FINANCIAL FREEDOM SUITS: BANKRUPTCY, RACE, AND CITIZENSHIP IN ANTEBELLUM AMERICA

Rafael I. Pardo*

This Article presents a new frame of reference for thinking about how the federal government facilitated citizenship claims by free people of color in the antebellum United States. While scholars have accounted for various ways in which free black litigants may have made such claims, they have not considered how the Bankruptcy Act of 1841 enabled overindebted free people of color to reconstruct their economic lives, thereby restoring the financial freedom that was and continues to be an essential component of American citizenship. Relying on a variety of primary sources, including manuscript court records, this Article shows how six free men of color in the Eastern District of Louisiana leveraged the economic benefit provided by the 1841 Act to reintegrate into their commercial communities and thereby protect their claims to citizenship.

TABLE OF CONTENTS

---

* Robert T. Thompson Professor of Law, Emory University. For helpful discussions, comments, and suggestions, I am grateful to Mechele Dickerson, Deborah Dinner, Melissa Jacoby, Maria Montalvo, Janiel Myers, Walter Stern, and participants in the 2019 Summer School at the University of Glasgow's Centre for Business History in Scotland. For extraordinary assistance at the National Archives in Kansas City, Missouri, and the Notarial Archives Research Center in New Orleans, Louisiana, I thank Siva Blake, Jessica Hopkins, Cheryl Jones, Sally Reeves, Sally Sinor, and Steve Spence. As more specifically indicated below, this Article excerpts material from my prior work originally published as *Bankrupted Slaves*, 71 VAND. L. REV. 1071 (2018), and *Federally Funded Slaving*, 93 TUL. L. REV. 787 (2019).

INTRODUCTION

On June 15, 1843, New Orleanians had to contend with "very heavy showers during the day, accompanied by vivid lightning."[1] The next day's dawn, however, greeted the Crescent City's inhabitants with clear skies,[2] paving the way for endeavors unhindered by tempestuous weather. For two men, Pierre Casanave and Chazal Thomas, June 16 held an especially pronounced promise of a fresh start. The federal district court in New Orleans granted both men discharges under the Bankruptcy Act of 1841,[3] pursuant to which each was "fully discharged of, and from all his debts owing by him at the time of the presentation of his petition to be declared Bankrupt."[4] By virtue of this relief, the federal government presented these men with "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt."[5]

One may be tempted to dismiss Casanave's and Thomas's discharges as unremarkable. After all, hundreds of thousands of individuals today receive such

---

1. DAILY PICAYUNE (New Orleans), June 16, 1843, at 2.

2. *See* DAILY PICAYUNE (New Orleans), June 17, 1843, at 2 ("Our last rain used us much more kindly than the previous one; it lasted but one day, but it left behind it weather much more tropical in its character than we had before experienced this season.").

3. Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843).

4. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 PROVISIONAL AND DISCHARGE DECREES, 1842–1843, at 333, 355 (located in Record Group (RG) 21, The National Archives at Fort Worth, Texas) [hereinafter EDLA DECREE BOOK] (setting forth, respectively, discharge decrees for Pierre Casanave and Chazal Thomas).

5. Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

relief annually,[6] and even under the short-lived 1841 Act,[7] tens of thousands of individuals walked away from federal courthouses with certificates of federal bankruptcy discharges in hand.[8] But the fact of the matter is that the relief afforded to these men was quite remarkable. They were free men of color in the slave South who asserted their autonomy as legal actors, pursuing debt forgiveness through aggregate litigation that flipped racial hierarchy on its head.

What did the antebellum experiences of free people of color who sought federal bankruptcy relief signify? This Article begins to answer that question. To be sure, historians have analyzed claims-making in the debtor-creditor sphere by antebellum free blacks. For example, Kenneth Aslakson has examined debt collection cases in the New Orleans City Court involving free people of color during the early nineteenth century.[9] Kimberly Welch has explored antebellum debt actions by free people of color in the Natchez district of Mississippi and Louisiana.[10] More closely related to this study of financial freedom suits, Martha Jones has explored the experiences of free people of color who sought relief during the 1850s under

---

6. For example, cases under Chapter 7 of the Bankruptcy Code routinely account for the majority of bankruptcy filings by individuals whose debts primarily consist of nonbusiness debts. *See, e.g.*, ADMIN. OFFICE OF THE U.S. COURTS, TABLE F-2: U.S. BANKRUPTCY COURTS—BUSINESS AND NONBUSINESS CASES COMMENCED, BY CHAPTER OF THE BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING DECEMBER 31, 2017, https://www.uscourts.gov/sites/default/files/data_tables/bf_f2_1231.2017.pdf (reporting that Chapter 7 cases constituted approximately 62% (i.e., 472,190 of 765,863) of all cases filed by nonbusiness debtors in 2017). Debtors in such cases almost always receive a discharge. *See, e.g.*, Rafael I. Pardo, *Self-Representation and the Dismissal of Chapter 7 Cases*, *in* BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA 87, 95 (Samuel Estreicher & Joy Radice eds., 2016) (reporting that, "of the 79,649 non-dismissed Chapter 7 cases in this study, 99.3% resulted in a discharge for the debtor").

7. Debtors had only a 13-month period within which to file for relief under the 1841 Act. *Compare* Act of Aug. 19, 1841, ch. 9, § 17, 5 Stat. 440, 449 (providing an effective date of February 1, 1842) (repealed 1843), *with* Act of Mar. 3, 1843, ch. 82, 5 Stat. 614 (repealing the 1841 Act). Notwithstanding the Act's repeal, Congress provided that any unresolved bankruptcy cases at the time of repeal would remain unaffected and could "be continued to . . . final consummation." 5 Stat. at 614.

8. Two documents issued by the House of Representatives several years after repeal of the 1841 Act report various bankruptcy case statistics by federal judicial district, including summary tables compiling the statistics for each individual district included in the respective reports. *See* H.R. DOC. NO. 29-99, at 8 (1847); H.R. DOC. NO. 29-223, at 30–31 (1846). Combined, the reports set forth statistics for 27 of the 38 districts existing at the time of the Act within the nation's 26 states and the District of Columbia. Rafael I. Pardo, *Documenting Bankrupted Slaves*, 71 VAND. L. REV. EN BANC 73, 75–76 (2018). The House documents report that courts in those districts granted discharges to 33,944 individuals and denied discharges to 896 individuals. *See* H.R. DOC. NO. 29-99, at 8; H.R. DOC. NO. 29-223, at 30–31. For a discussion of the deficiencies in these statistical reports, including coverage gaps and inaccuracies, see Pardo, *supra*, at 76–83.

9. KENNETH R. ASLAKSON, MAKING RACE IN THE COURTROOM: THE LEGAL CONSTRUCTION OF THREE RACES IN EARLY NEW ORLEANS 135–41 (2014).

10. KIMBERLY M. WELCH, BLACK LITIGANTS IN THE ANTEBELLUM AMERICAN SOUTH 6, 115–33 (2018).

Maryland's debt-forgiveness law.[11] Yet no historian has examined the experiences of blacks who pursued debt relief under the 1841 Act.[12]

But that is not to say that the historical dimensions of bankruptcy and race have gone unexamined. Recent scholarship has explored how the 1841 Act and the domestic slave trade intersected during the nineteenth century. The verdict thus far has been that the Act amplified the federal government's complicity in entrenching antebellum slavery in two ways: first, by making the government the owner and seller of slaves belonging to financially distressed slave owners who sought bankruptcy relief;[13] and second, by enabling indebted slave traders to reconstruct their financial lives and thus return to the business of slaving.[14] Yet further examination of the historical record reveals that the verdict is incomplete when it comes to evaluating the intersection of bankruptcy and race in antebellum America.

Without a doubt, the 1841 Act both imposed a distinct type of subordination on enslaved black individuals and gave financial support to enslavers who imposed their own subordination on such individuals. But the Act simultaneously presented an opportunity for some free people of color in financial distress to attain economic liberation and, in the process, lay claim to a citizenship partly defined by the evolving meaning of "failure in the land of the free," which entailed "the redefinition of insolvency from moral failure to economic risk [and] applied principally to debtors who were themselves entrepreneurs in the changing

---

11. MARTHA S. JONES, BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA 108–19 (2018).

12. I am aware of two historians who have briefly commented on the pursuit of bankruptcy relief under the 1841 Act by free people of color. In his work examining, among other things, the role of and attitudes toward debt in antebellum North Carolina, *see* DAVID SILKENAT, MOMENTS OF DESPAIR: SUICIDE, DIVORCE, AND DEBT IN CIVIL WAR ERA NORTH CAROLINA 141–58 (2011), David Silkenat observes, without additional commentary or analysis, that "[d]espite their difficulty in procuring credit, free blacks [in North Carolina] appear in disproportionate numbers among bankruptcy filers in 1842, accounting for more than 10 percent of the total," *id.* at 157–58. For reasons discussed further below, the figure provided by Silkenat should be approached with caution when interpreting the historical record. *See infra* Appendix B.

Second, in her examination and analysis of "the diary of free black barber and Natchez, Mississippi, businessman William T. Johnson," Kimberly Welch, *William Johnson's Hypothesis: A Free Black Man and the Problem of Legal Knowledge in the Antebellum United States South*, 37 L. & HIST. REV. 89, 91 (2019), Welch briefly discusses Johnson's impressions of the 1841 Act and how it affected those in his community who sought relief under its provisions, including an acquaintance who, like Johnson, was a barber and a free man of color, *see id.* at 106–08. Welch characterizes Johnson's negative view of the Act as follows: "In Johnson's mind, bankruptcy was not a fresh start. It was the end." *Id.* at 108. It is worth noting that, although Johnson suffered a downturn in his own business during the same year that the Act went into effect (i.e., 1842), he had the means to stay afloat and thus did not seek to avail himself of the Act's benefits. *Id.* at 106–07.

13. *See* Rafael I. Pardo, *Bankrupted Slaves*, 71 VAND. L. REV. 1071, 1079–80 (2018).

14. *See* Rafael I. Pardo, *Federally Funded Slaving*, 93 TUL. L. REV. 787, 792–93 (2019).

economy."[15] For those members of Congress who supported the 1841 Act,[16] as well as for those debtors who availed themselves of the relief that it provided, the legislation signified "the bankruptcy ideal of conferring absolution on insolvent debtors and sending them back into the world to make a fresh start in the quest for economic independence—a quest that has been a driving theme in American history."[17] In seeking financial freedom under the Act, free blacks not only played an active role in the origin story for modern-day bankruptcy law,[18] but they also subverted the racial hierarchies in a society where one's personal liberty often went hand in hand with the color of one's skin.[19]

Understanding the significance of this story requires us to recognize that various states of freedom existed for people of color, depending on their legal status. Toward the most restrictive end of the spectrum, enslaved individuals in antebellum Louisiana, where our story takes place,[20] had opportunities to sue for their freedom that were more robust than those afforded to enslaved individuals in other slave states.[21] Importantly, such "freedom suits" did not constitute the sole means by which people of color sought to claim liberty prior to the Civil War. As Judith Schafer has noted, free people of color in antebellum America grappled with a much more layered concept of freedom:

> [F]ree people of color [were] forced to prove their status in an increasingly hostile legal and social culture. At any moment their freedom might be snatched away and their lives changed forever. The meaning of freedom for them was inextricably chained to their ability to defend their liberty at law. Free people of color often found themselves using the very laws that supported slavery as a creature of

---

15. Bruce H. Mann, *Failure in the Land of the Free*, 77 AM. BANKR. L.J. 1, 3 (2003).

16. For an extended discussion of the politics surrounding the 1841 Act, see Pardo, *supra* note 14, at 815–26.

17. Mann, *supra* note 15, at 7.

18. The 1841 Act marked the first time in U.S. history that debtors could voluntarily seek bankruptcy relief. Pardo, *supra* note 13, at 1083. While a radical concept at the time, *see* Cont'l Ill. Nat'l Bank & Tr. Co. of Chi. v. Chi., Rock Island & Pac. Ry., 294 U.S. 648, 670 (1935), voluntary bankruptcy relief has been an engrained part of the nation's legal landscape for over a century, *see* Jonathan Remy Nash & Rafael I. Pardo, *Does Ideology Matter in Bankruptcy? Voting Behavior on the Courts of Appeals*, 53 WM. & MARY L. REV. 919, 938 n.70 (2012).

19. *Cf.* Janice L. Sumler-Edmond, *Free Black Life in Savannah*, *in* SLAVERY AND FREEDOM IN SAVANNAH 124, 125 (Leslie M. Harris & Daina Ramey Berry eds., 2014) ("[S]ince the State of Georgia did not recognize them as persons possessing full citizenship rights, free people of color had little recourse when it came to protecting their property or the limited freedoms they did possess.").

20. *See infra* Section II.A.

21. JUDITH KELLEHER SCHAFER, BECOMING FREE, REMAINING FREE: MANUMISSION AND ENSLAVEMENT IN NEW ORLEANS, 1846–1862, at 3 (2003). For a comprehensive treatment on freedom suits throughout the South during the antebellum period, see LOREN SCHWENINGER, APPEALING FOR LIBERTY: FREEDOM SUITS IN THE SOUTH (2018).

> the law to maintain their own liberty. Failure to understand and use the law properly could result in freedom forever lost.[22]

Free people of color thus had to be vigilant and proactive in thinking about how they could harness the legal system—the very same one that left them vulnerable to the imminent and ever-present threat of enslavement—to protect themselves.[23]

Again, it has been shown that the 1841 Act very much supported the institution of slavery.[24] And yet, because of the pervasive nature of the debtor-creditor relationship during the first half of the nineteenth century,[25] including throughout the South,[26] we might nonetheless expect that overindebted free people of color would have turned to the Act for refuge from the scourge of financial distress. In doing so, they would have laid claim to their financial freedom.[27] Federal bankruptcy law thus presented a vehicle for the pursuit of what I term a "financial freedom suit,"[28] a legal action available to indebted free individuals regardless of their race,[29] but one of especial salience when brought by free people of color.[30]

---

22. SCHAFER, *supra* note 21, at xiv; *see also* JOHN W. BLASSINGAME, BLACK NEW ORLEANS, 1860–1880, at 14–15 (1973) ("Although the free Negro made a concerted effort to create a viable community, he was severely handicapped in his struggle. The free Negro's color associated him with the slave, and he suffered many penalties as a result. Although his property rights were protected and he had the right to sue and to be sued, the free Negro had no guarantee of justice in Louisiana's courts.").

23. *Cf.* ASLAKSON, *supra* note 9, at 45 ("While the laws supported slavery, racism, and patriarchy, they also, above all else, protected property rights. The legal structure, therefore, allowed those free people of color with property to undercut some of the power structures created by slavery and racism."); Juliet E.K. Walker, *Racism, Slavery, and Free Enterprise: Black Entrepreneurship in the United States Before the Civil War*, 60 BUS. HIST. REV. 343, 345 (1986) ("Paradoxically, the need to protect private property, which protected and promoted the institution of slavery, also provided the basis for black entrepreneurial expression, both slave and free.").

24. *See supra* text accompanying notes 13–14.

25. *E.g.*, BRUCE H. MANN, REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE 3 (2002).

26. *E.g.*, SILKENAT, *supra* note 12, at 141; *cf.* ASLAKSON, *supra* note 9, at 136 ("The most common property disputes in the New Orleans City Court were cases seeking collection of debts, including promissory notes, accounts, general debt, services rendered, as well as some of the real estate and slave property cases.").

27. *See* EDWARD J. BALLEISEN, NAVIGATING FAILURE: BANKRUPTCY AND COMMERCIAL SOCIETY IN ANTEBELLUM AMERICA 168 (2001) ("Americans who negotiated the bankruptcy process [under the 1841 Act] frequently . . . characteriz[ed] discharges as documents of personal liberation."); *cf.* SILKENAT, *supra* note 12, at 141 ("Debt functioned as a fundamental threat to an individual's independence because it made the debtor assume a subordinate position to his or her creditor.").

28. *Cf.* BALLEISEN, *supra* note 27, at 15 ("Unable to transact business and vulnerable to endless legal suits, bankrupts faced the equivalent of perpetual bondage. If, however, American legislators fashioned statutory mechanisms that gave failed debtors the ability to gain discharges from their obligations, the 'enslaved' would receive emancipation.").

29. *See infra* text accompanying note 139.

30. *Cf.* JULIET E.K. WALKER, THE HISTORY OF BLACK BUSINESS IN AMERICA: CAPITALISM, RACE, ENTREPRENEURSHIP 126 (1998) ("In the face of limited employment

In using the term "financial freedom suit," I do not mean to suggest an equivalence with the term "freedom suit." As previously mentioned, the latter term referred to legal action by enslaved individuals to secure their personal liberty.[31] Financial freedom, however, was a critical component for protecting one's personal liberty.[32] For this reason, I have chosen to use the term "financial freedom suit."

This Article identifies six free men of color who initiated financial freedom suits under the 1841 Act in the Eastern District of Louisiana.[33] The analysis constitutes a preliminary exploration of how some free people of color in antebellum America contested racial subordination in unanticipated ways as a result of the Act's race-neutral language. These heretofore untold accounts provide a new lens for thinking about the ways in which some free blacks may have sought civic inclusion by seeking financial freedom.[34]

This Article proceeds as follows: Part I explores the relationship between citizenship and financial freedom in antebellum America and how the 1841 Act provided an ideal means by which overindebted free people of color could potentially restore their financial freedom in a society rife with institutional racism, particularly in the slave South. Part II presents this Article's case study, which shows how six free men of color in the Eastern District of Louisiana leveraged the economic benefit provided by the 1841 Act to reintegrate into their commercial communities and thereby protect their claims to citizenship. This Article concludes that the story of financial freedom suits is part and parcel of the long tradition of free black enterprise in the nation's history.

I. CITIZENSHIP, FINANCIAL FREEDOM, AND THE 1841 ACT

In her seminal work on the antebellum struggle of free people of color to secure the rights of citizens, Jones observes that, during this time period, "[r]ights, like citizenship, were not self-evident," partly as a result of "the absence of positive law—such as the later Civil Rights Act of 1866."[35] Because of this legal lacuna, "the

---

opportunities, most antebellum free blacks who developed business enterprises were motivated by a simple goal: sheer economic necessity and survival."); George A. Levesque, *Interpreting Early Black Ideology: A Reappraisal of Historical Consensus*, 1 J. EARLY REPUBLIC 269, 274–75 (1981) ("The single, most abiding preoccupation of American blacks before the war . . . was their search for freedom. . . . [B]lacks, working within the general antislavery movement, but also in race based churches and mutual aid societies, sought to combat prejudice and obtain economic and social security.").

31. *See supra* note 21 and accompanying text.

32. Local Loan Co. v. Hunt, 292 U.S. 234, 245 (1934) ("*The power of the individual to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as much if not more than it is a property right.* To preserve its free exercise is of the utmost importance, not only because it is a fundamental private necessity, but because it is a matter of great public concern. From the viewpoint of the wage-earner there is little difference between not earning at all and earning wholly for a creditor." (emphasis added)).

33. For an explanation of why this study does not include free women of color, see discussion *infra* note 178.

34. *Cf.* BLASSINGAME, *supra* note 22, at 15 ("The free Negro was a quasicitizen—he bore much of the responsibility of citizenship with few of its privileges.").

35. JONES, *supra* note 11, at 11.

equation linking rights and citizenship was never fixed" in antebellum America.[36] Nevertheless, the historical record reveals that "[w]ell before any judicial or legislative consensus granted their rights, free black men and women seized them, often in everyday claims that set them on a par with other rights-bearing persons."[37]

This Part lays the groundwork for recognizing how the 1841 Act constituted part of the constellation of antebellum law enabling free people of color to claim civic inclusion in a society that sought to keep them politically, economically, and socially subordinated. Section I.A makes the case for conceptualizing citizenship as partly a function of financial freedom, which in turn depends on freedom from repressive levels of debt. Section I.B discusses how antebellum law addressed freedom from debt, first focusing on the legal consequences of overindebtedness, then surveying the South's varying responses for alleviating the problem under state law, and concluding with an examination of how the 1841 Act operationalized a federal system for debt forgiveness. Section I.C analyzes how the Act generally provided a much more robust form of relief than Southern state law—a relief that had the potential to significantly advance citizenship claims by free blacks.

A. Citizenship as a Function of Financial Freedom

How precisely did the relief afforded to individuals under the 1841 Act translate into their ability to make citizenship claims? The answer, simply put, is that federal bankruptcy relief served as a means to restore financial freedom,[38] which we might view as an indispensable condition for securing the personal liberty that lies at the heart of U.S. citizenship. Mechele Dickerson contends that "[f]inancial freedom is intricately connected to the concept of the 'American Dream,'"[39] which at a minimum "entails financial security and the general ability to live comfortably."[40] The flip side of this coin is that "people who have no control over their financial affairs live in a state of unfreedom."[41] Accordingly, if we take it as a given that personal liberty includes "the capacity to seize actual opportunities that freedom provides,"[42] and if the lack of financial freedom hinders the ability of

---

36. *Id.*

37. *Id.*

38. *Cf.* Mechele Dickerson, *Vanishing Financial Freedom*, 61 ALA. L. REV. 1079, 1092 (2010) ("Indeed, the 1938 and 1978 changes to formal U.S. bankruptcy laws were designed to give people greater financial freedom by shielding them from the harsh consequences of their improvident borrowing choices, by letting them become full participants in the market economy, and by clearly signaling that our nation no longer embraced the view that people should ever be imprisoned, executed, or maimed simply because they are deeply in debt.").

39. *Id.* at 1088.

40. *Id.*

41. *Id.* at 1120; *see also id.* at 1083 ("A person would lack economic or financial freedom if he cannot make spending decisions or choices because of monetary limitations or restrictions . . . .").

42. *Id.* at 1082.

individuals to realize such opportunities,[43] then it stands to reason that restoring financial freedom is key to securing U.S. citizenship.[44]

To be sure, impediments to financial freedom can arise from a variety of circumstances, including from external factors beyond an individual's control.[45] But depending on the manner in which an individual exercises financial freedom, the freedom itself could be undermined. For example, and particularly relevant to the focus of this Article, if financial freedom necessarily includes the freedom to incur debt when entering into market transactions, then concerns about overindebtedness jeopardizing financial freedom loom large.[46] In this regard, Dickerson emphasizes that "[w]hile indebtedness is not by itself a bad thing, when protecting financial freedom, we must continue to remember the importance of protecting both the financial freedom *to* participate in activities and the financial freedom *from* being harmed by certain activities."[47] In other words, the issue becomes one about the optimal level of debt incurred when exercising financial freedom.[48] Too much debt may negate the value of investment and consumption opportunities pursued through borrowed funds, thus jeopardizing one's financial freedom.

