OVERVIEW OF MISSOURI FREEDOM SUITS STATUTES, AND THE ROLE OF PLAINTIFFS, JUDGES, LAWYERS and THE COMMUNITY IN THE ST. LOUIS FREEDOM SUITS

Courtesy of Freedom Suits Memorial Foundation
An Official Partner of the National Underground Railroad Network to Freedom program of the National Park Service

Introduction

Much has been written about the St. Louis freedom suits. The most well-known plaintiffs by far are Harriett and Dred Scott, but their case was towards the end – and clearly a product of - that arc of hundreds of plaintiffs who had already been suing for their freedom. Clearly, the course of history would have been very different if the Scotts were the only freedom suit plaintiffs. Freedom Plaza and its Freedom Suits Memorial sculpture honor, recognize, and celebrate the courage and bravery of the many, many enslaved plaintiffs, whose continual efforts over time proved to be a catalyst in changing the way most of our nation regarded Black Americans.

What follows is a brief overview of the laws relied upon, and the four main groups involved in the St. Louis freedom suits, which were filed in the decades leading up to the Civil War: the plaintiffs; the judges; the lawyers; and, the community. This is by no means intended to be complete, but rather to provide a motivating core of information to demonstrate the importance of illuminating this important and pivotal chapter in American history.

Freedom Suits Statutes and the Three Main Grounds for Bringing a Freedom Suit

The First Two Freedom Suits Statutes

The laws governing Missouri before it became a state included a law which authorized a person to sue to show they were wrongly enslaved. Most freedom suits plaintiffs relied on one of two of such statutes. One was enacted in 1807 and the other in 1824; they contained similar provisions.

The 1807 Louisiana Territory Statute

FREEDOM

AN ACT *to enable persons held in slavery, to petition for their freedom.*

1. It shall be lawful for *any person held in slavery* to petition the general court of common pleas, praying that such person may be permitted to sue as a poor person, and stating the grounds on which the claim to freedom is founded. If

in the opinion of the court the petition contains sufficient matter to authorize their interference the court shall award the necessary process to bring the cause before them. (*emphasis added*)

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From the Laws of the Territory of Louisiana, Chapter 35, 1807.

This 1807 statute has four additional, main sections, which set out the grounds for the suits and the steps the court can take to make sure the case moves forward. The main features of these sections are: **a)** the action is to be brought in assault and battery and false imprisonment to be instituted in the name of the person claiming freedom against the person who claims the petitioner as a slave; **b)** the court shall assign counsel to the petitioner and enter an order that they shall have reasonable liberty to confer with that counsel; **c)** the court may order that the petitioner shall not be taken nor removed from the court's jurisdiction, nor be "subjected to any severity" because of his or her application for freedom; and, **d)** the court can require the defendant to post a bond or to direct the sheriff to take possession of the petitioner and may then hire the petitioner out with the earnings to be given to the petitioner or the defendant, "as the event of the suit may justify". Based on the evidence at jury trial the court could pronounce a "judgment of liberation" from the defendant and all persons claiming by, from, or under, him, her or them; and an appeal shall be to the general court as in other cases.

The 1824 Missouri Statute

In 1824, three years after achieving statehood, Missouri enacted its own version of the freedom suits statute. It also had five sections and some additional language to the 1807 Louisiana Territory version. Significantly, it is also had the word "freedom" in its title: "**FREEDOM… AN ACT** *to enable persons held in slavery to sue for their freedom.*" Its effective date was July 4, 1825. (There were later versions of the statute, which made suing for freedom more difficult.)

The Three Main Grounds for Bringing a Freedom Suit

None of the statutes authorizing freedom suits statutes contain any specifics as to the grounds for a plaintiff to succeed. As a practical matter, however, there were three main grounds for success in bringing a freedom suit: **1)** that the petitioner was a free Black person, by purchase or other methods of achieving free status, who was forced into slavery; **2)** they were born a free Black person and were forced into slavery; and, **3)** that they stayed or resided long enough in a free state or territory to have become free – the well-known phrase "*once free, always free*." Many freedom suits plaintiffs, including Dred and Harriet Scott, utilized this last basis to sue for their freedom.

