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THE ROLE OF WOMEN IN THE 1857 *DRED SCOTT* CASE: THE STORIES OF IRENE EMERSON AND HARRIET, ELIZA, AND LIZZIE SCOTT

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ABSTRACT

The 1857 *Dred Scott v. John F.A. Sandford* decision was the culmination of an eleven-year legal battle that began in the St. Louis Circuit Court. The court battle began on April 6, 1846, when Dred Scott and his wife, Harriet, both filed suit against their widowed owner, Irene Emerson, alleging trespass for assault and false imprisonment. Harriet's case was immediately combined with her husband's, meaning that the fate of his case would determine the futures of Harriet and the couple's daughters, Eliza and Lizzie. Domesticity reigned as an ideology within the country, yet women were gaining some legal power, as demonstrated by Irene Emerson. While Irene was allowed to own property and be sued in court, she seems to have permitted male relatives, such as her brother, to act on her behalf. On the other hand, Harriet Scott had the right to file a suit before the court, but the combination of her suit with her husband's, even if she was the impetus for the filing of the suit, further illuminates the limitation on the rights of women, both African American and white. In fact, the ownership of women and women's property was both a legal and a social tradition. Contemporary scholarship primarily avoids discussing the importance of these women to the case, which I argue reflects the patriarchal tradition in law contemporaneous with the case and in ensuing research. While focusing on the men in the case presents the basic facts of the *Scott* case, it fails to discuss the limited role of women involved within the case and how their rights were curtailed, either forcibly or voluntarily, by those of the men around them. My research demonstrates the roles that the Scott women and Irene Emerson had in this landmark case and how these increasingly limited roles shifted the emphasis of the case from gender to race, citizenship, territorial mobility, and slavery.

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Chapter 1

Introduction

The 1857 *Dred Scott v. Sandford* case is one of the most remembered cases in United States Supreme Court history. On the eve of the Civil War, tensions over the legal status of African Americans flared among Democrats and Republicans. While the case has traditionally been presented as a sectional conflict of North vs. South, the political differences between the generally pro-slavery Democrats and anti-slavery Republicans were national, not regional. The 7-2 *Scott* decision effectively rendered freedom impossible for slaves, citizenship impossible for all African Americans, and marked the Missouri Compromise as unconstitutional. Although it was a majority ruling, the complexity of the case is imperative in understanding its divisiveness. Chief Justice Roger Taney wrote the majority opinion, while *all* of the other justices on the Court wrote their own opinions: six in concurrence and two in dissent. The unusual number of opinions by the justices demonstrates the varying degrees to which even those that were in the majority agreed or disagreed with the reasoning of the case.

The question of personal freedom from servitude became one of the most prominent questions of the United States beginning in the 1800s. Slavery existed as an institution legally permitted by the federal government, creating two separate groups of African Americans within the country – the enslaved and the free. While free African Americans had some rights within their states, they still dealt with severe impediments on their rights. By the 1850s, controversy about slavery and the right to personal freedom came to a head between the Republican and Democratic parties. Republicans were often anti-slavery with an emphasis on anti-expansion

policies, while Democrats were traditionally pro-slavery and vied for the self-determination of slavery in the United States' western territories. The modern perception of anti-slavery North vs. pro-slavery South is often exaggerated and is better understood in the context of a predominantly Republican North and Democratic South. Taking into account the political makeup of the different geographical locations illuminates the ideological split on slavery.

These tensions between the Republicans and Democrats were amplified with the 1857 Supreme Court Case *Dred Scott v. Sandford*. The case brought into question the freedom of a slave who was taken to free territory and then returned to a slave state. Scott sued for his freedom, claiming that his time spent in free territory made him a free man. When the case made its way to the Supreme Court, Chief Justice Taney and the majority of the justices issued a ruling that said that Scott was not a citizen of the country because of his race and therefore had no standing to sue in federal court. In addition, the Court ruled the Missouri Compromise unconstitutional because it inhibited the rights of citizens to transport their property, including human property. This declaration was the link between the argument about mobility (that if you go to a free place, you are a free man) and the power of Congress, granted in Article Four of the Constitution, to control territories at all.

