

Letitia Carson, Her Story

Chapter 7. Carson vs. Smith

Through most of the 19th century, the issue of slavery was a key point of social and political discussions in the US. Territorial applications for statehood were focused on whether the proposed state was to allow slavery ("slave state") or forbid it ("free states"). This difference in viewpoint led directly to the US Civil War in 1861. It is not coincidental the Oregon was granted statehood in 1859 by making slavery illegal -- and by making future black immigration and occupation illegal at the same time.

The first Oregon exclusion law was passed in 1843 by the self-appointed Provisional Government, a temporary political structure set up by retired French-Canadian (Metis) fur trappers and the first Oregon Trail settlers to farm the Willamette Valley. This law included a ban on slavery and a requirement that slaveowners free their slaves. Blacks who remained in Oregon after their freedom was granted, however, would be publicly whiplashed and expelled. If they were caught again in the Territory within six months, the punishment would be repeated.

This law was amended to substitute hard labor for whiplashing, and was repealed in 1845, before it could take effect, if at all. There was no reasonable method to enforce such a law, even if it were enacted.

In September, 1849 another exclusion law was passed, by the first meeting of the new Oregon Territorial Legislature. This version allowed black residents already in Oregon to remain but banned further black immigration. Ship owners were responsible for their black crew members and could be fined \$500 if the crew member jumped ship and remained in Oregon. In this second version, new black immigrants would be arrested and then ordered to leave.

In the Territorial Legislature of 1854 a proposition was made to exclude "free negroes" and Chinese from the territory, and a motion was made by a Jackson County representative to amend the bill so that slaveholders might bring and hold their slaves in Oregon. The bill didn't pass, and the existing 1849 exclusion law -- without any apparent intent to specifically do so -- was inadvertently voided in the process.

These laws were enacted during a time of great national and local debate regarding slavery. *Uncle Tom's Cabin*, for example, began as an anti-slavery magazine serial in June 1851 and was published in book form as the series was completed in March 1852. The first day of sales, all 3,000 copies of the book were sold and a total of eight full-time printing presses were subsequently needed to meet the demand for the

300,000 additional copies that were published and sold in the first year. By the end of the 19th century, only the Bible had sold more copies in the United States than *Uncle Tom's Cabin* in the previous 100 years. The moral and political debate between abolitionists and pro-slavery advocates was considered vital to the future of the United States and its Territories and the topic was of great interest to nearly everyone.

On April 16, 1852, at a time when *Uncle Tom's Cabin* had just attained national popularity, Robin and Polly Holmes filed a lawsuit against Nathaniel Ford to free their four children -- whom he had continued to keep enslaved on his Polk County farm. Ford had owned the Holmes family in Missouri but had promised them freedom if they helped develop his farm after crossing the Oregon Trail with him in 1844. He kept his promise to Robin and Polly, but insisted their children remain under his ownership at least until they reached adulthood. When pressed on the issue, he threatened to return to Missouri and sell the children there.

The Holmes lawsuit languished in court and went nowhere. It took over a year for the first hearing to take place, at which time Ford requested a further delay and offered to provide a \$3,000 bond to ensure he would not take the children to Missouri to sell. Two months later, in June, 1853, Holmes renewed his petition to free his children and the judge attempted to postpone the case another six months.

On July 2, 1853, George W. Williams arrived in Oregon via steamboat from San Francisco with his wife, Kate. He had just turned 30, had never attended college, but had been successfully practicing law since the age of 21 and was the newly appointed Supreme Court Justice of Oregon Territory by US President Franklin Pierce.

Robin Holmes quickly approached the new Justice with his complaint, and the first major case over which Williams presided in Oregon became *Holmes v. Ford*. On July 13, less than two weeks after his arrival and following a two-day trial, Williams ruled that "in as much as these colored children are in Oregon, where slavery does not legally exist, they are free."

The following month, in August 1853, 35-year-old Andrew Jackson Thayer -- like Williams, also a New York native and successful attorney -- arrived in Oregon over the Oregon Trail and set up practice in Corvallis. Six months later, on February 27, 1854, Thayer, as legal representative for Letitia Carson, served a Notice of Complaint against Greenberry Smith and the estate of David Carson for more than \$11,000 in compensation for the seven years she had worked for David in Oregon, and for her 29 head of cattle that Smith had sold to himself and other neighbors.

