing data on Texas farm owners, tenants, and croppers by race between 1900 and 1940); U.S. BUREAU OF THE CENSUS, NEGRO POPULATION, 1790–1915, p. 572 tbl.30, pp. 610–11 tbl.57 (providing data on racial demographics of different land tenure classes in the south).

108. Charge of the Court at 112, *Foster*, 81 S.W.

109. *Id.* at 522.

For his part, the landlord's primary defense was that he had hired the plaintiff as an employee, rather than rented to him as a tenant. From there, the landlord claimed that the plaintiff had breached his contract—by disobeying the landlord's instructions on how to cultivate the crops—and having breached, the plaintiff could be removed from the property in whatever manner the landlord saw fit.

The court agreed with this line of reasoning. *If* the contract was for employment, and *if* the employee had breached by refusing his landlord's orders, *then* under such conditions the landlord did nothing wrong when he used threats and force to oust the plaintiff from the property.¹¹⁰ To reiterate, if the plaintiff were an employee (as all sharecroppers were), then the landlord's violence did not warrant any remedy. The plaintiff's redress was contingent on his property rights as a tenant, which were in turn contingent on the contract.

Ultimately, however, the court issued a judgment and verdict in favor of the plaintiff. Given the contract's ambiguity, the trial court instructed the jury to determine the contract's "true intent at the time of execution."¹¹¹ The jury found that the contract was intended to be for tenancy, and, as a result, the tenant-plaintiff could maintain "possession of said premises and property" for the remaining six months of the lease. In addition, the defendant-landlord was "restrain[e]d . . . from interfering with his possession."¹¹² By convincing the jury that his understanding of the contract was the correct one, the plaintiff was able to prove that his property rights had been violated and that as a result he was owed a remedy for his landlord's violence.

B. In the Absence of Property

Property claims were not the only path forward for sharecroppers and tenants, however. For some plaintiffs, suing on the basis of contract rights was the better option. The case of *Rhoades v. Pointer* illustrates how contract claims could sometimes outperform those that were rooted in property. Allen Pointer, a Black share-tenant in Texas, and his white landlord, A.J. Rhoades, entered a contract to grow cotton in 1918.¹¹³ In August of that year, Rhoades

110. The court's support of this reasoning is clear from its jury instructions. Charge of the Court at 116, *Foster*, 81 S.W.

111. *Id.* at 114.

112. *Foster*, 81 S.W. at 702.

113. *Rhoades v. Pointer*, 243 S.W. 583, 584 (Tex. Civ. App. 1922). The contract's terms are closer to the terms of a sharecropping contract than share-tenancy. The landlord, Rhoades, provided the tools and teams, and he and Pointer were splitting the crops equally. The court, however, refers to the contract between Rhoades and Pointer as a "rent contract." *Id.* at 583–84. In addition, a conversion claim (which is how the court describes it) would not have been an option had Pointer been a sharecropper.

chased Pointer and his family off the premises “through an attitude of violence toward appellee [Pointer], who was a negro.”¹¹⁴ Pointer opted to sue on the contract, rather than in tort for conversion, and won nearly nine hundred dollars in damages.¹¹⁵

By choosing to sue on the contract, rather than for conversion (i.e., a property-based tort claim), Pointer was able to side-step his landlord’s efforts to use tort rules to his advantage. Instead, Pointer benefitted from the relatively more straightforward nature of his contract claim, succeeding at trial and on appeal.

1. The Challenge of Valuing Crops

In order to understand why suing on the contract could sometimes be more straightforward than a conversion claim, it is important to understand the legal rules for measuring damages to crops, which could vary depending on whether a claim was in contract or in tort.

As an initial matter, rapid and drastic fluctuations in crop prices could make pinpointing crops’ prices difficult. This was especially true of cotton, which experienced the most price fluctuation of southern crops in the late nineteenth and early twentieth centuries. Indeed, cotton prices fluctuated significantly in the time between Rhoades’s theft from Pointer and Pointer’s subsequent suit against Rhoades, with a high of approximately 32 cents, and a low of 24.¹¹⁶ Given that Pointer was claiming damages for thousands of pounds of cotton and cottonseed, even slight differences in the price per pound would have enormously impacted the overall value.¹¹⁷

What made Pointer’s measure of damages even more complicated was the fact that contract and tort doctrine had different rules for valuing crops with fluctuating prices. In tort actions, the rule of higher intermediate value applied.¹¹⁸

114. *Id.* at 584.

115. A trial court awarded Pointer \$872.74 in damages. The judgment was affirmed by a Texas court of appeals in May 1922. *Id.* at 588.

116. Fed. Rsrv. Bank of Richmond, *Cotton Prices in the World Wars*, ECON. Q., Mar. 31, 1944, at 2, https://fraser.stlouisfed.org/files/docs/publications/frbrichreview/pages/65097_1940-1944.pdf [<https://perma.cc/B7D7-R6RJ>]; *Rhoades*, 243 S.W. at 587.

117. Pointer alleged that Rhoades owed him half of the proceeds from thirteen bales of cotton and fourteen bales of cotton seed. *Rhoades*, 243 S.W. at 584. There are approximately 500 pounds of cotton per bale, and each bale results in roughly 700 pounds of seed. This means that Rhoades owed Pointer the proceeds from over 3000 pounds of cotton and nearly 5000 pounds of cotton seed.

118. 2 THEODORE SEDGWICK, A TREATISE ON THE MEASURE OF DAMAGES § 507, at 991–92 (Arthur G. Sedgwick and Joseph H. Beale eds., 9th ed. 1912). Courts applied this rule in actions of

Under this rule, the measure of damages was “the highest market price which the property may have had from the date of the taking to the end of the trial.”¹¹⁹ For breach of contract actions, by contrast, the measure of damages was always the value of the plaintiff’s share of the crops at the moment the landlord sold them, regardless of changes to a crop’s market price.¹²⁰ To reiterate, when crop prices were stable, the measures of damages in contract and tort were the same. It was when prices rose or fell significantly—as they did in *Rhoades v. Pointer*—that contract and tort used different rules for calculating damages.

The fluctuating value of crops was not the only challenge to determining damages in sharecropper and tenant litigation. Although not an issue in *Rhoades*, in several other cases, landlords committed acts of violence against sharecroppers and tenants before the crops had matured. Some of these attacks happened before the crops had even been planted.¹²¹ Because there was no set rule for measuring damages for immature crops, plaintiffs, defendants, and courts did not always agree on the best way to measure the costs of the harm. For example, in one case where a landlord attacked his tenants after they had tilled the land, but before they had planted the crops, the court used the doctrine of quantum meruit as the basis

conversion, detinue, and replevin. Conversion, detinue, and replevin are all actions that allow someone to recover property that someone else has taken from them.

119. *Id.*

120. As noted in a contemporaneous *Harvard Law Review* article, different courts had different methods of determining this value. Either damages would be equal to the value of the plaintiff’s share, “less what he might reasonably have earned in other employments during the period of the contract,” or damages would be equal to the value of the contract, meaning “the profits to be derived therefrom.” *Damages for Loss of Prospective Crops*, 34 HARV. L. REV. 662, 662 (1921).

121. *Beck v. Kah*, 136 S.E. 160 (Ga. 1926) (describing how the Beck family was run off the land in February after some work had been done to prepare the land for a crop, but before anything had been planted); *Burell v. Pirkle*, 119 S.E. 529, 530 (Ga. 1923) (detailing how J.L. Burell was run off the land before he could start cultivating it and after all other “desirable place[s] to cultivate” had been rented); *Roberson v. Allen*, 66 S.E. 542 (Ga. Ct. App. 1909) (describing how the Roberson family was run off the land after the land had been plowed and only some of the crops had been planted); *Walker v. Rogers*, 273 S.W. 439 (Ky. 1925) (illustrating how Henry Rogers was shot from behind just over a month before tobacco harvest); *Crews v. Cortez*, 113 S.W. 523, 526 (Tex. 1908) (illustrating how the Cortez family was run off the land “when the crops were immature”); *Tignor v. Toney*, 35 S.W. 881 (Tex. Civ. App. 1896) (describing how Babe Toney was run off the land in May after crops were planted and growing, while the crops would not be mature until September); *Foster v. Roseberry*, 78 S.W. 701, 702 (Tex. Civ. App. 1904) (detailing how the parties entered into contract in June, and the laborer was run off the land in December before some crops were ready to be harvested); see also WELLS-BARNETT, *supra* note 15, at 19 (describing a landlord in Elaine, Arkansas who drove off nine of the thirteen families that were working on his land before the crops had been harvested).

for the plaintiffs' recovery.¹²² Under the doctrine of quantum meruit, a plaintiff can recover the value of labor that has already been performed.¹²³ In another case in the same jurisdiction, a similarly situated plaintiff—meaning one who had been run off the land before the crops had been planted—requested expectation damages based upon crop yields. This particular plaintiff had been run off the land by his landlord, thus leading the plaintiff to grow crops on a less “desirable place to cultivate.” Because of this, the plaintiff claimed as damages the difference in value between the amount of crops that he could have grown had he remained on the original property, and the amount that he was actually able to grow after being forced off the land.¹²⁴

The primary challenge in suits with violence that occurred early in the growing season—which was also the reason that some of these cases resulted in divergent rulings—was that plaintiffs generally could not (and to this day, still cannot) receive damages for lost profits when the profits are too speculative or uncertain.¹²⁵ The uncertainty of crops' prospective value thus served as a useful defense for landlords who wanted to avoid paying out damages.¹²⁶

Given the variety of ways that courts could determine the value of a plaintiff's lost crops, it is unsurprising that in some cases, this valuation was hotly contested by the parties to the litigation.¹²⁷

122. *Roberson*, 66 S.E. at 542 (“A. was entitled to treat B.’s breach of his contract as discharging him from any further performance on his part, and to sue B. on a quantum meruit, and recover the value of his labor in plowing, fencing, cultivating, and improving B.’s land and premises.”).

123. 3 J.G. SUTHERLAND, A TREATISE ON THE LAW OF DAMAGES §§ 688–90, at 2530–40 (John R. Berryman ed., 1916); 26 SAMUEL WILLISTON, TREATISE ON THE LAW OF CONTRACTS § 68:1 (4th ed. 2021). The Georgia Court of Appeals explained in *Roberson* that the five months of the contract that had been performed should be treated as an entire contract (even though the contract was for twelve months). The court likely included this explanation to circumvent the entire contract doctrine—which stipulated that workers would not receive payment for work done on a contract if they quit before the term of the contract was complete. The court also explained that the defendant’s conduct constituted a breach that could be treated as “discharge from any further performance.” *Roberson*, 66 S.E. at 542.

124. In his petition, the plaintiff alleged that “the place he did obtain yielded only 2 1/2 bales of cotton and about 30 bushels of corn; whereas the land rented by him from [defendant] Pirkle would have yielded 4 bales of cotton and 75 bushels of corn, the difference in value being \$200 . . . for which damages he prays judgment.” *Burell*, 119 S.E. at 530.

125. This remains true today.

126. As pointed out in a contemporaneous Harvard Law Review article on this particular issue, the question of uncertainty did not need to cause confusion for courts, because “the certainty required is certainty as to the *fact* of damage, and not as to the *amount*.” Nevertheless, some courts did use uncertainty of amount as a reason to deny recovery of damages. *Damages for Loss of Prospective Crops*, *supra* note 120, at 663.

127. See, e.g., *Howton v. Mathias*, 73 So. 92 (Ala. 1916) (detailing how defendant’s appeal asserted that an improper measure of damages was used); *Young v. Gay*, 6 So. 608, 610 (La. 1889) (describing how on application for rehearing, “correct[ing] an error . . . made in the adjustment of the accounts between the parties”); *Crews v. Cortez*, 113 S.W. 523, 526 (Tex.