While the case has been continually studied through the lens of the petitioner Dred Scott, Chief Justice Taney, and the associate justices of the Court, four key figures are missing from the current scholarship on the case – Harriet, Eliza, and Lizzie Scott, and Irene Emerson. Harriet Scott was the wife of Dred Scott and also filed a suit in the St. Louis Circuit Court, but her case was combined with her husband's. The future of her two daughters, Eliza and Lizzie, rested upon the decision of the Supreme Court. The Scotts were owned by Dr. John Emerson and his wife, Irene. Upon Dr. Emerson's death in 1843, the Scotts became the possession of Mrs. Emerson,

who was the original defendant in the St. Louis Circuit Court. By exploring the roles of both the Scott women and Irene Emerson, it becomes clear that although women possessed the legal right to sue for their own freedom and to own their own property, the men's rights took legal precedence over the women's. Harriet Scott was not awarded a separate case from her husband's, even though she was able to file suit. Irene Emerson, on the other hand, seems to have had her case controlled, whether forcibly or voluntarily, by her brother, John F.A. Sanford. Scholarship primarily avoids discussing the importance of these women to the case. While this type of scholarship gives the basic facts of what happened in *Dred Scott*, it fails to discuss the rights and lack thereof of black and white women within the American judicial system.

Harriet Robinson Scott (1820?-1876) was born into slavery in Virginia around 1820 and belonged to a federal Indian agent, Major Lawrence Taliaferro. It was at Fort Snelling, Minnesota Territory, where Harriet met and married Dred Scott in 1836 and became the legal property of her husband's owner, Dr. John Emerson. Harriet filed her own suit for freedom – self-ownership – in the St. Louis Circuit Court in 1846, but her case was combined with her husband's case. Harriet's fate, and the fate of her two children, Eliza (b. 1838?) and Lizzie (b. 1839?), were tied with Dred's case. Although Dred Scott and his attorneys agreed to pursue Dred's case instead of Harriet's, Harriet's role in the case is often overlooked. This thesis will discuss the impact that Harriet Scott had on her husband's suit for freedom and whether she potentially initiated the idea for suit. This thesis will also examine the ramifications of the Court's decision for Eliza and Lizzie, young African American women held within the grips of slavery.

Eliza Irene Sanford Emerson (1815-1903) was the named defendant in the 1846 St. Louis Circuit Court case. The Scotts sued Irene for their freedom because by now she was the widow

of Dr. John Emerson and hence the legal owner of his slaves. She was the daughter of a wealthy businessman and married Dr. Emerson at Fort Jesup, Louisiana, in 1838. After Dr. Emerson's death in December 1843, his will specifically granted Irene full control of the property of her husband, including the Scott family. Although Mrs. Emerson was the defendant in the Scott's initial 1846 suit, her role in the case was overshadowed by her brother, John Sanford, who led the defense of the case. Mrs. Emerson notably fought for the Scotts to remain her possession, as demonstrated by the numerous appeals that she filed. As the mother of an infant daughter and without visible means of economic support beyond the inherited property, Mrs. Emerson reasonably tried to retain the income from hiring the Scotts out. However, Mrs. Emerson's exact role in the case is contested because of the dominant presence of John Sanford in the case. The slaves were allegedly transferred to her brother's name between 1848 and 1850, after she moved to Massachusetts and remarried. This change in ownership determined the legal terms of the ensuing Supreme Court case. Through the lens of Mrs. Emerson, this thesis will explore the development of women's property law and how it impacted the way that widows owned property after their husband's deaths. This thesis will also attempt to demonstrate the ways in which Mrs. Emerson was overshadowed, whether voluntarily or forcibly, by her brother and other men.

It is vitally important to study these women – Harriet, Eliza, and Lizzie Scott, and Irene Emerson – not only in the specific context of the case to determine their roles, but also to establish the role of women within the judicial system and in property ownership. Such an analysis of women will attempt to change our understanding of the case overall, as one that not only restrained African Americans, but also women. While I will explore the wider context of the *Dred Scott* case in my first chapter, I will use my final two chapters to address the Scott women and Irene Emerson. In my analysis of these women, I aim to uncover a new side to the

case and answer some specific questions, such as: What role did women, both African American and white, have within the judicial system in the 1850s? What possible impact did Harriet Scott have on the filing of the case? Does viewing the case through the lens of these women change the common understanding of the case?

To answer these questions and to develop the groundwork of the *Scott* case, I utilize primary sources including the case in its original format from the various levels of the court system (state and federal). In addition to these primary sources, I rely heavily on the research of Don Fehrenbacher to establish the details of the case and the decision. Fehrenbacher has dedicated much of his research to the *Dred Scott* case, and his writing is of importance not only for the analysis that he develops but also what he does not. Fehrenbacher's main focus in his books *The Dred Scott Case* (1978) and *Slavery, Law, & Politics* (1981) is that the *Scott* case had both political and constitutional ramifications, and that the case itself demonstrates the politicization of the slavery issue. Paul Finkelman's anthology *Dred Scott v. Sandford* (1997) also serves as a good starting point for scholarly research because it is both a secondary and primary source. The anthology combines Finkelman's background research about the case and his collection of newspapers and speeches from immediately following the 1857 decision. I also rely on a selection of journal articles detailing the property rights of women and the rights of women in the legal system, along with the few references to the Scott women and Irene Emerson in contemporary literature to craft my portraits of these four women.