Freedom Suits Plaintiffs

Some say these plaintiffs should be regarded as the first civil rights litigants. Whether a fitting description or not, clearly these courageous plaintiffs were not even allowed to seek freedom as we think of it today. Instead, they fought for what they were permitted to achieve

with the limited legal rights they had, under the societal circumstances of their day, which we now universally regard as appallingly unjust to Black Americans. What cannot be denied is the now larger than life stature which freedom suit plaintiffs have as being among the most significant change agents in American history. St. Louis has 328 named plaintiffs honored on its Freedom Suits Memorial.

This passage from Tony Sestric's book, "*57 Years*", provides a few poignant and sobering examples of the challenges facing freedom suit plaintiffs:

> This book is about the bravery and courage the more than four hundred slaves who fought for their freedom. The filing of the early freedom suits resulted, often, in plaintiffs being 'sold down the river' to masters down the Mississippi, never to be seen again. Once the judges and plaintiffs' lawyers figured out how to stop these sales, the slaves were incarcerated until their trial. But this often resulted in the slaves being 'hired out' by the sheriff, frequently leading to cruel treatment, as bad as that handed out by their master. Finally, the courts required the masters to post a bond to keep possession of their slaves. The bonds were normally high enough that masters would make sure the slaves were present when their day in court came, lest their masters forfeit a huge bond… Filing for their freedom required incredible patience, courage, and an acceptance of a long and frequently discouraging process on the part of the slave.

57 Years- A History of the Freedom Suits in the Missouri Courts; Reedy Press (2012), Introduction, p. vii.

Scholars of this litigation have found support for the plaintiffs themselves being remarkably savvy about their cases. This was not only as to the laws available to them, but also as to their understanding of human nature and how to gather evidence necessary to their cause. Stanford University history professor, Anne Twitty, in her book's chapter entitled, "*With the Ease of a Veteran Litigant*", offers the following:

> Long before they sued for their freedom, those held in bondage on a sparsely populated frontier obtained legal information from a variety of sources. They listened intently to advice provided by their white neighbors and shared information about legal representation with their children, siblings, spouses, and those with whom they had been enslaved. They sought attorneys who would help them press their claims and relied on their own past experiences with the law, using their accumulated legal knowledge to file again and again, both in St. Louis circuit court and courts throughout the United States. Such evidence demonstrates that those who sued for their freedom absorbed the law deeply and measured their actions according to its dictates, tirelessly seeking ways in which it might be used to serve their own interests.

Before Dred Scott- Slavery and Legal Culture in the American Confluence, 1787-1857, Anne Twitty, Cambridge University Press (2016), p.75.

The Role of Judges

Author/lawyer Tony Sestric wrote in his "*57 Years*" that two of the three judges who clearly established the right of slaves to successfully sue for their freedom were Mathias McGirk and George Tompkins. *57 Years- A History of the Freedom Suits in the Missouri Courts*, Reedy Press (2012), p. 63. Sestric's book profiles six judges who were involved in the freedom suits because they served on the St. Louis circuit bench and/or on the Missouri Supreme Court.

As mentioned earlier, the laws upon which freedom suits were based were first enacted before Missouri was a state and was still part of the Louisiana Territory. Under those laws and the Missouri 1824 statute that substantially borrowed from it, a judge had the responsibility to determine whether a plaintiff's petition stated a possibly cognizable claim for freedom. Both the 1807 and 1824 statutes empowered the court as a sort of "gate keeper" for the initial claim and to some extent to oversee its management. For example, a judge had authority to permit the plaintiff to sue as a poor person, to assign counsel for them, and to order they shall have reasonable freedom to meet with their counsel. There was also a provision for the court to enter an order to prevent the defendant from removing the plaintiff to another jurisdiction pending the outcome of the litigation. Enslavers had been known to move an enslaved plaintiff out of Missouri to avoid losing the case.