2. Contract, Not Conversion

When share-tenant Allen Pointer sued his landlord, he elected to waive the tort claim and instead claim damages that were based on a contract theory of value.¹²⁸ Specifically, Pointer chose to ratify Rhoades’s unlawful sale and sue for the proceeds of this sale, rather than sue for conversion (a tort) outright.¹²⁹ Pointer’s decision to waive the tort drew upon a “firmly established rule” of remedies.¹³⁰ Under this rule, the owner of wrongfully taken goods, which have already been sold by the tortfeasor, may elect to “waive the tort” and instead sue *ex contractu*, meaning on the basis of the express or implied promise to “refund the price or value.”¹³¹ In the words of the Texas appellate court, by waiving the tort Pointer was electing to “ratify the sale and sue for his part of the proceeds.”¹³²

Waiving the tort had two clear benefits for Pointer. First (and as discussed in the previous Part) it allowed Pointer to sidestep any potential confusion on the part of the judge or the jury about how to value crops with fluctuating prices in conversion suits. Second, by waiving the tort, Pointer thwarted Rhoades’s strategy on appeal to claim that Rhoades’s and Pointer’s contract created a different legal relationship—with different legal rules about damages—than the one the trial court had recognized.

As discussed in Subpart II.A, landlords regularly argued for interpretations of sharecropping and tenancy contracts that varied from the ones put forward by plaintiffs. Pointer’s landlord, Rhoades, was no different. On appeal, Rhoades “insist[ed]” that he and Pointer were tenants in common and that as a result, Pointer’s suit was “one for damages sounding in tort” and that the “wrong rule” for the measure of damages had been used.¹³³ Unfortunately, because there is no

1908) (answering certified question about the proper measure of damages and explaining that the “difficult[y] . . . in applying this measure of damages is recognized by all, but it is the logical and just one, and the trouble encountered is not insuperable”); *Tignor v. Toney*, 35 S.W. 881 (Tex. Civ. App. 1896) (reversing the trial court’s verdict for the plaintiff because the incorrect measure of damages was used).

128. *Rhoades v. Pointer*, 243 S.W. 583, 585 (Tex. Civ. App. 1922)

129. *Id.* (explaining that Rhoades could “elect whether to treat the transaction as a conversion and sue for damages, or ratify the sale and sue for his part of the proceeds, which appellee [Rhoades] insists he has done. We think the pleading clearly shows that appellee brings the suit for his one-half of the proceeds of the property sold.”).

130. JOHN NORTON POMEROY, *REMEDIES AND REMEDIAL RIGHTS* § 460, at 748 (5th ed., 1929) (describing waiver of tort as “a firmly established rule, from which no dissent has been suggested”).

131. *Id.* The doctrine of waiver of tort remains good law, though perhaps less well known today than at the time of *Rhoades*.

132. *Rhoades v. Pointer*, 243 S.W. 583, 585 (Tex. Civ. App. 1922).

133. *Id.* As tenants in common, Rhoades and Pointer would both have had ownership interests in the property. This contrasts with the more typical tenancy arrangement, where one person

extant archival case file for *Rhoades v. Pointer*, we cannot know exactly why Rhoades believed tenancy in common would lead to these results.¹³⁴ What we can know is that it did not matter whether or not Rhoades's tenancy in common argument was correct. The question was moot because Pointer had already elected to waive the tort. As the court put it, "without contesting the correctness of . . . [Rhoades's] proposition, as an abstract rule of law," Pointer could elect to waive the tort and sue for the proceeds, which his pleadings "clearly show[ed]" he had done.¹³⁵

It is worth noting that Pointer's decision to waive the tort also came at a cost. Waiving the tort entailed waiving all tort actions against his landlord, not only the action in conversion. This meant that Pointer was also forgoing his ability to claim punitive damages or "proceed against the person of the defendant [landlord]."¹³⁶ It is possible that Pointer could have been awarded more in damages had he opted to sue in tort because he would have then been able to request punitive damages as well. As one court described the decision to forgo possible tort claims, it meant "pursu[ing] a remedy milder and more favorable to the defendant. The defendant cannot be worse and may be better off by being sued ex contractu."¹³⁷

Nevertheless, even Pointer's more conservative legal strategy led to significant results: Nearly \$900 in damages, or approximately \$17,550 in today's dollars.¹³⁸ Three years after the case's final decision, Allen and his wife, Trula,

owns the property (the landlord) and the other pays for rights to possess and use the property for a certain period of time (the tenant). Tenancy in common also differs from joint tenancy. Although both refer to legal arrangements where multiple people own a single property, there are several differences between the two. One of the more important differences is that in a joint tenancy arrangement, each tenant owns an equal share of the property, whereas in a tenancy in common, the tenants in common can own different percentages of the property.

134. For a different landlord's use of tenancy in common as a legal defense, see the discussion of *Tignor v. Toney* *infra* in Subpart III.B.

135. *Rhoades*, 243 S.W. at 585.

136. *First Nat'l Bank v. Martin & Co.*, 162 S.W. 1029, 1031 (Tex. Civ. App. 1914) (quoting *Elwell v. Martin*, 32 Vt. 217 (1859)). The court in *Rhoades* cited *First National Bank* as authority in its explanation of waiver of tort. *Rhoades*, 243 S.W. at 585.

137. *Elwell*, 32 Vt. at 220.

138. This calculation was made using the Bureau of Labor Statistics inflation calculator. *CPI Inflation Calculator*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/X9P9-V4MA>]. To find the calculation, I inputted "\$900," then set to "in January 1918," and clicked "Calculate." As Lawrence Friedman has pointed out, there are several challenges to accurately estimating the value of these awards in contemporary dollars, including the differing rates of inflation for wages as compared to the cost of living. See Lawrence M. Friedman, *Civil Wrongs: Personal Injury Law in the Late 19th Century*, 12 AM. BAR FOUND. RSCH. J. 351, 366 (1987).

And in fact, the \$17,550 calculation is likely an underestimate of the relative value of the Pointers' win. According to a 1926 report by the Department of Agriculture, the average annual expenditures for a southern tenant farming family was \$1,377.80 in 1919. Thus, the

moved with their eight children to Arlington, Texas. Allen “preferred” Arlington, as according to his children it was somewhere they could “survive better.”¹³⁹

3. Suing a Well-Resourced Landlord

Although we cannot know precisely why Pointer decided to waive the tort, it is easy to imagine that this may have been a strategic decision. Pointer’s landlord Rhoades was a formidable opponent. A prominent businessman in Gause, Texas, one newspaper described Rhoades as a “merchant prince.”¹⁴⁰ In addition to being Pointer’s landlord, Rhoades also ran the store that furnished Pointer with supplies.¹⁴¹ Nearly all of Pointer’s business transactions were likely with his landlord-merchant Rhoades. The Pointer family, by contrast, was caught in sharecropping and tenancy’s cycle of debt. Like many Black agricultural families, the Pointers alternated between being sharecroppers and share-tenants.¹⁴² In other words, even though most landlord-defendants were better resourced as compared to sharecropper and tenant plaintiffs, the power imbalance between Allen Pointer and A.J. Rhoades was particularly acute.¹⁴³ Bringing a straightforward contract claim (which also eliminated the option of seeking punitive damages) may have seemed like the more prudent strategy.

It is also possible that Pointer chose not to claim punitive damages out of a fear of provoking further violence. Rhoades’s wealth and social standing, especially as compared to that of the Pointer family, likely created a belief (for Rhoades as well as others) that Rhoades could act with impunity. His actions

\$872.84 that the court awarded the Pointers likely covered more than half of the family’s expenses for the year. E.L. KIRKPATRICK, DEPT. OF AGRIC., *THE RELATION BETWEEN THE ABILITY TO PAY AND THE STANDARD OF LIVING AMONG FARMERS* 8 tbl.2 (1926), <https://babel.hathitrust.org/cgi/pt?id=uiug.30112019240776&view=1up&seq=3&skin=2021> [<https://hdl.handle.net/2027/uiug.30112019240776>].

139. April D. McLellan, *Family Recalls Roots During Black History Month*, FORT WORTH STAR-TELEGRAM, Feb. 5, 1986, at 1B, 2B.

140. *Mr. and Mrs. C.N. Green at Home*, CAMERON HERALD, Apr. 12, 1917, at 3 (“Mr. A.J. Rhodes, one of the merchant princes of Gause, was a Cameron visitor Monday.”).

141. *Rhoades v. Pointer*, 243 S.W. 583, 584 (Tex. Civ. App. 1922).

142. Although in 1900 Allen Pointer owned his own home free of a mortgage, twenty years later he was renting again. 1900 *United States Federal Census*, ANCESTRY, <https://www.ancestry.com/search/collections/7602/> [<https://perma.cc/8EJ2-6MTG>]; 1920 *United States Federal Census*, ANCESTRY, <https://www.ancestry.com/search/collections/6061/> [<https://perma.cc/W8VD-EDPK>].

143. For discussions on obvious power imbalances, see *Allen v. Bannister*, 97 So. 820 (Ala. 1923); *Ragsdale v. Ezell*, 35 S.W. 629 (Ky. 1896); *Tignor v. Toney*, 35 S.W. 881 (Tex. Civ. App. 1896). To be sure, many landlords were in debt, had overleveraged their property, and likely could not better afford to hire a lawyer than some croppers and tenants. Woodman, *supra* note 56, at 335. Regardless, landlords were still more likely to benefit from class privilege, and could probably “count on a sympathetic judge and jury.” *Id.*

toward the Pointer family likely also gave rise to this belief—Rhoades did not just commit one bad-faith action, he exhibited a pattern of duplicitous behavior toward the Pointer family. He ran Pointer and his family off the land, only to later ask them to return, promising that he would not “hurt” Pointer or his family.¹⁴⁴ Then, and in spite of this promise, Rhoades refused to pay Pointer a fair price for the cotton he and his family harvested. When Pointer tried to settle his account, Rhoades offered him \$260.¹⁴⁵ This was less than a third of the amount that the cotton was worth.¹⁴⁶ In addition, Rhoades—a powerful white man—likely considered the idea of being legally punished for mistreating a poor, Black family like the Pointers, to be a challenge to the racial status quo. And Pointer would have known that Black people had died for doing less than challenging society’s racial norms. During the Jim Crow era, whites regularly assaulted Black women, men, and children on the basis of even the slightest threats to the racial hierarchy, both real and imagined. Rarely were they punished for doing so.

C. Disreputable Assaults

The last category of successful claims involves three cases in which plaintiffs won primarily on the grounds of the tort of assault and battery.¹⁴⁷ These successful assault and battery cases provide two critical insights about sharecropper and tenant litigation generally. First, they illustrate that even in a labor context where violence against croppers and tenants was routine, some categories of violence were considered “harmful” or “offensive” enough to warrant a legal remedy.¹⁴⁸ In the three cases where the landlord’s violence caused a lasting physical injury, the plaintiff won at trial and on appeal, receiving redress for his landlord’s violence. The injuries in these cases were serious. One man, who was shot in the back, lost an eye. Another (the plaintiff in the *Bishop* case discussed in the Introduction)

144. *Rhoades*, 243 S.W. at 584.

145. *Id.* at 587.

146. The jury’s award was also likely an undervaluing of the cotton. As the appellate court notes in its opinion, the \$872 amount was based on a 31.2 cent price per point, which was below the market value for cotton in the fall of 1918. *Id.*

147. See *Bussell v. Bishop* 152 Ga. 428 (1921) (detailing how a sharecropper was attacked by a lynch mob that had been organized by landlord; landlord assaulted sharecropper in an effort to compel him to breach his contract); *Walker v. Rogers*, 273 S.W. 439 (Ky. 1925) (describing how a sharecropper was shot from behind with a repeating shot gun; shots struck him in the back, shoulders, side of the face, and one shot entered his eye); *Melton v. Allen*, 278 S.W. 1095 (Ky. 1925) (detailing how a sharecropper was struck with a machete, which made a gash in his skull that exposed his brain, and cut off his thumb).