Although current scholarship accurately describes the impact that the case had on both sectional tensions and on the freedom of African Americans, it does not place enough emphasis on the roles of women within the case and the eventual impact that the case had on women in general. Irene Emerson's role demonstrates that women, and particularly unmarried women

including widows, were allowed to be the defendants of a legal suit and that their testimony was valid in court. Mrs. Emerson also legally owned property after her husband's death, but her property rights seem to either vanish or be relinquished upon remarriage. African American women faced an even greater level of subordination than their white counterparts, even if women like Harriet Scott served as an impetus for lawsuits. Women were clearly involved in this case, property rights, and the judicial system at large. Although much work has been done on the *Scott* case, the lack of reliable evidence about the women makes it nearly impossible to offer definitive conclusions. Expanding this base of knowledge, however, will highlight the way that gender norms plagued the judicial system and how multiple layers of ownership impacted African American women within such a system. This thesis will posit potential answers to many questions about the role of women in the *Dred Scott* case and will seek to provide readers with the opportunity to decide for themselves about which they deem to be the most plausible.

Chapter 2

The Case Itself

Dred Scott was born in 1795 in Virginia and immediately felt the effects of slavery on his life.[1] Beginning in his childhood or very early youth, Dred belonged to Peter Blow and his family, moving with the family from Virginia to Alabama in 1818, and then to St. Louis, Missouri, in 1830.[2] Following the death of Mr. Blow in 1832, Dr. John Emerson of St. Louis purchased Dred in the late fall of 1833. Because of his status as a slave, the details of Dred Scott's life up until his famous legal battle are few and far between, with this lack of information leading to often contradicting accounts of Dred's experiences. Dred's thoughts on being sold to Dr. Emerson are one such example of the contradicting stories, as one account claims that Scott was so upset to leave the Blows that he ran away and hid in a swamp near St. Louis for a short period of time.[3] Another account claims that after being badly whipped by Mr. Blow, Scott begged Dr. Emerson to buy him.[4] The strong involvement of the Blows in Scott's later trial seems to indicate that the former account is true and that Scott had a good relationship with the Blow family in general, especially with the son, Taylor Blow.

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[1] Edward Baptist, *The Half Has Never Been Told* (New York: Basic, 2014), 368.
[2] Paul Finkelman, *Dred Scott v. Sandford* (Boston: Bedford Books, 1997), 10.
[3] I have chosen to refer to Dred Scott most often with his first name in an effort to avoid confusion between Harriet Scott and Dred Scott. Because the case addresses the entire Scott family, I believe that it removes agency from Harriet Scott to have only her husband's side of the story told. As demonstrated in later chapters, researchers often negate Harriet Scott's involvement in the case. In an effort to tell the stories of both Dred and Harriet Scott, I will utilize their first names.
[4] Don Fehrenbacher, *Slavery, Law, and Politics* (Oxford: Oxford University Press, 1981), 123.

Dred served as a personal servant to Dr. Emerson, who worked as the post physician at Fort Armstrong in Illinois – a free state. Because of the two and a half years that Dred spent in Illinois with Dr. Emerson, Dred would likely have been considered free under Illinois state law. Although the state did not have strong support for racial equality or for freedom, the state did not allow slavery or for slaves to be held there for an extended period of time. Because of Dred's apparent illiteracy, he likely had no knowledge of Illinois state law and also would not have found a lawyer eager to take his case.[5] Dr. Emerson continually filed requests for a transfer from Fort Armstrong because of the lack of amenities, and he was finally transferred in 1836 when the Army vacated Fort Armstrong.[6] After leaving Fort Armstrong, Dr. Emerson and Dred Scott moved to Fort Snelling, located in the Wisconsin Territory. The Wisconsin Territory was part of the Louisiana Purchase and was therefore subject to the Missouri Compromise of 1820. The Missouri Compromise stated that slavery would be excluded from lands acquired as a part of the Louisiana Purchase and above the 36°30' parallel. This law might have made it illegal for Dr. Emerson to hold Dred as a slave in free territory. However, Dr. Emerson retained Dred as a slave because no officials attempted to enforce the state and federal laws prohibiting slavery within the fort. While no precedent had been set as to special privileges for military members' slave rights in free territory, it was also highly unlikely that anyone appeared willing to aid Dred in a pursuit of freedom. In his book *Dred Scott v. Sandford*, Paul Finkelman theorizes that Dred Scott's enslavement would have markedly changed if he had been in a free state in the East, where "he