It is unknown whether Carson approached Thayer, whether he approached her, or whether sympathetic neighbors or local residents arranged the meeting, but her legal Notice stated that she would file a claim to the Benton County Probate Court the following month for:

. . . the damages which I have sustained in consequence of the non performance of the following personal contract made & entered into by & between the said David Carson during his life time and myself . . . while on the road from the state of Missouri to the territory of Oregon and after he had passed the state line of the said state of Missouri stipulated & agreed to & with me that in consideration ~~that~~ I would live with & work for the said David Carson for and during the term of his natural life that at his decease he would make me his sole heir or that he would give me his entire property which should own or be possessed of at the time of his said decease that in pursuance of said contract I continued to live with & work for the said David until the time of his decease, but the said David not regarding his said contract neglected to make me heir to his entire property or to give me the same or any part thereof either by will or otherwise wherefore I have sustained great damage to wit five thousand dollars . . .

In addition to the claim of “damages on contract,” Letitia’s request also included seven and one-half years of labor for \$500/year (\$3750), the sale of her 29 head of cattle at \$50/head (\$1450), and the “use” of 10 cows for seven years (\$1000), for a total of \$11,200.

In response, Smith quickly employed 35-year-old attorney John Kelsay who, like Thayer, had also recently arrived in Oregon after crossing the Oregon Trail with his wife in the summer of 1853. Kelsay, an outspoken pro-slavery Democrat, was born in Kentucky, but was raised and practiced law in Missouri before emigrating to Oregon. He refuted Carson's claims with a long, drawn-out counterclaim that there was no proof of the seven year's labor, nor of the ownership of the 29 cattle, or of any agreement to rent or lease 10 cows.

To settle the dispute, subpoenas were issued to Andrew Carson and David Carson (“Jr.”), and to neighboring Soap Creek Valley landowners Francis Writsman, Albert Writsman, Joseph Hughart, and John Wiles. The subpoenas were issued by Probate Judge (and State Representative and County Commissioner) Abram Locke and served by Deputy Sherriff William Jackson.

Attempts to subpoena Henry Knighton, a fellow 1845 Missouri emigrant who had traveled the Oregon Trail with David and Letitia and could testify as to the ownership of the cattle, and to William Henry Walker, a former neighbor, family friend, and caretaker who had visited the Carsons shortly before David's death and could also testify as to ownership of the cattle, were unsuccessful and the proceedings postponed.

On July 17, 1854, Letitia appeared in person before Justice of the Peace D. W. Russell to reduce her claimed labor charges to \$200/year (\$1500 total) and allow for a credit of \$500 for room and board and clothing for her two children, making a total complaint of only \$1000 – which was also refused by Greenberry Smith.

In September, Attorney Thayer again requested subpoenas for several of Letitia's former neighbors (by then she and her children were living in Douglas County) but excluding the two Carson men. He then filed a complaint in Benton County District Court on her behalf for the modified \$1000 amount.

The ensuing trial likely took place at Joseph Avery's home in Corvallis. Avery was another Old Oregonian that had probably known, and may have even traveled with, the Carsons on their way to Oregon in 1845. Avery established his claim at the mouth of the Marys River, where it enters the Willamette, and plotted the original Corvallis townsite with his neighbor, William Dixon, on their adjacent claims. Here he established a store and soon became wealthy with traffic from the California Gold Rush. Avery also sold the major local and regional newspapers, and his store and home became the County's center of news, commerce, and politics for many years.

When the first murder trial took place in Benton County, in June 1852, there was no courthouse to hold a trial, and so Avery's home had been rented for that purpose. This was a logical choice as Territorial Governor Joseph Lane had officially designated Avery's house "as the place for Benton County business" in 1849, and a new courthouse had yet to be budgeted, or even seriously considered by 1852. There had been no real need until that point.

The murder trial involved yet another 1845 Old Oregonian, Nimrod O'Kelly, who had shot and killed a man he claimed was knowingly trespassing on his property. O'Kelly traveled the Oregon Trail with Avery, his friend, and lived 15 miles south of Corvallis, but chose to travel from his home, directly past Avery's, and several miles further north to Soap Creek Valley, to the home of another Oregon Trail friend, Greenberry Smith's, for shelter and advice. Greenberry advised O'Kelly to turn himself in.

According to Lansing (2005: 115) David Carson had been slated to be a juror at the O'Kelly trial in the summer of 1852, and had likely appeared on June 1, the first day, but "could have been . . . who might have been . . . ailing . . . at age fifty-two the oldest jurymen on the panel. He died two months after the trial." He then noted that "Carson, or whoever it was . . . was paid his fee [about \$4] nonetheless."

If David were too ill to be a juror at the sensational O'Kelly trial, would Letitia or either of the two Carson boys have attended as observers? Certainly she would have been aware of the news every day -- her long-time neighbors and fellow 1845 Old Oregonians, Greenberry Smith and juror Thomas Read, were directly involved.