148. The tort of battery protects individuals from “harmful” and “offensive” bodily contact. RESTATEMENT (THIRD) OF TORTS § 101 (AM. L. INST. 1995).

“suffer[ed]. under . . . serious disability” as a result of his wounds.¹⁴⁹ The third, a Black share-tenant named Ed Allen, endured one of the worst assaults considered in this Article. Allen’s landlord attacked him from behind with a corn knife—a machete-like instrument—striking him in the skull and on the hand as Allen tried to defend himself. Allen “lost the thumb of his right hand, and suffered a gash in his head, exposing his brain.”¹⁵⁰ In light of these injuries, a trial court awarded him \$820.10 in damages.¹⁵¹

Second, these cases shed light on the reputational dynamics that would have been at play in all sharecropper and tenant litigation. Determining whether violence qualified as an assault and battery, depended on many factors, including the circumstances of the violence, the relationship of the parties, and crucially—given the vast discrepancies in social and economic capital between sharecroppers and landlords—the parties’ characters and reputations.¹⁵² Although evidence of reputation generally could not be used at trial, parties’ reputations still mattered.¹⁵³ And for Black plaintiffs during Jim Crow, demonstrating that one had good standing in the white community was a powerful courtroom strategy.¹⁵⁴ These dynamics would have been even more pronounced in jury trials, which comprised the majority of the cropper and tenant litigation.¹⁵⁵

149. See *Bussell*, 152 Ga. 428; *Walker*, 273 S.W. 439.

150. *Melton*, 278 S.W. at 1096.

151. *Id.*

152. In contemporary U.S. civil law, evidence of reputation and character is only allowed in very limited contexts. See 32 C.J.S. Evidence § 656 (2021) (“In an action for assault and battery, testimony with respect to the defendant’s reputation in the community for truthfulness and veracity is inadmissible. Also, in such an action, evidence of the defendant’s reputation for peace and quiet and for lack of violence is inadmissible, but evidence of the plaintiff’s reputation for violence may be admissible as tending to show the plaintiff to be the first aggressor.”) (citation omitted).

153. Numerous historians have demonstrated the ways that a plaintiff or defendant’s social standing could influence the outcome of litigation. For more on the importance of reputation and honor in southern courtrooms, see ARIELA GROSS, *DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM* (2000); MILEWSKI, *COLOR LINE*, *supra* note 12; WELCH, *supra* note 12; Eatmon, *supra* note 12.

154. Milewski, *Reframing*, *supra* note 12, at 1126; Eatmon, *supra* note 12, at 63–65.

155. In nineteen out of the twenty-four appellate cases, the jury is mentioned in the court’s opinion. See, e.g., *Howton v. Mathias*, 73 So. 92 (Ala. 1916); *Allen v. Bannister*, 97 So. 820 (Ala. 1923); *Woodson v. McLaughlin*, 324 S.W. 185 (Ark. 1922); *Burell v. Pirkle*, 119 S.E. 529 (Ga. 1923); *Smith v. Summerlin*, 48 Ga. 425 (1873); *Walker v. Rogers*, 273 S.W. 439 (Ky. 1925); *Ragsdale v. Ezell*, 49 S.W. 775 (Ky. 1899); *Pellifigue v. Judice*, 98 So. 244 (La. 1923); *Curtis v. Cash*, 84 N.C. 41 (1881); *Sullivan v. Calhoun*, 108 S.E. 189 (S.C. 1921); *Hillhouse v. Jennings*, 38 S.E. 596 (S.C. 1901); *Yarbrough v. Brookins*, 294 S.W. 900 (Tex. Civ. App. 1927); *Rhoades v. Pointer*, 243 S.W. 583 (Tex. Civ. App. 1922); *Melton*, 278 S.W. 1095; *Barnett v. Govan*, 241 S.W. 276 (Tex. Civ. App. 1922); *Crews v. Cortez*, 113 S.W. 523 (Tex. 1908); *Foster v. Roseberry*, 78 S.W. 701 (Tex. Civ. App. 1904); *Tignor v. Toney*, 35 S.W. 881 (Tex. Civ. App. 1896); *Malone v. Scott*, 40 Tex. 460 (1874).

1. Proving and Valuing Permanent Physical Injuries

The gravity of permanent physical injuries would have been relatively easy to prove in court. If an injury were serious enough, no other evidence was required to prove that damages were warranted. Instead, the accompanying consequences were taken to be self-evident.¹⁵⁶

In this way, plaintiffs' bodies could simultaneously serve as evidence of violence and its consequences, sometimes explicitly so. For example, one plaintiff was asked on the witness stand to "take your coat off and shirt off and let the jury see where the shot hit you."¹⁵⁷ After removing his shirt, tobacco farmer Henry Rogers showed the jurors the scars from where his landlords' bullets had entered his back. He also removed his eye patch in order to "exhibit[]" his injured eye to the jury.¹⁵⁸ This kind of exhibition was considered best practice. In the words of one treatise, having one's client exhibit his injuries was "best" as long as it could "be done with propriety and decency."¹⁵⁹ To be clear, just because this was considered best practice among lawyers, does not mean that it would have been experienced as such by those being asked to strip and display their bodies in the courtroom.¹⁶⁰

These plaintiffs' wounds would have also shared similarities with the "crushing and mutilating" injuries that came to define tort law in the late nineteenth and early twentieth centuries.¹⁶¹ Most often caused by factory and railroad accidents, the growing frequency of grievous, accidental injuries fueled a transformation in tort law, as numerous historians have documented.¹⁶² To be

156. In the words of one treatise, for certain kinds of injuries, a plaintiff only needed to prove "the kind and extent of the injury received" in order to prove that there had also been pain and suffering. GEORGE P. VOORHEIS, A TREATISE ON THE LAW OF THE MEASURE OF DAMAGES FOR PERSONAL INJURIES § 49, at 76 (1903).

157. *Walker*, 273 S.W. 439.

158. Bill of Evidence at 99, *Id.*

159. VOORHEIS, *supra* note 156, at § 271.

160. The nineteenth and early-twentieth centuries were replete with sensationalized displays of other-ed bodies, especially the bodies of disabled and/or Black people. Freak shows—which invited individuals to gawk at these other-ed bodies—were at the height of their popularity. While it is not possible to know whether the existence of these practices elsewhere in American culture influenced legal norms around proving injury or disability, I believe it is worth considering these norms in the context of this broader culture regardless. See, e.g., Ellen Samuels, *Examining Millie and Christine McKoy: Where Enslavement and Enfreakment Meet* 37 SIGNS 53, 55–59 (2011) (describing the history of, and scholarship on, freak shows).

161. *Id.* at § 261.

162. Lawrence Friedman has described this change as torts being "thoroughly made over. Hardly a stone or board remains intact." Friedman, *Civil Wrongs*, *supra* note 138, at 351; see also RANDOLPH EMIL BERGSTROM, *COURTING DANGER: INJURY AND LAW IN NEW YORK CITY, 1870–1910* (1992); LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* (Touchstone 2nd ed.

sure, this transformation pertained primarily to negligence law, rather than intentional torts (like those considered here). Nevertheless, the growth and reshaping of tort doctrine that took place during this time period—an “era of new technologies for causing injury”—impacted the way courts generally dealt with compensating bodily harm, regardless of its cause.¹⁶³

As tort law developed, the measure of damages for employees’ injuries developed with it, shifting emphasis from a method that incorporated “a mark of disapproval for the actions of the party ordered to pay” to one that commodified workers’ bodies and lives.¹⁶⁴ The market value of a worker’s labor became the primary yardstick against which their loss was measured.¹⁶⁵ As Nate Holdren and other scholars of tort law have pointed out, this market-value measure of injury aligned with a logic of commodification that was being taken up across tort law.¹⁶⁶ For employee-plaintiffs the value of their injury was tied to their pre-injury wages. The gender and racial consequences of this rule were stark. If you received less pay than white workers at your job because you were Black, you also received less for any injuries incurred on the job.

Although this market-oriented assessment of harm emerged in response to industrial accidents, these same measures of damages were used for sharecroppers and tenants whose injuries were intentionally caused. When determining how much a plaintiff should be awarded in damages, juries were instructed to consider, among other factors, “any impairment of [the plaintiff’s] power to earn money in the future”¹⁶⁷ Perhaps this is why Ed Allen—the Black tenant whose landlord cut open his skull and cut off his thumb—was awarded an amount in damages that the Kentucky Supreme Court described as “trifling” when compared to his injury.¹⁶⁸

1985); NATE HOLDREN, *INJURY IMPOVERISHED: WORKPLACE ACCIDENTS, CAPITALISM, AND LAW IN THE PROGRESSIVE ERA* (2020); EDWARD G. WHITE, *TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY* (1980); BARBARA YOUNG WELKE, *RECASTING AMERICAN LIBERTY: GENDER, RACE, LAW, AND THE RAILROAD REVOLUTION, 1865–1920* (2001); WITT, *supra* note 15; Eatmon, *supra* note 12.

163. WITT, *supra* note 15, at 23.

164. HOLDREN, *supra* note 162, at 38–39.

165. *Id.*

166. *Id.*; see also MARTHA CHAMALLAS & JENNIFER B. WRIGGINS, *MEASURE OF INJURY: RACE, GENDER, AND TORT LAW* (2010); Viviana Zelizer, *The Purchase of Intimacy*, 25 L. & SOC. INQ. 817, 831 (2000).

167. See *Walker v. Rogers*, 273 S.W.439, 440 (describing jury instructions); see generally *Melton v. Allen*, 278 S.W. 1095, 1096 (describing jury instructions); SEDGWICK, *supra* note 118.

168. *Melton*, 278 S.W. at 1096.

2. The Importance of Reputation

Allen's "trifling" verdict also highlights an unfortunate reality of many of the cases considered here: Plaintiffs' wins often left a lot to be desired. Even with a grave injury that was easily proven, Allen's success was hardly guaranteed.

One of the obstacles that Allen (as well as other cropper and tenant plaintiffs) faced, was the influence that parties' reputations could have on a trial, particularly a jury trial. For Allen—a Black man suing a white landlord—this obstacle was also racially inflected. Like other Black plaintiffs in this era, Allen would have wanted to prove that he had good character and good standing in the white community. Doing so would have helped Allen appear as sympathetic to white jurors as possible.¹⁶⁹ And, while parties' reputations would have been important in all sharecropper and tenant litigation, it would have been of the utmost importance for Allen. He and his landlord, Ed Melton, were the only two witnesses to Melton's attack. Without any other eyewitnesses, the account of what happened came down to one man's word against the other's.

Given the lack of eyewitnesses, both Melton and Allen likely sought to discredit one another by showing that the other party had a "bad reputation for veracity" and should not be believed.¹⁷⁰ In general, evidence of a party's character and reputation were not admissible in civil proceedings.¹⁷¹ One of the few exceptions to this rule, however, was for witness impeachment. Courts allowed attorneys to ask questions about a witness's character, so long as the purpose of the questioning was to demonstrate (or refute) that the witness had "a bad reputation for veracity."¹⁷² If the witness being questioned also happened to be a party to the case, then he could also be shown "to have a general bad moral character."¹⁷³ Although no trial transcripts remain for *Melton v. Allen*, transcripts from other sharecropper and tenant litigation show that attorneys

169. See, e.g., MILEWSKI, *COLOR LINE*, *supra* note 12; Eatmon, *supra* note 12; WELCH, *supra* note 12.

170. Unfortunately, Melton's archival file does not include any trial testimony. But similar strategies can be found in the archives of some of the other cases. See, e.g., *Ragsdale v. Ezell*, 49 S.W. 775 (Ky. 1899); *Allen v. Bannister*, 97 So. 820 (Ala. 1923); *Walker*, 273 S.W. 439.

