

IN THE SHADOW OF **Dred Scott**



ST. LOUIS FREEDOM SUITS
and the Legal Culture of Slavery in Antebellum America

KELLY M. KENNINGTON

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The University of Georgia Press

ATHENS

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Athens, Georgia 30602

www.ugapress.org

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Most University of Georgia Press titles are available from popular e-book vendors.

Printed digitally

Library of Congress Cataloging-in-Publication Data

Names: Kennington, Kelly M. (Kelly Marie), author.

Title: In the shadow of Dred Scott : St. Louis freedom suits and the legal culture of slavery
in antebellum America / Kelly M. Kennington.

Description: Athens : University of Georgia Press, [2017] | Series: Early American Places |
Includes bibliographical references and index.

Identifiers: LCCN 2016028172 | ISBN 9780820345512 (cloth : alk. paper) | 9780820345529
(pbk. : alk. paper) | 9780820350851 (ebook)

Subjects: LCSH: Slaves—Legal status, laws, etc.—Missouri—Saint Louis. | Region—
History—19th century—Cases.

Classification: LCC KF482 .K46 2017 | DDC 342.77808/7—dc23 LC record available at
<https://lccn.loc.gov/2016028172>

ACKNOWLEDGMENTS

In the five years since my daughter Olivia arrived, I have frequently repeated the phrase “it takes a village to raise a child” with newfound appreciation. The saying also comes to mind as I think about the long process it took to “birth” this book. Completing a book definitely takes a village. While the book’s flaws remain my own, there are many people and institutions who were critical to helping me bring this project to fruition. I am deeply grateful for my “village.”

My research has benefited from the generous support of several research and writing fellowships. Thank you to Duke University for the Anne Firor Scott and Summer Research fellowships; the Julian Price Endowment for the travel and research support; and the Anne T. and Robert M. Bass family for the Instructorship that supported my last year of research in graduate school. The William Nelson Cromwell Foundation and the American Society for Legal History, the William E. Foley Research Fellowship from the Missouri State Archives, and a Summer Grant from Auburn University’s College of Liberal Arts helped fund the travel for the final stages of the book.

I am so thankful for the support of the members of my writing groups during my years at Duke: Gordon Mantler, Sebastian Lukasik, Steve Inrig, Felicity Turner, Orion Teal, and Eric Weber, who shared wine, food, and writing advice. Two dear friends deserve separate mention: Heidi Giusto has read and commented on countless drafts of my work over the years and is one of my best sources of support and advice; Julia Gaffield’s boot camp was vital to my early research and writing, and

her last-minute text references helped answer a couple of late questions. Thanks also to Anne-Marie Angelo, Fahad Bishara, Elizabeth Brake, Jenny Crowley, Seth Dowland, Karlyn Forner, Mitch Fraas, Katharine French-Fuller, Reena Goldthree, Alisa Harrison, Paul Johstono, Max Krochmal, Pam Lach, Noeleen McIlvenna, Erin Parish, Bryan Pitts, Paul Quigley, Jacob Remes, Phil Rubio, Liz Shesko, David Silkenat, Silvermoon, Michael Weisel, Paige Welch, and Kristin Wintersteen for being such excellent colleagues and friends.

Laura Edwards has pushed me to excel at all stages of my work on this project. Her gentle, insightful, and thorough comments on the early research, the numerous drafts, and the final book manuscript were invaluable, and she continues to be the type of mentor and scholar I most admire and aspire to be. Thank you also to Ed Balleisen, Peter Wood, and Adriane Lentz-Smith for your careful reading of my work, your thoughtful advice on the early stages of the project, and your support for my research. I want to give special thanks to Margaret Humphreys for her generous support over the years. In addition, the early stages of my work benefited from generous conversations with Daina Ramey Berry, Sally Deutsch, Lil Fenn, John French, Barry Gaspar, David Gilmarlin, John Hart, Reeve Huston, Jonathan Ocko, Tom Robisheaux, Alex Roland, John Thompson, and the members of the Triangle Legal History Seminar.