The first Benton County Courthouse was not completed until 1855, so it seems most likely that the 1854 trial of *Carson v. Smith* also took place at Avery's rented home. The O'Kelly murder trial had involved dozens -- if not hundreds -- of people, including curious spectators, and probably took place out of doors, but it is unknown and never reported how many people may have attended Letitia's court case. Fall weather may have dictated the location and how many people attended. Perhaps people may have even been cautioned not to attend or report on the event.

On October 10, Smith provided a lengthy enumerated response to Letitia's claims via Attorney Kelsay -- in addition to his sworn statement to Clerk James Slater -- claiming: 1) Letitia had not worked for seven years as stated, nor were her services worth \$1000; 2) Letitia was David's slave until the time of his death; 3) as a slave and "member of the family," room and board and clothing for her and her children were sufficient payment for the seven years she spent with David; 4) her emancipation from slavery, brought about by her move to Oregon, was "reasonable worth" in itself for her labor; 5) she had been too sick to work for six months in 1851-1852 and David's care and "medical attendance" also constituted fair payment for her work, as did time she spent with the Joseph Gage family in Polk County in 1849 during the birth of her son.

Smith also claimed to have "a bill of sale of said Letitia Carson plaintiff to deceased David Carson" which was highly unlikely and never produced.

The following day, October 11, Letitia refuted Smith's claims, point by point, "but she avers that she resided in said family as a servant and performed menial [sic] service as such during said period mentioned." In one of the very few public accountings of the lawsuit, the October 17, 1854, *Oregon Statesman* reported (on page 3):

Lutensia Censor v. Green B. Smith, administrator on estate of David Censor, deceased. This was an action by a black woman to recover the value of her service rendered in this territory to defendant, from the year 1845 to 1852. Lutensia was a slave in Missouri, but came to Oregon and served her master faithfully until his death. In the absence of circumstances which would imply an agreement to pay, Jury disagreed – 9 for and 3 against – jury discharged. Cause continued. D. Smith, Grover and Thayer for plaintiff, Logan and Kelsey for defendant.

In addition to Judge Williams, other prominent Oregonians present at the hearing included Thayer, Kelsay, Reuben Boise, Lafayette Grover, Stephen Chadwick, David Logan, and Delazon Smith -- all significant members of the 60 total representatives later elected to create an Oregon State Constitution in August 1857.

On May 7, 1855, an all-white male jury of several local land and business owners, decided “for the Plaintiff the sum of three hundred dollars,” although Clerk Slater inadvertently recorded the amount as “\$3,000.” Judge Williams ordered that the \$300 judgment be accepted, in addition to \$222.20 costs, for a total of \$522.20. It is unclear what Attorney Thayer may have received, as sheriff’s fees were \$29.00, clerk’s fees were \$27.10, and “witness fees” were \$166.10.

None of this seems to have been reported in the newspapers or even noted in the subsequent writings or public statements of any of the prominent principals involved.

On August 2, 1855, Attorney Thayer filed a second lawsuit on behalf of Letitia, regarding her 29 cattle, which she valued at \$2,000 and that had been sold by Smith at the January 1853 public auction. On September 21 this amount was reduced to \$1,200 “or thereabouts” – which more closely reflected the price at which they had been sold.

Smith responded that he had “no knowledge, information, or belief sufficient to enable him to answer said complaint as to having sold any cattle of any kind for any sum of money whatever.” But, in any instance, \$500 should be credited against the “securing and rearing of said cattle from 1845 to the time of said sale.”

During much of this time, Letitia and her son Jack -- and possibly daughter Martha, as well -- were holed up at "Fort Elliff" with the Elliff and Nidey families in Upper Cow Creek Valley, in Douglas County. This was during the so-called Rogue River Indian War, which reached its climax at the "Battle of Hungry Hill" on October 31, 1855 -- and less than 20 miles from the Elliff homestead.

In February, 1856, Attorney Kelsay volunteered to participate in the War and 30 days later was elected as "Colonel" of the Southern Battalion -- then numbering about 60 men. On April 27 he led the so-called "Battle at Little Meadows" with about 100 volunteers in which an estimated 50 defenseless Indian men, women, and children were massacred during a dawn attack, and only one American killed. The following month Kelsay retired from the military and returned to his law practice, but preferred being addressed as "Colonel" for the remainder of his life.