171. This remains true today.

172. David Torrance, *Evidence of Character in Civil and Criminal Proceedings*, 12 *YALE L.J.* 352, 361 (1903).

173. *Id.* (describing that when a party to a civil action was a witness in the action, "of course his character as witness may be impeached or sustained substantially like that of any other witness. . . . [H]e may be shown not only to have a bad reputation for veracity, but in many States, to have a general bad moral character.").

regularly made efforts to prove that their clients' reputations were "good," and that the opposing parties' were "bad."¹⁷⁴

A witness's reputation for veracity was not the only way that character and reputation emerged at trial either. As historians of southern Black litigants have documented, character was key for Black plaintiffs.¹⁷⁵ So, too, was appealing to white judges' and jurors' beliefs about white superiority. For Allen, this strategy emerged very clearly in his attorney's closing arguments. The attorney encouraged jurors to find for Allen because he was "only a poor negro" who, even in freedom, still had to "bow and submit to the will of the white man."¹⁷⁶ By casting Allen as a vulnerable and "poor negro," Allen's attorney drew upon (and reinforced) the white supremacist image of Blacks as "helpless and in need of white assistance."¹⁷⁷

It would be easy to read the appellate decisions discussed in this Part and emerge with a belief in private law's power to protect the vulnerable. But that is only part of the story. The following Part focuses on the bleaker aspects of the history of croppers' and tenants' suits against violent landlords. Private law *did* provide a way for sharecroppers and tenants to access remedies, but these remedies left much to be desired. More precisely, the redress that private law offered was difficult to obtain, limited in its scope, and put cropper and tenant plaintiffs at risk of even greater violence.

III. PRIVATE LAW'S LIMITATIONS

At every stage of the litigation process—from seeking an attorney, to the appeals, to the final judgment's award amount—sharecroppers and tenants faced enormous challenges. Simply deciding to bring a case against a landlord placed sharecroppers and tenants at risk of experiencing greater harm. Indeed, one of the deadliest incidents of antiblack violence in the United States—the Elaine Massacre—occurred as a result of white planters' outrage at being sued by Black sharecroppers and tenants.¹⁷⁸

174. This questioning is present in the trial testimony of the following cases: *Allen v. Bannister*, 97 So. 820 (Ala. 1923); *Howton v. Mathias*, 73 So. 92 (Ala. 1916); *Walker v. Rogers* (Ky. 1925).

175. See MILEWSKI, *COLOR LINE*, *supra* note 12; Eatmon, *supra* note 12; WELCH, *supra* note 12. MARTHA S. JONES, *BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA* (2018).

176. *Melton v. Allen*, 278 S.W. 1095, 1096 (Ky. 1925). Bill of Exceptions at 36, *Id.*

177. MILEWSKI, *COLOR LINE*, *supra* note 12, at 145.

178. CAMERON McWHIRTER, *RED SUMMER: THE SUMMER OF 1919 AND THE AWAKENING OF BLACK AMERICA* 214–15, 219 (2011); WOODRUFF, *supra* note 15, at 84 (2003); Steven Anthony, *The Elaine Riot of 1919: Race, Class, and Labor in the Arkansas Delta* 108–115 (May 2019) (Ph.D. dissertation, University of Wisconsin-Milwaukee).

Bringing a suit, much less winning one, exposed croppers and tenants to their landlords' anger, and by extension, violence. One North Carolina judge told a sharecropper who won a case against his landlord, "if I was you . . . I would move from this farm."¹⁷⁹ Those who were courageous enough to forge ahead with their lawsuits despite the demonstrated deadly risk were faced with a legal system that disfavored croppers and tenants as compared to landlords. The majority of suits likely never made it to trial.¹⁸⁰ On the rare occasions when they did, landlords were almost always better-resourced and therefore, almost always in a better position to use legal technicalities, sophisticated legal arguments, and the appeals process to their advantage.

When sharecroppers and tenants did manage to beat the odds and win their cases, the remedies were limited, both materially and symbolically. Judges and juries had "low expectations" for damages amounts in civil injury cases.¹⁸¹ In addition, the majority of the remedies that courts awarded did not compensate victims for the violence they suffered per se. With the exception of the few assault and battery suits discussed in Subpart II.C, most courts based their measure of damages solely on contract and property values, and not for the violence that accompanied the violations of these private rights.

The result was a legal regime with a contradictory approach to landlords' violence: It offered partial remedies for the harms caused by landlords' violence, while simultaneously obfuscating this violence in the legal record.

A. Dangerous from the Beginning

The story of the brutal, days-long assault on Black Americans in Phillips County, Arkansas during the Elaine Massacre illustrates the life-or-death stakes of civil litigation for some sharecroppers and tenants. Between the days of September 30 and October 7 in 1919, groups of armed white men hunted down and killed any Black adult or child they could find.¹⁸² The violence was a direct response to Black

179. *Interview With Samuel James (S. J.) and Leonia Farrar*, *supra* note 29. The sharecropper and his family followed the judge's advice and relocated to another town. *Id.*

180. Friedman, *Civil Wrongs*, *supra* note 138, at 351.

181. *Id.*; see also BERGSTROM, *supra* note 162; FRIEDMAN, *HISTORY OF AMERICAN LAW*, *supra* note 162; HOLDREN, *supra* note 162; WHITE, *supra* note 162; WELKE, *supra* note 162; WITT, *supra* note 15; Eatmon, *supra* note 12.

182. These posses were comprised of more than just Phillips County residents. White men from other parts of Arkansas, Mississippi, and Tennessee traveled to the area to join the violence. Jeannie M. Whayne, *Low Villains and Wickedness in High Places: Race and Class in the Elaine Riots*, 58 *ARK. HIST. Q.* 285, 287 (1999).

croppers' and tenants' efforts to legally enforce and negotiate their contracts. It sent a clear message to the farmers who had put their faith in the potential of private law: "[B]eware of . . . false prophets."¹⁸³

The Parts that follow recount the history of the Elaine Massacre, as it is now known, through the lens of private law. The Massacre provides a stark example of what happened when Black Americans' advocacy for private rights was deemed too threatening to the post-slavery south's status quo.

1. In Pursuit of Private Rights

In the fall of 1919, cotton prices had the power to change lives for the better. They were the highest they had been since the Civil War ended, selling at around forty cents a pound, nearly four times the price of a few years prior.¹⁸⁴ Black sharecroppers and tenant farmers in Phillips County, Arkansas understood that this price increase could be economically transformative for them. Many of them were organizing to that end as members of the recently formed Progressive Farmers and Household Union of America (PFHUA).¹⁸⁵ The union had also hired former Assistant U.S. Attorney Ulysses S. Bratton to represent its interests and its members. Bratton had a reputation for protecting the legal rights of Black Americans.¹⁸⁶

In most accounts, the violence ended on October 2 after the National Guard arrived. But the National Guard did not withdraw and declare that the "insurrection" was over until October 7. WOODRUFF, *supra* note 15, at 90.

183. According to an *Arkansas Gazette* article, Arkansas Governor Charles Brough made a speech after the events in Elaine during which he told the Blacks present in the audience "that the negro would be protected as long as he was law-abiding, and urged them to beware of voices of false prophets." *Governor's Advice to Negroes*, *Ark. Gazette*, in GOVERNOR'S SCRAPBOOK ON ELAINE RIOT AND OTHER EVENTS 18, <https://digitalheritage.arkansas.gov/cgi/viewcontent.cgi?article=1000&context=brough-scrapbooks> [https://perma.cc/JYX4-Y27L]. The "voices" to which he was referring are likely the voices of the farmers' attorney, Ulysses Bratton, who was later blamed for inciting the riot. *Id.*
184. Cotton sold for 11 cents a pound in 1915. MCWHIRTER, *supra* note 178, at 211; *see, e.g.*, Warren M. Persons, *The Crisis of 1920 in the United States: A Quantitative Survey*, 12 *AM. ECON. REV.* 5, 10–11 (1922); Fed. Rsrv. Bank of Richmond, *supra* note 116.
185. *See* WELLS-BARNETT, *supra* note 15.
186. As AUSA, he had prosecuted a white mob that had intentionally tried to intimidate Black sawmill workers into quitting in *Hodges v. United States*, 203 U.S. 1 (1906). Unfortunately, the Supreme Court used *Hodges* as "the final step in the evisceration of the Thirteenth Amendment," by holding that Congress could not intervene in private contracts, and therefore could not enact legislation that prevented racially motivated interference in labor contracts. GOLUBOFF, *supra* note 10, at 19.

When the leader of the Progressive Farmers and Household Union of America (PFHUA), Robert Hill, approached Bratton about representation, Bratton "did not hesitate" to accept. Anthony, *supra* note 178; *see, e.g.*, Kieran Taylor, "We Have Just Begun": *Black Organizing and White Response in the Arkansas Delta, 1919*, 58 *ARK. HIST. Q.* 264, 267 (1999); Nan Elizabeth

The PFHUA's objectives centered on its members' contract and property rights.¹⁸⁷ A primary concern was receiving fair prices for the 1919 cotton season along with overdue payments for the previous seasons' labor and cotton. Union members also intended for these contract actions to act as a stepping-stone to property ownership by enabling them to earn more for their labor, which in turn would have allowed them to pool resources and buy a tract of land.¹⁸⁸ Then, as owners of the land that they farmed (rather than sharecroppers and tenants), union members would have been better positioned to negotiate the price at which their cotton was sold.¹⁸⁹

This legal strategy was both enterprising and preventive. Like landlord-employers elsewhere in the south, Phillips County planters were willing to exercise a panoply of violent and coercive techniques when breaching their contracts.¹⁹⁰ Several Black farming families had already been run off the land where they were tenants or sharecroppers by the time PFHUA members began organizing and advocating for their rights. Many croppers and tenants were owed back pay for previous seasons' cotton. The PFHUA members' contract actions were an effort to intervene in and prevent further breaches by their landlord-employers.

In other words, the members of the PFHUA likely knew that some amount of conflict with their landlords was on the horizon. Nonetheless, they continued to pursue their contract negotiations and enforcement actions. Perhaps they believed in the promise of private law. Some members may have felt the risk was

Woodruff, *African-American Struggles for Citizenship in the Arkansas and Mississippi Deltas in the Age of Jim Crow*, 55 *RADICAL HIST. REV.* 33, 42 (1993).

187. In the words of Ida B. Wells-Barnett, the farmers had "decided to combine their forces and employ a white lawyer to represent them in their plea for better systems of contract, better wages, and better working conditions." WELLS-BARNETT, *supra* note 15, at 53.

188. As Ida B. Wells-Barnett described the motivation of the Elaine farmers:

If they could get all the farmers in that neighborhood to join an organization, they could employ a lawyer to look after settlements at the end of the year; they could create a treasury and buy a tract of land for themselves; they could get all the farmers to hold their cotton for higher prices.

Id. at 8.

189. See *supra* Subpart I.B for a discussion of the reasons that croppers and tenants were not able to receive market value for their crops.

190. Several of the statements Ida B. Wells-Barnett reported in *The Arkansas Race Riot* referenced threats made by white landlords against Black farmers. For example, Wells-Barnett begins Chapter Five with the following description:

Last year [Billy Archdale] started with thirteen Negro families on the place. By the time the crops were "laid by" he had driven all but four of them off. This place is a mile and a half from Elaine. The way he did this was to refuse to feed the families longer, insist that they were in his debt for supplies they got while planting, working and laying by the crop, and taking furniture, chickens, hogs, and driving them away.

WELLS-BARNETT, *supra* note 15, at 19.

worth the reward. Others may have been motivated by economic desperation. Whatever the reason, no one anticipated how enthusiastically the white community would resort to violence to foreclose these private rights.

2. The Violence

Black farmers' contract actions and negotiations threatened white planters, economically and existentially. Landlords' profits would have suffered if the terms of croppers' and tenants' contracts were performed as agreed. Profits would have suffered even more if the farmers' union had been able to negotiate fair prices for cotton. Moreover, the collective nature of the union's organizing meant that white planters might have been held accountable en masse. The possibility of multiple white landlords being sued for violating Black farmer's (private) rights threatened to disrupt the racial hierarchy of Jim Crow.