Howard Erlanger and the Institute for Legal Studies at the University of Wisconsin Law School deserve special recognition for welcoming me and providing research and institutional support during my year as the Law and Society Postdoctoral Fellow. Madison is a magical place, and Howie and others made my time there productive and memorable. My year began with the exceptional advice and community provided by Barbara Welke and the members of the 2009 Hurst Summer Institute for Legal History. For reading my dissertation and helping me rethink my ideas and move forward to write this book, I am especially grateful to Howie, Steve Kantrowitz, Mitra Sharafi, and Karl Shoemaker. While at UW, I also benefited from conversations and feedback on my writing from Christy Clark-Pujara, Mary Claypool, Ariela Gross, Dirk Hartog, Martha Jones, Adam Malka, Lauren McCarthy, Dylan Penningroth, Ryan Quintana, Mitra Sharafi, Karl Shoemaker, and Jim Sweet. Thanks also to Lauren McCarthy for her research assistance and friendship.

Auburn is a vibrant community of scholars whom I am so fortunate to call my colleagues and friends. Rupa Mishra and I began our teaching careers together, and I am deeply grateful for her friendship, support,

and advice over the years. In the final stages of writing and revisions, the close network of the “cul-de-sac” has provided welcome laughs and distractions, answered questions and given suggestions, and been there to encourage me through the process. Thanks also to Ken Noe, Ralph Kingston, Kathryn Braund, Jenny Brooks, Chris Ferguson, Ruth Crocker, Carolyn Day, Sunny Stalter-Pace, the members of the Nineteenth Century Studies group, and all of my colleagues in the history department for your helpful advice on pieces of the project. Emily Friedman, Chase Bringardner, Becky Brunson, Eden McLean, and Danilea Werner have each provided support and guidance when I needed it the most, and I appreciate their friendship.

One of the things I have most enjoyed about becoming a historian is traveling for research and to professional events where I get to meet new colleagues and make friends who share my interests. In doing so, I have accumulated many professional debts over the years that I am happy to be able to briefly acknowledge here. I only hope I do not forget anyone. For reading portions of the work at its various stages, I thank Melissa Blair, Diane Mutti Burke, Kristen Epps, Eden McLean, Michael Schoeppner, Christine Sears, Rachel Shelden, and Karen Tani. Rabia Belt and Martha Jones read and commented on the entire manuscript, and it is much improved as a result of their suggestions. For enriching the project through their comments and suggestions at conferences, I am grateful to Rob Baker, Robert Cottrol, Jim Gigantino, Mark Graber, Ariela Gross, Sally Hadden, Bernard Herman, Tony Kaye, Ted Maris-Wolf, Stephen Middleton, Christopher Morris, Jesse Nasta, Susan O'Donovan, Gautham Rao, Josh Rothman, Daniel Sharfstein, Leslie Schwalm, Rebecca Scott, Anne Twitty, Lea VanderVelde, Kirt von Daacke, and Eva Sheppard Wolf. I thank Randy Sparks and the late Judy Schafer for their mentorship and support from my earliest research stages. I also want to thank Lauren Araiza, Adam Arenson, Ari Bryn, Catherine Conner, Deborah Doroshow, Samantha Ger vase, Hilary Green, Jonathan Hancock, Luke Harlow, Melissa Hayes, Rana Hogarth, Jennifer Holland, Julia Irwin, David Konig, Susanna Lee, Todd Olzewski, Steve Prince, Sharon Romeo, and Lauren McIvor Thompson for sharing their insights on the research and writing process, providing a laugh or an understanding ear, and cheering me on as I worked on this project. My online support system, especially my Summer Writing Group and the members of the #Graftonline, helped me push through the last round of revisions on the book.

The University of Georgia Press has been a joy to work with; I appreciate your patience with a new author. Thank you to Walter Biggins and

Beth Snead for answering my many questions and supporting this project. Thanks also to the three anonymous reviewers for the press; this work is a much stronger book because of the detailed, insightful comments offered by each of the readers. I also want to thank the *Journal of Southern History* and its editorial staff for granting permission for me to include material from my article "Geography, Mobility, and the Law" (53, no. 3 [2014]: 575–604) in the book.