Meanwhile, in Benton County, depositions, statements, and subpoenas were being given, made, and served throughout most of 1856 and included most of the same individuals; and again including the two Carson men. Also subpoenaed, but unsuccessfully, was David Davis's wife, Sarah, who was said to be critical to the defense. She was a next-door neighbor to Letitia for many years, lived in a stable, high-profile house and store, and it should have been a relatively easy task to serve her with a subpoena. It is interesting to speculate why that wasn't done.

A new sheriff, Sheldon Fargo, and a new clerk, Thomas Odeneal, had been elected since the earlier trial, though, replacing Thomas Right and James Slater. And a brand-new courthouse had been constructed, with this likely being one of the very first events to take place in that location.

This time William Henry Walker was able to be located, however, and his October 8, 1856, deposition from Douglas County was critical to Letitia's case. He testified he had known the Carsons since 1848 -- when he had an adjacent land claim in Soap Creek Valley -- and had most recently talked with David Carson in August 1852, about a month before his death:

I remarked to David Carson that he had quite a large band of cattle. When he replied that those cattle there were not his except seven head which consisted of two yoke of oxen one cow one yearling & one sucking calf, and he further said that Twenty seven head of the cattle belonged to Lutishia Carson. He particularly pointed out an old pied cow that Lutishia Carson had bought said cow on the plains in 1845 and remarked that 27 head which he pointed out as Lutishia Carson's were the natural increase of said cow.

On October 20, 1856, Judge George Williams, in the presence of US Marshall John McCracken, Prosecuting Attorney George Shiel, Sherriff Sheldon Fargo, and Clerk Thomas Odeneal, issued a judgment for \$1200, together with \$199.75 costs, in accordance with the Jury's verdict in that amount.

In March 1857 the US Supreme Court, in *Dred Scott v. Sandford*, declared:

A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a "citizen" within the meaning of the Constitution of the United States . . . Consequently . . . they are not entitled to sue in that character in a court of the United States.

On June 2, 1857, Letitia Carson received \$778.80 from Smith, via Attorney Thayer, "being in full of all demands against estate."

The Dred Scott Decision had a sobering effect on Oregon politics and legal affairs. The Court ruled, among other things, that Congress and territorial legislatures had no authority to prohibit slavery in federal territories and that only sovereign states could decide the issue of slavery. This ruling added significant complexity to Oregon's efforts to become a State – which was generally divided between the Lane Democrats, who favored slavery, the "Salem clique" Democrats who were willing to make both slavery and residency by free blacks illegal, and the new Republicans, who were dead-set against slavery of any kind in Oregon and divided regarding black residency.

The *Carson v. Smith* results were politically and socially newsworthy, and unprecedented. The hearings were attended by many prominent local and state citizens – including two future Oregon senators, multiple mayors, judges, elected representatives, and the brother and business partner of a future Oregon Governor -- and yet were barely acknowledged, if at all, in the local or state press at that time.

Letitia Carson was one of the most noteworthy Oregon Trail pioneers in history, yet she is strangely absent from that history. The reasons are likely mostly political and economical, but also based on the facts that she was a woman, black, and illiterate.

The Oregon Constitutional Convention began deliberations on August 17, 1857, a month after the Dred Scott decision, and all Oregon newspapers covered its actions and debates in great detail. The August 29, 1857, anti-slavery *Weekly Oregonian*, for example, covered the ensuing debate on the statewide slavery issue with the headline: "The Nigger Question."

Shortly before the scheduled start of the convention, Judge Williams, a Democrat, decided to speak out publicly against the prospect of slavery in Oregon -- the only Democrat in Oregon to do so at that time. Williams wrote a long letter, published in its entirety in the *Oregon Statesman*, responding to what he perceived to be a growing number of Democrats favoring slavery in Oregon.

Williams used his "Free State Letter" to strongly argue that slavery was not adaptable to Oregon's economy and climate. He further tried to establish his credibility with his intended readers by declaring his hatred for abolitionism or black equality, while affirming his belief that slavery should be left alone where it already existed. In fact, he considered southern slaveholders to be "as high minded, honorable, and humane a class of men as [could] be found in the world . . ." and maintained that abolitionists were unfairly persecuting them.

He went on to argue that slavery would harm the existing labor force, writing, "Negroes are naturally lazy . . . [They] are an ignorant and degraded class of beings, and therefore they will vitiate to some extent those white men who are compelled to work or associate with them." Williams also argued that the cost of bringing slaves to Oregon and maintaining them would be prohibitively expensive. Only a handful of Oregon's farmers could afford the cost of buying, transporting, and providing for slaves. Moreover, the territory's crops and economy generally were not suited for slavery or a plantation system such as with tobacco and cotton in the South and tobacco and hemp in Missouri.