[5] Finkelman, *Dred Scott v. Sandford*, 14.
[6] Fehrenbacher, *Slavery, Law, and Politics*, 123.

likely would have been declared free by a state judge."[7] However, Courts tended to protect slave property increasingly in the 1840s and 1850s, as evidenced by *Prigg v. PA* (1842).[8]

It was at Fort Snelling that Dred met Harriet Robinson, a slave of the Indian agent Major Lawrence Taliaferro.[9] As a local justice of the peace, the Major performed the wedding ceremony between Scott and Robinson, and the two remained married for twenty years until Dred's death. It remains unclear whether Dr. Emerson purchased Harriet as a slave or if she was given to Dred Scott as a wife by the Major.[10] Regardless, the marriage of the Scotts was significant because slaves could not legally marry. The marriage of the Scotts undermined many proslavery arguments because a civil marriage is considered a contract, and "no American states allowed slaves to make contracts or in any other way perform legally binding acts."[11] Interestingly, Dred Scott was listed by name as a head of household in the 1836 territorial census. Dred Scott's presence in the census, coupled with his recent marriage to Harriet Robinson suggests to Lea VanderVelde and Sandhya Subramanian that "he lived as a free man in free territory."[12] Such an interpretation places an immense amount of emphasis on the marriage ceremony itself, which simply could be used as a way to placate slaves without acknowledging any of their formal rights. However, it seems peculiar that a civil figure, the Major, performed

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[7] Finkelman, *Dred Scott v. Sandford*, 15.
[8] A Pennslyvania state law prohibited African Americans from being taken out of Pennsylvania into slavery. The Supreme Court held that the federal Fugitive Slave Law precluded this Pennsylvania state law.
[9] Ibid., 16.
[10] Fehrenbacher, *Slavery, Law, and Politics*, 124.
[11] Finkelman, *Dred Scott v. Sandford*, 16.
[12] Lea VanderVelde and Sandhya Subramanian, "Mrs. Dred Scott," *The Yale Law Journal* 106, no. 5 (Jan. 1997): 1071.

the ceremony if it was only in an effort to pacify the Scotts.[13] After the marriage, Harriet was taken as a slave of Dr. Emerson, along with her husband, and neither's potential rights were acknowledged.

In October 1837, Dr. Emerson requested a transfer from Fort Snelling, claiming that the harsh winter had flared his rheumatism.[14] Because travel down the Mississippi proved dangerous at that time of the year, Dr. Emerson left Harriet and Dred Scott at Fort Snelling while he travelled to Jefferson Barracks in St. Louis. Dr. Emerson hired the Scotts out as slaves while he was away, which brought the system of slavery into what was supposed to be a free territory. The Scotts may have won a suit for freedom had they pursued it while at Fort Snelling, a claim that Finkelman says "all northern state supreme courts, and a good many southern judges, would have upheld."[15] Finkelman's interpretation seems highly unlikely considering the political climate of the time. Once again, *Prigg v. PA* seems to prove Finkelman's hypothesis wrong. Just a month after moving to Jefferson Barracks, Dr. Emerson transferred to Fort Jesup in Louisiana, where he met and married Eliza Irene Sanford in 1838.[16] In April 1838, Dr. Emerson wished to be reunited with his slaves, so they were transported down the Mississippi River to Louisiana. The Scotts once again did not sue for their freedom when they were in Louisiana, which may again indicate their lack of legal knowledge, or it may illustrate a fear of punishment if they filed

[13] It is possible that Harriet was impregnated by Taliaferro and that her marriage to Dred was an effort to rid himself of the embarrassment of having a child with a slave. Harriet's role as a concubine matches traditional roles of female slaves.
[14] Fehrenbacher, *Slavery, Law, and Politics*, 124.
[15] Finkelman, *Dred Scott v. Sandford*, 17.
[16] Fehrenbacher, *Slavery, Law, and Politics*, 125.

a suit.[17] The Scotts' inaction may also highlight their belief that they were treated well enough and had hope of one day being legally manumitted.