Several archivists provided me with assistance, and so I enthusiastically thank the staff of the Missouri History Museum, the Missouri State Archives–St. Louis, and the Western Historical Manuscripts Collection. Personal relationships can make quite a difference in the course of a research project, and I am fortunate to know the people I met through my archival journeys. In particular, I want to thank Molly Kodner and Dennis Northcott at the Missouri History Museum; Patricia Barge (here's our book, Pat!), Sharon Kenny, Nik Henle, Bill Glankler, and Eben Lehman at the Missouri State Archives–St. Louis branch; Dennis Snead, Valerie J. Munzlinger, and the Marion County Clerk's office; Ruth Ann Hager at the St. Louis County Library; and Elizabeth Dunn at the Daniel Rubenstein Library. Kristin E. S. Zapalac deserves special thanks for her kindness and her willingness to share some of her unending knowledge about Missouri's freedom suits. Finally, I want to thank Bob Moore of the National Parks Service, who generously shared with me his extensive freedom suit expertise and research, as well as personal notes and photographs. Mel Conley of the Civil Court Records archive and Bob Moore deserve the gratitude of all scholars who study the St. Louis freedom suits for identifying these valuable resources and working to separate, organize, and preserve them for future researchers.

My family has been a constant source of support through the research and writing of this project. My mom, Leslie Kennington, has read the entire book and offered feedback as well as given countless hours of encouragement and confidence when I needed it most. My dad and stepmom, Rohn and Terrie Kennington, have given generously from the "Rohn Kennington Scholarship," and I am so grateful for their assistance and their faith in me. Thanks also to Hillary Mount, Courtney Saddler, Celeste Kennington, Caleb Kennington, and Gene and Sharon Brandewie. I want to thank Rebecca Gordon and Ellen Overmyer Lloyd for their friendship and their patience while listening to me talk about this project; you ladies are my family, too.

Over the past several years, Kim Welch has become not only my writing buddy, my accountability partner, and my sounding board for new

ideas, she has become one of my dearest friends. She read numerous drafts of the book, talked me through challenging passages, and pushed me to keep going whenever I was discouraged. Thank you, Kim, for all that you do.

Kevin Brandewie has lived with this project from its inception, and yet he is still willing to help me think through difficult sections of material, provide comfort and comic relief when I need it, and support me at every step of the way. I am so fortunate to get to share this journey with him. Our two beautiful children, Olivia and Alex, arrived as I worked on this book (Alex just two weeks after my initial submission), and their bright smiles and infectious personalities make coming home from work each day a pleasure.

Finally, I cannot say enough good things about Mike and Diane Everman. Mike is the archivist at the Missouri State Archives—St. Louis, and Diane is the archivist for Enterprise and for the Jewish Community Archives (among her many projects). From my first foray into the St. Louis archives, Mike and Diane helped me immerse myself in the beautiful city, driving me through neighborhood enclaves, introducing me to the world-class museums, and dining with me at the best restaurants. They invited me to stay with them on my many return research trips and then provided countless nights of fun conversations, fabulous food, and Cardinals' games. Their passion for the city's history—especially its less well-known residents like the enslaved plaintiffs chronicled in this book—is infectious. This book is lovingly dedicated to them for their many kindnesses to me and others.

NOTE ON SOURCES

In the pages that follow, the case files of more than three hundred enslaved individuals who sued for freedom in St. Louis (in 287 cases, several of which involved multiple enslaved plaintiffs) will serve as the basis for a broader discussion of the legal culture of slavery and the processes of negotiation that occurred in and around freedom suits. The St. Louis freedom suits are located in the Missouri State Archives' St. Louis branch, as part of the St. Louis Circuit Court Historical Records Project, and are nearly all available online through the Historical Records Project website. A handful of newly discovered freedom suits from the General Court for the Territory of Louisiana (which included St. Louis and the territory that became Missouri) came to the author's attention in the final stages of this project. More freedom suits undoubtedly exist in this collection of early territorial court records and will be an exciting avenue for future research into early St. Louis. Additional local St. Louis court cases—debt cases, disputes over slave sales, and other types of legal action—and legal records relating to the freedom suits and local legal culture, such as circuit court record books, execution books, and manumission records, help to flesh out the use of the legal system by enslaved individuals and their enslavers.