Importantly, Dickerson's present-day theorization about financial freedom parallels legal, political, commercial, and newspaper commentary during the antebellum era on how debt's adverse effects could impede civic inclusion.[49] For example, in an 1849 opinion, the Louisiana Supreme Court noted that the state's debt-forgiveness law was "intended, by discharging the unfortunate debtor, to leave him at liberty to apply his industry to the support of himself and his family, and to

---

43. *See id.* at 1096 ("Indeed, making relatively easy and low-cost credit available to unserved or underserved borrowers gives them a form of financial freedom that can make them more active participants in the market economy and that will give them greater future opportunities.").

44. But this does not mean that financial freedom is itself a characteristic of U.S. citizenship. As Professor Dickerson notes, "[T]he U.S. has never been willing to enshrine financial freedom with the same protections we have given the freedom not to be oppressed, tyrannized, enslaved, or otherwise deprived of our political rights." *Id.* at 1083–84; *see also id.* at 1120 ("The gradual erosion of financial freedom is an untreated epidemic that largely has been overlooked even as we have worked assiduously to protect U.S. citizens from threats to their personal liberty in the U.S. . . . ."). This approach starkly contrasts with "[t]he constitutions of at least 54 countries . . . [that] guarantee economic or financial rights." *Id.* at 1083 n.19.

45. *Id.* at 1083.

46. *Id.* at 1104 ("The increase in opportunities for people to exercise their freedom to become overindebted has created an illusion of financial freedom that masks the fact that overindebtedness itself erodes financial freedom.").

47. *Id.* at 1120.

48. *Cf. id.* at 1118 ("Of course, while thrift is good, being *too* thrifty is not so good. That is, just as there is a problem with too *much* debt, there also is a problem with too *little* debt.").

49. Such concerns date back to the Early Republic Era. *See, e.g.*, ROWENA OLEGARIO, THE ENGINE OF ENTERPRISE: CREDIT IN AMERICA 4 (2016) ("Alexander Hamilton and Benjamin Franklin thought hard about how best to encourage credit's productive potential while ensuring that its destructive capacity remained under control.").

open the door to the bettering of his condition."[50] In the congressional debates leading up to the 1841 Act, Senator Garret D. Wall, a New Jersey Democrat, argued that federal bankruptcy relief would "promote[] the productive energies of the country by emancipating the honest debtor from the hopelessness of that most depressing, demoralizing, and paralyzing bondage resulting from the failure attending the disastrous exercise of those energies."[51] Wall further noted that the discharge of debt would have a regenerative effect on a debtor's "activity, perseverance, and enterprise."[52] The New Orleans Chamber of Commerce urged Congress in January 1841 to address the plight of the "[t]housands of industrious and enterprising citizens, who ha[d] been bowed down to the earth by the commercial derangements of the past three years,"[53] by enacting federal bankruptcy legislation that would enable those in financial ruin to once again "contribute to the general wealth and prosperity of the nation."[54] Finally, in their defense of the 1841 Act, the *Independent Monitor*'s editors stated that the legislation would provide relief from "a bondage more revolting than slavery," and they encouraged those who had been declared bankrupts "to persevere in the steps they ha[d] taken to recover *true liberty*."[55]

Each of these observations points to the following question: In "a society that defined citizenship largely in terms of proprietorship"[56] and that valued "economic independence as an ideal,"[57] how did the law seek to restore financial freedom, if at all, for overindebted individuals?

B. Freedom from Debt in Antebellum America

Achieving optimal indebtedness may have been especially difficult in the antebellum United States given the ubiquity and nature of commercial debt obligations during this time period.[58] As described by Edward Balleisen, "The expansion of America's market economy depended crucially on . . . 'the credit system'—an intricate tangle of obligations that extended throughout the country, financing production, distribution, and consumption of the nation's goods and services."[59] Because the scarcity of coined money made financial instruments

---

50. Plympton v. Preston, 4 La. Ann. 356, 360 (1849). For a discussion of Louisiana's antebellum debt-forgiveness law, see Pardo, *supra* note 13, at 1101–02; Pardo, *supra* note 14, at 836.

51. CONG. GLOBE, 26th Cong., 1st Sess. app. at 462 (1840).

52. *Id.*

53. S. DOC. NO. 26-123, at 2 (1841).

54. *Id.* at 1.

55. *Thoughts on Bankruptcy*, INDEP. MONITOR (Tuscaloosa), July 20, 1842, at 2. For a discussion of how some bankruptcy reformers during the antebellum era equated overindebtedness with enslavement, see BALLEISEN, *supra* note 27, at 165–67.

56. BALLEISEN, *supra* note 27, at 12.

57. *Id.* at 15.

58. The discussion that follows in *infra* notes 59–65 and accompanying text is excerpted (with some revisions) from Pardo, *supra* note 14, at 813–14.

59. BALLEISEN, *supra* note 27, at 27; *cf.* CALVIN SCHERMERHORN, THE BUSINESS OF SLAVERY AND THE RISE OF AMERICAN CAPITALISM, 1815–1860, at 1 (2015) ("[Capitalism] was a highly structured system of trade characterized by debt obligations that bound borrowers' ambitions, expectations, and imaginations to future repayment. Debt instruments

evidencing payment obligations (e.g., individuals' promissory notes, banknotes, bills of exchange) the dominant form of payment,[60] "almost all business owners found themselves entangled in complex webs of credit, at once debtors to suppliers and creditors to customers."[61] Accordingly, so far as marketplace success went, the commercial landscape placed a particular premium on businessmen's skill at making reliable assessments of their counterparties' repayment abilities.[62] Further complicating matters, the practices of discounting and endorsing financial instruments "multiplied the interlinked strands within the credit system,"[63] with the result that "[e]conomic hardships anywhere along the chain of credit could quickly migrate up and down the chain."[64] This cascading effect of financial failure "democratized the specter of insolvency, bringing its anxieties and perplexities to a greatly expanded population of market-oriented proprietors."[65]

Given that "[t]he brutal fact of ever-present business failure demanded the creation of institutions to cope with it,"[66] the question arises whether the federal government took any steps to alleviate the commercial pains that arose from the excesses of capitalism in the expanding economy. It did, albeit for a narrow window of time, through the 1841 Act. Before turning to a discussion of relief under the Act, this Section first looks to the legal consequences faced by overindebted antebellum debtors.[67]

1. The Legal Consequences of Overindebtedness

Consider the plight of an antebellum debtor who lacked sufficient assets that could be liquidated to fully repay the debtor's creditors. If that debtor stopped paying either some or all of the debtor's creditors, and if the debtor had some assets on hand, the debtor's creditors would look to those assets as potential sources of repayment. Outside of bankruptcy, a creditor owed money by the debtor could seek individual recourse through the courts, suing the debtor for the money owed and

---

represented those obligations, which were durable, mobile, and ultimately transferable, the basis of paper money.").

60. *See* BALLEISEN, *supra* note 27, at 27; SCHERMERHORN, *supra* note 59, at 25.

61. BALLEISEN, *supra* note 27, at 2.

62. *See* SCHERMERHORN, *supra* note 59, at 25; *cf.* MANN, *supra* note 25, at 7 ("[T]he decision to extend or withhold credit rested on personal ties or experience, or, absent those, on second- or third-hand information reported by someone whom the creditor knew.").

63. BALLEISEN, *supra* note 27, at 31. For further discussion of antebellum credit transactions involving discounting and endorsing, see, for example, *id.* at 30–31, and MANN, *supra* note 25, at 13–16.

64. BALLEISEN, *supra* note 27, at 32; *cf.* MANN, *supra* note 25, at 13 ("Assignability kept debtors' promises circulating in the marketplace, making it difficult for debtors to know when they would return for repayment or from what quarter they would come. All that was certain was that reports of a debtor's distress would bring all of his promises back at once."); SCOTT A. SANDAGE, BORN LOSERS: A HISTORY OF FAILURE IN AMERICA 30 (paperback ed. 2006) ("Independence in commercial society risked perilous interdependence. In the panic, it seemed as if everybody owed everybody and nobody could pay anybody.").

65. BALLEISEN, *supra* note 27, at 5.

66. *Id.* at 21.

67. The discussion that follows in *infra* Subsection I.B.1 is excerpted (with some revisions) from Pardo, *supra* note 13, at 1099–1100.

obtaining a judgment entitling the creditor to collect the debt from the debtor's property using the state's coercive power.[68] Depending on the facts and circumstances, that litigation could have taken place in state court or federal court. As such, the debtor's creditors could have sought to enforce money judgments against the debtor, both through the state system and the federal system.[69]

Under either system, one way to enforce the money judgment would have been through the writ of *fieri facias*, a court order that instructed a government official—for example, a sheriff in the case of a state judgment and a U.S. marshal in the case of a federal judgment[70]—"to cause the judgment to be satisfied out of the judgment debtor's goods and chattels" and that "was executed by seizure and sale" of the property.[71] Some jurisdictions further permitted the writ to reach a debtor's real estate.[72]

These types of collection efforts would likely continue until creditors had collectively exhausted the debtor's assets.[73] If, however, the debtor ever acquired new property, the debtor's creditors could resume their collection efforts, provided that their money judgments had neither become dormant (although such judgments could be revived) nor unenforceable as a result of a statute of limitations.[74] If the creditors avoided or overcame such impediments, the debtor would face the specter of "[t]he unlimited enforceability of money judgments,"[75] unless the debtor could somehow obtain debt relief.[76]

A contemporary account of these creditor-collection dynamics places in stark relief the dilemma faced by debtors in financial distress. Joseph Smith, founder of The Church of Jesus Christ of Latter-day Saints and one of the most notable debtors to seek relief under the 1841 Act, described being driven to file for bankruptcy to escape the hell of perpetual debt collection, which entailed "stripping,

---

68. *E.g.*, Douglas G. Baird, *Blue Collar Constitutional Law*, 86 AM. BANKR. L.J. 3, 4 (2012).

69. Much of the work of antebellum state courts involved the enforcement of money judgments. *See* Thomas D. Russell, *The Antebellum Courthouse as Creditors' Domain: Trial-Court Activity in South Carolina and the Concomitance of Lending and Litigation*, 40 AM. J. LEGAL HIST. 331, 347 (1996); Thomas D. Russell, *South Carolina's Largest Slave Auctioneering Firm*, 68 CHI.-KENT L. REV. 1241, 1245 (1993). Likewise, the enforcement of money judgments lay at the heart of the federal judicial power. *See* Baird, *supra* note 68, at 7–8.

70. *See, e.g.*, Hagan v. Lucas, 35 U.S. (10 Pet.) 400, 400 (1836).

71. Stefan A. Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 IOWA L. REV. 155, 157 (1957).

72. *Id.* at 164–72.

73. Keep in mind that, once the debt owed to a particular creditor had been satisfied, that creditor's collection efforts would cease, while others would continue with their efforts seeking to be repaid in full. *See generally* BALLEISEN, *supra* note 27, at 80–82 (discussing debt collection efforts by antebellum creditors).

74. Riesenfeld, *supra* note 71, at 172–77.

75. *Id.* at 173.

76. *See infra* Subsections I.B.2, I.B.3 (discussing how state and federal law provided debt relief during the antebellum era).

wasting, and destitution, by vexatious writs, and law suits, and imprisonments."[77] Without question, Smith recognized that bankruptcy relief could give him a fresh start by providing a break from his financial past.[78] To provide the reader with a better sense of how this federal form of relief provided debtors with a superior means by which to attain financial freedom, this Section turns to a brief discussion of the manner in which antebellum state law responded, if at all, to the problem of overindebtedness.

2. State Law Responses to Overindebtedness

As aptly stated by Peter Coleman, "[a]ny society that admits the concept of debt has to develop some means of dealing with those who default on their obligations."[79] During the nineteenth century, federal bankruptcy law existed only intermittently.[80] As a result, states played an especially prominent role in experimenting with various approaches to debt relief that responded to jurisdictionally specific issues affecting debtor-creditor relations.[81] In the South, those approaches included abolishing debtors' prison, requiring debtors to repay their debts through indentured servitude, temporary stay laws that halted judicial collection efforts by creditors, exemption laws that protected certain debtor property from being seized to satisfy judgment debts, and debt-forgiveness laws that relieved individuals from personal liability for their debts.[82]

Of these forms of relief, debt-forgiveness laws were the most robust in facilitating financial freedom insofar as they permitted debtors to walk away from their overindebtedness.[83] Problematically for Southern debtors, only four states in the region had such relief, and two of those states conditioned the relief on creditor consent.[84] Moreover, as we shall see, state debt-forgiveness laws provided incomplete relief to the extent that debtors owed interstate debts: the Constitution prohibited their discharge pursuant to state law.[85] Accordingly, legal responses to overindebtedness did not, as a general matter, readily facilitate financial freedom in

---

77. 4 JOSEPH F. SMITH, HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 595 (1908).

78. *See id.* at 594 (stating that, by seeking relief under the 1841 Act, "the individual was at liberty to start anew in the world, and was not subject to liquidate any claims which were held against him previous to his insolvency").

79. PETER J. COLEMAN, DEBTORS AND CREDITORS IN AMERICA: INSOLVENCY, IMPRISONMENT FOR DEBT, AND BANKRUPTCY, 1607–1900, at 3 (Beard Books 1999) (1974).

80. *See* Nash & Pardo, *supra* note 18, at 937.

81. *See* COLEMAN, *supra* note 79, at 31, 36.

82. *Id.* at 242–45.

83. I refer to state laws that provided for the discharge of debt as "debt-forgiveness laws," rather than bankruptcy laws or insolvency laws, to avoid the debate during this time period over whether bankruptcy and insolvency were substantively distinct concepts. *See* KENNETH N. KLEE & WHITMAN L. HOLT, BANKRUPTCY AND THE SUPREME COURT: 1801–2014, at 95 n.680, 127 n.926 (2015).

84. Pardo, *supra* note 14, at 835–36.

85. *See infra* notes 126–27 and accompanying text.

the South.[86] Having established this backdrop, this Section turns to a discussion of how Congress operationalized voluntary relief from debt under the 1841 Act.[87]

3. Voluntary Relief Under the 1841 Act

The 1841 Act represented a seminal moment in reorienting bankruptcy law as a mechanism for debtor relief,[88] shifting the focus away from its origins primarily as a creditor-collection device.[89] One of the primary indicia of this shift was the ability of debtors to seek bankruptcy relief voluntarily. Up until this point in time, debtors lacked such control.[90] Instead, they were subject to the will of their creditors, who would determine if and when bankruptcy proceedings should be instituted against the debtor.[91] But rather than limit relief to a narrow class of individuals,[92] Congress under the 1841 Act classified "[a]ll persons whatsoever, residing in any State, District or Territory of the United States, owing debts" as potentially eligible for relief.[93] Moreover, only a narrow class of individuals faced the threat of involuntary bankruptcy proceedings.[94] Accordingly, under the 1841 Act, the overwhelming majority of debtors could initiate on their own terms the process for obtaining forgiveness of debt with the hope of regaining their financial freedom.

Of course, the ability to seek bankruptcy relief did not necessarily ensure access to that relief. For example, just as the direct costs of filing for bankruptcy (i.e., court fees and attorneys' fees) have been a barrier to relief for present-day

---

86. The same can be said about the North. *See* COLEMAN, *supra* note 79, at 101–02, 154–58.

87. The discussion in *infra* Subsection I.B.3 is excerpted (with some revisions) from Pardo, *supra* note 13, at 1083–89.

88. *See* F. REGIS NOEL, A HISTORY OF THE BANKRUPTCY LAW 138 (1919) (noting that the 1841 Act "was substantially for the benefit of debtors").

89. PETER CHARLES HOFFER ET AL., THE FEDERAL COURTS: AN ESSENTIAL HISTORY 113 (2016) ("The [1841] Act 'shifted' the balance of power in court, through the mechanism of the voluntary confession of bankruptcy, from the creditor to the debtor, a shift that has characterized the federal law to this day.").

90. *See* NOEL, *supra* note 88, at 138 (noting that the 1841 Act "introduced the principle of voluntary bankruptcy into our legislation").

91. *See* Act of Apr. 4, 1800, ch. 19, §§ 1–2, 2 Stat. 19, 21–22 (repealed 1803).

92. The 1800 Act's involuntary bankruptcy scheme applied only to a "merchant, or other person residing within the United States, actually using the trade of merchandise, by buying and selling in gross, or by retail, or dealing in exchange, or as a banker, broker, factor, underwriter, or marine insurer" who committed one of the acts of bankruptcy enumerated in the statute. § 1, 2 Stat. at 20–21. *See generally Factor*, BLACK'S LAW DICTIONARY (11th ed. 2019) (providing various definitions for "factor," including "[a]n agent who is employed to sell property for the principal and who possesses or controls the property"). For a discussion of the role of factors in antebellum New Orleans, see RICHARD HOLCOMBE KILBOURNE, JR., LOUISIANA COMMERCIAL LAW: THE ANTEBELLUM PERIOD 108–20 (1980).

93. Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (repealed 1843).

94. § 1, 5 Stat. at 441–42 (providing for involuntary bankruptcy proceedings under a limited set of circumstances against merchants, retailers of merchandise, bankers, factors, brokers, underwriters, and marine insurers).

debtors,[95] so too did debtors under the 1841 Act confront such barriers.[96] Despite this qualification, the fact remains that the introduction of voluntary bankruptcy relief on such a wide scale constituted a radical departure from prior bankruptcy law, both within and outside of the United States.[97]

Procedurally, for debtors to access the bankruptcy forum, the 1841 Act required that they file a petition with the district court located in the federal judicial district where they resided or had their principal place of business at the time of filing the petition.[98] In the bankruptcy petition, debtors would request that the district court issue a decree declaring them to fall within the class of individuals eligible to pursue the relief available under the 1841 Act.[99]

A debtor's eligibility for a bankruptcy decree hinged on the satisfaction of certain conditions—specifically, (1) a declaration by the debtor asserting the debtor's inability "to meet [the debtor's] debts and engagements"[100] and (2) financial disclosures regarding the debtor's liabilities and assets.[101] The disclosure requirements served the purpose, among others, of providing the court and its officers adequate information to perform the marshalling and distribution functions entailed in allocating whatever the debtor had given up in exchange for bankruptcy relief.[102] Provided that the debtor complied with these conditions, the district court would declare the debtor to be a bankrupt,[103] thereby opening the gates to the bankruptcy forum and providing the bankrupt an opportunity to request a discharge of debts. In other words, the bankruptcy decree did not guarantee that the bankrupt would obtain a discharge.

---

95. *See* Rafael I. Pardo, *Taking Bankruptcy Rights Seriously*, 91 WASH. L. REV. 1115, 1123–24 (2016).

96. *See* BALLEISEN, *supra* note 27, at 138, 268 n.15.

97. *See, e.g.*, Clarke v. Rosenda, 5 Rob. 27, 31 (La. 1843) ("The principle of voluntary bankruptcy, as understood by us, and fixed by the act of Congress, is unknown in England to this day, the provision in a recent statute being widely different from that in our act of Congress. It was also unknown in the act of Congress of the 4th of April, 1800." (citation omitted)); Conrad v. Prieur, 5 Rob. 49, 52–53 (La. 1843) ("An essential difference is believed to exist between the bankrupt law of England and ours. There, it is exclusively a forced proceeding; the voluntary clause is unknown to it . . . ."); *cf.* Shelton v. Pease, 10 Mo. 473, 478 (1847) ("The Bankrupt law of 1841, is however, in many respects *sui generis* and materially unlike the British statutes or the act of 1800 . . . ."). By way of comparison, English bankruptcy law first allowed voluntary bankruptcy for merchants in 1844 and for nonmerchants in 1861. Charles Jordan Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 AM. BANKR. L.J. 325, 353–54 (1991).

98. § 7, 5 Stat. at 446.

99. *See* § 1, 5 Stat. at 441.

100. *Id.*

101. *Id.* These financial disclosures were to be "verified by oath" or alternatively "by solemn affirmation" if the debtor were "conscientiously scrupulous of taking an oath." *Id.*

102. *See, e.g.*, *In re* Plimpton, 19 F. Cas. 874, 874 (S.D.N.Y. 1842) (No. 11,227); *In re* Malcom, 16 F. Cas. 540, 540 (S.D.N.Y. 1842) (No. 8,986); *In re* Frisbee, 9 F. Cas. 959, 960 (S.D.N.Y. 1842) (No. 5,130).

103. *See, e.g.*, *Plimpton*, 19 F. Cas. at 874.

Upon obtaining a bankruptcy decree, the bankrupt could petition the district court for a discharge.[104] To qualify for a discharge, the bankrupt had to satisfy several conditions. First, the 1841 Act required the bankrupt to surrender all of the bankrupt's property existing as of the date of the bankruptcy decree, with the exception of a limited amount of property necessary for the support of the bankrupt (and, if applicable, the bankrupt's spouse and children).[105] Second, the bankrupt had to have complied with all orders issued by the court.[106] Finally, the bankrupt had to fall outside a particular class of individuals—specifically, one defined mostly by reference to a limited set of circumstances relating to a bankrupt's fraud or misconduct in connection with the bankruptcy case.[107] If the bankrupt satisfied these discharge-eligibility rules,[108] the Act required the court to grant the bankrupt a discharge certificate.[109]

---

104. § 4, 5 Stat. at 443.

105. *See* §§ 3–4, 5 Stat. at 442–43. This surrender of property constituted what the bankrupt had to relinquish in exchange for a discharge. *See infra* notes 115–17 and accompanying text.

106. *See* § 4, 5 Stat. at 443.

107. *See id.* at 443–44. To prevent abuse of the bankruptcy system by repeat filers, the 1841 Act also precluded a court from granting a discharge if the bankrupt had previously received a discharge in a prior case, unless the proceeds from the liquidation of the bankrupt's estate were sufficient to pay all creditors 75% of their claims. § 12, 5 Stat. at 447.

108. For a discussion of the modern-day distinction between "bankruptcy eligibility rules" and "discharge eligibility rules," see Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405, 415–17 (2005).