Dr. Emerson continued to travel with the Army and transferred back to Fort Snelling from October 1838 to May 1840. It was on the trip back to Fort Snelling in the Fall of 1838 that Harriet Scott gave birth to her first child, born on the Mississippi River, along the area that was bordered by the free state of Illinois and the free territory of Wisconsin.[18] One of the few accounts of the Scott family comes from Reverend Alfred Brunson, a fellow passenger on the *Gypsy* steamboat that the Scotts and Emersons used to travel to Fort Snelling. Reverend Brunson wrote in his autobiography that the Scotts were servants to the Emersons but "belonged to the lady," meaning Mrs. Emerson.[19] With the question of ownership so central to the eventual court cases, Reverend Brunson's account begins to raise the question of the agency of Mrs. Emerson. She was likely not the owner, but it is possible that the Scotts may have had more of a distant relationship with Mrs. Emerson than her husband.[20] In May 1840, Dr. Emerson went to Florida to aid with the Seminole War, while Mrs. Emerson and the Scotts returned to St. Louis. Dr. Emerson's time in Florida lasted for only two years, when he returned to St. Louis and his health rapidly began to decline. On December 29, 1843, Dr. Emerson died from reported syphilis and willed his entire estate to his wife, Eliza Irene Emerson.[21]

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[17] If a slave tried to sue, consequences at home – corporeal punishment, immediate sale, etc. – would be likely. A rational fear explains why most of the four million slaves by 1861 did not think of using the court system.
[18] Finkelman, *Dred Scott v. Sandford*, 19.
[19] Fehrenbacher, *Slavery, Law, and Politics*, 125.
[20] See page 62 of this thesis for an example of the relationship between the Scotts and Dr. Emerson.
[21] Fehrenbacher, *Slavery, Law, and Politics*, 127.

Dr. Emerson's will allowed Mrs. Emerson to sell all or any part of his land or tenements to benefit her and her daughter, Henrietta (b. November 27, 1843). Because Mrs. Emerson had full control of the property of her husband, that meant that she also had control over the Scott family.[22] Over the course of three years, Mrs. Emerson hired out the Scotts as slaves and received all of the profits of the rent.[23] At the same time, Mrs. Emerson also faced difficulty in settling her husband's estate. John F.A. Sanford, Mrs. Emerson's brother, was appointed as one of the executors of the will, but it was the court appointed Alexander Sanford, Mrs. Emerson's father, who actually managed the Missouri estate. Alexander Sanford died in 1848 before completing a final report of the estate, which left full control of the estate in the hands of Mrs. Emerson, as evidenced by the sale of some of her husband's land.[24] Dred Scott was likely hired out to Mrs. Emerson's brother-in-law Captain Bainbridge until February 1846, where he worked as a slave to the captain in Texas. After Dred's return to St. Louis in February, he and Harriet were hired out to Samuel Russell.[25] Just a few short weeks later, Scott tried to purchase freedom for himself and his family from Mrs. Emerson; however, the sale was denied by either Mrs. Emerson or those acting on her behalf. On April 6, 1846, Dred and Harriet Scott filed suit against Mrs. Emerson in the Missouri circuit court, alleging trespass for assault and false imprisonment.[26]

Missouri slaves were surprisingly successful in their suits for freedom, which Missouri statute specifically enabled slaves to pursue. Slaves in the St. Louis Circuit Court who petitioned for freedom won more than 100 cases. Additionally, the court had recognized more than 100

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[22] Ibid.
[23] Finkelman, *Dred Scott v. Sandford*, 19.
[24] Fehrenbacher, *Slavery, Law, and Politics*, 127.
[25] Ibid., 128.
[26] Ibid., 129.

times the rule of freedom by residence and freed slaves (and their immediate kin) from their masters[27] since 1807.[28] The Scotts suit for freedom assumed the conventional form of a suit for damages of which the alleged acts of the defendant (the master) were considered lawful if the plaintiff was not a free person; however, if the plaintiff was indeed a free person, the acts of the defendant were considered assault and false imprisonment.[29] The state of Missouri provided the Scotts with an attorney, as was custom. VanderVelde claims that according to Missouri statute, lawyers were appointed to slaves by "simply asserting a claim, filing an affidavit, and asking the judge to assign one."[30] While both Dred and Harriet Scott filed cases before the St. Louis Circuit Court, only Dred's was upheld. Lawyers from both sides almost immediately agreed that the two cases should be consolidated, and the result of Dred's case would also be the outcome of Harriet's case.[31]

The origins of the Scotts' suits are not entirely clear, as to who provided the Scotts with not only the knowledge but the financial initiative to start the case. It is indeed possible that Scott himself conceived the idea, as it was common for slaves and former slaves in St. Louis to talk openly about suits for freedom.[32] It is also possible that some of Scott's former masters initiated the case. After returning to St. Louis in 1846, Scott connected with the sons of his former master, Peter Blow. The Blow family assisted Scott by providing financial support for his litigation.[33] Harriet Scott may have also first discovered the possibility of a claim to freedom when she