The St. Louis freedom suits contain varying levels of complexity that sometimes defy simple categorizing. Certain case files are rich and complete, and others contain only a petition and a few related documents. The outcomes of the cases are not always known or entirely clear. For example, some cases have no verdict in the case file. Circuit Court

record books and other supporting documents can sometimes indicate the likely outcome of the case, but even when a verdict is known, the enslaved person's status is not always fully identifiable. For that reason, defining cases as "successful" or not is fraught with the possibility of oversimplification. This book does include some rough numbers and several charts in the appendix, which classify cases by whether or not the plaintiff was freed by the case or if their status could not be determined by the case's outcome.

Although not systematically comparative in method, this study surveys more than eight hundred state supreme court freedom suits to provide a broader context for St. Louis's cases and to begin to make some connections between the St. Louis example and other jurisdictions. The impressive collection of appellate records involving people of African descent collected by Helen Tunnickliff Catterall (*Judicial Cases Concerning American Slavery and the Negro*, 5 vols. [Washington, DC: Carnegie Institution of Washington, 1926]) yielded a list of cases involving disputes over personal status. Because freedom suits happened throughout the United States, using appellate records is one way to get a sense of how these additional locations compared to the local legal culture of St. Louis and to suggest avenues for further local research of freedom suits elsewhere.

Although freedom suit case files and related legal records form the heart of this project, occasionally personal manuscript collections (mostly of lawyers, slaveholding defendants, and other prominent members of the St. Louis community), newspapers, and additional types of records help complete the picture of St. Louis's freedom suits. Letters are an important part of capturing—to the best possible extent—the web of negotiations and concerns swirling around outside the courtroom action in freedom suits. Much of the relevant correspondence involved prominent St. Louis attorneys and judges whose letters have survived in archival collections. Though letters are imperfect in recovering the full panoply of conversations that took place beyond the courtroom, they indicate the many related exchanges that happened between slaveholding defendants, attorneys, and other participants that made up a crucial part of the legal culture of slavery.

The numerous misspellings in all quotes are original. For purposes of clarity, the term "sic" after each misspelled word is avoided.

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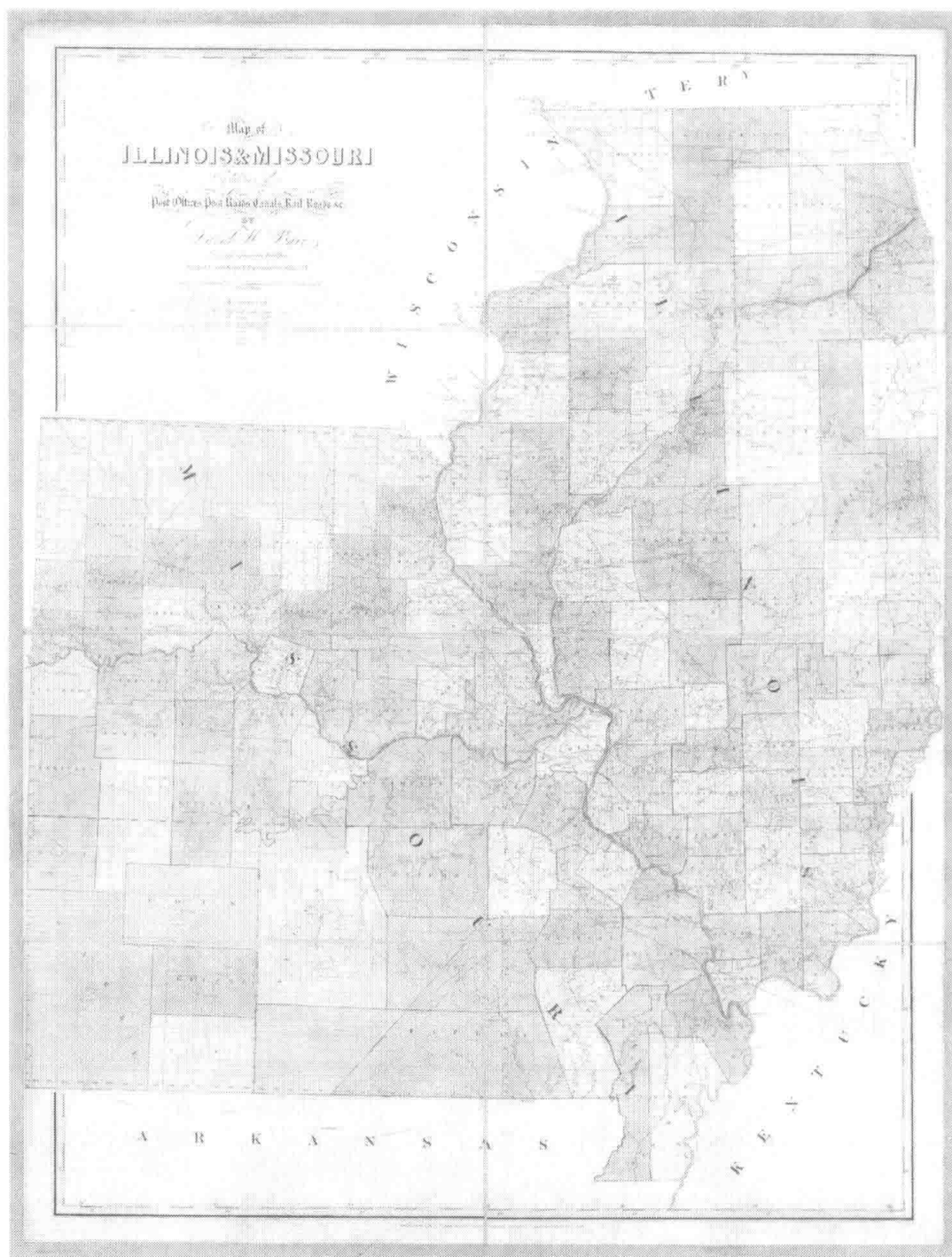