109. § 4, 5 Stat. at 443. Notably, the 1841 Act enabled creditors to block the court from granting the bankrupt a discharge if "a majority, in number and value, of the creditors who . . . ha[d] proved their debts" filed at the discharge hearing "their written dissent to the allowance of a discharge." *Id.* at 444. Upon invocation of this collective-dissent mechanism, the bankrupt could respond by demanding a jury trial in the district court. *Id.*; *see In re* Lothrop, 15 F. Cas. 921, 921 (D. Mass. 1842) (No. 8,518). In the event of an adverse finding by the district court jury, the bankrupt could appeal to the circuit court and elect to have the matter "heard and determined by said court summarily, or by a jury." § 4, 5 Stat. at 444; *see also Lothrop*, 15 F. Cas. at 921 (stating that, upon invocation of the collective-dissent mechanism, "the only mode of trying the issue between the bankrupt and the opposing creditors is by jury, . . . and then, in case of a refusal to grant a discharge, demand a trial by jury, or appeal to the circuit court"). The Act ultimately mandated that the bankrupt be granted a discharge if the debtor had "made a full disclosure and surrender of all his estate, as . . . required [by the Act], and ha[d] in all things conformed to the directions thereof." § 4, 5 Stat. at 444. Accordingly, by demonstrating the requisite conformity, a bankrupt could overcome creditors' collective objection to discharge.

In addition to the collective-dissent mechanism, creditors could object to the bankrupt's discharge on independent grounds, such as the bankrupt's failure to surrender all of the requisite property. *See, e.g.*, BANKR. D. MASS. R. XIII ("Whenever any creditors less than a majority in number and value, who have proved their debts, . . . shall appear at the hearing of the petition of the bankrupt for his discharge and a certificate thereof, and object thereto, they shall file their objections in writing; and the court will thereupon proceed to examine and decide upon the same . . . having regard to the nature of the objections and the proofs required in support thereof.") (repealed), *reprinted in* P.W. CHANDLER, THE BANKRUPT LAW OF THE UNITED STATES 47 (Boston, James H. Weeks 1842).

The most expansive form of discharge would have provided a bankrupt under the 1841 Act with a release from all prebankruptcy debts, notwithstanding the identity of the creditors or the circumstances under which the debts had been incurred. On the surface, this is what the 1841 Act's discharge provision purported to do—that is, to provide the bankrupt "a full discharge from all his debts, to be decreed and allowed by the court which has declared him a bankrupt, and a certificate thereof granted to him by such court accordingly."[110] The Supreme Court, however, interpreted the Act to except from discharge any debt resulting from defalcation by the debtor while acting as a public officer or in a fiduciary capacity.[111] Additionally, courts appear to have been split on the issue of whether a discharge under the Act applied to debts owed to government creditors.[112] Aside from these limited exceptions, a bankrupt's discharge under the 1841 Act encompassed all prebankruptcy debts, thus representing a very robust form of relief.

The discharge marked the beginning of the bankrupt's new financial life, unfettered by prebankruptcy debts. By cutting off a creditor's ability to recover such debts as a personal liability of the bankrupt,[113] the 1841 Act severely limited a creditor's postbankruptcy recourse to collect any unpaid, prebankruptcy amounts owed by the bankrupt.[114]

As stated before, in order to obtain a discharge, the bankrupt had to surrender all of the bankrupt's nonexempt property existing on the bankruptcy-decree date.[115] The 1841 Act provided that a bankrupt could keep "necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt," as designated by the assignee on the basis of "the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value . . . the sum of three hundred dollars."[116] Additionally, the bankrupt would be allowed to keep the "wearing apparel" belonging to the bankrupt and the bankrupt's spouse and children.[117] In summary, the bankrupt's exempt property would be limited to the bankrupt's necessary goods, not exceeding a value of $300 [$7,806] in the

---

110. § 4, 5 Stat. at 443.

111. *See* Pardo, *supra* note 13, at 1084 n.59.

112. *See id.* at 1087 n.78.

113. *See* § 4, 5 Stat. at 444 (providing that the "discharge and certificate . . . shall be and may be pleaded as a full and complete bar to all suits brought in any court of judicature whatever"). Because the bankruptcy discharge constituted an affirmative defense to a judicial collection effort by a creditor, *see, e.g.*, Fellows v. Hall, 8 F. Cas. 1132, 1133 (C.C.D. Mich. 1843) (No. 4,722), the possibility existed that the defense would be waived if not properly raised, *see, e.g.*, Bank of Mo. v. Franciscus, 15 Mo. 303, 308–09 (1851), thus negating the benefit of discharge with respect to that creditor.

114. Some possibilities for postbankruptcy collection on a discharged debt included informal voluntary payments by the former bankrupt to the creditor, or alternatively, a formal agreement (i.e., a contract) between the parties that the former bankrupt would repay the debt. *See* BALLEISEN, *supra* note 27, at 124–28; *see also, e.g.*, Bach v. Cohn, 3 La. Ann. 101, 102 (1848) (stating that "the effect of the [discharge] certificate [under the 1841 Act] may be avoided by a new contract, entered into *bonâ fide* by the bankrupt after his discharge").

115. *See supra* note 105 and accompanying text.

116. § 3, 5 Stat. at 443.

117. *Id.*

aggregate,[118] and the clothes belonging to the bankrupt and the bankrupt's spouse and children.

When considering the scope and price of discharge, one can conceive of the "net financial benefit" obtained by a bankrupt under the 1841 Act as the difference between (1) the total amount of discharged debt and (2) the sum of the bankrupt's direct costs of obtaining bankruptcy relief (e.g., court fees and attorneys' fees) and the value of the bankrupt's nonexempt assets.[119] Many cases under the Act were no-asset cases—that is, cases in which the bankrupt did not have any nonexempt assets for liquidation and distribution to creditors.[120] Accordingly, it must have seemed to many creditors that the typical bankrupt obtained forgiveness of debt without having to pay much of a price.[121]

C. The Significance of the 1841 Act to Free Blacks

To begin to understand the significance of the 1841 Act, especially as it relates to financial freedom suits by free people of color, we must draw the distinction between federal bankruptcy relief and state debt-forgiveness laws given the distinctively unique potential that the former had in setting debtors back on the path to financial freedom.[122] The need for this substantive distinction rests on how the Supreme Court had construed the federal bankruptcy power to limit the scope of debt relief that states could extend to their citizens.[123]

First and foremost, the Court had ruled in 1819 in *Sturges v. Crowninshield* that, in the absence of federal bankruptcy legislation, states could enact debt-relief laws provided that they did not run afoul of the Constitution's bar precluding states

---

118. Figures in 2018 U.S. dollars are provided in brackets throughout the Article, with amounts rounded to the nearest dollar if under $1 million and rounded to the nearest $100,000 if over $1 million. Nominal dollar amounts have been converted to 2018 dollars using the Consumer Price Index estimates compiled by the Federal Reserve Bank of Minneapolis. *Consumer Price Index, 1800–*, FED. RES. BANK MINNEAPOLIS, https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1800- (last visited Jan. 20, 2020).

119. *See* Michelle J. White, *Why It Pays to File for Bankruptcy: A Critical Look at the Incentives Under U.S. Personal Bankruptcy Law and a Proposal for Change*, 65 U. CHI. L. REV. 685, 700 (1998).

120. *See* Pardo, *supra* note 13, at 1118–19.

121. *See* BALLEISEN, *supra* note 27, at 119. In a no-asset case, the price for discharge would have been limited to the bankrupt's direct costs of obtaining bankruptcy relief. *See supra* text accompanying note 114. Balleisen notes that, depending on the federal judicial district, court fees under the 1841 Act could range from $15 to $50 for a simple case (i.e., one not raising litigable issues). *See* BALLEISEN, *supra* note 27, at 138; *see also, e.g.*, H.R. DOC. NO. 27-172, at 17–18 (1843) (setting forth a table of fees under the 1841 Act for a no-opposition bankruptcy case in the U.S. District Court for the Eastern District of Pennsylvania, administered in the city or county of Philadelphia, and listing a total amount of $30.45). Attorneys' fees for such a case would not likely have exceeded $25. *See* BALLEISEN, *supra* note 27, at 140.

122. The discussion that follows in *infra* notes 123–36 and accompanying text is excerpted from Pardo, *supra* note 14, at 809–10.

123. The U.S. Constitution grants Congress the power "[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8, cl. 4.

from impairing contractual obligations.[124] Such a law would impair a contractual obligation if the law purported to apply retroactively to obligations predating the law's enactment.[125] In 1827, the Court further ruled in *Ogden v. Saunders* that a state's power to enact laws discharging contractual debts did not extend to debts owed by its citizens to citizens from another state.[126] As such, state debt-forgiveness laws had limited temporal and territorial scope, providing debtors relief from intrastate, but not interstate, contractual debts that arose *after* the laws' enactment.[127] This was the doctrinal backdrop to the 1841 Act at the time it went into effect.[128]

Taking stock of this legal landscape is one of the keys to understanding the significance of the Act, which facially provided a bankrupt "a full discharge from *all his debts*."[129] In other words, through the federal bankruptcy power, Congress had accomplished what the states could not do on their own—that is, provide nearly complete financial relief through the discharge of intra- and interstate prebankruptcy debts.[130] Moreover, because the Constitution has never prohibited the *federal* government from impairing contractual obligations,[131] Congress fashioned relief that temporally applied to all prebankruptcy debts, even those that had arisen *prior to* the 1841 Act's passage.[132] At the time of enactment, of the 13 Southern states that permitted slavery,[133] only 4 of them had some form of debt-forgiveness laws providing for the discharge of debt,[134] constitutionally limited, of course, to

---

124. *See* Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 208 (1819). Article I, section 10 of the Constitution provides, in relevant part, that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. CONST. art. I, § 10, cl. 1.

125. The Court provided this interpretation of its *Sturges* holding eight years later in *Ogden v. Saunders*. *See* Ogden v. Saunders, 25 U.S. (12 Wheat.) 213, 273 (1827) (Johnson, J.); *see also* Boyle v. Zacharie, 31 U.S. (6 Pet.) 348, 348 (1832) ("Whatever principles are established in that opinion [i.e., Justice Johnson's opinion in *Ogden v. Sanders*], are to be considered . . . the settled law of the court."). Accordingly, pursuant to the *Sturges* holding, state debt-relief laws could only apply prospectively—that is, to contractual obligations postdating the passage of such laws. *See Ogden*, 25 U.S. (12 Wheat.) at 284–85 (Johnson, J.).

126. *See Ogden*, 25 U.S. (12 Wheat.) at 271–72 (Johnson, J.).

127. *See* Brown v. Smart, 145 U.S. 454, 457 (1892) (citing *Sturges* and *Ogden*).

128. Justice Story confirmed as much in one of his rulings as a circuit justice in 1842. *See* Springer v. Foster, 22 F. Cas. 1008, 1009 (Story, Circuit Justice, C.C.D. Mass. 1842) (No. 13,266). The 1841 Act took effect on February 1, 1842. Act of Aug. 19, 1841, ch. 9, § 17, 5 Stat. 440, 449.

129. § 4, 5 Stat. at 443 (emphasis added).

130. *Cf. Ogden*, 25 U.S. (12 Wheat.) at 274 ("Without that provision [i.e., the Constitution's bankruptcy clause], no power would have existed that could extend a discharge beyond the limits of the State in which it was given, but with that provision it might be made co-extensive with the United States."). I say "nearly complete relief" because, in a couple of limited circumstances, courts interpreted the 1841 Act to except certain debts from discharge. *See supra* notes 110–12 and accompanying text.

131. *See* U.S. CONST. art. I, § 9.

132. *See* Pardo, *supra* note 13, at 1087–88.

133. *See* discussion *infra* note 195.

134. *See* Pardo, *supra* note 14, at 836.

intrastate debts.[135] The other nine Southern states had no such relief.[136] Accordingly, through its bankruptcy legislation, the federal government offered a significant economic benefit to Southern debtors, including those who resided in states with debt-forgiveness laws.

This Article now turns to an exploration of how this robust form of relief had particular salience for free people of color in their claims to citizenship through financial freedom. Financial freedom suits by free people of color signified a form of legal relief that subverted antebellum society's racial hierarchy. Although undoubtedly true that "institutional racism, buttressed by proscriptive legislation, severely limited the potential development of any enterprise undertaken by free blacks,"[137] free black debtors could simultaneously look to the 1841 Act (at least during the time that it was in effect) for relief from the financial risks that had materialized in their entrepreneurial pursuits—pursuits that were quite vital to their citizenship claims.[138] The Act's race-neutral language, which provided that "[a]ll persons whatsoever, residing in any State . . . of the United States, owing debts" could commence a financial freedom suit,[139] meant that free people of color could access the federal bankruptcy forum. The importance of this system feature alone cannot be overstated.

At the time of the 1841 Act, some Southern states had race-based legislation that impeded free black debtors from regaining financial freedom that had been extinguished by overindebtedness.[140] For example, Delaware subjected

---

135. *See, e.g.*, Cook v. Moffat, 46 U.S. (5 How.) 295, 307–09 (1847) (holding that Maryland's debt-forgiveness law could not operate to discharge a debt owed under a contract made in New York between a Maryland citizen and a New York citizen); Larrabee v. Talbott, 5 Gill 426, 437 (Md. 1847) (same), *overruled in part by* Pinckney v. Lanahan, 62 Md. 447 (1884).

136. *See* Pardo, *supra* note 14, at 835.

137. Walker, *supra* note 23, at 344.

138. *Cf. id.* at 370 ("Antebellum free blacks viewed business activities not only as a means of escape from the degrading poverty of their lives, but as a basis for improving the socioeconomic status of the race as well.").

139. Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (repealed 1843).

140. Such legislation also existed at the municipal level. *See, e.g.*, Savannah, Ga., An Ordinance, to Amend and Consolidate Various Ordinances of the City of Savannah, for Raising a Fund for the Support of a Watch in the City of Savannah, and to Prescribe the Mode of Assessing and Collecting Taxes in the City of Savannah, and for Other Purposes Connected Therewith § 5 (Aug. 27, 1839) (providing that all free blacks who relocated from elsewhere in the state to reside in Savannah had to pay a $100 tax within thirty days of arrival and that failing to pay the tax when due would result in imprisonment until the debt was paid or the debtor was "discharged by order of Council, or due course of Law"), *reprinted in* A DIGEST OF ALL THE ORDINANCES OF THE CITY OF SAVANNAH 421 (Savannah, Purse's Print 1854), *and invalidated in part by* Cooper v. City of Savannah, 4 Ga. 68, 74 (1848) ("[T]hat portion of the ordinance which declares the petitioners shall be imprisoned for the non-payment of the one hundred dollars tax imposed, is repugnant to the laws of the State and void.").

Additionally, some Southern legislation sought to inhibit free people of color from attaining financial freedom in the first instance by limiting the economic opportunities that they could pursue. *See, e.g.*, H.E. STERKX, THE FREE NEGRO IN ANTE-BELLUM LOUISIANA 162, 201 (1972); WALKER, *supra* note 30, at 122; WELCH, *supra* note 10, at 18; Sumler-Edmond, *supra* note 19, at 138–39.

only free black male debtors to imprisonment for debt and further required them, but no other defaulting debtors, to pay off their debts through indentured servitude.[141] In North Carolina, while the legislature initially granted in 1839 all debtors the right to seek discharge from imprisonment for failure to pay the fines and costs of prosecution associated with conviction for any crime or misdemeanor,[142] the legislature eliminated the ability of free people of color to access that relief in 1841.[143] Thus, the 1841 Act, working in tandem with the preemptive effect of the Constitution's Supremacy Clause,[144] gave free black debtors in jurisdictions such as Delaware and North Carolina the power to assert claims to financial freedom in direct contravention of state laws that sought to keep them financially subordinated.[145]

Even in states with race-neutral debt-relief laws, free black debtors stood poised to make greater gains toward financial freedom under the 1841 Act. Recall that the most robust form of state debt-relief laws were those that discharged debts and that only 4 of the 13 Southern states had such laws in effect at the time of the Act.[146] Further recall that two of those four states predicated debt forgiveness on creditor consent,[147] with Louisiana requiring approval by "a majority of the [debtor's] creditors in number, and who are also creditors for more than the half of the whole sum due"[148] and South Carolina requiring consent by all of the debtor's creditors.[149] When seeking relief in those jurisdictions, it seems reasonable to conclude that free black debtors inevitably would have owed money to white

---

141. *See* COLEMAN, *supra* note 79, at 210.

142. Act of Jan. 8, 1839, ch. 23, 1838–1839 N.C. Sess. Laws 32.

143. Act of Jan. 11, 1841, ch. 29, 1840–1841 N.C. Sess. Laws 61.

144. *See* U.S. CONST. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."); *cf. Ex parte* Eames, 8 F. Cas. 236, 237 (Story, Circuit Justice, C.C.D. Mass. 1842) (No. 4,237) ("But all the court were agreed, that when congress did pass a bankrupt act, it was supreme, and that the state laws must yield to it, and could no longer operate upon persons or cases within the purview of such act. The enactment of such an act suspended the state laws on the same subject, and created a disability in the state to exercise powers of the like nature."); *Ex parte* Ziegenfuss, 24 N.C. (2 Ired.) 463, 465 (1842) ("It is also conceded by me, that the Bankrupt act, passed by Congress, under an express provision of the Constitution of the United States, must necessarily supersede any State law with which it comes in conflict.").

145. It should be noted that courts disagreed whether the 1841 Act excepted from discharge debts owed to the government. *See* Pardo, *supra* note 13, at 1087 & n.78. Accordingly, the position taken by courts in North Carolina on this issue would have determined whether the Act afforded the state's free blacks the means to seek release from imprisonment for failure to pay the fines and costs of prosecution associated with conviction for any crime or misdemeanor. *See supra* text accompanying note 143. For further discussion of 1841 Act cases commenced by free blacks in North Carolina, see *infra* Appendix B.

146. *See supra* notes 82–84 and accompanying text.

147. *See supra* note 84 and accompanying text.

148. LA. CIV. CODE art. 2173 (1825) (amended 1870 and repealed 1978).

149. COLEMAN, *supra* note 79, at 184.

creditors.[150] Furthermore, it does not take much imagination to realize that, in a society characterized by widespread and deeply embedded racism, such attitudes would have led some white creditors to withhold their consent to relief, thereby blocking access to financial freedom by free people of color.[151] Importantly, under the 1841 Act, all bankrupts, including those who were free blacks, could overcome the obstacle of withheld creditor consent.[152] Accordingly, federal bankruptcy relief gave free people of color the power to circumvent the racial animus that could otherwise preclude them from obtaining financial freedom under state law.

Finally, the 1841 Act gave free people of color the power to "push aside race-based restrictions on their courthouse capacities."[153] All slave states, with the exception of Louisiana, generally prohibited free blacks from testifying against

---

150. *See* JONES, *supra* note 11, at 110–11 ("In a cross-racial economy some creditors were bound to be white men and women."); *cf.* WALKER, *supra* note 30, at xxv ("[I]n antebellum America, the most successful black businesspeople were those who established enterprises that paralleled mainstream American businesses. The consumer base of these black entrepreneurs was generally white.").

By way of example, the original schedule of debts that Jacob Zebriskie, a free African American, filed in his Eastern District bankruptcy case highly suggests that most of his creditors were white. Of the 21 scheduled creditors, Zebriskie identified 2 of them as free men of color, "Wm Zebriskie f.m.c." and "Mr. Barron f.m.c." Schedule A. of Debts Due by Jacob Zebriskie, *In re* Zebriskie, No. 417 (E.D. La. Oct. 7, 1842) [hereinafter Zebriskie Debt Schedule]. Zebriskie did not include racial classifications for any of the other creditors who were individuals, *see id.*, thus suggesting that they were white. In further support of this inference, he amended his original debt schedule from which he had erroneously omitted three debts, one owed to a husband and wife, and the other two owed solely to the husband. *See* Supplemental Petition of Bankrupt, *In re* Zebriskie, No. 417 (E.D. La. Dec. 9, 1842). Zebriskie identified these creditors as "David Drake & Wife f.p.c.," *id.*, once again demonstrating his inclination to include racial designations for his black creditors.

Among Zebriskie's originally scheduled creditors, one of them almost surely was white: an attorney, "A. McCarty Esq." from New Orleans, who was owed thirty dollars. Zebriskie Debt Schedule, *supra*; *see also* NEW ORLEANS DIRECTORY FOR 1842, at 273 (New Orleans, Pitts & Clarke 1842) (providing listing for "McCarty Alfred, attorney at law, Front Levee b. Delord st. and S. market"). Odds are that there were no black lawyers in antebellum New Orleans. *See* Paul Finkelman, *Not Only the Judges' Robes Were Black: African-American Lawyers As Social Engineers*, 47 STAN. L. REV. 161, 172–73, 173 n.84 (1994) (reviewing J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944 (1993)); Welch, *supra* note 12, at 100; *cf.* Robert C. Reinders, *The Free Negro in the New Orleans Economy, 1850–1860*, 6 LA. HIST. 273, 277–78 (1965) (stating that there were "only a handful" of black professionals in antebellum New Orleans and making no mention of free black lawyers). We can therefore be fairly confident that McCarty was white.

151. *Cf., e.g.*, SCOTT P. MARLER, THE MERCHANTS' CAPITAL: NEW ORLEANS AND THE POLITICAL ECONOMY OF THE NINETEENTH-CENTURY SOUTH 62 (2013) ("[R]acism probably caused . . . Creole entrepreneurs in New Orleans to be resented all the more when they acted as landlords for white businessmen."); WALKER, *supra* note 30, at 122 ("Whites used both legal and extralegal means to prevent blacks from participating in businesses as well as to drive successful free blacks out of business.").

152. *See* discussion *supra* note 109.

153. JONES, *supra* note 11, at 118.

whites.[154] And yet, as Jones has noted in her analysis of free people of color who sought relief during the 1850s under Maryland's debt-forgiveness law, "every black insolvency petition that listed a white creditor was an instance in which black men gave testimony against the interests of white men."[155] Analogously, the 1841 Act required debtors seeking relief to file under oath a schedule of liabilities with their bankruptcy petitions.[156] By virtue of the expanded scope of federal bankruptcy relief, however, such schedules could have included interstate creditors, unlike petitions for relief under state debt-forgiveness laws.[157] This demonstrates one of the ways in which "[b]ankruptcy law . . . is the oldest, most enduring, and most far-reaching form of procedural aggregation in use in the United States."[158] Thus, relative to state debt-forgiveness laws, the 1841 Act exponentially facilitated financial freedom claims by free people of color against whites, and in the process heightened the subversion of racial hierarchies,[159] especially considering that 12 of the 13 slave states did not allow free blacks to testify against whites and that 9 of the 13 slave states did not have debt-forgiveness laws.[160]

When we think about free people of color during the antebellum period making claims to citizenship through financial freedom, the 1841 Act represented an ideal vehicle for doing so. This Article now turns to its case study on the topic, which focuses on free blacks who sought federal bankruptcy relief in the Eastern District of Louisiana.

II. A PRELIMINARY INVESTIGATION INTO FINANCIAL FREEDOM SUITS

This Article now marshals evidence that provides a glimpse into financial freedom suits by free men of color under the 1841 Act. My aim here is to leave the

---

154. *See* S. REP. NO. 38-25, at 2–6 (1864). For further discussion of the right of free people of color in antebellum Louisiana to testify in court, see STERKX, *supra* note 140, at 173–77.