It is no wonder, then, that the number of Black farmers visiting the law offices of Bratton, Bratton & Casey made local white residents concerned about future legal action.¹⁹¹ How they proceeded to act on this concern varied widely. Some whites warned Black laborers against striking or suing their landlords. Others, however, prepared "to get ready for trouble."¹⁹²

The "trouble" began at 11:00 p.m. on September 30, 1919, when a group of white men opened fire on a church where members of the PFHUA were holding a meeting. Several Black farmers and one white man died because of the shootout. The next morning, a mob of fifty to sixty white men shot into thickets near the church where they believed people were hiding, in the hopes that they could "run them out and kill them."¹⁹³

The antiblack violence was brutal and indiscriminate. One family was burned alive in their home.¹⁹⁴ After killing an elderly woman, a mob further desecrated her body by tying her dress over her head and throwing her body into a public road.¹⁹⁵ Four brothers—none of whom were farmers—were returning from a hunting trip when they were intercepted by vigilantes, killed, and left by the

191. Anthony, *supra* note 178, at 108.

192. One of the plantation owners near Elaine who participated in the violence is reported to have advised white residents "to get ready for trouble." *Id.* at 113.

193. WOODRUFF, *supra* note 15.

194. WELLS-BARNETT, *supra* note 15, at 17–18; Nan Elizabeth Woodruff, *The Forgotten History of America's Worst Racial Massacre*, N.Y. TIMES (Sept. 30, 2019), <https://www.nytimes.com/2019/09/30/opinion/elaine-massacre-1919-arkansas.html> [<https://perma.cc/K9TJ-39BY>].

195. WELLS-BARNETT, *supra* note 15, at 21; WOODRUFF, *supra* note 15, at 98.

side of the road for days.¹⁹⁶ Their bodies were so riddled with bullets that they were unrecognizable.¹⁹⁷

Both public and private actors participated in the slaughter. After the first days of killing, Arkansas's governor called in the National Guard to restore order. Nearly six hundred National Guard soldiers arrived in Elaine, including a twelve-gun machine gun battalion.¹⁹⁸ From there, the violence only worsened. Federal troops participated in acts of torture.¹⁹⁹ They fired on groups of unarmed civilians.²⁰⁰ Dozens of Black men, women, and children were arrested and jailed for participating in the "riot."²⁰¹ In the words of a respected journalist from the *Arkansas Gazette*, the National Guard "left a path strewn with orphans and widows and . . . shot them down in cold blood without any reason or excuse—thus manifesting a blood thirstiness without any parallel disclosed in the history of civilization."²⁰²

According to the state of Arkansas, between one hundred and two hundred thirty-seven Black women, men, and children were murdered.²⁰³ The highest estimated death toll is eight-hundred-fifty-six.²⁰⁴ In either estimate, the Elaine Massacre was one of the deadliest incidents of racial terrorism in U.S. history.

3. Foreclosing Private Rights

Clearly, the Black farmers' advocacy for their contract and property rights had been interpreted as an act of aggression by the white community.²⁰⁵ The white plantation owners, sheriffs, soldiers, and other vigilantes who participated in the

196. WELLS-BARNETT, *supra* note 15, at 25–27; WOODRUFF, *supra* note 15, at 89.

197. MCWHIRTER, *supra* note 178, at 219 (quoting W.E.B. Du Bois).

198. WOODRUFF, *supra* note 15, at 86 ("All telephone lines from Elaine were cut. On the morning of October 2, Governor Brough personally escorted 583 federal troops, including a twelve-gun machine-gun battalion . . .").

199. *Id.* at 87–89.

200. *Id.* at 87.

201. *Id.* at 88. The only whites who were arrested were the union's lawyers. *Id.* at 90; Anthony, *supra* note 178, at 120, 132.

202. Woodruff, *supra* note 15, at 87 (quoting L.S. (SHARPE) DUNAWAY, WHAT A PREACHER SAW THROUGH A KEY-HOLE IN ARKANSAS 108–09 (1925)).

203. The Arkansas state legislature formally acknowledged the deaths of 100 to 237 African Americans. S. Con. Res. 6, 91st Gen. Assemb., Reg. Sess. (Ark. 2017), <https://www.arkleg.state.ar.us/Bills/Document?type=pdf&chamber=SCR&source=Bills&bill=6&ddBienniumSession=2017%2F2017R> [<https://perma.cc/4MVM-D3YB>].

204. WOODRUFF, *supra* note 15, at 91.

205. As numerous historians have documented, whites across the country were already on high alert for greater demands for equality from Black Americans in 1919. The fear was that Black soldiers returning home from World War I would seek more democracy at home after helping to secure it abroad. *See, e.g.*, WOODRUFF, *supra* note 15; MCWHIRTER, *supra* note 178; KELLEY, *supra* note 15; GOLUBOFF, *supra* note 10.

killing viewed their actions as suppressing an “uprising.”²⁰⁶ They believed that Black sharecroppers had been plotting to murder white landlords, take their crops, and seize their land.²⁰⁷ By this logic, the violence had been necessary to reestablish and reinforce the racial hierarchy that the union’s legal actions had threatened.

The Elaine Massacre is an extreme example of a phenomenon that occurred across the Jim Crow south. The use of violence to protect and reinforce a white supremacist status quo. The history of southern whites’ use of violence to protect the Jim Crow social order is well known. Often, this history of violence is understood in relation to advocacy for public rights—like the right to vote, the right to receive an education, or the right to exist in public spaces. Yet, the Elaine Massacre demonstrates that violence was used to suppress and retaliate against advocacy for private rights as well.

Without a doubt, “suppressing” and “retaliatory” violence had an immeasurable impact on the availability of private law as a form of redress. The possibility of being attacked, tortured, or killed would have deterred many sharecroppers and tenants from initiating a suit. We cannot know how many people weighed the risks and chose not to sue, or how many others who began the legal process were dissuaded or killed because of it.

B. Disfavored by the System

We do know, however, that some sharecroppers and tenants still chose to bring cases against violent landlords despite the risks. We also know from the trial and appellate records that remain, that some of these plaintiffs made it past initial procedural hurdles and managed to have their suit tried in open court. And when they did, they were greeted with another set of challenges. Doctrine, procedure, and legal culture worked in tandem to create a system with steep odds for sharecropper and tenant plaintiffs.

206. This narrative, which has since been proven false, echoed antebellum fears of slave uprisings and underscored the centrality of land and property rights to the south’s social order. After all, during slavery, property rights were what divided free whites from enslaved Blacks. Unsurprisingly then, in the post-slavery south, property rights continued to have profound symbolic and economic importance. See, e.g., HOLT, *supra* note 8.

207. See, e.g., *Arkansas Race Riots Are Well in Hand*, READING TIMES, Oct. 3, 1919, at 1, 12 (“Under the mystic plan, according to information secured by local officials, the negroes were promised that the government was to pay them for their cotton direct and they in turn were to settle with the land owners.”); *Arkansas Race Riot*, NASHVILLE BANNER, Oct. 4, 1919, at 1, 6 (“The activity among the black [sic] . . . seeks to impress the tenant farmers with the idea that they should own the land.”); *Race Riots in Arkansas*, CITIZEN EXAM’R (Hayneville, Alabama), Oct. 9, 1919, at 1 (“It seems that the negroes were incited to acts of violence by a white man, who had been for some time advising them to seize the cotton fields by force, and promising the sending in of a federal agent who would purchase the seized cotton.”).

Croppers and tenants could be outmaneuvered at trial or on appeal in a wide range of ways.²⁰⁸ In some cases, landlord-defendants used confusing or overly legalistic rules as a means of getting a case dismissed or reversed.²⁰⁹ In other instances, landlords dragged appeals out for years.²¹⁰ For example, in one Kentucky case, a wealthy landlord appealed the trial court's decision against him all the way to the state supreme court, twice. It took eight years for the case to reach a final decision.²¹¹ And lastly, in most trials, landlords were able to have a number of well-respected members of the community—including doctors, merchants, and other planters—testify on their behalf.²¹² With less money, less legal know-how, and less favor in the courtroom, most cropper and tenant plaintiffs were out-resourced by landlord-defendants in nearly every way possible.

The 1896 Texas case *Tignor v. Toney* illustrates what this outmaneuvering could look like for sharecropper and tenant plaintiffs. Babe Toney managed to beat the odds and win her trial but was never able to actually receive a remedy for the violence she experienced. Toney had won her suit against her landlord and his agent in lower court, but, unfortunately, this decision was

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208. This is assuming, of course, that they overcame the odds and made it to trial in the first place. As Lawrence Friedman and others have demonstrated, most cases were never actually heard in open court. Friedman, *Civil Wrongs*, *supra* note 138, at 365; HOLDREN, *supra* note 162, at 78–83; WELKE, RECASTING AMERICAN LIBERTY, *supra* note 162, at 98.
209. See, e.g., Woodson v. McLaughlin, 234 S.W. 185 (Ark. 1921); Beck v. Kah, 136 S.E. 160 (Ga. 1926) (describing how an injunction was improperly used to evict tenant from land and deprive court of jurisdiction); Barnett v. Govan, 241 S.W. 276 (Tex. Civ. App. 1922); Malone v. Scott, 40 Tex. 460 (1874). See also *supra* note 127 (listing cases that were reversed because the incorrect measure of damages was used).
210. Allen v. Bannister, 97 So. 820 (Ala. 1923) (showing an instance where there were three years between contract year and case's final decision); Howton v. Mathias, 73 So. 92 (Ala. 1916) (showing an instance where there were three years between contract year and case's final decision); Smith v. Summerlin, 48 Ga. 425 (1873) (showing an instance where there were three years between contract year and case's final decision); Rhoades v. Pointer, 243 S.W. 583 (Tex. Civ. App. 1922) (showing an instance where there were four years between contract year and case's final decision); Barnett, 241 S.W. 276 (showing an instance where there were three years between contract year and case's final decision); Crews v. Cortez, 113 S.W. 523 (Tex. 1908) (showing an instance where there were three years between contract year and case's final decision); Tignor v. Toney, 35 S.W. 881 (Tex. Civ. App. 1896) (showing an instance where there were seven years of appeals and continuances before case was dismissed); Malone, 40 Tex. 460 (showing an instance where there were five years between contract year and case's final decision).
211. Ragsdale v. Ezell, 49 S.W. 775 (Ky. 1899).
212. See, e.g., Bill of Evidence, 55, 61, 63, 66, 72, Walker v. Rogers, 273 S.W. 439 (Ky. 1925) (providing testimony from defendant's witnesses, who included three doctors, a pastor, and a judge); Ragsdale, 49 S.W. 775; Crews, 113 S.W. 523.

reversed and remanded on appeal. In 1901, and after several years' worth of continuances, Toney failed to appear in court and her case was dismissed.²¹³

The case's reversal rested on two mistakes of law, both of which were common stumbling blocks for sharecropper and tenant plaintiffs. The first—a misapplication of the rules of sharecropping and tenancy—were the grounds of many landlord-defendants' appeals, particularly in cases with ambiguous contracts.²¹⁴ These errors were the result of the strained legal distinction between sharecropping and tenancy and the different legal rights afforded to each. Here, the trial court treated Toney's contract as creating a tenancy relationship and then awarded damages in a way that would have only been appropriate for sharecropping.²¹⁵

The second mistake, which was rooted in agency law, and which is addressed in the following Part, also happened to be a common barrier to recovery in employees' suits against their employers in the late nineteenth and early twentieth centuries.²¹⁶ Namely, the court held Toney's landlord-employer liable for the violent actions of his agent without first determining if the landlord had ratified the agent's actions.