FIGURE 1. David H. Burr, "Map of Illinois & Missouri," in *The American Atlas* (Washington, DC, 1839). Courtesy of the David Rumsey Map Collection, www.davidrumsey.com.

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Introduction: The Legal Culture of Slavery

When Alsey, a thirty-eight-year-old enslaved woman, sued for freedom in the St. Louis Circuit Court in March 1841, she initiated a series of legal processes that continued for more than a decade. According to her petition, sometime in the late 1810s, Robert Cross granted permission for his son-in-law to take fourteen-year-old Alsey from Kentucky to Illinois to live and work for his family as a slave. Several witnesses testified to her residence in Illinois, where the state's 1818 constitution prohibited slavery (with one exception that did not fit Alsey's circumstances), though the witnesses disagreed over a few key issues.¹ Cross's son-in-law confirmed Alsey's version of events—that he took her to Illinois with Cross's permission, and five years later, he sold her to pay off a debt.² The buyer then transferred Alsey to William Campbell, who took her back to Kentucky. Defense witnesses countered this narrative by suggesting that Cross's son-in-law took Alsey without Cross's permission, held her in Illinois against his wishes, and sold her without any legal claim to ownership. According to one witness, Alsey's alleged owner, Robert Cross, accompanied the witness to search for her but only after she had lived in Illinois for five years. The pair traveled first to the Illinois residence of Cross's son-in-law (who took Alsey from Cross) and then to William Campbell's Kentucky home, where Campbell refused to give Alsey to Cross and "compelled us [Cross and the witness] at the point of arms to desist."³ Facing the threat of deadly force, Cross retreated; he later regained possession of Alsey after successfully suing Campbell in Kentucky. Alsey most likely learned of her right to freedom based on her residence in the free territory of Illinois,