155. JONES, *supra* note 11, at 114.

156. Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (requiring a debtor or joint debtors to file a "petition, setting forth to the best of his knowledge and belief, a list of his or their creditors, their respective places of residence, and the amount due to each, . . . verified by oath, or, if conscientiously scrupulous of taking an oath, by solemn affirmation") (repealed 1843). For cases commenced today under the Bankruptcy Code, "[s]tatements in bankruptcy schedules are executed under penalty of perjury and when offered against a debtor are eligible for treatment as judicial admissions." *In re* Bohrer, 266 B.R. 200, 201 (Bankr. N.D. Cal. 2001); *accord, e.g.*, *In re* Henderson, 560 B.R. 365, 371 (Bankr. D.N.M. 2016); *In re* 1701 Commerce, LLC, 511 B.R. 812, 829 (Bankr. N.D. Tex. 2014).

157. *See supra* notes 126–27, 133–35 and accompanying text.

158. Troy A. McKenzie, *Bankruptcy and the Future of Aggregate Litigation: The Past As Prologue?*, 90 WASH. U. L. REV. 839, 842 (2013).

159. *Cf.* JONES, *supra* note 11, at 109 ("Insolvency petitions [under Maryland law] . . . were tools with which African Americans could bring formal grievances against whites to the courthouse. They testified against white parties, even though state law prohibited it."); *id.* at 111 ("Many black petitioners who came before the commission [under Maryland's debt-forgiveness law] pushed the limits of generally held proscriptions on their legal capacity, giving testimony against the interests of white creditors . . . .").

160. *See supra* notes 133–36, 154 and accompanying text.

reader with a firm sense of the manner in which such individuals, by exercising their statutory right to federal bankruptcy relief, made claims to citizenship and in the process upended prevailing racial hierarchies. The remainder of this Part proceeds as follows. Section II.A discusses my case study to explore financial freedom suits. Section II.B sets forth the study's preliminary findings, providing a quantitative assessment of the scope of economic liberation sought by the six free men of color whose 1841 Act cases are analyzed. Section II.C evaluates the postbankruptcy ability of these men to reintegrate into their commercial communities.

A. Case Study Design

This Article's case study takes place in the Eastern District of Louisiana (the "Eastern District"), which was home to New Orleans at the time of the 1841 Act.[161] Constituting the historical inquiry in this way raises two questions. First, why limit the study to a single district? Second, if a single-district study makes sense, why should that district be the Eastern District? Each of these questions will be answered in turn.

A key principle—namely, that "the specifics of region, political economy, and jurisdiction [are] critical to how law [is] constructed at the intersection of formal edicts and lived experience"[162]—motivates the decision to focus on a particular district. We might expect differences across federal judicial districts to have substantively affected how institutions and individuals interacted with the 1841 Act. That expectation mandates a gradual approach in moving away from theorization and abstraction: select a specific jurisdiction and unearth the dynamics of its financial freedom suits. Upon adopting this approach, one must decide where to start.

In addition to legal history, this study entails business history. As such, principles for structuring the latter form of inquiry can help guide selection of a jurisdiction. Caitlin Rosenthal observes that "[b]uisness histories rarely seek out the typical; more often, they describe the businesses that were the biggest and the most profitable."[163] With these principles in mind, we can look at the backdrop to financial freedom suits under the 1841 Act to set the criteria for an ideal judicial district—that is, a district where debt reached dizzying heights and led to spectacular financial failures by both white and free black entrepreneurs in a commercial landscape prominently featuring the domestic slave trade.

As the nation's economy became increasingly commercial during the first half of the nineteenth century, with much of that entrepreneurial activity financed

---

161. *See* Act of Mar. 3, 1823, ch. 44, 3 Stat. 774 (current version at 28 U.S.C. § 98 (2018)). Congress consolidated the Eastern and Western Districts of Louisiana into the District of Louisiana in 1845, *see* Act of Feb. 13, 1845, ch. 5, 5 Stat. 722 (current version at 28 U.S.C. § 98), well after the 1841 Act's repeal in 1843, *see* Act of Mar. 3, 1843, ch. 82, 5 Stat. 614.

162. JONES, *supra* note 11, at 12.

163. CAITLIN ROSENTHAL, ACCOUNTING FOR SLAVERY: MASTERS AND MANAGEMENT 8 (2018). But this does not mean that bigger is always better in the study of business history. *See* PHILIP SCRANTON & PATRICK FRIDENSON, REIMAGINING BUSINESS HISTORY 81 (2013) (arguing that the study of microbusinesses "could enlarge and enrich business history").

by credit, business failure inevitably occurred and especially so during times of economic crises, such as the Panic of 1837 and its aftermath.[164] In a district where entrepreneurship reigned supreme, including among free people of color, there is a stronger likelihood of uncovering financial freedom suits by victims of the nation's economic growing pains.[165] Moreover, in a district where slavery's capitalism was especially pronounced, financial freedom suits would amplify the contestation of racial hierarchy.[166] The Crescent City stands out as the place in antebellum America where these criteria coalesced to the greatest extent, thereby making the Eastern District an optimal location for this study.

At the time of the 1841 Act, as antebellum America's third-largest city and largest slave market,[167] New Orleans "was the only true metropolis in the slave South . . . [and] the chief citadel of southern merchant capitalism."[168] The city's money market—one of the nation's largest, if not the largest—was critical to the national economy.[169] Furthermore, among all of the South's major cities, New Orleans had the largest population of free people of color,[170] a total of 19,226,[171] followed by Baltimore with 17,967,[172] and then, trailing a distant third, Washington,

---

164. *See* Pardo, *supra* note 14, at 791–92.

165. *Cf.* ELIZABETH LEE THOMPSON, THE RECONSTRUCTION OF SOUTHERN DEBTORS: BANKRUPTCY AFTER THE CIVIL WAR 106 (2004) ("Various factors contributed to these groups' [i.e., white women and African Americans] general absences from bankruptcy dockets [under the Bankruptcy Act of 1867]. Foremost was the fact that the individuals who owned property and dealt in the commercial arena—and, in turn, became financially distressed and needed the Bankruptcy Act—were predominantly white men."); WALKER, *supra* note 30, at xxii ("From the colonial era, when free blacks first developed businesses, to the late twentieth century, limited access to credit has been a major factor in the difficulties of blacks in expanding and succeeding in their business ventures."); David A. Skeel, Jr., *Racial Dimensions of Credit and Bankruptcy*, 61 WASH. & LEE L. REV. 1695, 1701 (2004) ("Individuals and businesses that do not have access to credit do not file for bankruptcy. . . . The fact that credit is a prerequisite to bankruptcy and that blacks had significantly constrained access to credit may partly explain why we do not find active practice of bankruptcy by black lawyers in the mid-twentieth century.").

166. *Cf.* RASHAUNA JOHNSON, SLAVERY'S METROPOLIS: UNFREE LABOR IN NEW ORLEANS DURING THE AGE OF REVOLUTION 16–17 (2016) ("Rather than considering free blacks, people of so-called mixed race, or interracial sex as evidence of comparatively lenient race regime, this book instead examines the contingent lived experiences of racism across all levels of a complicated society. Historian Doris Garraway makes this point about colonial Saint-Domingue, where one of the most brutal slave systems in the Americas gave rise to a politically active, economically independent, and largely mixed-race free black class. . . . This insight is also instructive for New Orleans, where the early nineteenth-century slaves and free blacks both contended with the hardening lines of white supremacy.").

167. *See* Pardo, *supra* note 13, at 1106.

168. *See* MARLER, *supra* note 151, at 16.

169. *See* KILBOURNE, JR., *supra* note 92, at 121; *cf.* SCHERMERHORN, *supra* note 59, at 120 ("By 1840 Louisiana had more bank money and credit than any other state in the Union.").

170. MARLER, *supra* note 151, at 22–23; RICHARD C. WADE, SLAVERY IN THE CITIES: THE SOUTH 1820–1860 app. at 325–27 (1964).

171. WADE, *supra* note 170, app. at 326.

172. *Id.* app. at 325.

D.C., with 4,808.[173] Importantly, during the first half of the nineteenth century, entrepreneurship by free blacks was much more robust in the Lower South than in the Upper South,[174] with New Orleans serving as the fulcrum of that business activity.[175] Credit-funded entrepreneurial activity in the Crescent City yielded frequent and dramatic incidents of financial failure that affected all segments of the business sector, including free black enterprises,[176] thereby setting the stage for distressed entrepreneurs to seek legal relief, including under the 1841 Act. For these reasons, the Eastern District is an ideal location for providing a supercharged account of how free blacks contested antebellum racial hierarchies by pursuing their financial freedom.[177]

For this Article, I analyze six 1841 Act cases filed by individuals whom I have identified, pursuant to the methods described in Appendix A, as having been free men of color: [178] (1) Pierre Casanave,[179] (2) Louis Ferrand fils,[180] (3) Antoine

---

173. *Id.* app. at 327.

174. *See* Loren Schweninger, *Black-Owned Businesses in the South, 1790–1880*, 63 BUS. HIST. REV. 22, 37–38, 46–47 (1989).

175. *See, e.g.*, STERKX, *supra* note 140, at 237; Robert C. Reinders, *The Free Negro in the New Orleans Economy, 1850–1860*, 6 LA. HIST. 273, 281 (1965); Loren Schweninger, *Antebellum Free Persons of Color in Postbellum Louisiana*, 30 LA. HIST. 345, 347–51 (1989); Walker, *supra* note 23, at 354, 362.

176. *See* ASLAKSON, *supra* note 9, at 140.

177. *Cf. id.* at 2 ("[I]n the process of negotiating a legal system that supported and legitimized racially based slavery, free people of African descent in New Orleans, through their participation in the courts, caused the legal reshuffling of racial categories."); JONES, *supra* note 11, at 12 ("Baltimore may vie with Philadelphia and New Orleans for supremacy when it comes to studying free people of color. But for a study of race and citizenship, no city better lends itself to understanding this fraught intersection."); Walker, *supra* note 23, at 375 ("In antebellum America, black business participation required an entrepreneurial expertise and motivation far beyond those which distinguished the business success of their white counterparts. . . . [B]lack entrepreneurs would have to show a higher than usual level of ingenuity and subtle aggressiveness in the development of their enterprises, as they contended not only with the same economic forces as white entrepreneurs, but also with societal and institutional racism and slavery.").

178. At least ten women filed 1841 Act cases in the Eastern District. *See* Pardo, *supra* note 13, at 1114 nn.243–44. But the methodology used to identify free blacks in the Eastern District who sought bankruptcy relief under the 1841 Act, *see* discussion *infra* Appendix A, only revealed free black men. Furthermore, in looking at some of Eastern District women's case files in connection with prior research, *see, e.g.*, Pardo, *supra* note 13, at 1116–17 (discussing the Eastern District case of Widow Benjamin Bossie), none of the documents in those case files indicates that the women were black.

179. Casanave's last name appears in various primary and secondary sources with the alternate spelling of "Cazenave." *See, e.g.*, sources cited *infra* notes 182, 296. Because his bankruptcy petition spells his last name as "Casanave," and because he signed that petition as "Casanave," Petition of Pierre Casanave f.m.c. to Be Declared Bankrupt, *In re* Casanave, No. 696 (E.D. La. Feb. 6, 1843) [hereinafter Casanave Bankruptcy Petition], I have generally adopted the spelling "Casanave" throughout the Article to avoid confusion. I only use the alternate spelling when referring to a court document whose official title features that spelling or when directly quoting a source that uses that spelling.

180. On the meaning of the word "fils" when appended to a surname, see MATTHEW CASEY, EMPIRE'S GUEST WORKERS: HAITIAN MIGRANTS IN CUBA DURING THE AGE OF US

Jonau, (4) Drury L. Mitchell, (5) Chazal Thomas, and (6) Jacob Zebriskie.[181] Each of these men resided in New Orleans, with the exception of Mitchell, who resided in West Feliciana Parish.[182] It should be noted that their cases represent *less than one percent* of all of the 1841 Act cases filed in the Eastern District.[183] Given the identification methods used,[184] these six men very likely do not constitute all of the free men of color from the Eastern District who sought relief under the Act. Yet even with a more robust identification method, it seems unlikely that the percentage of the district's cases involving free blacks would have approached the percentage of free black adults among the district's total population of free adults,[185] which was approximately 16%.[186]

OCCUPATION 95 (2017) (describing "the French *fils*, meaning 'son of' or 'junior' when appended at the end of an individual's name").

181. Zebriskie's last name appears in various primary sources with alternate spellings. *See, e.g.*, sources cited *infra* notes 228, 365. Because his bankruptcy petition spells his last name as "Zebriskie," and because he signed that petition as "Zebriskie," Petition of Jacob Zebriskie f.m.c. to Be Declared Bankrupt, *In re* Zebriskie, No. 417 (E.D. La. Oct. 7, 1842), I have generally adopted the spelling "Zebriskie" throughout the Article to avoid confusion. I only use the alternate spelling when referring to a court document whose official title features that spelling or when directly quoting a source that uses that spelling.

182. *See, e.g.*, Petition of Pierre Cazenave f.c.m., a Bankrupt, for a Discharge at 1, *In re* Casanave, No. 696 (E.D. La. Mar. 10, 1843) [hereinafter Casanave Discharge Petition] ("Respectfully represent[s] Pierre Cazenave f.c.m. of New Orleans . . . that . . . he has been duly declared a Bankrupt . . . ."); Petition of Chazal Thomas to Be Declared Bankrupt at 1, *In re* Thomas, No. 718 (E.D. La. Feb. 11, 1843) [hereinafter Thomas Bankruptcy Petition] ("Respectfully represent [sic] Chazal Thomas a free man of colour residing in the City of New Orleans . . . that he is owing debts in his private right and capacity . . . ."); Petition of D.L. Mitchell, Bankrupt, for a Discharge at 1, *In re* Mitchell, No. 404 (E.D. La. Dec. 20, 1842) [hereinafter Mitchell Discharge Petition] ("Respectfully represents Drury L. Mitchell of . . . the Parish of West Feliciana . . . that . . . he was duly declared a Bankrupt . . . .").

183. There were 763 cases filed under the 1841 Act in the Eastern District. *See infra* notes 327–37 and accompanying text.

184. *See infra* notes 347–68 and accompanying text.

185. The 1841 Act did not establish age criteria as an eligibility rule for seeking relief under the Act, *see* Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (repealed 1843), meaning that children could pursue such relief, *see In re* Book, 3 F. Cas. 867, 868 (C.C.D. Ohio 1843) (No. 1,637). Nonetheless, it seems reasonable to conclude that adults would have overwhelmingly constituted the segment of the population to have filed for bankruptcy relief, hence the focus on the adult population. In using the term "adult," I refer to any individual who was ten years or older. For a discussion regarding the need to define "adult" in this manner and the drawback to this approach, see Pardo, *supra* note 13, at 1109–10.

186. According to the 1840 U.S. census, the Eastern District consisted of 15,187 free adults of color among a total population of 95,167 free adults. *See* DEP'T OF STATE, COMPENDIUM OF THE ENUMERATION OF THE INHABITANTS AND STATISTICS OF THE UNITED STATES 60–61 (Washington, D.C., Thomas Allen 1841). When focusing instead on all free individuals, regardless of age, the Eastern District consisted of 22,197 free people of color among a total population of 134,374 free individuals. *See id.* It should be kept in mind that census returns from the nineteenth century very likely *underreport* the number of free people of color. *See* Reinders, *supra* note 175, at 273.

The potential underrepresentation of free people of color in the Eastern District's 1841 Act cases starkly contrasts with historian David Silkenat's observation

In selecting the six Eastern District cases to paint an initial portrait of free men of color who sought relief under the 1841 Act, I do not claim that the portrait is representative of all free men of color who commenced such cases in the Eastern District, let alone in other federal judicial districts. To be sure, differences existed between the Eastern District and other districts during this time period. I mention some of these differences to demonstrate the ways in which the Eastern District experience may have been unique from that in other districts.

To start, the workforce consisting of free people of color may have been more highly skilled in New Orleans than in other cities throughout the nation, including in the South,[187] thus giving rise to a "distinct free [black] business class"[188] and "provid[ing] the basis for expanded business opportunities for free people of color in the New Orleans urban economy."[189] Perhaps as a result of these expanded opportunities, the Crescent City's free blacks had a higher tendency than their counterparts in other cities to invest in real estate.[190] Relatedly, free blacks in Louisiana had a higher tendency than their other Southern counterparts to own enslaved individuals,[191] which Louisiana law classified as real property.[192] Not surprisingly, then, during the antebellum period, free people of color in Louisiana constituted "the most prosperous group of African descent in the United States, controlling substantially more property than free [people of color] in any other

---

regarding the overrepresentation of free people of color in 1841 Act cases filed in North Carolina—an observation that this Article critically examines. *See infra* Appendix B.

187. *See* Reinders, *supra* note 175, at 274–75, 275 n.7; *cf.* JONES, *supra* note 11, at 114 ("The profiles of black debtors [in antebellum Baltimore] reflect the overall economic standing of the city's African American community. They were poorer and more likely to work at the bottom of the labor market.").

188. Schweninger, *supra* note 174, at 37; *see also id.* at 40–41 ("Even in New Orleans, despite increased harassment and the emigration of some free black businessmen to islands in the Caribbean, large-scale free black business activity continued during the late antebellum era.").

189. Walker, *supra* note 23, at 362.

190. *See* WALKER, *supra* note 30, at 97; Reinders, *supra* note 175, at 280–81. *Compare* MARLER, *supra* note 151, at 62 ("[F]ree blacks in antebellum New Orleans . . . accumulated large urban real estate portfolios as a lucrative sideline to other trades. Free people of color probably found such investments appealing not only because of their steadily rising values, but also because they offered opportunities for wealth enhancement that circumvented the racial ceilings inhibiting their ability to operate and advance in the city's exclusivist mercantile social circles."), *with* Sumler-Edmond, *supra* note 19, at 137 ("One of the most egregious pieces of the 1818 antiblack legislation was Section VIII of the Georgia Code of Laws, which prohibited blacks from purchasing real estate or slaves. . . . The following year, likely realizing that they had overreached, lawmakers amended the statute by repealing the prohibition against the purchase of land in most of the state. But it remained in force in Savannah, Augusta, and Darien . . . .").

191. *See* ASLAKSON, *supra* note 9, at 36; Schweninger, *supra* note 175, at 348; Schweninger, *supra* note 174, at 32; *cf.* Sumler-Edmond, *supra* note 19, at 138 ("Would-be free black slaveholders [in Savannah] . . . found it difficult to purchase enslaved property after the 1818 law [prohibiting such purchases by free blacks] went into effect. Free blacks had to identify white slave traders willing to violate the law and accept their business, but most white Georgians thought that only whites should be slaveholders. As a result, the number of black slaveholders in Savannah decreased nearly every decade between 1810 and 1860.").

192. *See* Pardo, *supra* note 13, at 1108 n.212.

state."[193] Finally, and perhaps most importantly, Louisiana's "unusual customs with regard to free people of color contrasted sharply with the proscriptive laws, mores, and institutions confronting blacks in other regions of the South."[194]

The Eastern District of Louisiana was also statistically significantly different than the group of 22 federal judicial districts located in slave states and the District of Columbia.[195] Here, four examples will suffice: (1) the ratio of the district's population of free people of color to the district's total population; (2) the ratio of the district's population of free people of color to the district's white population; (3) the ratio of the district's population of free people of color to the district's population of enslaved individuals; and (4) the ratio of filed bankruptcy cases to the district's population of free adults.

In considering these ratios, all of which have been rounded to the nearest thousandth, let us begin by focusing on the absolute numbers for various populations within the Eastern District. These figures, which the federal government reported in

193. Schweninger, *supra* note 175, at 350; *see also id.* at 359–60 ("On the eve of the [Civil War], Louisiana's free Creoles of color were the richest group of blacks in the country. They had risen to an economic level equal to that of the average white American.").

194. *Id.* at 347; *see also, e.g.*, ASLAKSON, *supra* note 9, at 183 ("Free people of color enjoyed more privileges and rights in Louisiana than anywhere else in the antebellum South . . . based, in large part, on the perception that free blacks were racially distinct from enslaved blacks."); STERKX, *supra* note 140, at 170–71 ("There were certain rights guaranteed to all citizens of Louisiana. By availing themselves of these rights free persons of color . . . could secure considerable protection under the law. . . . Free [people of color] of Louisiana, then, can be considered as possessing the status of quasi-citizenship and as such enjoyed a better legal position than any of their counterparts in other states of the South."); *cf.* Kathryn Olivarius, *Immunity, Capital, and Power in Antebellum New Orleans*, 124 AM. HIST. REV. 425, 426 (2019) ("Historians of Atlantic empires and slavery have long considered New Orleans an outlier among American cities, characterized by its Caribbean-esque tripartite social system of whites, *gens de couleur libres*, and slaves."). The issue of whether the law provided free people of color more opportunities and advantages in Louisiana than in other jurisdictions in the antebellum South has been subject to debate. *See, e.g.*, WELCH, *supra* note 10, at 21 & 233 n.46.

195. From the time that the 1841 Act went into effect on February 1, 1842, up to its repeal on March 3, 1843, the nation consisted of 26 states and the District of Columbia, among which there were 38 federal judicial districts. *See* Pardo, *supra* note 8, at 75. Thirteen of these states permitted slavery: Alabama, Arkansas, Delaware, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Virginia. *See* 1 SLAVERY IN THE UNITED STATES: A SOCIAL, POLITICAL, AND HISTORICAL ENCYCLOPEDIA, at xxx (Junius P. Rodriguez ed., 2007) (setting forth a map identifying states that permitted and prohibited slavery). The District of Columbia also permitted slavery during this time period. *See Chronology of Slavery in the United States*, *in* 1 SLAVERY IN THE UNITED STATES, *supra*, at 1, 41. These 14 slave jurisdictions consisted of 23 federal judicial districts. *See* Pardo, *supra* note 13, at 1106.

the 1840 U.S. census,[196] predate the 1841 Act's effective date by a couple of years.[197] Even so, these data provide a useful benchmark for thinking about the district's composition on the eve before free people of color would have the opportunity to commence cases under the Act.