1. Babe Toney's Story

In January 1894, Babe Toney, a Black mother of three, entered into a verbal contract with a white overseer named C.H. Tignor to farm thirty-seven-and-a-half acres on the plantation of his boss (also white), Colonel Littleberry Ellis. Toney was farming “on the halves,” which meant that Ellis—through the actions of his agent Tignor—would supply Toney with all the necessary farming tools and supplies,

213. Babe Toney's landlord was a man named Colonel Littleberry Ellis. One of the wealthiest men in Texas at the time, one local newspaper described him as “one of the most prominent men in all of Texas.” *Col. L.A. Ellis Dead*, AUSTIN WEEKLY STATESMAN, Dec. 17, 1896, at 3. When Ellis died in 1896, his wealth was valued at \$2,000,000. It is possible that Ellis's death contributed to the case's many continuances. *Col. Littleberry A. Ellis*, ST. LOUIS GLOBE-DEMOCRAT, Dec. 12, 1896, at 4; see also Wolkoff, *supra* note 97.

214. See cases discussed *supra* in Subpart II.B.

215. Toney's damages were for conversion of the crops that she co-owned as a co-tenant with her landlord. The lower court erred by awarding Toney the value of her crops without first determining if the crops could be returned. This was error because the rule is that a co-tenant cannot receive damages for conversion of jointly held property without first showing that the property had been destroyed. Toney had not alleged the crops' destruction, however, instead claiming that they “were on hand in kind.” See *Tignor v. Toney*, 35 S.W. 881, 882–83 (Tex. Civ. App. 1896) (“The charge of the court directing the jury to find for the plaintiff the value of the property and damages was erroneous. . . . [T]here was no evidence that the property was not on hand, and judgment against appellants for the value thereof was not authorized.”).

216. HOLDREN, *supra* note 162; Friedman, *Civil Wrongs*, *supra* note 138.

and at the end of the season, Toney would receive “one half of said crop for the labor of her self [sic] and children.”²¹⁷ The contract formation was likely unremarkable and routine, as she and her children had farmed Ellis’s land the year before without incident.

The peacefulness ended on May 15, 1894, however, when the overseer, Tignor, breached Toney’s contract with “threats, force, and violence,” ejecting her from the farm and upending her life.²¹⁸ Toney’s son, Walter, had overslept that May morning. And, unfortunately, when he arrived to the fields to begin working, Tignor was waiting, and he was angry. He refused to let Walter work, instead insisting that he deliver a message to his mother: “[T]o leave the place, that he . . . wanted the house by night, and by God he wanted us to get off the place.”²¹⁹ Tignor also visited Toney later that day, shotgun in tow, just to make sure she had received his message to abandon the premises. Toney and her children left that night.²²⁰

Unsurprisingly, Toney and her family suffered significantly as a result of Tignor’s actions. They struggled to find another place to live, as well as to find other paid employment. They “suffered excruciating pains of hunger, and exposure.” And Toney herself “suffered mentally, almost to the brink of insanity.”²²¹ In addition, they lost out on the profits of roughly 18,000 pounds of seed cotton and two hundred bushels of corn. For many similarly situated sharecroppers and tenants who experienced a landlord’s (or overseer’s) violence, this is where the story would have ended.

Toney, remarkably, decided to sue. In September of that year, after the crops had fully matured, Toney sued Tignor, and his boss, Ellis, for compensatory and punitive damages. Not only did she demand redress for her financial loss, but for her emotional suffering as well. A jury awarded her three-hundred dollars for the crops and two-hundred and fifty dollars for the mental anguish and suffering that Tignor’s violence caused.

Unfortunately, Tignor and Ellis were not content to let the verdict lie. When they appealed the case, they claimed, among other things, that “a gross error and unpardonable sin” had been committed.²²² And while the appellate court left the question of sin unaddressed, it did hold that the trial court had erred, and that its judgment was to be reversed and remanded.

217. Complaint at 3, *Tignor*, 35 S.W. 881.

218. *Id.* at 881.

219. Statement of Facts at 19, *Tignor*, 35 S.W. 881.

220. In her words, “I was afraid not to leave, I was afraid Mr. Tigner [sic] would hurt me. I knew he would do it.” Statement of Facts at 20, *Tignor*, 35 S.W. 881.

221. Complaint at 3, *Tignor*, 35 S.W. 881.

222. Appellants’ Brief at 22, *Tignor*, 35 S.W. 881.

2. Caught in the Gaps

Babe Toney was a sharecropper who had requested—and received—remedies that were only available to plaintiffs who owned the crops, such as tenants. Specifically, she had asked for her crops to be returned and for punitive damages for mental anguish and suffering. Neither of these remedies would have been available to her as a sharecropper. Only tenants, who owned the crops, could request that their property be returned. In addition, as a sharecropper seeking damages for stolen²²³ crops, she would have had to sue for breach of contract. Punitive damages are generally unavailable in breach of contract suits.²²⁴ By awarding Toney remedies that would only have been available to tenants, the trial court effectively—if implicitly—found that she and Ellis had entered into a tenancy agreement.

When the trial court awarded Toney the value of her crops as damages, however, without first determining whether or not the crops were “on hand in kind,” it created a contradiction between Toney’s status and her remedies. As a tenant,²²⁵ Toney first needed to prove that the crops had been destroyed before she could receive damages for their conversion. Had she instead been treated as a sharecropper suing for breach of contract, her remedy would have been the value of the proceeds from her share of the crop, and the question of whether the crops remained “on hand” would have been irrelevant. The catch was that as a sharecropper, she could not have also received punitive damages. And therein lay the contradiction: One of Toney’s remedies was appropriate for a sharecropper (the crop value), and one was appropriate for a tenant (the punitive damages). This contradiction between status and remedy became the grounds for the defendants’ successful appeal.²²⁶

223. I use the word stolen here for ease of understanding. Technically a landlord could not steal crops from a sharecropper because a sharecropper did not own the crops. Nevertheless, it seems disingenuous to describe running someone off the land and withholding their proceeds from the crops as anything other than stealing from them.

224. Under Texas state law, in order to receive punitive damages for breach of contract, Toney would have needed to prove that an additional tort had occurred at the time of breach. But proving that Tignor had committed an assault four months prior would have been challenging.

225. More precisely, the Texas appellate court used the rules of tenancy in common for its reasoning. Toney’s contract with Ellis would have clearly created a tenancy in common in Texas prior to the laws around sharecropping changing in the 1880s.

226. On appeal, defendants argued that there were many inconsistencies in the trial court’s verdict, including: (1) If the case were for the return of specific property, the jury should have received different instructions for the measure of damages; (2) if the case were not for the return of specific property, then it is for breach of contract; and (3) if the case is for breach of contract, then punitive damages are not allowable. Appellants’ Brief at 7, 11, *Tignor*, 35 S.W. 881.

Toney was not the only plaintiff who got caught in the gaps created by the idiosyncrasies and inconsistencies of sharecropping and tenancy law. Several other plaintiffs lost at trial or on appeal because they had requested (or received) remedies that were inconsistent with the nature of their contracts.²²⁷ In one Arkansas case, for example, a sharecropper plaintiff—whose home had been torn out from under him while he and his family were still living in it—lost because he had requested damages for the emotional and physical harm of the wrongful eviction.²²⁸ As the court explained, however, as a sharecropper, the plaintiff's right to occupancy was contingent on his employment. Thus, no recovery was possible without first proving that this sharecropping (meaning employment) contract had been breached. Furthermore, even if the plaintiff were able to receive damages, it would be for the value of the crops and not for the harm his family experienced when they lost their home.

This particular gap in the availability of punitive damages likely created perverse financial incentives for sharecroppers' landlords. Practically, it meant that sharecroppers could not receive redress for the violence in a landlord's violent breach of contract, but rather only for the breach itself. To be sure, sharecroppers had the option of alleging a separate tort for assault and battery. But for the reasons discussed in Part II.C, assault and battery claims were often difficult to win. In addition, assault and battery claims had different standards of proof than those that were used to determine whether "malicious or oppressive" conduct had accompanied a breach of contract.²²⁹ Without the possibility of punitive damages for breach of contract, damages awarded for violent breaches would be the same as the damages awarded for nonviolent ones.

3. The Agency Problem

The challenges created by the laws of sharecropping and tenancy were not Toney's only obstacle on appeal. Agency law—specifically, the issue of principal-agent liability—was a stumbling block as well. The appellate court held that Toney's landlord could not be found liable for the overseer's violence unless the

227. See, e.g., *Woodson v. McLaughlin*, 234 S.W. 185 (Ark. 1921); *Beck v. Kah*, 136 S.E. 160 (Ga. 1926); *Hillhouse v. Jennings*, 38 S.E. 596 (S.C. 1901); *Crews v. Cortez*, 113 S.W. 523 (Tex. 1908); *Malone v. Scott*, 40 Tex. 460 (1874).

228. *Woodson*, 234 S.W. 185.

229. See, e.g., ARCHIBALD ROBINSON WATSON, A TREATISE ON THE LAW OF DAMAGES FOR PERSONAL INJURIES § 722, at 858 (1901) ("And while there should be clear and unmistakable evidence of a malicious intent to injure before the jury should assess punitive damages, this need not be shown by direct and positive proof, if the whole transaction with its surrounding facts and circumstances, fairly implies the existence of malice.").

landlord had authorized the violence beforehand or ratified it afterwards. This reasoning, which can be found in other cropper and tenant litigation, worked in landlords' favor, effectively allowing landlords to hire violent overseers without being on the hook for their violence.²³⁰

For both financial reasons as well as reasons of actual accountability, it makes sense that Toney sued both the overseer-agent who committed the violence (Tignor) and her landlord (Ellis). As discussed in Part I, violence was a central part of planters' management style, and this remained true for planters with larger properties (as well as those who lived out of state) who tended to outsource the day-to-day management to overseers.²³¹ Many landlords were likely aware—and encouraging of—their overseers' violent and coercive tactics. Overseers who were “less tolerant” of sharecroppers and “had no patience for them whatsoever” would be remembered as the ones who performed their jobs well.²³²

In addition to being responsible for hiring a violent overseer like Tignor, Toney's landlord Ellis would have been better able to afford the damages that Toney sought. Ellis was “one of the most prominent men in all Texas,” and owned a 5235-acre sugar plantation in addition to the plantation on which Toney farmed.²³³ Indeed, suing the employer of an employee-tortfeasor was, and remains, a common strategy in tort cases with employee-caused injuries.

If Toney could prove that Tignor's violence was part of his job description as overseer, Ellis would also be found liable for Tignor's violent actions. Under the doctrine of respondeat superior, employers are liable for the employees' tortious conduct, so long as the conduct was within the scope of their employment.²³⁴ Given that planters actively sought to employ overseers who used harsh and coercive tactics, this likely seemed like an easy hurdle to clear.

Finding Ellis liable for punitive damages under this theory, however, had one significant obstacle. Toney first needed to prove that Ellis had “approved and ratified” Tignor's actions,²³⁵ but a clear indication of a landlord's approval or

230. See, e.g., *Woodson*, 234 S.W. 185; *Yarbrough v. Brookins*, 294 S.W. 900 (Tex. Civ. App. 1927); *Crews*, 113 S.W. 523.

231. In one well-known folk song about sharecropping, the singer laments that the “big boss man” is “standing on his turnrow, with his pistol in his hand / He done whooped that woman, goin' to kill that man.” MANCE LIPSCOMB, *BIG BOSS MAN* (Arhoolie Recs. 1960).

232. Interview by Robert H. Alexander and Ellen Virginia Alexander with Rebecca Yarbrough, in Scott, Ark., BUTLER CTR. FOR ARK.'S STUD. (1973), <https://arstudies.contentdm.oclc.org/digital/collection/p1532coll1/id/13217/rec/6> [<https://perma.cc/9LJG-V89T>].