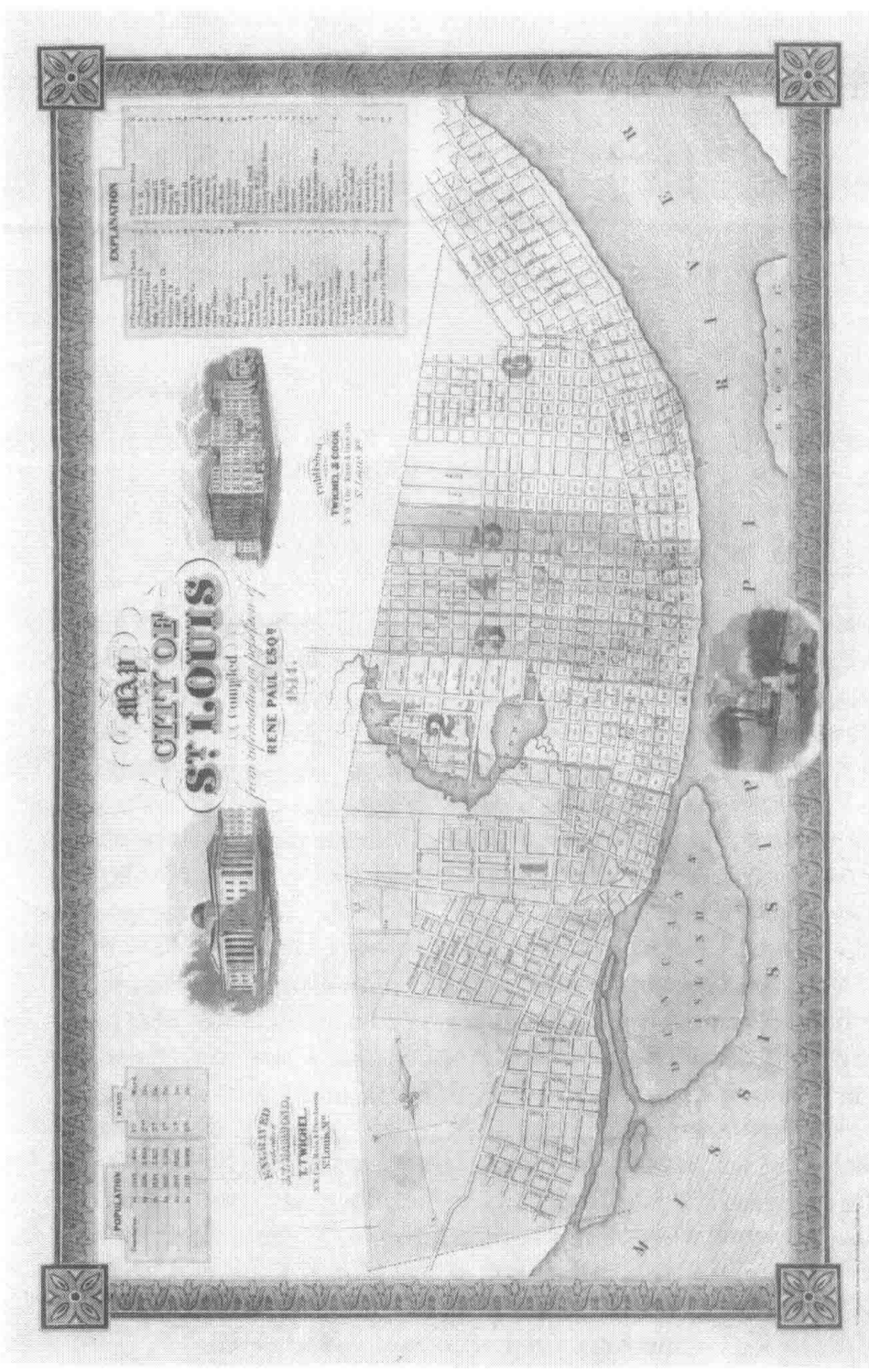


FIGURE 2. Rene Paul, “Map of the City of St. Louis compiled from information in the possession of Rene Paul Esqr.” Published by Twichel and Cook N.W. Cor. Main and Pine Sts. St. Louis, Mo. Engraved at the Office of J. T. Hammond, by T. Twichel. N.W. Cor. Main and Pine Streets. St. Louis, Mo., 1844. Courtesy of the David Rumsey Map Collection, www.davidrumsey.com.

or she first had the opportunity to sue for freedom, years later, when Cross brought her to St. Louis and sold her to a prominent St. Louis attorney and Circuit Court judge, Robert Wash. Wash eventually sold Alsey and her son to William Randolph, who became the defendant in her freedom suit.⁴

The process of freedom suits, and their outcomes, often relied on interpersonal relationships and local influences. For example, one witness elaborated on his personal problems with Judge Robert Wash—who bought Alsey in St. Louis and sold her to the defendant, Randolph. The witness remained bitter about losing his own human property in numerous freedom suits. He blamed Judge Wash, testifying that he was “sorry to know such a man” whose decisions against him “were neither legal nor constitutional.” The witness even offered to give \$100 to help Alsey win her freedom, hoping to force Wash to lose his investment in Alsey, because he “very much dislikes the man.”⁵ Personal conflict seeped into the decision-making process of freedom suits, connecting the web of people who each brought their unique set of motivations to these cases: in this instance, even a slaveholder and defendant in a handful of St. Louis freedom suits willingly offered to help an enslaved plaintiff prosecute her case.