In 1840, the Eastern District's population consisted of 249,641 individuals.[198] Of the total population, 22,197 were free people of color, 112,177 were whites, and 115,267 were enslaved individuals.[199] Accordingly, for every 1,000 individuals in the district, there were 89 free people of color; for every 1,000 white individuals in the district, there were 198 free people of color; and for every 1,000 enslaved individuals, there were 193 free people of color.[200]

How did the Eastern District's ratios compare to the same ratios for the median federal judicial district among the other 22 federal judicial districts in the jurisdictions that permitted slavery (respectively, the "median slave district" and the "other slave districts")?[201] In the median slave district, for every 1,000 individuals in the district, there were 10 people of color; for every 1,000 white individuals in the district, there were 12 free people of color; and for every 1,000 enslaved individuals, there were 34 free people of color.[202]

Each of the Eastern District's ratios was statistically significantly higher than the corresponding ratio for the median slave district.[203] Among the 23 slave

---

196. DEP'T OF STATE, *supra* note 186. These data have been compiled in a dataset made available through the Inter-University Consortium for Political and Social Research. *See* Michael R. Haines, *Historical, Demographic, Economic, and Social Data: The United States, 1790–2002*, INTER-U. CONSORTIUM FOR POL. & SOC. RES. (ICPSR No. 2,896, 3d ver. 2010), https://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/2896/version/3.

197. *See* Act of Aug. 19, 1841, ch. 9, § 17, 5 Stat. 440, 449 (providing that the 1841 Act "shall take effect from and after the first day of February next") (repealed 1843); *see also* Hutchins v. Taylor, 12 F. Cas. 1079, 1081 (Story, Circuit Justice, C.C.D.R.I. 1842) (No. 6,953) (stating that the 1841 Act's effective date was February 1, 1842).

198. *See* DEP'T OF STATE, *supra* note 186, at 60–62.

199. *See id.*

200. Put another way, in the Eastern District, the ratio of free people of color (1) to the total population was 0.089, (2) to whites was 0.198; and (3) to enslaved individuals 0.193.

201. *See* discussion *supra* note 195.

202. For the group of other slave districts as a whole, the median and mean ratios (rounded to the nearest thousandth) of free people of color: (1) to the total population were, respectively, 0.010 and 0.037; (2) to whites were, respectively, 0.012 and 0.058; and (3) to enslaved individuals were, respectively, 0.034 and 0.449. Various statistical tests (e.g., the Shapiro-Wilk and the Shapiro-Francia tests for normality) indicate that these ratios are not normally distributed interval variables for this set of 22 observations.

203. Multiple one-sample median tests indicate that: (1) the median ratio of free people of color to the total population for the other slave districts was statistically significantly lower at the 5% level ($n = 22$, $z = -2.615$, $p = 0.0089$) than a ratio with a value of 0.089 (i.e., the Eastern District's ratio); (2) the median ratio of free people of color to whites for the other slave districts was statistically significantly lower at the 5% level ($n = 22$, $z = -3.193$, $p = 0.0001$) than a ratio with a value of 0.198 (i.e., the Eastern District's ratio); and (3) the median ratio of free people of color to enslaved individuals for the other slave districts was statistically significantly lower at the 5% level ($n = 22$, $z = -2.062$, $p = 0.0392$) than a ratio with a value of 0.193 (i.e., the Eastern District's ratio).

districts, the Eastern District had the fourth-highest ratio of free people of color to the total population,[204] the third-highest ratio of free people of color to whites,[205] and the fourth-highest ratio of free people of color to enslaved individuals.[206]

Finally, 1841 Act cases in the Eastern District were filed at a statistically significantly higher rate than the rate within the average federal judicial district among the 19 other slave districts for which filing data are available.[207] Specifically, for every 1,000 free adults,[208] approximately eight cases were commenced in the Eastern District, in contrast to approximately six cases in the average slave district.[209] Among these 19 slave districts, the Eastern District had the sixth-highest rate of case filings under the 1841 Act.[210]

Despite the differences discussed here, and having emphasized that I do not purport to provide either a definitive or exhaustive account of financial freedom suits by free blacks, let me emphasize the importance of this case study. It presents a great deal of valuable information about a crucial aspect of citizenship claims by free people of color that has heretofore gone unnoticed or ignored. Ultimately, a concrete sense of the contours of such claims-making in a specific federal judicial district,

---

204. First was the District of Delaware (0.217), followed by the District of the District of Columbia (0.191), and then the District of Maryland (0.132).

205. First was the District of Delaware (0.289), followed by the District of the District of Columbia (0.273).

206. First was the District of Delaware (6.495), followed by the District of the District of Columbia (1.781), and then the District of Maryland (0.692).

207. Pardo, *supra* note 13, at 1110. It should be noted that sufficient data exist to calculate the ratio of 1841 Act cases to the total population of free adults for 35 of the 38 federal judicial districts located among the District of Columbia and the 26 states that existed at the time. *See* Pardo, *supra* note 8, at 75, 84 tbl.1. Various statistical tests (e.g., the Shapiro-Wilk and the Shapiro-Francia tests for normality) indicate that the ratio is a normally distributed interval variable for this set of 35 observations. Importantly, for every 1,000 free adults, approximately six cases were commenced in the average federal judicial district among the slave states, in contrast to approximately five cases in the average federal judicial district among the free states. An independent samples *t*-test reveals that the difference between these ratios is not statistically significant ($n = 35$, $t = -0.7491$, $p = 0.4591$). Put another way, Southern and Northern debtors essentially resembled one another when it came to their propensity for seeking relief under the 1841 Act. *But see* SILKENAT, *supra* note 12, at 156 ("Bankruptcy rates [under the 1841 Act] across the South were only a fraction of those found in other regions. . . . [T]hey were on average three times lower in the South than elsewhere.").

208. For a discussion regarding the calculation of the total population of free adults in the Eastern District and the other slave districts, see Pardo, *supra* note 13, at 1109–10.

209. *See id.* at 1110. In some instances, a single case could involve multiple debtors. *See infra* note 333 and accompanying text. Accordingly, the above-referenced bankruptcy filing rates understate the number of debtors involved in 1841 Act cases in the Eastern District and the average slave district.

210. First was the Southern District of Mississippi, with approximately 14 case filings for every 1,000 free adults in the district. Tied for second were four districts: the Northern, Middle, and Southern Districts of Alabama, as well as the District of the District of Columbia, each with approximately ten case filings for every 1,000 free adults in the district. For a discussion of the method for calculating these filing rates, see Pardo, *supra* note 13, at 1109–10.

one that was home to a city that played an integral role in the antebellum economy and thus should be part of the story about financial freedom suits,[211] opens up fruitful lines of future inquiry.[212]

B. Financial Freedom Suits in the Eastern District

To understand what precisely was at stake for Casanave, Ferrand, Jonau, Mitchell, Thomas, and Zebriskie (the "Eastern District Six") in making their claims to financial freedom, we can focus on the quantitative characteristics of their requests for relief.[213] Collectively, this group owed, at a minimum,[214] total debts amounting to $408,798.56 [$10.9 million].[215] To place this figure in perspective, the original St. Charles Theatre in New Orleans, which at the time was the fourth largest theatre in the world, was built in 1835 at a cost of $250,000 [$6.1 million].[216] The collective liabilities of the Eastern District Six exceeded the theatre's construction cost by approximately 63%. By any measure, these were financial freedom suits of substantial magnitude, whether considered as a group or on a case-by-case basis, starting with Thomas, who owed the least—$2,150.00 [$57,943]—and ending with Ferrand, who owed the most—$234,507.73 [$6.3 million].[217]

To further underscore the significant reach of the 1841 Act cases brought by the Eastern District Six, we can look to the number of debts that they recorded in their schedules of liabilities. Collectively, they sought to be released from personal

---

211. *Cf.* WALTER C. STERN, RACE AND EDUCATION IN NEW ORLEANS: CREATING THE SEGREGATED CITY, 1764–1960, at 11–12 (2018) ("During the antebellum period, New Orleans stood apart as the South's only major city, yet its position at the nexus of slavery and capitalism arguably made it the quintessential American city—or at least a part of the United States that must be reckoned with in order to comprehend the whole.").

212. *Cf.* JONES, *supra* note 11, at 12 ("The authority that a locally grounded study cedes in terms of breadth, it gains many times over in depth and complexity. To burrow into the dynamics of a local legal culture is to open a window onto how ordinary people interpreted law, the important role of legal administrators, and the perspectives of everyday litigants.").

213. The figures reported in this Section are derived from the original schedules of assets and liabilities, as well any supplementary schedules, filed by the Eastern District Six in their respective bankruptcy cases. *See infra* note 386. Bankrupts had various incentives under the 1841 Act to ensure the accuracy and completeness of the information that they provided in their schedules. First, the Act required a petitioning debtor to "verif[y] by oath, or, if conscientiously scrupulous of taking an oath, by solemn affirmation," the information provided in the schedules filed with the court. Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (repealed 1843). Moreover, erroneous or incomplete schedule information could potentially constitute grounds for a court's denial of discharge. *See* § 4, 5 Stat. at 443 (providing "[t]hat every bankrupt, who . . . shall otherwise conform *to all the other requisitions of this act*, shall . . . be entitled to a full discharge from all his debts" (emphasis added)); Conrad v. Prieur, 5 Rob. 49, 54 (La. 1843) ("The act of Congress makes it the duty of the bankrupt, *under the penalty of not obtaining his discharge*, to place upon his schedule or inventory, all his property without any exception . . . ." (emphasis added)). For these reasons, researchers ought to have reasonable confidence in the information appearing in the schedules filed by debtors who petitioned for relief under the 1841 Act.

214. *See infra* note 386.

215. *See infra* Appendix C, Table 2.

216. Pardo, *supra* note 14, at 794–95.

217. *See infra* Appendix C, Table 2.

liability for at least 295 debts,[218] with Jonau and Ferrand leading the way, the former scheduling 122 debts and the latter scheduling 108 debts.[219] But even when considering Thomas's freedom suit, which scheduled only five debts, the least number for the entire group, we must not lose sight of the fact that all of these suits entailed aggregate litigation.[220] Rather than requiring Thomas to initiate five individual lawsuits to obtain relief, the 1841 Act's collective procedure enabled him to commence a single action that would ultimately culminate in a discharge order,[221] thereby redefining the property rights of his scheduled creditors by precluding their ability to recover from him as a personal liability the debts that he owed them.[222] Reconsidering the financial freedom suits in this light, we realize that the Eastern District Six brought the equivalent of at least 295 lawsuits for relief that sought to protect their own property interest, freedom from debt.[223]

That freedom, of course, would depend on the Eastern District Six giving up any property in which they had an interest at the time that the federal district court decreed them to be bankrupts. While Thomas and Zebriskie listed property in their schedules of assets, they did not provide any accompanying values for those assets. The remaining bankrupts scheduled assets with a collective worth of $198,013 [$5.2 million].[224] It should be kept in mind, however, that the reported asset values represented the *debtors'* estimates.

When it came time to liquidate the property, the sales conducted by the Eastern District's U.S. marshal yielded a much smaller amount of gross proceeds: for example, $48,241.18 [$1.3 million] of gross proceeds from the sale of assets with a scheduled value of $162,957.71 [$4.2 million] in Jonau's case; $335 [$9,028] of gross proceeds from the sale of assets with a scheduled value of $1,756 [$45,692] in Mitchell's case; and $1,847 [$49,847] of gross proceeds from the sale of assets with a scheduled value of $31,707.10 [$854,506] in Ferrand's case.[225] Put another way, the asset sales in these cases yielded the following percentages of the scheduled asset values: approximately 30% in Jonau's case, 19% in Mitchell's case, and 6% in Ferrand's case.

To determine how exacting of a price these three men paid for their financial freedom, we can look to the corresponding average for all of the Eastern District's 1841 Act cases, a total of 763.[226] The clerk for the Eastern District's federal district court reported to Congress that the U.S. marshal's sales generated

---

218. *See infra* note 386.

219. *See infra* Appendix C, Table 2.

220. *See supra* note 158 and accompanying text.

221. *See infra* Appendix C, Table 1.

222. *See* Pardo, *supra* note 14, at 833.

223. *Cf.* Conrad v. Prieur, 5 Rob. 49, 53 (La. 1843) ("Here, every creditor seems to be made, by the law itself, a party to the bankruptcy; all are cited, and there is an issue joined between them and the bankrupt, who, in consideration of the surrender [of property], sues them for his discharge.").

224. *See infra* Appendix C, Table 2.

225. *See id.* These amounts are derived from the bankruptcy sales record books maintained by the Eastern District's U.S. marshal. *See infra* notes 320–21 and accompanying text. For further discussion regarding this archival source, see Pardo, *supra* note 8, at 91–94.

226. *See infra* notes 326–36 and accompanying text.

$1,950,168 of gross proceeds from the sale of assets with a scheduled value of $31,245,495.51, a yield of approximately 6%.[227] While the percentage yield from Ferrand's case was the same as the district-wide average, the yields in Mitchell's and Jonau's cases were, respectively, approximately three times and five times greater than the district-wide average. Thus, even when scaling down the scheduled asset values to their liquidation value, it becomes clear that, relative to the Eastern District's average bankrupt, Ferrand paid as steep a price, and Mitchell and Jonau paid an exceedingly higher price, for their financial freedom.[228]

This conclusion is further reinforced when considering that the gross proceeds generated by the U.S. marshal's asset sale in Zebriskie's case, $6,250.05 [$168,439],[229] in addition to the gross proceeds from the asset sales in Jonau's, Ferrand's, and Mitchell's cases,[230] resulted in a collective total of $56,673.23 [$1.5 million] of gross proceeds for the four cases.[231] This aggregate figure accounts for approximately 3% of the total amount of gross proceeds generated by the U.S. marshal's asset sales in all of the Eastern District's 1841 Act cases (i.e., $56,673.23 of $1,950,168),[232] notwithstanding the fact that the four cases constituted only *one half of one percent* of the district's total cases (i.e., 4 of 763). The overrepresentation of the gross proceeds from their cases underscores that these men gave up a disproportionate amount for their financial freedom.

To some, that may have been too much of a price to pay. For example, William Johnson, a free black barber and businessman from Natchez, Mississippi,[233] characterized the 1841 Act's requirement that a bankrupt surrender all nonexempt property for liquidation as a heartless one, writing in his diary, "Large Bank-Rubt

---

227. H.R. DOC. NO. 29-99, at 7 & n.† (1847).

228. In addition to the liquidated value of their surrendered property, their price for financial freedom would have included the direct costs of legal representation. *See supra* notes 119–21 and accompanying text. Counsel represented each of the Eastern District Six in their financial freedom suits. *See* Motion to Set Aside Proceedings at 1, *In re* Zebriskie, No. 417 (E.D. La. Mar. 5, 1845) (setting forth "motion of Richard M. Carter Esq. attorney for Jacob Zabriskie"); Petition of Chazal Thomas f.m. of c. Bankrupt, for a Discharge at 1, *In re* Thomas, No. 718 (E.D. La. Mar. 14, 1843) (signed by "John Gedge, of counsel"); Casanave Discharge Petition, *supra* note 182, at 1 (signed by "Robert Preaux Esq., atty for petitioner"); Petition of Louis Ferrand fils, Bankrupt, for a Discharge at 1, *In re* Ferrand, No. 711 (E.D. La. Mar. 10, 1843) (signed by "Robert Preaux Esq., atty for petitioner"); Mitchell Discharge Petition, *supra* note 182, at 1 (signed by "Cyrus Ratleff, Atty for Petitioner"); Petition of A. Jonau, Bankrupt, for a Discharge at 1, *In re* Jonau, No. 78 (E.D. La. Apr. 22, 1842) (signed by "L. Janin atty for Antoine Jonau"). This pattern is consistent with Aslakson's finding that, in cases before the New Orleans City Court during the early nineteenth century, "most free colored litigants had lawyers representing them." ASLAKSON, *supra* note 9, at 136. For further discussion regarding legal representation of free people of color in the antebellum South, see WELCH, *supra* note 10, at 85–99.

229. Recall that Zebriskie did not provide values for the property he listed in his asset schedule. Given those missing values, his case could not be considered in the analysis calculating the gross proceeds from asset sales as a percentage of the value of scheduled assets. *See supra* notes 225–28 and accompanying text.

230. *See supra* note 225 and accompanying text.

231. *See infra* Appendix C, Table 2.

232. *See supra* note 227 and accompanying text.

233. *See* discussion *supra* note 12.

Sale at the Court House To day[.] It was the notes and accts of Some Bank rupbt individuals[.] I Call the Bank Rupt Law nothing short of Robing [sic] a man[.] Bad luck to all who will take it[.]"[234] In an analysis of this diary entry, Welch interprets the commentary to mean that, "[i]n Johnson's mind, bankruptcy was not a fresh start."[235] While that very well may have been his thinking, it does not mean that the 1841 Act's price for financial freedom necessarily rendered the fresh start hollow, as Welch seems to generally suggest.[236] Focusing solely on the price of discharge, without asking what was obtained in return, prevents a thorough assessment of whether paying the price was beneficial despite its potential high cost.[237] This inquiry brings us back to the concept of the net financial benefit obtained by bankrupts under the 1841 Act and an opportunity to explore its application with respect to the Eastern District Six, all of whom were granted a discharge.[238]

Recall that this Article defines the Act's net financial benefit as "the difference between (1) the total amount of discharged debt and (2) the sum of the bankrupt's direct costs of obtaining bankruptcy relief (e.g., court fees and attorneys' fees) and the value of the bankrupt's nonexempt assets."[239] Only four of the Eastern District Six's cases—those of Ferrand, Jonau, Mitchell, and Zebriskie—contain data regarding the total amount of discharged debt and the amount of gross proceeds generated from sales of the bankrupt's property, the latter amount representing the liquidation value of the bankrupt's nonexempt assets.[240] To calculate the net financial benefit that Ferrand, Jonau, Mitchell, and Zebriskie obtained in their cases, we would need to know the direct costs that they expended in obtaining bankruptcy relief. Gaps in the 1841 Act and the historical record, however, present challenges on this front.

First, the Act required district courts to "prescribe a tariff or table of fees and charges to be taxed by the officers of the court or other persons, for services

---

234. WILLIAM JOHNSON'S NATCHEZ: THE ANTE-BELLUM DIARY OF A FREE NEGRO 451 (William Ransom Hogan & Edwin Adams Davis eds., 1951).

235. Welch, *supra* note 12, at 108.

236. *Id.* at 107 ("Bankruptcy had a high social cost. Losing property, and watching one's land, slaves, and possessions sold at a public auction to the highest bidder, meant losing one's anchor to local personal and credit networks—and one's anchor to a system of power and privilege.").

237. Importantly, the price of discharge itself may not have been high in all cases. That price partly comprised the nonexempt property that the bankrupt surrendered for liquidation. *See supra* text accompanying notes 115–17. And yet few 1841 Act cases involved bankrupts who had nonexempt assets to surrender for liquidation. *See supra* notes 120–21 and accompanying text. Moreover, among those bankrupts who did have such assets, some managed to find the wherewithal to repurchase their surrendered property, including individuals whom they had enslaved. *See* Pardo, *supra* note 13, at 1156 & n.464.

238. *See infra* Appendix C, Table 1. Interestingly, free people of color who sought financial freedom under Maryland's debt-forgiveness law experienced a high rate of litigation failure. JONES, *supra* note 11, at 115 ("Their petitions were declined or 'refused' at a high rate, in just over 50 percent of cases, meaning that often they did not receive the full benefits that insolvency promised. Court records are not explicit about why so many petitions were refused.").

239. *Supra* text accompanying note 119.

240. *See infra* Appendix C, Table 2.

under this act, or any other on the subject of bankruptcy."[241] And yet, despite obviously contemplating that the bankruptcy process would feature court costs, Congress did not expressly specify in the 1841 Act who would bear those costs.[242] The resulting statutory gap created ample opportunity for federal district courts to engage in residual bankruptcy policymaking,[243] pursuant to which they would assign responsibility for case costs and determine the method, manner, and timing for paying them.

Relying on their rulemaking authority under the Act,[244] some district courts promulgated rules that made a voluntary bankrupt accountable for the costs of administering a case (e.g., the assignee's and marshal's fees) if the estate lacked sufficient funds to pay them. For example, the U.S. District Court for the District of Connecticut established a rule for compelling a voluntary bankrupt "to give a stipulation, with surety, in such sum as may be deemed proper, conditioned that the fees and expenses of the assignee shall be paid in full, *in case the bankrupt's property shall be insufficient*; and conditioned, also, that the marshal's fees be paid if any should occur."[245] The U.S. District Court for the Southern District of New York had a similar approach, enacting a rule that relieved the assignee of his obligation to administer a case when insufficient proceeds existed to fully pay the estate's administrative expenses, including any fees owed to the assignee, "until the

---

241. Act of Aug. 19, 1841, ch. 9, § 6, 5 Stat. 440, 446 (repealed 1843). Congress did not give courts unfettered discretion when establishing bankruptcy fees under the Act. Rather, this task had to be conducted with an eye toward affordability due to the Act's mandate that the "fees . . . be as low as practicable, with reference to the nature and character of such services." *Id.*

242. *Cf. In re* Greaves, 10 F. Cas. 1067, 1068 (S.D.N.Y. 1842) (No. 5,744) ("No provision is made by the bankrupt act enabling parties to conduct proceedings forma pauperis, and *the act evidently contemplates* that they [i.e., voluntary bankrupts] shall discharge all expenses incident to the prosecution of their application." (emphasis added)).

243. *See* Rafael I. Pardo & Kathryn A. Watts, *The Structural Exceptionalism of Bankruptcy Administration*, 60 UCLA L. REV. 384, 387, 445 (2012) (stating that "courts function as lawmakers in the bankruptcy arena because of their delegated policymaking powers" and observing "that, from the earliest days of the Republic and with every iteration of the bankruptcy laws, Congress tasked the federal courts with administration of the bankruptcy system").

244. *See* § 6, 5 Stat. at 445–46 ("[I]t shall be the duty of the district court in each district, from time to time, to prescribe suitable rules and regulations, and forms of proceedings, in all matters of bankruptcy . . . .").