233. *Col. L.A. Ellis Dead*, *supra* note 213, at 3; Wolkoff, *supra* note 97, at 2.

234. RESTATEMENT (THIRD) OF AGENCY § 2.04 (AM. L. INST. 2006); Seymour D. Thompson, 2 THE LAW OF NEGLIGENCE IN RELATIONS NOT RESTING IN CONTRACT 861 (1886).

235. *Tignor v. Toney*, 35 S.W. 881, 882 (Tex. Civ. App. 1896). Ellis could have perhaps been found liable under a theory of negligence, but Toney did not bring any claims of negligence. It is

ratification was hard to come by, especially since an overseer's continued employment was not considered sufficient proof. This made it easy for landlords to successfully claim that they were neither aware of nor ratified an overseer's malicious behavior.

As with the gap in the availability of punitive damages discussed above, the limitations on a planter's liability for an overseer's violence could easily have incentivized landlords' bad-faith actions. So long as landlords claimed not to be aware of an overseer's violent managerial techniques, they could insulate themselves from having to pay out punitive damages. In other words, outsourcing violence to overseers could save landlords money. They would not have to pay a sharecropper or tenant punitive damages even if they were held liable for an overseer's violence, thus ensuring that landlords who outsourced their violence would only ever end up owing the amount they had already agreed upon in their contracts.

In sum, for sharecroppers and tenants, bringing successful claims for the harm caused by a landlord's violence could be like threading a needle. Doing it correctly required precision and skill. By extension (and in direct contrast to the experiences of cropper and tenant plaintiffs), for landlord-defendants, finding a legal error upon which to base an appeal could often be easily managed.

CONCLUSION

The history that I have described in this Article—of sharecroppers and tenants' efforts to use private, common-law claims to receive redress in the wake of their landlord-employers' violence—revises our understanding of private law's relationship to racial violence. It illustrates that private law could serve as a surprising source of redress for sharecroppers and tenants who were left unprotected by criminal law and public law. Yet, this history also reveals that private law both abetted racial violence—with doctrine that made certain kinds of violence less legible as violence—and in some instances, may have actively encouraged violence by providing perverse financial incentives to landlords who used violence to coerce a breach. To be sure, neither of these roles for private law (as abettor or facilitator of violence) would have been possible without the pre-existing failures of criminal and public law. Nevertheless, private law's role as abettor and facilitator of violence was also the result of specific aspects of private

possible that she avoided these claims out of concern that it might lead Ellis to argue that she was a sharecropper rather than a tenant. As a sharecropper (and therefore employee of Ellis), she would have been barred from bringing such a claim under the fellow servant rule. Under this rule, an employee could not sue her employer because of another employee's negligence.

law doctrine. In other words, the fault for the law's complicity in Jim Crow era racial violence cannot, and should not, be laid entirely at the feet of public law and criminal law.

This forgotten history of sharecropper and tenant litigation also demonstrates that the interaction of public and private law, and of contract, property, and tort doctrines, created an environment where certain kinds of employer violence were more legally legible than others. In particular, violence that primarily breached contracting parties' duty of good faith and fair dealing—but was not considered or prosecuted as a crime—was most at risk of falling into doctrinal gaps, thus leaving victims without a clear legal remedy.

The example of sharecroppers whose landlords had a violent management style (but neither stole from, nor wrongfully evicted them) provides a clear illustration of the contours and consequences of these doctrinal gaps.²³⁶ As described in Part I, a white landlord's violent harassment of a sharecropper bore very little risk of criminal punishment, especially if the cropper was Black. This left a sharecropper victim with one of three legal options: Sue for breach of contract, sue for assault and battery, or both. Unfortunately, and as the cases discussed in Parts II and III demonstrate, winning on assault and battery was unlikely without physical evidence of a grievous and permanent injury. Thus, the only real path forward for a cropper was a breach of contract claim, on the grounds that the landlord's violent harassment constituted a breach of that landlord's duty of good faith and fair dealing. Even if the sharecropper were able to succeed on this particular theory of breach, their remedy would still have been limited to the value of the contract itself.²³⁷ The harmful nature of the breach would have been inconsequential for the measure of damages. In other words, the remedy would have obfuscated the violence.

Though fictionalized, the scenario that I just described is based upon the general trends of the litigation considered in this Article. Most sharecroppers and tenants who successfully used private law to receive redress technically were not being compensated for the violence that they experienced, but rather for the violation of their contract and property rights. Of course, given that these plaintiffs experienced these harms simultaneously, receiving a remedy for the violation of

236. As discussed in Subpart I.A, this management style was common among white southern planters with Black sharecroppers.

237. Whether a court agreed that a landlord's violent harassment constituted a violation of the duty of good faith and fair dealing would have largely turned on the court's perception of the violence's severity. The landlord would have likely responded, as many did, that they were merely exercising their right to ensure the crops were being grown in a good and farmer-like manner, and that their coercive management techniques did not violate any express terms of the contract.

their private rights may well have felt like remediation for the violence. Nonetheless, the problem remains that day-to-day landlord violence—which was experienced by vast numbers of Black sharecroppers and tenants in the Jim Crow south—likely would not have given rise to a colorable legal claim.

To be clear, private law did not create this problem. This problem—by which I mean the legal illegibility of certain forms of violence—has more to do with society’s views on violence, than with any one particular legal doctrine. Indeed, there have been categories of violence that have gone criminally unpunished throughout U.S. history. As some sociologists and cultural theorists have argued, these classes of unpunished violent acts, some of which do not even register socially as violence, are the consequence of a social system that relies upon differentially valued populations of people.²³⁸ In other words, communities cohere as an “us,” when there is a different, and less-valuable “them” from which to differentiate, a social process that all too often entails using violence to create and police the boundary between “us” and “them.”²³⁹

But I am less interested in the precise origins of the problem of legally invisible violence, however, than I am with making it visible as a problem, and not just a problem for public law, but for private law as well. This intellectual commitment is aligned with the work of Black feminist legal scholars like Kimberlé Crenshaw, Cheryl Harris, Dorothy Roberts, and others who have thoroughly documented how the intersection of public law doctrines renders certain kinds of violence invisible.²⁴⁰

238. Lisa Cacho describes it thusly: “The production and ascription of human value are both violent and relational, both differential and contextual. Value is ascribed through explicitly or implicitly disavowing relationships to the already devalued and disciplined categories of deviance and nonnormativity.” LISA MARIE CACHO, *SOCIAL DEATH: RACIALIZED RIGHTLESSNESS AND THE CRIMINALIZATION OF THE UNPROTECTED 18* (2012); see also LINDON W. BARRETT, *BLACKNESS AND VALUE: SEEING DOUBLE* (1999); CHANDAN REDDY, *FREEDOM WITH VIOLENCE: RACE, SEXUALITY, AND THE US STATE* (2011).

239. The history of anti-miscegenation laws and the lynching of Black men accused of having sexual relationships with white women bears this out. Much has been written on the violent policing of the Black-white racial boundary. See, e.g., Cheryl Harris, *Whiteness as Property*, 106 *HARV. L. REV.* 1707 (1993); ARIELA GROSS, *WHAT BLOOD WON’T TELL: A HISTORY OF RACE ON TRIAL IN AMERICA* (2008); TAVIA NYONG’O, *THE AMALGAMATION WALTZ: RACE, PERFORMANCE, AND THE RUSES OF MEMORY* (2009); ELLEN SAMUELS, *FANTASIES OF IDENTIFICATION: DISABILITY, GENDER, RACE* (2014).

240. See, e.g., Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 *STAN. L. REV.* 1 (1988); Crenshaw, *supra* note 14; Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 *STAN. L. REV.* 777 (2000); Harris, *supra* note 239; Melissa Murray, *Strange Bedfellows: Criminal Law, Family, and the Legal Construction of Intimate Life*, 94 *IOWA L. REV.* 1253 (2008); Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 *CAL. L. REV.* 1239 (2012); Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being “Out of Place” From Emmett Till to Trayvon Martin*, 102 *IOWA L. REV.* 1113 (2017); DOROTHY

The history of sharecropper and tenant litigation described in this Article illustrates that the intersections of private law doctrines can perform a similar kind of vanishing for certain kinds of violence. As the Article demonstrates, however, the nature of these intersections and the harms that they obscure are historically contingent. Consequently, for those of us who want to understand the full scope and consequences of racial violence, there is an urgent need to map the margins of private law as thoroughly as those of public law.²⁴¹

APPENDIXES

Appendix A: Methods

1. Search Terms

To find the appellate cases analyzed in this Article, I searched Westlaw for a number of key terms related to violence and agricultural labor between 1865 and 1930 in the records of civil cases heard by state courts in the ten states with the largest number of Black sharecroppers and tenants during these decades: Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas.²⁴²

I used the following search terms to capture cases that involved incidents of violence: “assault,” “threat,” “thrash,” “whip,” “beat,” “threaten!,” “violence,” “insult,” and “(run /5 off).” In order to find cases involving sharecroppers or share-tenants, I ran this violence search string in conjunction with Westlaw’s keynote for “renting on shares, action between parties” as well as in conjunction with the following agricultural terms: “tenant,” “share crop,” and “cropper.” In both instances, I searched within the results for any of the following terms: “crop,” “cotton,” “tobacco,” “wheat,” “oats.” I did so in order to limit the results to cases involving: (1) tenants or croppers, where (2) violence occurred, and (3) a contract to grow crops existed.

In total, these searches returned 411 cases, which I carefully read through in order to find cases where the plaintiff was a sharecropper or share-tenant who

ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997); JENNIFER NASH, *BLACK FEMINISM REIMAGINED: AFTER INTERSECTIONALITY* (2019).

241. Crenshaw, *supra* note 240.

242. Although I included Mississippi and Tennessee in the search, no results returned for either state. It is possible that the different tenancy laws in Tennessee resulted in fewer of these cases. More research needs to be done, however, in order to explore the reasons for these states’ lack of cases.

brought a civil case against their landlord after the landlord had committed (or threatened to commit) violence against them. Only cases where the plaintiffs were sharecroppers or share-tenants were included. Thus, cases where the plaintiff did not live on the premises, paid rent in a pre-determined amount of the crops, or was a cash renter, were excluded. The results of this search are the twenty-four cases that serve as the primary focus of this Article.

2. Periodization

As the table of cases indicates, the earliest case that I found was a dispute over a contract for the 1869 agricultural season. The latest case involved a contract for the 1926 season. This reflects my decision to use the end of the Civil War and the beginning of the Great Depression as the periodization for my cases. To be sure, there were significant historical changes that happened during this time period.²⁴³ Nevertheless, the kinds of violence that sharecroppers and share-tenants experienced at the hands of their landlords during these decades remained the same. Due to the continuity of this violence, I have chosen to analyze these cases together. I end on the eve of the Great Depression, because the passage of the Agricultural Adjustment Act in 1933 provided landlords with different avenues for expropriating croppers' and tenants' profits.

3. Additional Archival Sources

After finding my final set of twenty-four cases, I turned to several states' archives to examine the extant case files in their original form.²⁴⁴ The amount of material included in each case file varied greatly between cases. The most complete of these files included the full record of the initial trial, including the initial filings,

243. For a discussion of some of these changes, see *supra* Subpart I.B. In the years right after emancipation, Black American croppers and tenants were more likely to have the Freedmen's Bureau adjudicate disputes with their landlords than southern courts. Whether Bureau agents used legal reasoning that was similar to that of southern courts will be a subject of future research. Regardless of the nature of their legal reasoning, these agency adjudications did not have any precedential value for state courts hearing similar cases. Rapport, *supra* note 88, at 34.