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[27] Lea VanderVelde, "The Dred Scott Case in Context," *Journal of Supreme Court History* 40, no. 3 (2015): 269.
[28] Ibid., 279, fn 26.
[29] Fehrenbacher, *Slavery, Law, and Politics*, 129.
[30] VanderVelde, "The Dred Scott Case in Context," 270.
[31] Ibid., 272.
[32] Fehrenbacher, *Slavery, Law, and Politics*, 129.
[33] Ibid., 122. One of the sons, Taylor Blow, remained Scott's friend and benefactor until his death, likely stemming from a childhood bond.

attended the Second African Baptist Church in St. Louis. Reverend John Anderson had purchased his freedom after a lifetime of slavery, so he or another member of the church congregation may have informed Harriet of her right to freedom.[34] Regardless of the origins of the case, once Harriet and Dred Scott decided to sue for their freedom, they found attorneys who were willing to take their cases.

The Scotts' initial case reached a St. Louis Circuit Court on June 30, 1847, bearing the title *Scott v. Emerson.*[35] In order to have a successful suit, the Scotts needed to prove that Dred had been taken to reside on free soil and that Mrs. Emerson now claimed or held him as a slave.[36] Testimonies from witnesses Scott knew at Forts Armstrong and Snelling easily confirmed the first stipulation and proved that Scott had indeed been taken to reside on free soil while still claimed as a slave. Scott's lawyers relied on the testimony of Samuel Russell, the man to whom the Scotts had been hired out. Russell maintained that he had hired the Scotts from Mrs. Emerson, but he admitted that his wife had been the one to make the arrangements and had paid Alexander Sanford, not Mrs. Emerson.[37] With Russell's complicated testimony, it could not be proven that Mrs. Emerson owned Dred Scott. Because of this technicality, the jury ruled in favor of Mrs. Emerson.

Although the Scotts were unsuccessful in their first trial, the judge granted the Scotts' request for a new trial in December 1847 and continued the legal process. Mrs. Emerson's counsel filed an appeal to the court's decision to grant a new trial based on a writ of error in 1848, which took the case to the Missouri Supreme Court. In June 1848, the court denied Mrs.

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[34] Finkelman, *Dred Scott v. Sandford,* 19.
[35] Because the attorneys agreed that Harriet's case was primarily the same as Dred's, all of the decisions made by the court also apply in *Harriet v. Emerson.*
[36] Fehrenbacher, *Slavery, Law, and Politics*, 130.
[37] Ibid., 131.

Emerson's claim and granted the Scott's request for a retrial.[38] Although the court did not side with Mrs. Emerson, she and her backers' tenacity in pursuit of the Scotts exhibits her desire to maintain her property. While Mrs. Emerson's motivations for proceeding with the case remain unknown, it seems that Mrs. Emerson wanted to keep the Scotts as her property just as badly as they wanted to be relinquished from her ownership.[39]

The case did not return to court until 1850 after a long series of delays. In the two-year span since the Missouri Supreme Court's permission for a retrial, Alexander Sanford died and Mrs. Emerson moved from St. Louis to Massachusetts, leaving her affairs to her brother, John Sanford.[40] The judge in the circuit court instructed the jurors to carefully consider Scott's residence in free territory, as that residence would invalidate Scott's status as a slave and make him a free man.[41] Mrs. Adeline Russell testified this time instead of her husband, and she affirmed that she had hired out the Scotts directly from Mrs. Emerson, addressing the technicality on which the Scotts had previously lost their case. After favorable instruction from the presiding judge, the jury ruled in favor of the Scotts.[42] Mrs. Emerson's counsel then appealed the decision to the Missouri Supreme Court.

By the time the case came before the Missouri Supreme Court in 1852, the slavery issue had become even more politicized and divisive across the United States. Particularly in Missouri, the sectional tension between pro-slavery and anti-slavery politicians came to a boiling point at

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[38] Ibid.
[39] It is impossible to know, however, whether or not Mrs. Emerson was simply used as a figurehead by the men in her life or whether she wished to keep the Scotts for herself. Further discussion of the potential motivation behind the case appears in Chapters 2 and 3.
[40] Ibid., 132.
[41] Finkelman, *Dred Scott v. Sandford*, 22.
[42] Fehrenbacher, *Slavery, Law, and Politics*, 132.

exactly the time this case came before the court.[43] The Missouri Supreme Court reversed the rule of freedom-by-residence that had decided Dred's second trial in the St. Louis Circuit Court and applied this reversal retroactively to the case.[44] The Missouri Supreme Court relied heavily on the opinion of the United States Supreme Court in the 1851 *Strader v. Graham* case. This federal case involved a group of Kentucky slave musicians who were taken to Ohio for performances. Eventually, these men pursued their freedom by fleeing to Canada, and their owner sought damages from several men who had helped the slaves escape.[45] The defense argued that the slaves were actually free when they arrived in Ohio, which is very similar to the claims of the Scotts. Although the Supreme Court dismissed the case for lack of jurisdiction, Chief Justice Taney's opinion in the case claimed that the status of the slaves upon returning to Kentucky "depended altogether upon the laws of that State and could not be influenced by the laws of Ohio," thereby federally approving the idea of reversion.[46]