245. BANKR. D. CONN. R. 15 (1842) (emphasis added) (repealed), *reprinted in* S. DOC. NO. 27-19, at 34 (1842). Of course, the bankrupt would also be held accountable for other court costs that the bankrupt directly incurred (e.g., clerk's fees for the filing of a bankruptcy petition) as explained by the district's judge, Andrew T. Judson, in a letter to U.S. Secretary of State Daniel Webster. *See* Letter from Andrew T. Judson, U.S. Judge, Dist. of Conn., to Daniel Webster, Sec'y of State, U.S. Dep't of State (Dec. 24, 1842) ("[A] very large proportion of these unfortunate men have been enabled, of themselves, without the aid or expense of counsel, to realize the benefits of this law, for the very moderate sum, on an average, of about $15, including blanks, printing, fees of clerk, marshal and assignee."), *in* S. DOC. NO. 27-19, at 32; *see also Judson, Andrew Thompson*, FED. JUD. CTR., https://www.fjc.gov/history/judges/judson-andrew-thompson (last visited Oct. 8, 2019) (providing biographical information about Judge Judson).

necessary sum is advanced to him, or satisfactory security is furnished therefor."[246] Although the rule did not specify the party who would bear those costs, the district's judge, Samuel R. Betts,[247] explained in an opinion that the assignee's expenses constituted "one of the charges the bankrupt must meet as necessarily incident to his proceeding" when the bankruptcy estate was administratively insolvent.[248]

Unfortunately, I have not located a complete set of bankruptcy rules promulgated by the U.S. District Court for the Eastern District of Louisiana. And while I have located excerpts of those rules,[249] none of them pertains to responsibility for court costs and the method, manner, and timing for paying them. Fortunately, the editors of the *Mississippi Free Trader* did take notice of bankruptcy fees in the Eastern District, reporting that "[t]he U.S. District Judge in New Orleans has ordered that every one applying for the benefit of the Bankrupt act deposit with the Clerk $30 to meet expenses."[250] Notably, the editors did not hesitate to express their disapproval of the measure, emphasizing that it would create a serious impediment to relief under the Act: "How is it when the applicant has neither money, nor assets, and nothing but debts? Under this rule, he cannot avail himself of the law. We can name a dozen men who have not seen $30 for six months."[251]

While the rule may have presented a barrier to relief for some debtors, it apparently did not for the Eastern District Six. With the exception of Jonau's case, the docket reports for their cases, which are set forth in the district court's docket books,[252] include informal and formal notations indicating that each debtor deposited $30 with the court upon commencing his case.[253] The omission of such

---

246. BANKR. S.D.N.Y. R. 58 (1842) (repealed), *reprinted in* RULES AND REGULATIONS IN BANKRUPTCY, ADOPTED BY THE CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW-YORK 12–13 (New York, John S. Voorhies 1842).

247. *Betts, Samuel Rossiter*, FED. JUD. CTR., https://www.fjc.gov/history/judges/betts-samuel-rossiter (last visited Oct. 8, 2019).

248. *In re* Greaves, 10 F. Cas. 1067, 1068 (S.D.N.Y. 1842) (No. 5,744).

249. *E.g.*, Transcript of Record at 94, Houston v. City Bank of New Orleans, 47 U.S. (6 How.) 486 (1847) (No. 144) (setting forth excerpt of bankruptcy rules promulgated under the 1841 Act by the U.S. District Court for the Eastern District of Louisiana); Transcript of Record at 18–19, Nugent v. Boyd, 44 U.S. (3 How.) 426 (1845) (No. 158) (same).

250. MISS. FREE TRADER (Natchez), Mar. 3, 1842, at 2.

251. *Id.*

252. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 DOCKETS, 1842–1843 (located in Record Group (RG) 21, The National Archives at Fort Worth, Texas) [hereinafter EDLA DOCKETS]. For a description of the docket books maintained by the clerk of the Eastern District's federal district court, see *infra* notes 310–11, 333 and accompanying text.

253. While the docket reports consist almost exclusively of formal entries in ink, they also contain some informal entries in pencil. Importantly, each of the docket reports for the five cases has a pencil entry at the top that sets forth a date and a $30 reference. For example, the docket report for Ferrand's case, which has been partially reproduced in Figure 3 in Appendix A, sets forth the notation "Febry 15 $30." 4 EDLA DOCKETS, *supra* note 252, at 711 (setting forth the docket report for the bankruptcy case filed by "Louis Ferrand fils f.m.c." on February 9, 1843). This entry suggests that Ferrand deposited $30 with the court clerk six days after filing his bankruptcy petition on February 9, 1843. *See id.*

notation from the *Jonau* docket report is puzzling. The district court had already promulgated the deposit rule at the time that Jonau filed his bankruptcy petition,[254] as evidenced by notations in earlier-commenced cases.[255] Entries in the *Jonau* docket report, however, do indicate that the recorded court costs were paid at various intervals,[256] presumably from proceeds generated by liquidating estate property.

Given the absence of evidence of a $30 deposit in Jonau's case, a concern arises that calculating the net financial benefit that he received under the Act may be inaccurate. For example, if Jonau actually made the deposit and the clerk omitted to record it on the docket report, failing to account for the $30 payment would *overstate* Jonau's net financial benefit. This is just one instance of methodological difficulties arising from gaps in the historical record.

Incomplete evidence on the legal fees that the Eastern District Six incurred in connection with their cases further complicates matters. In one of his rulings as a circuit justice, Justice Story held in *Ex parte Hale* that a debtor would have to bear the costs of attorneys' fees incurred in connection with a voluntary case under the 1841 Act, whether prior to or after being decreed a bankrupt—that is, none of those costs could be shifted to the estate.[257] As it turns out, all of the Eastern District Six had legal representation in their financial freedom suits,[258] but the case files for those suits generally lack evidence regarding attorneys' fees incurred by the bankrupts. This suggests that a rule similar to that from *Ex parte Hale* applied in the Eastern District.

Given the incomplete evidence of direct costs in the Eastern District Six cases, the best option (until additional research provides further clarification) is to calculate an inflated net financial benefit that does not account for these costs—

Some of the other docket reports also include a formal entry in ink clearly stating that the $30 deposit had been paid. For example, the docket report for Zebriskie's case, in addition to setting forth in pencil the notation "October 7 $30," also includes the ink notation "Less this amount Paid October 7 1843," followed by a corresponding $30 reference. 2 EDLA DOCKETS, *supra* note 252, at 55 (setting forth the docket report for the bankruptcy case filed by "Jacob Zebriskie" on October 7, 1842).

254. *See* 1 EDLA DOCKETS, *supra* note 252, at 78 (setting forth the docket report for the bankruptcy case filed by "A. Jonau" on February 24, 1842).

255. For example, the docket report for the joint case of Louis Alfred Ducros and Ernest Morphy has a notation in pencil at the very top stating "$30 deposited" and a notation in ink stating "Less paid on the 19 of February as per Entry in Cash Book," followed by a corresponding $30 reference. *Id.* at 61 (setting forth the docket report for the bankruptcy case filed by Louis Alfred Ducros and Ernest Morphy on February 18, 1842).

256. For example, one of the *Jonau* docket entries for May 19, 1842, states, "Settled as per Entry in Cash Book under this date $131.27." *Id.* at 78. The recorded costs appear to be the fees due to the district court clerk. For example, the first two entries for April 9, 1842, are "Calling Case for hearing" for 50 cents and "Decree of Bankruptcy & proofs of Publication" for 2 dollars. *Id.* For an example of the various fees that district court clerks charged for services provided in cases under the 1841 Act, see RULES AND REGULATIONS IN BANKRUPTCY, ADOPTED BY THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NORTH CAROLINA 10 (Fayetteville, Edward J. Hale 1842).

257. *See Ex parte* Hale, 11 F. Cas. 178, 179 (Story, Circuit Justice, C.C.D.N.H. 1842) (No. 5,910).

258. *See* discussion *supra* note 228.

specifically, by computing the difference between the total amount of discharged debt and the liquidation value of the bankrupt's nonexempt assets.[259] With this limitation in mind, the inflated net benefit received by Ferrand, Jonau, Mitchell, and Zebriskie in their financial freedom suits were as follows, from highest to lowest: for Ferrand, $232,660.73 [$6.3 million]; for Jonau, $107,605.19 [$2.8 million]; for Zebriskie, $3,835.02 [$93,982]; and for Mitchell, $3,135.80 [$81,284].[260] While these men certainly gave up a lot in their quest for financial freedom, each received a much more substantial benefit in return, clearing the way for a second chance at a better economic life.

C. Postbankruptcy Commercial Reintegration

Of course, having a clean slate did not necessarily mean that the Eastern District Six would be able to successfully reintegrate into the commercial economy.[261] Perhaps this is Welch's point when she argues that the surrender and sale of property under the Act "meant losing one's anchor to local personal and credit networks—and one's anchor to a system of power and privilege."[262] But to be clear, even in the absence of commencing a case under the Act, debtors would inevitably have faced judicial collection efforts that ultimately would have left them without assets and still owing money—at least for those debtors whose debts exceeded the liquidation value of their assets,[263] as we know was the situation for four of the Eastern District Six.[264]

Moreover, obtaining relief under the 1841 Act did not preordain the exclusion of a discharged bankrupt from the personal and credit networks from which the fresh start could be built into a new economic life.[265] For example, Joseph Beard, a New Orleanian slave auctioneer, commenced an 1841 Act case, obtained a discharge of debts totaling $64,513.67 [$1.7 million],[266] and then went on to become one of the city's most financially successful slave auctioneers.[267] Others like him followed a similar path,[268] all of which suggests that bankruptcy relief did not signify

---

259. For a sense of the magnitude of direct costs under the 1841 Act, see discussion *supra* note 121.

260. *See infra* Appendix C, Table 2 (setting forth financial data for the Eastern District Six, including amounts of debt owed and gross proceeds generated from liquidation of their nonexempt property).

261. *See* BALLEISEN, *supra* note 27, at 14 ("[P]ersonal histories of failure *usually* tarnished public standing and restricted access to capital and credit, greatly complicating the efforts of former bankrupts to return to the business world." (emphasis added)).

262. Welch, *supra* note 12, at 107.

263. *See supra* Subsection I.B.1; *cf.* BALLEISEN, *supra* note 27, at 13–14 ("Once outright failure actually took place, liquidation of assets generally followed. Whether such liquidation occurred through sheriff's sales, under the auspices of private assignees, or according to the terms of the 1841 Federal Bankruptcy Act, the result was the same—loss of legal title to property and the concomitant requirement of moving down in the world.").

264. *See infra* Appendix C, Table 2.

265. *See* BALLEISEN, *supra* note 27, at 14 ("[L]egal releases from debts, however valuable, did not instantaneously bring forth new entrepreneurial openings.").

266. Pardo, *supra* note 14, at 802–03.

267. *See id.* at 801–02, 841–42.

268. *See, e.g.*, *id.* at 843 (discussing the financial success that Norbert Vignié, a New Orleanian auctioneer, experienced after receiving a discharge under the 1841 Act).

a kiss of death when it came to reestablishing oneself as a viable economic actor in the competitive commercial landscape.[269]

The question thus arises whether any of the Eastern District Six may have experienced such success. We can look for concrete evidence of their postbankruptcy economic lives in the records of the Notarial Archives Research Center at the Office of the Clerk of Civil District Court for the Parish of Orleans.[270] At the time of the 1841 Act, Louisiana law provided that certain commercial transactions would have legal effect only if notarized.[271] Additionally, even for transactions that did not have to be notarized, doing so would accord them greater legal significance.[272] These records provide a wealth of transactional detail that can be used to ascertain whether the Eastern District Six reintegrated into the Crescent City's economy.[273]

A brief exploratory review of a fraction of the extant notarial records dating from 1845 to 1849 confirms that the five New Orleanians among the Eastern District Six (i.e., all but Mitchell)[274] found opportunities to reclaim a stake in the local economy by acting in a variety of capacities, including as buyers, sellers, debtors, and creditors.[275] During this five-year period, these five men entered into at least 26

---

269. *Cf.* BALLEISEN, *supra* note 27, at 17 ("But full-fledged pecuniary redemption came most readily to insolvents who enjoyed well-placed social and familial connections, a finding that offers a new measure of the salience of class position in structuring nineteenth-century business opportunities.").

270. *Research Center & Historical Documents*, CLERK OF THE CIVIL DIST. COURT FOR THE PAR. OF ORLEANS, http://www.orleanscivilclerk.com/research.htm (last visited Oct. 6, 2019).

271. *See* LA. CIV. CODE art. 2237 (1825) ("All acts may be executed under private signature, *except such as positive laws have ordained to be passed in presence of a notary*." (emphasis added)) (current version at LA. CIV. CODE ANN. art. 1836 (2019)).

272. *See id.* art. 2229 ("He who claims the execution of an obligation must prove it.") (current version at LA. CIV. CODE ANN. art. 1831 (2019)); *id.* art. 2231 ("The authentic act, as relates to contracts, is that which has been executed before a notary public or other officer authorized to execute such functions, in presence of two witnesses, free, male, and aged at least of fourteen years, or of three witnesses, if the party be blind.") (current version at LA. CIV. CODE ANN. art. 1833 (2019)); *id.* art. 2233 ("The authentic act is full proof of the agreement contained in it, against the contracting parties and their heirs or assigns, unless it be declared and proved a forgery.") (current version at LA. CIV. CODE ANN. art. 1835 (2019)).

273. *Cf.* Sally Kittredge Evans, *Free Persons of Color*, *in* 4 NEW ORLEANS ARCHITECTURE 25, 26 (1974) ("The New Orleans Notarial Archives is the key to a more personal documentation of the lives of [free people of color]. In these records can often be traced the first-hand testimony of their origins, intentions, hardships, investments, failures, debts, marriages, offspring, and testamentary inclinations.").

274. *See supra* note 182 and accompanying text. The absence of Mitchell from the New Orleans notarial records should not be interpreted to mean that he did not experience financial success in his postbankruptcy life. Given that Mitchell resided in West Feliciana Parish, *id.*, the notarial records from that parish would be the ones most likely to document his involvement in the local economy.

275. Unfortunately, financial and time constraints precluded a fully comprehensive search of the notarial archives for purposes of this Article.

notarized transactions involving a total of $16,892.48 [$484,928].[276] The median and mean transactions involved, respectively, $633.00 [$18,811] and $649.71 [$18,651].

At the low end of the transaction-size scale, Thomas purchased a property lot in Faubourg Marigny in 1849 for $80 [$2,415] in cash;[277] and Zebriskie loaned $100 [$2,795] in cash at the end of 1846 to Charlotte Diggs, a free woman of color, payable within a year at an annual interest rate of 8% and secured by two lots of ground in "the rear of th[e] City."[278] Zebriskie's loan to Diggs was the only postbankruptcy notarized transaction to which he was a party that I discovered.[279] On the other hand, the notarial records reveal Thomas to have been quite active in the marketplace.

From 1847 through 1849, Thomas engaged in 12 notarized transactions as a buyer, seller, and lessor of land, as well as a buyer and seller of enslaved individuals, in the aggregate amount of $6,570 [$191,353], with 4 of those transactions involving extensions of secured credit in the purchase or sale of property lots (3 as a buyer and 1 as a seller).[280] In fact, 1 of Thomas's 12 notarized

---

276. At a minimum, each man entered into the following number of notarized transactions: for Thomas, 12 transactions involving a total of $6,570.00 [$191,353]; for Jonau, 7 transactions involving a total of $5,772.23 [$162,760]; for Casanave, 4 transactions involving a total of $3,735.25 [$106,438]; for Ferrand, 2 transactions involving a total of $715.00 [$21,582]; and for Zebriskie, 1 transaction in the amount of $100.00 [$2,795].

277. 41 Amedee Ducatel, Act No. 573 (Dec. 26, 1849). For the following reasons, Thomas's purchase of the Marigny lot very likely constituted land speculation. First, the neighborhood's high concentration of black property owners included speculators. *See* STERN, *supra* note 211, at 21 (noting that, "[a]ccording to one estimate, three-quarters of the lots in Marigny had at least one free black owner during the first half of the nineteenth century," and further observing that "[w]hile many free black people owned homes in the neighborhood . . . a number also participated in the market as speculators, investors, developers, and landlords"). Second, Thomas had a history of engaging in such activity: His land speculation during the late 1830s precipitated financial distress and imprisonment for debt, which in turn prompted him to seek relief under Louisiana's debt-forgiveness law several years before commencing his 1841 Act case. *See* Petition of Chazal Thomas, Chazal Thomas v. His Creditors (Parish & City of New Orleans Parish Ct. Jan. 15, 1839) ("[O]wing to his speculations in landed property which has of late so considerably decreased in value . . . , Your petit[ioner] finds himself unable to meet his engagements . . . [and] an order of imprisonment has issued against him and he is now in the custody of the Sheriff of Orleans . . . ."). Finally, many of Thomas's postbankruptcy notarized transactions involved the purchase and sale of property lots. *See infra* note 280 and accompanying text.

278. 15 David L. McCay, Act No. 139 (Sept. 18, 1846).

279. Again, due to my limited review of the notarial archives, Zebriskie may have engaged much more extensively in notarized transactions than what I have depicted in this Article.

280. *See, e.g.*, 43 Hilary B. Cenas at 897 (Dec. 31, 1849) (purchase on secured credit of 17 property lots in the Gentilly neighborhood for $929 [$28,041]); 43 Hilary B. Cenas at 893 (Dec. 31, 1849) (purchase on secured credit of three property lots in the Gentilly neighborhood for $666 [$20,103]); 40 Amedee Ducatel, Act No. 262 (June 7, 1849) (purchase on secured credit of one property lot in Faubourg Franklin for $210 [$5,590]); 21 Charles V. Foulon, Act No. 104 (July 8, 1848) (sale on secured credit of 30 property lots in Faubourg Washington for $810 [$23,509]).

transactions fell at the high end of the transaction-size scale: the purchase of two enslaved individuals in 1847—Cooper, who was 29 years old, and Nancy, who was 30 years old—for $1,200 [$32,340] from Eulalie de Mandeville,[281] a wealthy black businesswoman.[282]

During this same period of time, Thomas coupled his marketplace activity with participation in the social activism of the Crescent City's network of black leaders, helping incorporate the Société Catholique pour l'Instruction des Orphelins dans l'Indigence (the Catholic Society for the Instruction of Indigent Orphans),[283] which "immediately established itself as a springboard for black advancement within New Orleans,"[284] in essence serving as a de facto public school for the free African American community.[285] Thus, we witness that Thomas's economic claim to civic inclusion, which he asserted through his exercise of financial freedom,

---

281. 5 Jean Agaisse, Act No. 77 (May 17, 1847). Along similar lines, in the calendar year after Jonau received his discharge, *see infra* note 385, he advertised his interest in "hir[ing] twenty Slaves, to work on a Sugar Plantation . . . for at least two months." *Notice*, LE COURRIER DE LA LOUISIANNE (New Orleans), Oct. 16, 1843, at 4. This advertisement suggests that Jonau had acquired access to a sufficient amount of postbankruptcy resources that would enable him to engage in the practice of "hiring out" enslaved individuals belonging to third parties. *See* WADE, *supra* note 170, at 38 ("'Hiring out' in its plainest form generally involved a contract which included the price, length of service, some assurances on treatment, and the nature of the work to be performed. Arrangements varied, some lasting only a week or for the duration of the job, others for five years."). If successful in doing so, it would indicate that, just like Thomas, some of the financial freedom that Jonau reattained tragically came at the expense of the well-being, dignity, and personal liberty of fellow human beings. *Cf.* WALKER, *supra* note 30, at 147 ("Black slaveholders in the planter and business classes . . . could make no claim to be benign oppressors. In the economic exploitation of their slaves, they were no different than white slaveholders."). In Jonau's case, some of those fellow human beings were likely children. *See Notice*, *supra* ("Young negroes of from 12 to 14 years of age, as well as women will be employed . . . ."). At the time Jonau initiated his financial freedom suit, he was the owner of four enslaved individuals who were ultimately sold through the federal bankruptcy process. *See* Pardo, *supra* note 8, at 93–94.

282. *See* WALKER, *supra* note 30, at 132 (describing Mandeville as "[t]he country's wealthiest antebellum black business woman"); Schweninger, *supra* note 175, at 348 (stating that Mandeville, "who owned a wholesale mercantile and dry goods store, distributed her commodities to retail outlets with a large slave labor force" and noting that she owned 32 enslaved individuals). For further background information on Eulalie de Mandeville, see generally Penny Johnson-Ward, Eulalie de Mandeville: An Ethnohistorical Investigation Challenging Notions of Plaçage in New Orleans as Revealed Through the Lived Experiences of a Free Woman of Color (Dec. 2010) (unpublished M.S. thesis, University of New Orleans) (on file with author).

283. *See* CARYN COSSÉ BELL, REVOLUTION, ROMANTICISM, AND THE AFRO-CREOLE PROTEST TRADITION IN LOUISIANA, 1718–1868, at 124 (1997). Thomas also helped organize the Association of the Holy Family, another religious society. *Id.* at 132–33.

284. STERN, *supra* note 211, at 16.

285. *See id.* ("Banned from the city's public system of thirty-one schools, free blacks treated Couvent's school, often referred to as the Couvent School or the Catholic Institution, as though it were a public institution. The school served students from all classes in spite of its identification as an institution for orphans, and its directors regularly requested and received annual appropriations from the state legislature.").

worked in tandem with, and perhaps even facilitated, his political claim to civic inclusion, which he asserted through his organization of the Catholic Society.[286]

Among the Eastern District Six, Casanave perhaps experienced the most robust financial rebirth. At the very top of the transaction-size scale, he purchased a property lot in Faubourg Tremé at an 1847 public auction for $1,950 [$52,553], with a down payment in cash of $487.50 [$13,138] and the unsecured balance of $1,462.50 [$39,414] payable over two years with interest totaling $483.90 [$13,041].[287] Just a couple of years later, he entered into a partnership with Jean Cérisée to set up a hairdressing establishment in the French Quarter at the corner of Royal and St. Anne Streets, which would also sell toiletries, silks, gloves, perfumes, and the like.[288] The partners capitalized the business at $1,800 [$54,331],[289] an amount far exceeding the capitalization of most free black enterprises in New Orleans.[290] A couple of months later, perhaps due to his new partnership with Cérisée, Casanave sold all of the goods from another hairdressing establishment, located on Condé Street between St. Anne and Dumaine Streets, to George Bermel of New Orleans for $357.25 [$10,783].[291] The stars appearing in Figure 1 below indicate the approximate locations of both of these hairdressing establishments.[292]

---

286. *Cf. id.* at 17 ("By identifying their school as a public one, free blacks indirectly asserted that they, too, were part of the public and therefore deserving of the rights and privileges that accompanied membership within it. At a time of increasing racial repression in New Orleans and nationally, this overtly political act was perhaps the closest they could come to directly demanding equal citizenship rights regardless of color.").

287. 40 Octave de Armas, Act No. 127 (May 28, 1847).

288. 41 Amedee Ducatel, Act No. 411 (Sept. 15, 1849).

289. *Id.* Each partner contributed $900 [$27,167] of capital funds. *Id.*

290. *See* Reinders, *supra* note 175, at 278 (stating that most free black businesses in New Orleans during the 1850s "were small affairs, capitalized at a few hundred dollars and generally given to retail sale of groceries and liquor").

291. 41 Amedee Ducatel, Act No. 529 (Nov. 27, 1849).