Freedom suits spawned additional litigation and struggles—in and out of court—when enslavers tried to avoid losing financial resources after an enslaved plaintiff won his or her freedom, as Alsey did with the jury’s verdict in 1843 and again in the 1844 appeal.⁶ Shortly after the initial verdict for Alsey’s freedom, the defendant, William S. Randolph, sued Robert Wash for selling Alsey and her son as slaves. Wash failed to appear in the Circuit Court, which resulted in a judgment for Randolph by default.⁷ Wash appealed twice to the Missouri Supreme Court after the Circuit Court refused to reinstate his case.⁸ Freedom suits held substantial financial repercussions for defendants who lost valuable human property. Each freed slave left a trail of slave traders desperate to pass the buck and avoid the loss. As Wash learned, some enslavers managed to dodge their responsibility by pursuing additional legal recourse against earlier buyers and sellers of the legally free plaintiff.

After Robert Wash lost his multiple appeals, he tried to pass his financial losses on to the person who sold Alsey to him: her initial owner, Robert Cross.⁹ The effects of freedom suits like Alsey’s rippled out beyond the initial lawsuits, resulting in additional legal battles, heated conversations, and occasionally, documentation. Private correspondence allows a glimpse into these conflicts, though undoubtedly many of the fights and accusations that followed when an enslaved person won freedom remain unrecorded. Writing to J. T. Barbour in Illinois (possibly a friend or legal agent), Wash explained that his “claim is founded . . . on a Bill of sale from Robt. F. Cross for two of the children (Burrie + Louisa) + . . . on the record of a Judgment rendered against me [Wash] after

Alsey obtained her freedom, which liberated also her son Moses.”¹⁰ In a second letter, Wash pleaded with Barbour to recover at least a portion of his losses from Cross, but Barbour informed Wash that he lacked a “private letter of his [Cross’s], that would make him liable.”¹¹ Wash needed more direct evidence of Cross’s culpability if he hoped to avoid getting stuck with the bill for Alsey and her son. Wash’s lack of documentation doomed his efforts, but the lawsuits he defended and the letters he wrote reveal the chain of additional legal and extralegal efforts that freedom suits generated.

Alsey’s petition, her legal strategies, and her experiences mirrored those of hundreds of enslaved men and women who used the legal system to seek free status as plaintiffs in St. Louis’s freedom suits (defined as any case in which the ultimate outcome decided the future personal status of a person held in slavery). Alsey presented the most often used argument for freedom made in the antebellum years—that her residence in free territory effected her release from slavery. Her case stretched into multiple legal actions across a number of years, a common result of these complicated battles. The rich surviving records in Alsey’s case detail the relationships, additional litigation, and maneuverings outside the formal legal system and across multiple states that characterized local contests over the meaning of slavery and freedom. When Alsey, Dred and Harriet Scott, and hundreds of other enslaved men and women approached the St. Louis courts to sue for freedom, they became active contributors to the legal culture of slavery. By sharing their experiences and crafting their arguments, these individuals, with the assistance of their attorneys, participated in the larger struggle over the meanings of slavery and freedom in the antebellum legal arena.

The term “legal culture” refers to the constellation of attitudes and experiences concerning law in a particular time and place—separate from formal legal institutions like statutes and court proceedings, though these institutions certainly influenced how antebellum Americans understood law and legal authority. Focusing on the process of freedom suits reveals how legal authority operated in the lives of ordinary people, which involved a combination of their experiences of local court dealings along with more informal conversations, negotiations, and debates. Legal culture is primarily concerned with how communities discuss and think about law and how their views on law shape everyday lives and practices.¹² Encompassed within legal culture is legal consciousness: individuals’ view of law, their experience of the law, and the considerations they make when approaching the legal system for assistance.¹³ Legal culture includes communal attitudes and practices, whereas legal consciousness focuses on individuals’ motivations and concerns and their conceptions about the role of law in their lives.