It is likely that the Missouri Supreme Court was both knowledgeable and influenced by the *Strader* decision, as is evident based on the discussion in both cases regarding the ability for the laws of certain states to have precedence in others. Justice Taney's reference to the laws of Ohio not having authority over the laws of Kentucky is almost directly mirrored in the Missouri Supreme Court's ruling in Dred Scott's case. In his March 22, 1852, decision, Judge William Scott wrote that laws of other states "have no intrinsic right to be enforced beyond the limits of the State for which they were enacted," essentially paraphrasing Taney's *Strader* decision.[47]

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[43] Ibid., 134.
[44] VanderVelde, "The Dred Scott Case in Context," 275.
[45] Fehrenbacher, *Slavery, Law, and Politics*, 135.
[46] *Strader v. Graham*, 51 U.S. 82 (1851). The claimed lack of jurisdiction means that the slaves' status was left to the law of their state of origin.
[47] Fehrenbacher, *Slavery, Law, and Politics*, 137.

Taney's conclusions would have had possible ramifications for future decisions made in the U.S. Supreme Court, but his comments had no binding power over decisions made in the state court of Missouri. While the Missouri Supreme Court in its 2-1 vote did not *have* to follow the opinion issued by Taney, the court, in a time of immense political and racial turmoil within the country, clung to Taney's opinion and ended the effort for Dred Scott to obtain his freedom via the Missouri court system.

While the Scotts' case had to be taken to trial court for final implementation of the decision, once again, the case did not proceed as expected. Instead of handing the decision down to the Scotts in 1852, Judge Alexander Hamilton of the Missouri trial court put off complying with the order. The next mention of the Scotts' case in the records of the Circuit Court was on January 25, 1854, with the case labeled as awaiting decision of the U.S. Supreme Court. Scholars speculate that Hamilton already knew that the Scott case was moving to the U.S. Supreme Court, so he decided to wait for this to happen.[48] Interestingly enough, the case did not enter the U.S. Supreme Court as *Scott v. Emerson*, but it instead entered the Court as *Scott v. Sandford* (the Supreme Court misspelled the defendant's name). Scott and his counsel likely knew that any appeal to the Supreme Court would elicit the same response given in the *Strader* decision, so his lawyers tried a new tactic. By 1853, Scott and his family had been allegedly sold to Mrs. Emerson's brother, John F.A. Sanford, a resident of New York City. Scott's counsel recommended a suit under the diverse-citizenship clause, which specifically allowed for suit in federal court because of Sanford and Scott's residence in different states.[49] Scott sued Sanford for battery and wrongful imprisonment, asking for $9,000 in damages. At this point, if Scott was

[48] Ibid., 130.
[49] Ibid., 140.

actually free, Sanford was wrongfully imprisoning a free man.[50] While it may appear as a simple change of name to the case, scholar Don Fehrenbacher argues that without the suit against Sanford, the case would not have had the impact that is known today:

> The crucial difference was that the two major issues in the *Sandford* case – Negro citizenship and the constitutionality of the Missouri Compromise restriction – did not appear on the face of the record in the *Emerson* case and would have been beyond the scope of federal court review. Thus, a Supreme Court decision in *Dred Scott v. Emerson* would have been narrowly based and without the great impact attributed to *Dred Scott v. Sandford*.[51]

While the two cases are essentially the same in substance, the explicitness with which *Scott v. Sandford* highlights both Negro citizenship and the Missouri Compromise changed the trajectory of the case completely. This change was what allowed the Scotts to not face the exact decision issued in *Strader*.

After making its way through the preliminary levels of the federal court system, oral arguments for the case began in the United States Supreme Court in February 1856. Scott's counsel consisted of St. Louis attorney Montgomery Blair, who had been practicing before the Supreme Court since 1853 and considered himself to be extremely knowledgeable about Missouri law. Blair himself was a Free-Soiler because he opposed the expansion of slavery into the western territories; however, Blair had held slaves and did not consider himself to be an abolitionist because he did not want slavery ended everywhere.[52] Blair attempted to expand his counsel, but no other attorneys agreed to take the case. Likely, most lawyers expected the Supreme Court to reject Scott's claim to freedom and set no new precedent.[53] On the other side, Sanford had hired two attorneys that were considered some of the best in the country – Henry S. Geyer and Reverdy

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[50] Finkelman, *Dred Scott v. Sandford*, 23.
[51] Fehrenbacher, *Slavery, Law, and Politics*, 140.
[52] Ibid., 148.
[53] Finkelman, *Dred Scott v. Sandford*, 27.