292. Figure 1 is a close-up image of the New Orleans map produced for the 1845 guidebook, *Norman's New Orleans and Environs*, which appears as an inset in the back of the 1976 facsimile reproduction of the guidebook, *see* BENJAMIN MOORE NORMAN, NORMAN'S NEW ORLEANS AND ENVIRONS 178 (Matthew J. Schott ed., La. State Univ. Press 1976) (1845), and which can also be viewed online, *Norman's Plan of New Orleans & Environs, 1845*, LIBR. OF CONGRESS, https://www.loc.gov/resource/g4014n.ct000243/ (last visited Oct. 13, 2019). The close-up image has been altered by adding the electronically drawn stars marking the approximate locations of Casanave's hairdressing establishments. The original map is oriented with its upper right-hand corner pointing north, and so too is the close-up image.

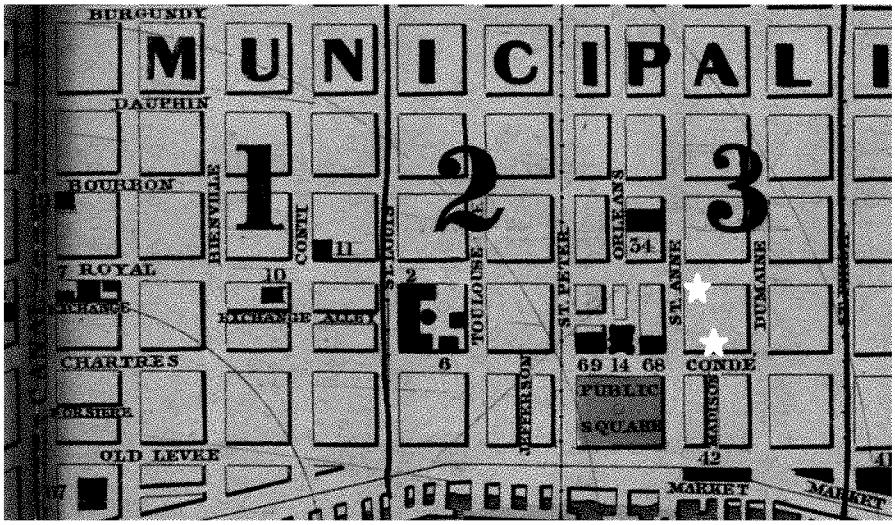


Figure 1: *Location of Casanave Hairdressing Establishments*

Around the same time, Casanave also appears to have gone into the undertaking business.[293] He "and his sons—Gadane, François, Pierre Jr., and St. Felix—were successful . . . as owners and operators of a livery and undertaking business at 88 Bourbon Street in the Vieux Carré."[294] In this enterprise, Casanave amassed real and personal property that distinguished him from others.[295] He eventually came to be known as "the grandest undertaker of funeral splendor in New Orleans,"[296] perhaps partly attributable to the business he may have generated through advertisements that extolled the virtues of his embalming services,[297] such as the example illustrated in Figure 2.[298] While surely various factors contributed to Casanave's postbankruptcy success, his 1841 Act discharge, which cut off the right

293. *See* Linda S. Epstein, *Pierre André Destrac Cazenave: Judah Touro's "Pet" or a Man of Means?*, 53 LA. HIST. 5, 9 (2012) ("The *Casanaves* appear as undertakers for the first time in the 1849 directory.").

294. *Id.* at 8.

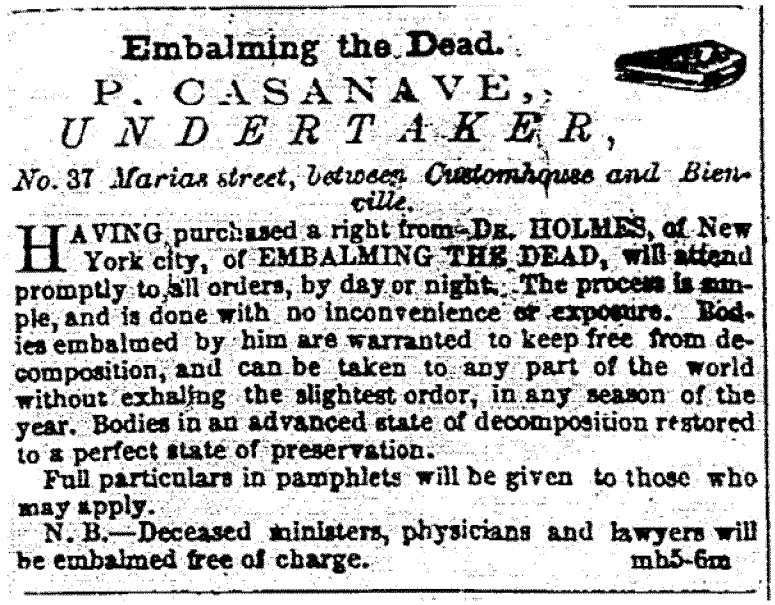
295. *See* Reinders, *supra* note 175, at 279 ("Unlike most undertakers of the age he did not have to live in close proximity to horses and cadavers as he had his own separate residence. He owned a hearse, four carriages, and a cab.").

296. *Id.* (internal quotation marks omitted); *see also* RODOLPHE LUCIEN DESDUNES, OUR PEOPLE AND OUR HISTORY 80 (Dorothea Olga McCants ed. & trans., La. State Univ. Press 1973) (1911) (describing "Mr. Pierre Cazenave, the leading undertaker and embalmer in New Orleans during the mid-1880's [sic]").

297. For commentary on the quality of Casanave's embalming services, see DESDUNES, *supra* note 296, at 80 ("It is said Mr. Cazenave carried to his grave a secret formula for preserving a corpse indefinitely. We believe this to be true, for there exists today at Emile Labat's establishment a mummy embalmed by Cazenave that has never shown the least signs of deterioration.").

298. *Embalming the Dead*, DAILY CREOLE (New Orleans), July 9, 1856, at 3.

of his creditors to recover from him the prebankruptcy debts that he owed them,[299] must have played an integral role in attaining his financial freedom.



Embalming the Dead.

P. CASANAVE,

UNDERTAKER,

No. 37 Marias street, between Customhouse and Bienville.

HAVING purchased a right from Dr. HOLMES, of New York city, of EMBALMING THE DEAD, will attend promptly to all orders, by day or night. The process is simple, and is done with no inconvenience or exposure. Bodies embalmed by him are warranted to keep free from decomposition, and can be taken to any part of the world without exhaling the slightest ordor, in any season of the year. Bodies in an advanced state of decomposition restored to a perfect state of preservation.

Full particulars in pamphlets will be given to those who may apply.

N. B.—Deceased ministers, physicians and lawyers will be embalmed free of charge. mb5-6m

Figure 2: Casanave Advertisement

CONCLUSION

As suggested by historian Scott Sandage, civic inclusion in antebellum America very much depended on financial freedom: "Nineteenth-century Americans understood that solvency and selfhood were speculative ventures. Buying and selling, borrowing and lending, acquiring and forfeiting were not simply economic behaviors; they were liberal virtues that remade daily life, individual selfhood, and national culture in the antebellum era."[300]

But white Americans at the time would not have likely viewed free blacks as individuals who could claim citizenship through the exercise of such freedom, as suggested by Sandage's analysis of the diary entry of Henry Hill, a Massachusetts bankruptcy lawyer who during the late 1840s also served as a law clerk to Henry Chapin, a master in chancery, helping Chapin process cases under the state's debt-forgiveness law.[301] When commenting on an insolvency case filed by a free black man in 1848, Hill revealed the racial prejudice that caused many in society to view

299. *See supra* note 113 and accompanying text.
300. SANDAGE, *supra* note 64, at 27.
301. *Id.* at 59–61.

black business activity as a quixotic enterprise,[302] or for that matter to approach it with outright hostility.[303]

But having traced the financial journey of the Eastern District Six into and out of the bankruptcy forum, we see the true nature of the relationship between financial failure and claims to citizenship by free people of color in antebellum America. In excess of 44,000 individuals sought relief under the 1841 Act.[304] This Article has shown not only that some free people of color commenced financial freedom suits, but also that their aggregate litigation claims were of substantial magnitude. By emerging from the bankruptcy forum with a discharge order in hand, which was the functional equivalent of a financial grant from the federal government,[305] the Eastern District Six harnessed the power of the 1841 Act to obtain freedom from debt and once again begin the journey toward financial freedom,[306] a core component of U.S. citizenship.[307] The story of financial freedom suits is therefore one about resilience and renewal, a powerful reminder "that the post-Civil Rights era of black business activity marks the continuation, rather than the beginning, of a historic tradition of black American business."[308]

---

302. *Id.* at 61 ("To Hill, the failure of an African-American man was a tautology; neither law nor culture presumed he could succeed, so how could he fail? It struck him . . . when the race, class, or gender of the parties contradicted his expectations for the type of case.").

303. *Cf.* WALKER, *supra* note 30, at xxii ("Economic institutions and political and social systems based on race in America, as opposed to class, have limited black Americans from achieving economic equality throughout the history of this country.").

304. *See* Pardo, *supra* note 8, at 86 tbl.1.

305. *See* Pardo, *supra* note 14, at 832–37.

306. To be sure, while financial failures "destroy capital and jobs," SCRANTON & FRIDENSON, *supra* note 163, at 110, "[d]ischarging past debts is the essence of human capital preservation," Charles J. Tabb, *Bankruptcy and Entrepreneurs: In Search of an Optimal Failure Resolution System*, 93 AM. BANKR. L.J. 315, 330 (2019).

307. *See supra* Section I.A.

308. WALKER, *supra* note 30, at xxii; *cf.* Sumler-Edmond, *supra* note 19, at 139 ("The institutional and economic strength of the antebellum free black community was central to the establishment of a strong post-emancipation black community in Savannah.").

APPENDIX A: DOCUMENTING DEBTOR RACE IN 1841 ACT CASES

The historical investigation presented in this Article primarily relies on the original manuscript records created in connection with Eastern District bankruptcy cases commenced under the 1841 Act.[309] These records, located at the regional facilities of the U.S. National Archives and Records Administration in Kansas City, Missouri, and Fort Worth, Texas,[310] include the following sources:[311]

1. the docket books for Eastern District bankruptcy cases (the "Eastern District docket books"),[312] which set forth "the case number, name of the petitioner, and a brief abstract of papers filed and actions taken" in each case;[313]
2. the minute books for Eastern District bankruptcy cases (the "Eastern District minute books"),[314] which consist of "records of proceedings held in [those] cases;"[315]
3. the documents filed in Eastern District bankruptcy cases (the "Eastern District case files"),[316] which include "petitions, inventories of the petitioner's property, orders, petitions for the discharge of the bankrupt, reports of the assignee who administered the estate, proofs of debts, depositions, petitions by creditors for the appointment of an assignee, rules, notices, schedules listing the assets and liabilities of the petitioner, motions, oppositions, and attachments;"[317]
4. the decree book for Eastern District bankruptcy cases (the "Eastern District decree book"),[318] which sets forth "temporary decrees issued after the assignee in bankruptcy proceedings had inspected the

309. These archival materials do not currently exist as publicly available digitized sources.

310. For a brief description of these types of records, see James K. Owens, *Documenting Regional Business History: The Bankruptcy Acts of 1800 and 1841*, 21 PROLOGUE 179, 185 (1989). For further discussion on the archival records of the federal district courts generally, see HOFFER ET AL., *supra* note 89, at 515–16.

311. For further discussion regarding some of these sources, see Pardo, *supra* note 8, at 91–109.

312. EDLA DOCKETS, *supra* note 252.

313. *Bankruptcy Act of 1841 Dockets, 1842–1843*, NAT'L ARCHIVES CATALOG, https://catalog.archives.gov/id/4513372 (last visited Jan. 29, 2019).

314. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 MINUTES, 2/1843–1/1861 (located in Record Group (RG) 21, The National Archives at Fort Worth, Texas) [hereinafter EDLA MINUTES].

315. *Bankruptcy Act of 1841 Minutes, 2/1843–1/1861*, NAT'L ARCHIVES CATALOG, https://catalog.archives.gov/id/4510563 (last visited Jan. 29, 2019).

316. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 CASE FILES, 1842–1843 (located in Record Group (RG) 21, The National Archives at Kansas City, Missouri).

317. *Bankruptcy Act of 1841 Case Files, 1842–1843*, NAT'L ARCHIVES CATALOG, https://catalog.archives.gov/id/4513381 (last visited Jan. 29, 2019).

318. EDLA DECREE BOOK, *supra* note 4.

petitions for conformity with requirements of the Bankruptcy Act of 1841 or decrees discharging the petitioner;"[319] and

5. the bankruptcy sales record books maintained by the Eastern District's U.S. marshal (the "Eastern District sales books"),[320] which "contain[ ] records of land, stock, household furnishings, and personal possessions which were sold to satisfy the claims of creditors" in Eastern District bankruptcy cases.[321]

While "[c]ourt records, especially the records of the civil courts, preserve one of the great underexplored chapters in the history of black life in America," the fact of the matter is that "[r]esearching nineteenth-century trial court records is a process fraught with technical challenges—of location, preservation, decipherment, and analysis."[322] The same can be said of the Eastern District's 1841 Act records. No published scholarship has systematically examined these sources for the purpose of analyzing the experiences of free people of color who sought federal bankruptcy relief during the antebellum period. But unearthing this history requires overcoming a formidable roadblock—namely, positive identification of individual debtors who were free people of color and who either sought relief under the Act or had a case initiated against them.[323]

In an ideal world, one would approach archival sources with an eye toward amassing sufficient information to enable both qualitative and quantitative assessments of the historical record.[324] In order to make quantitative assessments regarding the experiences of free black debtors under the 1841 Act relative to the

---

319. *Bankruptcy Act of 1841 Provisional and Discharge Decrees, 1842–1843*, NAT'L ARCHIVES CATALOG, https://catalog.archives.gov/id/4513393 (last visited Jan. 29, 2019).

320. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 SALES RECORD BOOKS, 1842–1853 (located in Record Group (RG) 21, The National Archives at Fort Worth, Texas); *see also* H.R. DOC. NO. 29-99, at 7 (1847) (referring to "the sales book of the marshal" consulted by the Eastern District's clerk of court, N.R. Jennings, in reporting to Congress "[t]he amount realized from the sales of property" in Eastern District bankruptcy cases).

321. *Bankruptcy Act of 1841 Sales Record Books, 1842–1853*, NAT'L ARCHIVES CATALOG, https://catalog.archives.gov/id/4513390 (last visited Jan. 29, 2019).

322. WELCH, *supra* note 10, at 6. For further discussion regarding these challenges, see *id.* at 6–8, 223–26.

323. Only a narrow class of debtors faced the threat of involuntary (i.e., creditor-initiated) proceedings under the 1841 Act. *See* Act of Aug. 19, 1841, ch. 9, §1, 5 Stat. 440, 441–42 (providing for involuntary cases under a limited set of circumstances against merchants, retailers of merchandise, bankers, factors, brokers, underwriters, and marine insurers) (repealed 1843). Nationwide, there were few involuntary cases under the 1841 Act. *See, e.g.*, H.R. DOC. NO. 29-223, at 6 (1846) (reporting that 1,510 voluntary petitions and 27 involuntary petitions were filed in the District of Connecticut under the 1841 Act); *id.* at 8 (reporting that 2,466 voluntary petitions and 84 involuntary petitions were filed in the Southern District of New York under the 1841 Act). Likewise, the Eastern District witnessed few involuntary cases under the Act. H.R. DOC. NO. 29-99, at 7 n.* (reporting that there were "three involuntary bankrupts" among 818 applicants who initiated 1841 Act cases in the Eastern District).

324. *See* Pardo, *supra* note 8, at 103.

experiences of their white counterparts, one would have to begin by identifying the total population of debtors under the Act, and then proceed to identifying the subpopulations of free black debtors and white debtors. Once having made these identifications, one would have to determine whether to analyze both subpopulations in their entirety or whether to analyze representative samples of the subpopulations. Loss, destruction, deterioration, nonindexing, mislabeling, and disorganization of archival records may very well preclude researchers from comprehensively examining an entire population,[325] let alone constructing sound data samples from which meaningful statistical analyses can be derived.[326] For the three primary reasons set forth below, such concerns are not as significant with regard to the trial court records of the Eastern District's 1841 Act cases.

First and foremost, we know that a total of 763 cases were commenced under the 1841 Act in the Eastern District.[327] A clarification of the historical record, however, is warranted. Several years after repeal of the 1841 Act,[328] the House of Representatives issued a document in 1847 (the "1847 House Document") reporting various statistics on bankruptcy cases under the 1841 Act.[329] The statistics are first presented as individual district tables, most of them accompanied by explanatory notation by the party who submitted the statistics to Congress (usually, the clerk of the federal district court).[330] The individual statistical tables for each district contain a category indicating the "[n]umber of applicants for relief under the [A]ct" (the "applicant category").[331] In the Eastern District statistical table submitted by N.R. Jennings, the clerk of the U.S. District Court for the Eastern District of Louisiana, a note explains that the number reported for the applicant category, 818, represented the total number of *individuals* who petitioned for bankruptcy relief, rather than the number of *petitions* that those individuals filed, which he reported as 759.[332] The discrepancy between the number of applicants and the number of bankruptcy

---

325. *See* WELCH, *supra* note 10, at 7–8, 223–24.

326. In her work "investigat[ing] unpublished and largely unexplored lower court records from the Natchez district of Mississippi and Louisiana between 1800 and 1860," *id.* at 6, Kim Welch has observed that "statistical analysis and sampling proves largely unhelpful because, in working with materials from these courthouses, *we always work in the context of an unknown baseline*," *id.* at 8 (emphasis added). To be sure, the challenges inherent in the study of nineteenth-century trial court records—including the problem of lost or destroyed records—also apply in the context of the 1841 Act. *See, e.g.*, Pardo, *supra* note 13, at 1107 n.206 (noting that "the U.S. National Archives and Records Administration, which maintains the records from the 1841 Act, does not have in its holdings any case files from the District of South Carolina, the Northern District of Mississippi, and the Southern District of Mississippi"). That said, as will be seen from the discussion below, researchers working with trial court records from the Eastern District's 1841 Act cases have the ability to establish known baselines for many research questions given the preservation, indexing, and extent of those records. *See infra* notes 327–45 and accompanying text.

327. *See Bankruptcy Act of 1841 Case Files, 1842–1843*, *supra* note 317 (noting that Eastern District case files are "[a]rranged numerically by case number, 1–763").

328. Act of Mar. 3, 1843, ch. 82, 5 Stat 614.

329. H.R. DOC. NO. 29-99 (1847).

330. *See id.* at 2–7.

331. *Id.*

332. *Id.* at 7 n.*.

petitions can be attributed to the fact that partners in trade could file jointly for relief (i.e., with a single petition) under the 1841 Act.[333]

The Eastern District docket books consist of docket reports for each filed case. The reports are arranged in chronological order by case number, with each case number seemingly having been assigned based on the date of filing of the bankruptcy petition. This organizational system is consistent with the system employed by other federal judicial districts to maintain their bankruptcy docket books under the 1841 Act.[334] The last docket report in the Eastern District docket books is for case number 763, that of Gustave Moussier, which was "discontinued in consequence of the repeal of the Law."[335] Additionally, other Eastern District records confirm that a total of 763 bankruptcy cases were commenced under the 1841 Act in that district.[336] The number of cases equally corresponds to the number of petitions filed given that the filing of a petition commenced a single case, regardless of whether the petition involved a single filer or joint filers.[337] Accordingly, the Eastern District statistics in the 1847 House Document should be viewed as having misreported the total number of petitions filed in that district under the 1841 Act.

Second, one of the volumes of the Eastern District minute books consists of an index listing the name and case number of the individuals whose bankruptcy cases were commenced in the Eastern District (the "Eastern District name index").[338] While there are some errors and omissions in the name index, consultation of other Eastern District records, such as the Eastern District docket books and case files, has permitted correction of those errors and omissions, thus allowing researchers to

---

333. *See id.* ("There were 759 petitions filed in court, in which several members of a commercial firm being joined, made the whole number of applicants 818."); *see also* Act of Aug. 19, 1841, ch. 9, § 14, 5 Stat. 440, 448 (providing for a joint bankruptcy case involving "partners in trade") (repealed 1843).

334. *See, e.g.*, BANKR. D. MASS. R. III (1842) (providing that "[a]ll petitions in bankruptcy shall be entered by the clerk, in a docket and register book, kept exclusively for matters in bankruptcy, in the order of time and with the dates affixed in which they are filed in the office") (repealed), *reprinted in* CHANDLER, *supra* note 109, at 40; *see also* § 13, 5 Stat. at 448 (stating "[t]hat the proceedings in all cases in bankruptcy . . . shall be carefully filed, kept, and numbered, in the office of the court, and a docket only, or short memorandum thereof, with the numbers, kept in a book by the clerk of the court").

335. 4 EDLA DOCKETS, *supra* note 252.

336. Pardo, *supra* note 8, at 109 n.182.

337. *See, e.g.*, 1 EDLA DOCKETS, *supra* note 252, at 100 (assigning a single case number, 100, to the case commenced by the joint petition filed by P. Brander, H.F. McKenna, and H.M. Wright).

338. *See Bankruptcy Act of 1841 Minutes, 2/1843–1/1861*, *supra* note 315 (stating that "[t]he volume for February-December 1843 contains an index to petitioners"). The maintaining of a name index in bankruptcy cases under the 1841 Act appears to have been a practice that prevailed in other federal district courts. *See, e.g.*, BANKR. D.N.C. R. 18 (1842) (providing that "[t]he clerks shall also prepare and keep in their respective offices, *with alphabetical indexes thereto*, suitable registers, into which shall be transcribed the dockets of each case in bankruptcy, and such registers shall be preserved as a record of all proceedings in bankruptcy" (emphasis added)) (repealed), *reprinted in* RULES AND REGULATIONS IN BANKRUPTCY, ADOPTED BY THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NORTH CAROLINA 4 (Fayetteville, Edward J. Hale 1842).

compile a complete list of every individual who was a debtor under the 1841 Act in the Eastern District.[339] In other words, researchers can establish the population baseline for a study such as this one.