Over the period of 1814 to 1860, 12 judges served on the trial court for St. Louis County. From 1821 to 1863, the span of reported freedom suits decisions by the Supreme Court of Missouri, 19 judges served on that court (which had three members). Not all these judges were "pro-freedom suits", which leads to the importance of the Rule of Law, as can be seen in some surprising acts of compliance by judges who were enslavers themselves. (for a list of these judges, go to www.stlfreedomsuits.org)

It seems that most of what we know about judges' actions may be from sometimes sparse trial court records and appellate decisions. This is because there were no trial transcripts as we know them today. For the majority of trials in the St. Louis Circuit Court, we have only the petitions and answers/denials thereto, a good number of subpoenas and clerk's notations, but rarely deposition "transcripts" or affidavits of witnesses. The rationales expressed in Missouri Supreme Court opinions likely provide us a mere glimpse of the complex landscape of slavery and indentured servitude which existed in an area which historians call the American Confluence. This was not in the deep South, but in the "vast region where the Ohio, the Mississippi, and the Missouri rivers converge…". *Before Dred Scott – Slavery and Legal Culture in the American Confluence – 1787-1857, Cambridge University Press (2016),* Anne Twitty, Introduction, p. 3. "Both slavery and freedom in the region, moreover, were more ambiguous than elsewhere in the United States. There were fewer slaves and slaveholders in the region than there were further south and east, and the advantages slaveholders had in other parts of country enjoyed over their slaves – by virtue of law, custom, or force – frequently broke down……The American Confluence was a place where slaves might attain an ever-greater degree of autonomy." *Id*. at p. 5. In short, for most of us, our insight into and our current day notions about slavery and the legal fights of the enslaved for their freedom in the time period at issue are almost certainly uneducated and ill-fitting.

It must be made clear that, but for the judges who first pronounced and then adopted the judicial doctrine of "*once free, always free*", there would not have been nearly as many

successful St. Louis freedom suits for plaintiffs as there were. This doctrine was announced in the Missouri Supreme Court case of *Winny v. Whitesides*, 1 Mo. 472 (1824) and was the theory upon which hundreds of freedom suits plaintiffs – including Dred and Harriet Scott – relied on in their cases.

The Role of Lawyers

Historical sources provide insight into both who the lawyers were and how they served as legal counsel to the freedom suit plaintiffs. Tony Sestric, in his "The Lawyers" section of "*57 Years*", reminds us to realize the legal community in pre-1860 St. Louis was incredibly much smaller than today. He tells us that in 1836 only about 20 lawyers lived in the area, but that number grew to 367 by the beginning of the Civil War. *57 Years, The Lawyers*, at page 13. Moreover, many of these attorneys were equally or more prominent in their businesses, such as banks and newspapers. One of them was Roswell Field, the father of famous children's author, Eugene Field. Some would go on to hold political office. A review of circuit court and appellate court records show that over 1814 to 1863, more than 120 attorneys were involved in freedom suits litigation, whether as counsel for the freedom seekers/plaintiffs or the enslaver/defendants. (for a list of these attorneys, go to www.stlfreedomsuits.org)

In Anne Twitty's remarkable book on pre-Civil War struggles against slavery, her third chapter – "*By the Help of God and a Good Lawyer*" – conveys how earnestly the plaintiffs' lawyers fought for them. In a closing paragraph, she observed the following:

> Taken as a whole, those who sued for their freedom in the St. Louis circuit court received competent counsel whose quality was largely identical in nature to the legal representations obtained by defendants. Though they were hardly perfect, the attorneys who represented such plaintiffs proved themselves more than willing to aggressively prosecute freedom suits. Their clients, who were savvy in their understanding of the law, recognized as much, and not only heaped praise upon their work but also, in some cases, developed close relationships with them.

Before Dred Scott – Slavery and Legal Culture in the American Confluence, 1787-1857, Anne Twitty, Cambridge University Press (2016), p. 125. This certainly makes sense if we realize that those who were attorneys in this new part of the nation, were almost certainly among the most educated. More granular research projects will reveal that not all these attorneys "were created equal" when it came to freedom suits.