244. Given the travel and safety restrictions caused by COVID-19, not all state archives were accessible. In total, I was able to obtain the archival case files for twelve of the twenty-four cases: *Allen v. Bannister*, 97 So. 820 (Ala. 1923); *Howton v Mathias*, 73 So. 92 (Ala. 1916); *Melton v. Allen*, 278 S.W. 1095 (Ky. 1925); *Walker v. Rogers*, 273 S.W. 439 (Ky. 1925); *Ragsdale v. Ezell*, 49 S.W. 775 (Ky. 1899); *Curtis v. Cash*, 84 N.C. 41 (1881); *Sullivan v. Calhoun*, 108 S.E. 189 (S.C. 1921); *Hillhouse v. Jennings*, 38 S.E. 599 (S.C. 1901); *Crews v. Cortez*, 113 S.W. 523 (Tex. 1908); *Crews v. Cortez*, 115 S.W. 609 (Tex. Civ. App. 1908); *Foster v. Roseberry*, 78 S.W. 701 (Tex. Civ. App. 1904); *Foster v. Roseberry*, 98 Tex. 138 (1904); *Tignor v. Toney*, 35 S.W. 881 (Tex. Civ. App. 1896); *Malone v. Scott*, 40 Tex. 460 (1874).

testimony, petitions, jury instructions, and decisions, as well as records of later appeals. The longest of these files was one hundred ninety-five pages. The shortest, however, was only sixteen pages long and consisted primarily of the court's final opinion, the plaintiff's legal complaint, and the defendants' answer.²⁴⁵ Thus, although an extraordinary amount of additional information could be gleaned from the archival files, this was not always the case.

In addition, I searched archives of regional and national newspapers for coverage of the twenty-four cases, as well as any articles about the sharecroppers, tenants, and landlords involved in these cases. There was no substantive coverage of any of the cases involving Black litigants. And only three cases with white litigants received substantive news coverage—*Ragsdale v. Ezell*, *Woodson v. McLaughlin*, and *Allen v. Bannister*.²⁴⁶

I also gathered additional data about litigants from census records. Census data proved invaluable for identifying the race of the parties, as most racial identities were not explicitly stated within the court's opinion. Primarily this is because the race of white litigants was almost universally unstated. The few references to white racial identity occurred when a court pointed out the racial nature of a landlord's attack. For example, in *Bussell v. Bishop*, the court explained the basis for plaintiff Colonel Bussell's fear by stating that "he is a negro and the defendant is a white man."²⁴⁷ More surprising, however, was the number of cases wherein the race of a non-white litigant was unstated. In total, five cases with Black litigants failed to mention that the litigant was Black.²⁴⁸

Lastly, part of my research included listening to and reading transcriptions of oral histories of former sharecroppers and landlords. These oral histories include the well-known Works Progress Administration [WPA] interviews with formerly enslaved people, in addition to oral histories conducted by the Southern Oral History Project. Two interviewees in these oral histories referenced suing a

245. The longest case file was for *Walker v. Rogers*, 273 S.W. 439 (Ky. 1925), and the shortest was *Sullivan v. Calhoun*, 108 S.E. 189 (S.C. 1921).

246. See, e.g., *Bud Bannister Recovers Damages*, GADSDEN DAILY TIMES-NEWS, Ark., Oct. 13, 1922, at 1 (describing Bannister's win); *Defendants Win Case*, DAILY ARK. GAZETTE, Dec. 2, 1920, at 7 (describing the verdict against the Woodsons); *Victory for Mr. Ragsdale*, HOPKINSVILLE KENTUCKIAN, May 8, 1896, at 1.

247. *Bussell v. Bishop*, 110 S.E. 174, 174 (Ga. 1921).

248. *Howton v. Mathias*, 73 So. 92 (Ala. 1916) (involving a Black plaintiff and white defendant); *Walker v. Walker*, 51 Ga. 22 (1874) (involving Black plaintiffs and a white defendant); *Curtis v. Cash*, 84 N.C. 41 (1881) (involving a Black plaintiff and a white defendant); *Sullivan v. Calhoun*, 108 S.E. 189 (S.C. 1921) (involving a plaintiff and defendants that were all Black); *Tignor v. Toney*, 35 S.W. 881 (Tex. Civ. App. 1896) (involving a plaintiff that was a Black woman).

landlord. Unfortunately, no records remain of either of these suits in state archives.

Appendix B: Table of Cases

Case	Contract Year	Violence	Pl.'s Race	Def.'s Race	P won at trial	P won on appeal
Malone v. Scott , 40 Tex. 460 (1874)	1869	<i>Eviction & Theft</i> : Jesse Scott driven from farm with threats of violence and by force; threatened to be shot if he did not leave; crops appropriated	Unknown	White	Yes	No
Smith v. Summerlin , 48 Ga. 425 (1873)	1870	<i>Theft</i> : after his request for his share was denied, Moses Summerlin was told that if he came back he would be shot and killed	Black	White	Yes	Yes
Walker v. Walker , 51 Ga. 22 (1874)	1873	<i>Assault & Theft</i> : farm hands of Peter Walker & Marlin Brown driven away; storehouses locked up; rights and privileges interfered with by menaces, threats, etc.	Black	White	Yes	Yes

Curtis v. Cash , 84 N.C. 41 (1881)	1877	<i>Assault & Theft</i> : tobacco of Alexander Curtis stolen by seven men (including landlord); one of the thieves waved a gun and said "he came for the tobacco and intended to have it"	Black	White	Yes	Yes
Young v. Gay , 41 La. Ann. 758 (1889)	1887	<i>Eviction</i> : violence used to forcibly eject Clement Young from premises	White	White	Yes	Yes

Case	Contract Year	Violence	Pl.'s Race	Def.'s Race	P won at trial	P won on appeal
Ragsdale v. Ezell , 18 Ky. L. Rptr. 146 (Ct. App. 1896); 20 Ky. L. Rptr. 1567 (Ct. App. 1899)	1891	<i>Assault</i> : Nannie Ezell, a sharecropper's wife, was seized, held, hugged and kissed against her will; continued to be held even though she begged to be let go	White	White	Yes	Yes
Tignor v. Toney , 13 Tex. Civ. App. 518 (1896)	1894	<i>Eviction & Theft</i> : threats, force, and violence used to eject Babe Toney from the farm; crops withheld	Black	White	Yes	No
Hillhouse v. Jennings , 60 S.C. 392 (1901)	1898	<i>Assault, Eviction & Theft</i> : malice and force of arms used to take E.Y Hillhouse's cattle lot and fodder house and destroy his garden, corncrib, and corn; Hillhouse threatened with gun and personal violence if he attempted to use the property	White	White	No	Yes
Foster v. Roseberry , 78 S.W. 701 (Tex. Ct. Civ. App., 1904); 98 Tex. 138 (1904)	1902	<i>Eviction & Theft</i> : force of arms used to oust L.S. Roseberry from fields; crops wrongfully harvested; threatened with death if he returned	White	Unknown	Yes	Yes

Crews v. Cortez , 102 Tex. 111 (1908), 52 Tex. Civ. App. 644 (1908)	1905	<i>Eviction & Theft</i> : threats and violence used to deprive Ramon Cortez of possession of premises and growing crops, and force Cortez, his family, and his hired hands to abandon the premises	Mexican American	White	Yes	No
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Case	Contract Year	Violence	Pl.'s Race	Def.'s Race	P won at trial	P won on appeal
Roberson v. Allen , 7 Ga. App. 142 (1909)	1907	<i>Eviction</i> : Isaac Roberson told he could no longer put his stock in pasture and that if he did so the stock would be killed; talked to in very insulting and unpleasant manner; threatened with severe violence on several occasions; faced with dictatorial and intolerant conduct	White	White	Yes	Yes
Howton v. Matthias , 197 Ala. 457 (1916)	1913	<i>Eviction & Theft</i> : Mariah Matthias, was told to tell that her husband Henry to get his "damned duds on his back, to leave everything, to leave the place and not be near there two hours afterward, the God-Damned black son-of-a-bitch"; mule, wagon, cattle, and crops taken	Black	White	Yes	Yes
Rhoades v. Pointer , 243 S.W. 583 (Tex. Ct. Civ. App. Beaumont, 1922)	1918	<i>Eviction</i> : through an attitude of violence toward them, Allen Rhoades and his family fled the premises and ceased gathering the cotton	Black	White	Yes	Yes

Pellifigue v. Judice, 154 La. 782 (1923)	1918	<i>Assault:</i> while trying to sell cotton at his landlord's store, Joseph Pellifigue (a French immigrant) was told that if he did not first buy a Liberty bond he would be made to "pass as a suspect to the enemy"; called a traitor; shoved while called a fugitive from his country	White	White	No	No
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Case	Contract Year	Violence	Pl.'s Race	Def.'s Race	P won at trial	P won on appeal
Woodson v. McLaughlin , 150 Ark. 340 (1921). Woodson II, 153 Ark. 151 (1922) (appeal from separate case tied to same incident of violence)	1919	<i>Eviction</i> : received threatening and abusive language; house was moved while Woodson family still lived in it; kitchen torn apart and large cracks were left in the house, which let rain and snow inside	White	White	No	No
Sullivan v. Calhoun , 117 S.C. 137 (1921)	1919	<i>Eviction & Theft</i> : Ferdinand Sullvian was run off the land; crops were gathered and proceeds withheld	Black	Black	Yes	Yes
Barnett v. Govan , 241 S.W. 276 (Ct. Civ. App. Tex. Texarkana, 1922)	1919	<i>Eviction & Assault</i> : Bell Govan was threatened with personal violence and forbidden from entering premises; abandoned crop and premises through fear of bodily injury	Black	White	Yes	Yes
Bussell v. Bishop , 152 Ga. 428 (1921)	1920	<i>Assault</i> : Colonel Bishop attacked by a mob that landlord had organized, during which Bishop was threatened with a shotgun, beaten upon the head with "some kind of instrument," told he was going to be killed, and shot twice in the head; thereafter received threats of a future attack	Black	White	Yes	Yes

Case	Contract Year	Violence	Pl.'s Race	Def.'s Race	P won at trial	P won on appeal
Burrell v. Pirkle, 156 Ga. 398 (1923)	1920	<i>Eviction:</i> locks placed on outbuildings and J.L. Burrell deprived of their use; threatened to have locks on home broken and home moved into; after lawsuit was initiated, Burrell was then ousted from the land and prevented from cultivating it	White	White	No	Yes
Allen v. Bannister, 210 Ala. 264 (1923)	1920	<i>Assault:</i> during an argument, Bud Bannister was threatened with a pistol and told that he would be killed if he came on the place again; threatened with being sent to a chain gang	White	White	Yes	Yes
Walker v. Rogers, 209 Ky. 619 (1925)	1923	<i>Assault:</i> after dispute over who should pay for a tobacco plant bed, Henry Rogers was shot from behind with a repeating shot gun; shots struck him in the back, shoulders, side of the face, and one shot entered his eye	White	White	Yes	Yes
Melton v. Allen, 212 Ky. 310 (1925)	1923	<i>Assault:</i> during a dispute over who owned the tobacco, Ed Lee Allen was struck with a corn knife, which cut off his thumb; Allen turned to leave, fell and while on the ground was struck in the back of the head, suffering a gash that exposed his brain	Black	White	Yes	Yes

Case	Contract Year	Violence	Pl.'s Race	Def.'s Race	P won at trial	P won on appeal
Yarbrough v. Brookins, 294 S.W. 900 (Ct. Civ. App. Tex. Amarillo, 1927)	1925	<i>Assault, Eviction & Theft:</i> tyrannical and cruel treatment; cursed and abused; home searched by sherriff without a warrant; Walter Brookins was forced to abandon crops, and leave home while wife was sick and in bed with a two week old baby; crops taken; threatened with serious violence if he did return	Black	White	Yes	No
Beck v. Kah, 163 Ga. 365 (1926)	1926	<i>Eviction:</i> W.C. Beck threatened to be kept in jail with continuous warrants if he did not give up the premises; landlord moved onto premises with his family and "proceeded to take charge of the farming operations as far as he could"; ordered to leave with an injunction that was "unauthorized by law"	White	White	No	Yes