Third, the researcher can reconstruct what occurred in a given case by looking to the contents of the corresponding Eastern District case file. Sometimes that might not be possible because the records for the case file have gone missing,[340] notwithstanding the Act's command "[t]hat the proceedings in all cases in bankruptcy . . . shall be carefully filed, kept, and numbered, in the office of the court."[341] For those case files with records, the researcher can verify the completeness of the case files by cross-referencing the Eastern District docket books, which include "a brief abstract of papers filed and actions taken" in each case.[342] For incomplete case files, the researcher may be able to fill some of those gaps by referring to other Eastern District records, such as the minute books and the decree book.[343] But some gaps will inevitably remain. Even for complete case files, the researcher may not be able to fully reconstruct what occurred in a given case because some case file records may be rendered indecipherable to varying degrees due to their deterioration. Finally, cross-referencing the records from Eastern District case files with other Eastern District records presents pitfalls for the researcher given the possibility of errors and omissions by the court personnel who created the latter records.[344]

Despite these caveats, the overall preservation, indexing, labeling, and organization of the Eastern District's voluminous records from the 1841 Act present the opportunity for meaningful quantitative and qualitative inquiries.[345] That potential exists for exploring the experiences of the Eastern District's free people of color who sought relief under the 1841 Act, including a comparison to the experiences of their white counterparts. But as previously mentioned, the primary difficulty in doing so turns on the researcher's ability to identify the race of debtors in those bankruptcy cases.[346]

Such identification could be facilitated by express designations in the Eastern District records classifying a given debtor as a free person of color. By way of analogy, under state law, "Louisiana courts had to identify the race of litigants . . . with the designation 'fpc' [i.e., "free person of color"] if free and 'slave'

---

339. *See* Pardo, *supra* note 8, at 109 n.182.

340. *See id.* at 98.

341. Act of Aug. 19, 1841, ch. 9, § 13, 5 Stat. 440, 448 (repealed 1843).

342. *Bankruptcy Act of 1841 Dockets, 1842–1843*, *supra* note 313.

343. *See supra* text accompanying notes 314–15, 316–17.

344. *See, e.g.*, Pardo, *supra* note 8, at 96–97 (discussing the possibility of omissions by the U.S. marshal in maintaining the Eastern District sales books); *id.* at 109 n.182 (identifying errors and omissions in the Eastern District name index).

345. *See, e.g.*, Pardo, *supra* note 13, at 1115 ("The analyzed materials tell both quantitative and qualitative stories about the scope and nature of the bankruptcy slave trade in a specific Southern jurisdiction, ultimately providing us with a granular view of how the bankruptcy system and its officials intervened in and took control over the lives of black men, women, and children.").

346. *See supra* text accompanying note 323.

if enslaved."[347] Similar acronyms included "f.w.c" for "free woman of color" and "f.m.c." for "free man of color,"[348] as well as their French equivalents—respectively, "f.c.l." for "femme de couleur libre" and "h.c.l." for "homme de couleur libre."[349] Moreover, Louisiana law "required all notaries or other public officers to insert the words 'free man of color' or 'free woman of color' when applicable on public documents."[350] The Eastern District's federal district court presumably would not have had to adhere to state procedural requirements in administering the 1841 Act cases before it.[351] Nonetheless, the possibility exists that the Eastern District's federal district court may have required, if not discretionarily included, express designations in its court records identifying free people of color with matters pending before it, including debtors in 1841 Act cases.[352] Moreover, even if the Eastern District did not make such designations, notarial and other public records created under state law and filed in the Eastern District's 1841 Act cases could have such designations.[353]

In fact, while examining the Eastern District case files in connection with my initial research on the intersection of the 1841 Act and the domestic slave trade,[354] I happened upon a notarial record in Antoine Jonau's case file with a single inconspicuous reference (i.e., the initials "f.m.c.") identifying him as a free man of

---

347. WELCH, *supra* note 10, at 224.

348. WALTER JOHNSON, SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET 252 n.34 (1999).

349. MELISSA DAGGET, SPIRITUALISM IN NINETEENTH-CENTURY NEW ORLEANS: THE LIFE AND TIMES OF HENRY LOUIS REY 8 (2017).

350. ASLAKSON, *supra* note 9, at 63; *see also* 1 HENRY A. BULLARD & THOMAS CURRY, A NEW DIGEST OF THE STATUTE LAWS OF THE STATE OF LOUISIANA 159 (New Orleans, E. Johns & Co. 1842) ("[I]t shall be the duty of all notaries, or other public officers, not to pass any act wherein any free person of color may be concerned, without inserting after the name and surname of such free person of color, these words, 'free man or free woman of color[.]'").

351. *See* Act of Aug. 19, 1841, ch. 9, § 6, 5 Stat. 440, 445–46 (stating that "it shall be the duty of the district court in each district, from time to time, to prescribe suitable rules and regulations, and forms of proceedings, in all matters of bankruptcy") (repealed 1843); *cf.* Anthony J. Bellia Jr. & Bradford R. Clark, *The Original Source of the Cause of Action in Federal Courts: The Example of the Alien Tort Statute*, 101 VA. L. REV. 609, 641 (2015) ("The Process Act applied when Congress did not otherwise provide a specific form of proceeding for the enforcement of a claim within the subject matter jurisdiction of the federal courts. Congress always could—and occasionally did—enact a specific cause of action for the enforcement of a specific federal right.").

352. While I have located excerpts of bankruptcy rules promulgated by the U.S. District Court for the Eastern District of Louisiana, *see supra* note 249, none of the excerpted rules pertains to a procedure for identifying free people of color with matters pending before the court.

353. *Cf.* STERKX, *supra* note 140, at 160–61 (discussing the "legal status of free persons of color" in antebellum Louisiana and noting that the law "required all such persons to place 'free man of color' or 'free woman of color' following their names in all business transactions, wills, and other forms of legal instruments" and that "both public and private records of the period carry the designation required by law").

354. Pardo, *supra* note 13; Pardo, *supra* note 8.

color.[355] This discovery came as a surprise given that nearly all of the more than 50 records in his case file,[356] as well as the Eastern District docket and minute books, do not include such a designation.[357] Wondering whether the designation could be corroborated, I delved back into Jonau's case file, ultimately finding a couple of other documents that appended the "f.m.c." designation to his name.[358] Recognizing the significance of this case file as part of the history of free people of color making claims for relief under the 1841 Act, I set out to identify additional case files involving debtors like Jonau.

Combing through each of the Eastern District case files to unearth designations of debtors as free men or women of color, however, was not a task that I could accomplish for purposes of this Article given financial and time constraints. The files consist of more than 24 linear feet of records contained in 48 legal archives boxes and 3 flat storage boxes for oversized materials.[359] That said, in connection with my most recent research on the intersection of the 1841 Act and the domestic slave trade,[360] I used the opportunity during a visit in July 2018 to the Fort Worth National Archives to search the Eastern District decree, docket, and minute books for designations identifying bankrupts under the 1841 Act as free people of color. In that process, I unearthed the names of five other bankrupts whom the court designated as free men of color: Pierre Casanave,[361] Louis Ferrand fils,[362] Drury L.

---

355. The record is a true copy of an act of sale pursuant to which Jean Emile Faures, the assignee in Jonau's bankruptcy case, sold "two lots of ground, buildings and appurtenances" to Simon Sacerdotte. J.E. Faures Assignee of Antoine Jonau to Simon Sacerdotte Lots & Buildings (Copy) at 3, *In re* Jonau, No. 78 (E.D. La. June 16, 1842). The act of sale begins by formally documenting Faures's appearance before Adolphe Mazureu, the notary public:

> Before me, Adolphe Mazureau, a notary public, in and for the Parish and City of New-Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses—personally appeared Jean Emile Faures Esquire of this City assignee of *Antoine Jonau f.m.c.* who declared that the said Antoine Jonau was declared Bankrupt and that the said J.E. Faures was appointed assignee of the Estate of said Bankrupt by a Decree of the United States District Court for the Eastern District of Louisiana . . . .

Id. at 1 (emphasis added).

356. For images of some of the case file records from *In re Jonau* mentioning Jonau without an "f.m.c." (or similar) designation, see Pardo, *supra* note 8, at 94 fig.1, 105 fig.3, 107 fig.4.

357. *E.g.*, 1 EDLA DOCKETS, *supra* note 252, at 78 (setting forth the docket report for the bankruptcy case filed by Antoine Jonau on February 24, 1842, and omitting "f.m.c." (or similar) designation); 6 EDLA MINUTES, *supra* note 314, at 225 (reporting on action taken by the court on September 19, 1844, regarding the assignee's sale petition in *In re Jonau* and omitting "f.m.c." (or similar) designation in the case caption).

358. *E.g.*, Opposition of the Petition for a Discharge, *In re* Jonau, No. 78 (E.D. La. July 11, 1842).

359. *See Bankruptcy Act of 1841 Case Files, 1842–1843*, *supra* note 317.

360. Pardo, *supra* note 14.

361. *E.g.*, EDLA DECREE BOOK, *supra* note 4, at 333 (setting forth bankruptcy decree and discharge decree for "Pierre Casanave f.m.c.").

362. *E.g.*, 4 EDLA DOCKETS, *supra* note 252, at 711 (setting forth the docket report for the bankruptcy case filed by "Louis Ferrand fils f.m.c." on February 8, 1843); 6 EDLA

Mitchell,[363] Chazal Thomas,[364] and Jacob Zebriskie.[365] As an example, Figure 3 sets forth the court's racial classification of Ferrand in the Eastern District docket books.

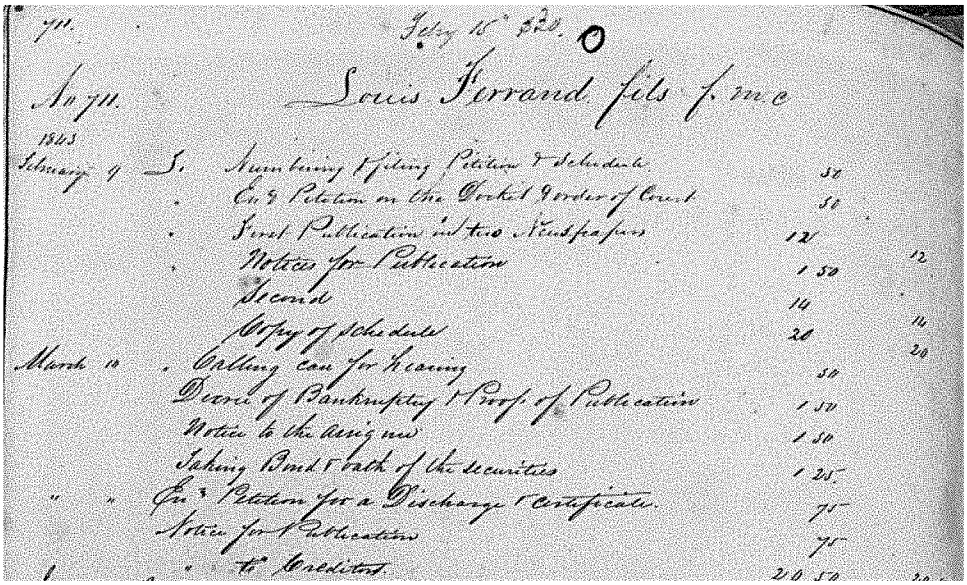


Figure 3: *Docket Report for* In re Ferrand fils

With this information in hand, I then visited the Kansas City National Archives in November 2018 to research their case files, in the process looking for additional evidence to corroborate the "f.m.c." designations that the Eastern District used to racially classify these men.[366] Of course, relying solely on court-assigned designations to identify all case files involving debtors who were free people of color

---

MINUTES, *supra* note 314, at 500 (reporting on action taken by the court on April 16, 1847, in the bankruptcy case of "Louis Ferrand fils f.m.c.").

363. *See, e.g.*, 6 EDLA MINUTES, *supra* note 314, at 352 (reporting on action taken by the court in the bankruptcy case of "D.L. Mitchell f.m.c.").

364. *See, e.g.*, EDLA DECREE BOOK, *supra* note 4, at 355 (setting forth bankruptcy decree and discharge decree for "Chazal Thomas f.m.c.").

365. *See, e.g.*, *id.* at 61 (setting forth bankruptcy decree and discharge decree for "Jacob Zabrizkie F.M.C.").

366. *E.g.*, Order to Show Cause at 1, *In re* Ferrand, No. 711 (E.D. La. Apr. 16, 1847) (referring to "judicial mortgaged creditors of said Louis Ferrand, fils f.m.c."); Petition of Assignee & Rule at 1, *In re* Zebriskie, No. 417 (E.D. La. Dec. 2, 1843) (seeking writ of possession for certain property surrendered by the bankrupt and identifying the bankrupt as "Jacob Zebriskie f.m.c."); Thomas Bankruptcy Petition, *supra* note 182, at 1 ("Respectfully represent [sic] Chazal Thomas a free man of colour residing in the City of New Orleans . . . that he is owing debts in his private right and capacity . . . ."); Casanave Bankruptcy Petition, *supra* note 179; Petition of Drury L. Mitchell F.M.C. to Be Declared a Bankrupt, *In re* Mitchell, No. 404 (E.D. La. Sept. 24, 1842).

will assuredly result in an incomplete picture,[367] as exemplified by Jonau's case.[368] For this reason, the analysis presented in this Article must be viewed as a preliminary investigation—that is, a precursor to a more thorough examination of the historical record.

APPENDIX B: FINANCIAL FREEDOM SUITS IN NORTH CAROLINA

In his work examining, among other things, the role of and attitudes toward debt in antebellum North Carolina, David Silkenat observes, without additional commentary or analysis, that "[d]espite their difficulty in procuring credit, free blacks [in North Carolina] appear in disproportionate numbers among bankruptcy filers in 1842, accounting for more than 10 percent of the total."[369] This observation, however, should be approached with caution when interpreting the historical record. In calculating the figure, Silkenat did not have a complete list of debtors involved in 1841 Act cases.[370] Acknowledging "the extant but very incomplete bankruptcy records [from North Carolina] at the National Archives,"[371] Silkenat seeks to augment the historical record by looking to a "scrapbook [that] contains newspaper clippings listing bankruptcy filings from twenty-three (of sixty-eight) counties."[372] Using these sources, Silkenat extrapolates a total number of 1841 Act case filings for all of North Carolina.[373] He does not, however, provide any of the figures on which he based his extrapolation, nor does he explain his extrapolation method.[374] He also does not indicate his methodology for identifying debtors under the Act who were free people of color, although it appears that he may have relied on manuscript returns from the 1840 U.S. census to do so.[375]

In all likelihood, Silkenat underestimates the number of 1841 Act case filings in North Carolina. His figure illustrating the number of such filings by state seems to indicate approximately 5 filings for every 10,000 free residents in North Carolina.[376] According to the 1840 U.S. census, from which Silkenat derives his

---

367. *See* JUDITH KELLEHER SCHAFER, SLAVERY, THE CIVIL LAW, AND THE SUPREME COURT OF LOUISIANA 271 n.25 (1994) ("Although the law required that the initials *f.m.c.* or *f.w.c.* be placed after the names of free persons of color in court records, trial courts were not always so generous."); WELCH, *supra* note 10, at 224 ("Some of the time court officials neglected to note whether or not the litigants and witnesses were people of color. Yet just because the designation is missing, we cannot assume that the plaintiff or defendant was white."); Reinders, *supra* note 175, at 274 ("Manuscript tax assessments supposedly list people by race until the knowing researcher discovers well-known free Negroes without the characteristic f.m.c. or h.c.l. after their names.").

368. *See supra* note 357 and accompanying text.

369. SILKENAT, *supra* note 12, at 157–58.

370. *See id.* at 248 n.55.

371. *Id.* The National Archives' holdings include case-file records for only one of the three federal judicial districts within North Carolina at the time of the 1841 Act. *See* Pardo, *supra* note 8, at 86 tbl.1.

372. SILKENAT, *supra* note 12, at 248 n.55.

373. *See id.* at 157 fig.6.

374. *See id.* at 248 n.55.

375. *See id.* at 157–58.

376. *See id.* at 157 fig.6.

state population figures,[377] the total free population in North Carolina consisted of 507,602 individuals.[378] Based on these figures, we would expect Silkenat to have estimated a total of 253 filings under the 1841 Act in North Carolina (i.e., 253 filings, divided by the free population of 507,602, and then multiplied by 10,000, yields 5 filings for every 10,000 free residents).

At the time of the 1841 Act, North Carolina consisted of three federal judicial districts: the Albemarle, Cape Fear, and Pamptico districts.[379] According to the population figures from the 1840 U.S. census, the Albermarle district had the smallest free population of the three districts—that is, a total of 84,844 free individuals, in comparison to 289,076 free individuals for the Cape Fear district and 133,862 free individuals for the Pamptico district.[380] According to the extant National Archives Records, there were at least 139 filings under the 1841 Act in the Albermarle district.[381]

If Silkenat did estimate a total of 253 filings under the 1841 Act in North Carolina, that would mean that the least populous of the three federal judicial districts in the state would have accounted for approximately 55% (139 of 253) of the total 1841 Act filings in the state. Importantly, North Carolina's two largest cities at the time of the 1840 U.S. census, Fayetteville and Wilmington,[382] were located in the Cape Fear district.[383] In light of this, and given that only approximately 17% (84,844 of 507,602) of North Carolina's free population resided in the Albemarle district, it is difficult to imagine that that district generated more than half of the 1841 Act filings within the state. Put another way, we should expect there to have been more than just 114 filings spread across the Cape Fear and Pamptico districts. Historians should therefore approach Silkenat's reported figure with caution and look for further evidence before concluding that free people of color in North

---

377. *See id.*

378. *See* DEP'T OF STATE, *supra* note 186, at 40–41.

379. *See* Act of Apr. 29, 1802, ch. 31, § 7, 2 Stat. 156, 162–63 (current version at 28 U.S.C. § 113 (2018)).

380. The 1840 U.S. census sets forth state population figures by federal judicial district, with one exception: It reports population figures for the entire state of North Carolina rather than by the state's federal judicial districts. *Compare, e.g.*, DEP'T OF STATE, *supra* note 186, at 60–62 (reporting population figures for the Eastern and Western Districts of Louisiana), *with id.* at 40–42 (reporting population figures for the entire state of North Carolina). The 1840 U.S. census, however, further disaggregates all population figures by county, including for North Carolina. *See id.* Accordingly, by referring to the geographic composition of each federal judicial district—for example, Congress specified that the Albemarle district would geographically consist of the areas designated under North Carolina law as "the districts of Edenton and Halifax," § 7, 2 Stat. at 162—I have reaggregated the county-level population figures from the 1840 U.S. census to produce population figures for the Albemarle, Cape Fear, and Pamptico districts.

381. Pardo, *supra* note 8, at 86 tbl.1.

382. *See* DEP'T OF STATE, *supra* note 186, at 42.

383. *See In re* Johnson, 13 F. Cas. 719, 719–20 (Daniel, Circuit Justice, C.C.D.N.C. 1842) (No. 7,368).

Carolina were overrepresented in 1841 cases relative to the percentage of free people of color among the state's total free population.[384]

APPENDIX C: STATISTICAL TABLES

Table 1: *Key Case Dates for the Eastern District Six*

Bankrupt	Case Number	Bankruptcy Petition	Bankruptcy Decree	Discharge Decree
Antoine Jonau	78	02/24/1842	04/09/1842	unknown[385]
Drury L. Mitchell	404	09/24/1842	10/25/1842	03/31/1843
Jacob Zebriskie	417	10/07/1842	11/07/1842	03/02/1843
Pierre Casanave	696	02/06/1843	03/10/1843	06/16/1843
Louis Ferrand fils	711	02/09/1843	03/10/1843	06/25/1843
Chazal Thomas	718	02/11/1843	03/10/1843	06/16/1843

384. According to the 1840 U.S. census, approximately 4.5% (22,732 of 507,602) of North Carolina's free population consisted of people of color. *See* DEP'T OF STATE, *supra* note 186, at 40–42. Recall Silkenat's assertion that free people of color constituted more than 10% of the debtors in 1841 Act cases filed in the state. *See supra* text accompanying note 369. If the true number of cases exceeded the number estimated by Silkenat, and if free people of color accounted for less than 10% of the debtors in the additional cases that he failed to estimate, then the true percentage of free people of color who were debtors in North Carolina's 1841 Act cases would be closer to the percentage of free people of color in the state's free population.

385. The Eastern District docket books usually provide unambiguous entries for the grant of discharge. *See, e.g.*, 2 EDLA DOCKETS, *supra* note 252, at 42 (setting forth the docket report for the bankruptcy case filed by Drury L. Mitchell on September 24, 1842, and providing an entry for March 31, 1843, which states, "Order of Court granting a Discharge & Certificate"). The docket report for *In re Jonau*, however, is ambiguous on this front. *See* 1 EDLA DOCKETS, *supra* note 252, at 78 (providing an entry for July 11, 1842, which states, "Order of Court relative to Petitions to discharge & Compound Claims"). Importantly, the case file records for *In re Jonau* do indicate that the Eastern District's federal district court granted Jonau a discharge. Marshal's Return, *In re* Jonau, No. 78 (E.D. La. Oct. 24, 1842) (appending a "copy teste" (i.e., a true copy) of an original order issued by the court on Oct. 20, 1842, stating that "the said Jonau has, by a decree of this Court, obtained a final discharge from all of his debts and a certificate thereof"). But those records do not indicate the date on which Jonau received the discharge. *E.g.*, Petition to Amend Schedule at 1, *In re* Jonau, No. 78 (E.D. La. Oct. 20, 1842) (stating that Jonau "received a certificate discharging him from all his debts," but omitting the date).

Table 2: *Financial Profile for the Eastern District Six*[386]

Bankrupt	Total Debt	Number of Debts	Total Assets	Gross Proceeds from Asset Sales
Antoine Jonau	155,846.37	122	162,957.71	48,241.18
Drury L. Mitchell	3,470.80	20	1,756.00	335.00
Jacob Zebriskie	10,085.07	23	values unreported	6,250.05
Pierre Casanave	2,738.59	17	1,592.39	—
Louis Ferrand fils	234,507.73	108	31,707.10	1,847.00
Chazal Thomas	2,150.00	5	values unreported	—
Column Total	**408,798.56**	**295**	**198,013.20**	**56,673.23**
Column Mean	**68,133.09**	**49.2**	**49,503.30**	**14,168.31**
Column Median	**6,777.94**	**21.5**	**16,731.55**	**4,048.53**

386. Table 2 includes debt and asset figures reported by the Eastern District Six in their originally filed schedules and any related supplementary filings. For an example of the latter, see Supplemental Petition of Bankrupt, *supra* note 150 (petitioning to amend original schedule of debts to include "debts due by him [that] were omitted through Error"). Also, Table 2 excludes scheduled debts for which the debtor did not report the amount owed to the creditor. For example, Zebriskie's original schedule of debts listed 21 creditors, including the Parish of Orleans. Zebriskie Debt Schedule, *supra* note 150. In the column describing the nature of the debt, Zebriskie reported "Taxes," and he included the notation "amt unknown" in the column for the dollar amount owed to the creditor. *Id.*