This is not to say that lawyers for freedom suit plaintiffs were highly regarded by all in the community. Tony Sestric, in his *57 Years*, points out that St. Louis lawyers representing freedom suit plaintiffs were not universally praised for their efforts:

> Reminiscent of today's claims that plaintiff lawyers sue for profit, filing baseless suits, the local press in the early 1800s muttered similar accusations. Proslavery St. Louis claimed St. Louis lawyers, hungry for business, were abusing the right to sue for their own personal gain and that the 'liberty of suing for freedom has become abused by the left-handed profiteering lawyers'

who encourage slaves to tell their friends, who then go back to the first lawyer, and so forth.

57 Years-A History of the Freedom Suits in the Missouri Courts, Anthony J. Sestric, Reedy Press *(2012),* pp. 15-16.

The Role of the Community

With increased study of the St. Louis freedom suits is the realization that an important component of this American chapter is the role which members of the community played in freedom seekers turning to the courts and, in other ways, helping freedom suits plaintiffs achieve the legal status of not belonging to another person as if they were mere chattel.

One of the earliest examples brought to the attention of most Americans – although not a central theme of the tragedy – was the Blow family purchasing the freedom of the Scott family after the United States Supreme Court issued its vitriolic opinion in March 1857. These were descendants of those who "owned" the Scotts in St. Louis, after they were brought here.

An example which some could say has the potential for a movie script involves the Shipman family freedom suits filed in 1827. Those suits were filed after creditors kidnapped most of a formerly enslaved family who took the surname of their enslaver/emancipator, David Shipman. The kidnapping occurred in Tazewell County, Illinois (near Pekin, Illinois) and was carried out by creditors of David Shipman, who had used his former slaves as collateral for loans. Once neighbors of the Shipmans learned of the kidnapping, three of them (now known by the community as the "Three Horsemen") rode all night to try meet the kidnappers with their victims at the St. Louis levee, where the kidnappers planned to sell their victims at auction. They essentially had no recourse but to file freedom suits. The Shipman plaintiffs are listed on the Freedom Suits Memorial in the year 1827. They eventually won their cases, which were appealed to the Missouri Supreme Court, which found in favor of the freedom seekers.

Another example is brilliantly documented and illustrated by the work of Dr. Anne Twitty, in her paper "*Litigating Freedom during the Missouri Crisis*", Anne Twitty (2021 Missouri Press) written as part of a larger work published by the Kinder Institute for Constitutional Democracy at the University of Missouri – Columbia. There, professor Twitty deftly illustrates how a religious community located in the St. Ferdinand Township, where Winny lived, supported her in her decision to file a freedom suit. Dr. Twitty also documents how they also supported at least two others – Jack and Arch – to file freedom suits. All three of these plaintiffs are memorialized on the black granite base of the Freedom Suits Memorial on Freedom Plaza.

This last group involved in the freedom suits shows the importance of those outside the legal system being able to help freedom seekers.

Conclusion

The St. Louis freedom suits plaintiffs, without realizing it, or intending so, were among the most significant change agents in American history. There is no doubt their quest for freedom initiated what can only be described as nation-altering change by showing themselves to be heroic human beings, deserving so much more than to be regarded as mere chattel.

Hon. David C. Mason (*ret'd*)
Board Chair

Paul N. Venker
President

About the Freedom Suits Memorial Foundation and Freedom Plaza

The Freedom Suits Memorial Foundation was formed to undertake an ambitious educational mission – to share the true stories of the struggles and successes of Black Americans from before the Civil War, up through the intervening years, all the way to the present. Scan the QR code below to learn more about this mission, the Foundation and its namesake, the Freedom Suits Memorial, at: stlfreedomsuits.org

Freedom Suits Memorial Foundation
"We Must Remember. For Them. For Us."

Freedom Plaza is listed as a site on the National Underground Railroad Network to Freedom program of the National Park Service, which is an honor shared by a select group of other St. Louis sites, including the Old Courthouse, Greenwood Cemetery (where Harriet Scott is buried), Tower Grove House (Missouri Botanical Garden), Mary Meachum Freedom Crossing, the Missouri Historical Society Library & Research Center, as well as a few others. Also, the Freedom Suits Memorial Foundation is proud to be an Official Partner of the National Underground Railroad Network to Freedom, recognized by the National Park Service. (updated: May 26, 2026)

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