Williams further contended that while white wage laborers could be hired and paid to work only for the period they were needed -- such as planting and harvesting seasons -- slaves would have to be supported by their master the entire year. This led to the question "What could a negro fitted by nature for the blazing sun of Africa, do in an Oregon winter?" Williams also claimed that southern slaveholders would sell only their most troublesome slaves. Would these slaves, once in Oregon, escape to the free state of California or to the free territory of Washington? Or worse yet, would they flee to the refuge of hostile Indians, perhaps forming an alliance to attack isolated and poorly protected white settlements in Oregon?

At least eight key individuals involved in *Carson v. Smith*, including Judge Williams and attorneys Thayer, Kelsay, Reuben Boise, Lafayette Grover, Stephen Chadwick, David Logan, and Delazon Smith were also among the 60 men elected in 1857 to help author the Oregon Constitution.

During the August constitutional debates regarding voting rights, "Mr." Kelsay was among the most active participants, strongly arguing that voting should be strictly limited to "free white men" rather than just "white men" because: "Everyone who is from a slave state knows that there are slaves there as white as any man in this room." Furthermore, and drawing repeatedly on his recent military experience, he stated:

. . . as the citizens of the country who are liable to do military duty, you put us upon a level in the army, and give the slave a vote with us. I am opposed to that. I want free men to stand by me whilst we have to fight the battles of the country.

Following the September 18, 1857, completion of the proposed Oregon Constitution - and while assuming the Territory would soon become a State -- the document and key issues went before the voting public on November 9.

Despite Kelsay's efforts to inject the word "free," Article II, Section No.2 of the proposed Constitution stated that voters were limited to white males 21 years of age who were US citizens and had resided in Oregon for at least six months, and foreign white males 21 years of age who had lived in Oregon for six months and declared their intent to become a US citizen for more than a year. Women, Indians, Chinese, and black people of any age -- free or otherwise -- were not allowed to vote.

There were three items on the 1857 ballot: 1) 7,195 voters approved the Constitution, while 3,125 opposed; 2) 7,727 people voted to make slavery illegal in Oregon, while 2,645 wanted to make it legal; and -- the issue that would separate Oregon from the other 49 (then 32) States -- 3) 8,640 adult white males voted to ban black residents in Oregon, their ability to own land, to file lawsuits, or to enter business contracts, while only 1,081 men voted to allow these rights.

The 1850 US Census listed 13,087 white residents and 207 "free coloreds" for Oregon Territory. Indians weren't counted. The 1860 census listed a significant increase to 52,160 white Oregonians, a reduction to only 128 free coloreds, and 177 "Indians" (apparently non-reservation). Letitia and her two children appeared in the 1850 and 1870 censuses; they were notably absent from the 1860 count. Politics and self-preservation may have been considerations as the US descended into Civil War.

The proposed 1857 black exclusion clause received far more popular votes than the approval of the Constitution or the ban on slavery. About this time Letitia and her children seemingly went into hiding in rural Douglas County and weren't listed in the 1860 census. Although enabling legislation was never passed and the clause was apparently voided by passage of the federal 14th and 15th Amendments after the Civil War, the ban remained a part of Oregon's Constitution until it was ultimately repealed -- after several failed efforts -- 70 years later, in 1927. In 1951 it finally became legal for whites to marry blacks (or Indians, Chinese, or Hawaiians) in Oregon, and vice-versa.

Many of the principals and participants in the *Carson v. Smith* lawsuits went on to have successful high-profile professional and political careers, in addition to their direct participation in writing Oregon's Constitution: Kelsay, Thayer, Boise, and Williams all became members of the Oregon Supreme Court, with Boise and Williams also attaining Chief Justice status; Thayer's brother Andrew became a business partner, Governor of Oregon, and Chief Justice of the Oregon Supreme Court; Secretary of State Chadwick and Grover also became Oregon Governors; Williams was a successful US Attorney General; Logan and Williams (by this time in his 80s) were both elected Mayors of Portland, while Kelsay was elected Mayor of Corvallis; Grover and Thayer both became US Representatives; Grover, Smith, and Williams were elected as US Senators; Benton County Clerk James Slater was also elected US Senator and authored the Slater Act, which enabled Letitia's daughter and granddaughter to claim Umatilla Indian Allotments in 1884.

In contrast to the lawyers, judges, and politicians she worked with and against, Letitia Carson and her children followed the lead of President George Washington, who said, "agriculture is the most healthful, most useful, and most noble employment of man," and famously claimed he would "rather be on my farm than be emperor of the world."

Of course, Washington's farm included more than 300 slaves that did the heavy lifting. But he made the decisions.

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