Johnson. Although Geyer was well-respected in Washington, Johnson was considered to be the "most respected constitutional lawyer in the country" and also remained a close friend of Chief Justice Taney.[54] The decision of Sanford to hire such experienced and high-profile attorneys demonstrates the importance placed on winning this case.

Briefs and oral arguments for the case lasted four days, and the Court likely discussed the ability of African Americans to have citizenship, the power of Congress to determine the status of slavery in the territories, and the constitutionality of the Missouri Compromise.[55] In his brief, Blair claimed freedom for Dred based on his time spent in Illinois, without mentioning his time spent at Fort Snelling.[56] Blair effectively avoided the territorial issue in his brief, whether intentionally or unintentionally, but Geyer and Johnson decided to take make this issue the most prominent of their argument. Sanford's counsel maintained its position that Scott could not sue in federal court because he was not a citizen and advanced its argument by attacking the Missouri Compromise.[57] It was at this time that the largest constitutional issues began to appear, coming verbally from the lawyers.[58] The Court could come to no decision, so reargruments were scheduled for the following year on two questions: 1) Was the plea in abatement legitimately before the Supreme Court? 2) Could a free Negro be a citizen of a state or the United States and therefore bring a suit in federal court?[59]

For the next round of arguments in December 1856, George T. Curtis, a conservative Massachusetts Whig, joined Montgomery Blair to serve on Scott's counsel. By this time, public

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[54] Fehrenbacher, *Slavery, Law, and Politics*, 148.
[55] Finkelman, *Dred Scott v. Sandford*, 27.
[56] Fehrenbacher, *Slavery, Law, and Politics*, 153.
[57] Ibid.
[58] Chief Justice Taney would later respond to these constitutional issues in his opinion.
[59] Finkelman, *Dred Scott v. Sandford*, 28.

attention toward the case had also grown, which may be the reason that Curtis joined the case. The Court once again heard four days of arguments, with Blair maintaining that Sanford had waived his right to question whether the court had jurisdiction when he continued with his suits in court.[60] Blair also argued that the word "citizen" had been used in both state and federal law for some time, but that it was possible for African Americans to be "quasi citizens." Such limited citizenship meant that African Americans would be able to own property, carry on business, and sue in federal court, but that they did not have to possess all of the civil rights that were guaranteed to whites.[61] For his argument on citizenship, Geyer created distinctions between state citizenship and federal citizenship, and free-born free Negroes and slave-born free Negroes. Ultimately, citizens of the United States had to be born as citizens or naturalized, and neither of these was true for Scott. Additionally, slave-born free Negroes were likely to be excluded from United States citizenship.[62] While the case previously had little outside attention, the continual debate and the possibility of a complete change in precedence garnered both political and public attention. Finkelman argues that "what had begun in 1846 as an attempt by Scott to gain freedom for himself and his family had become a case with potentially monumental legal and political significance,"[63] and it appeared that the rest of the country started realizing this as well.

It was with these arguments that the Court finally rendered a decision, but before examining this decision in depth, it is imperative to look at the structure of the Supreme Court in 1857 to see patterns in political affiliation, residence, and appointment, that may have impacted the decision at large.

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[60] Fehrenbacher, *Slavery, Law, and Politics*, 156.
[61] Ibid., 157.
[62] Ibid.
[63] Finkelman, *Dred Scott v. Sandford*, 28.

Table 1: Supreme Court in 1857[64]

Justice	Term of Service	State	Party	Appointed By
John McLean	1829-61	Ohio	Republican	Jackson, Southern Democrat
James Wayne	1835-67	Georgia	Democrat	Jackson, Southern Democrat
Roger Taney	1836-64	Maryland	Democrat	Jackson, Southern Democrat
John Catron	1837-65	Tennessee	Democrat	Jackson, Southern Democrat
Peter Daniel	1841-60	Virginia	Democrat	Van Buren, Northern Democrat
Samuel Nelson	1845-73	New York	Democrat	Tyler, Southern Democrat
Robert Grier	1846-70	Pennsylvania	Democrat	Polk, Southern Democrat
Benjamin Curtis	1851-57	Massachusetts	Whig	Fillmore, Northern Republican
John Campbell	1853-61	Alabama	Democrat	Pierce, Southern Democrat

Five justices were from slave states and came from slaveholding families (James Wayne, Roger Taney, John Catron, Peter Daniel, and John Campbell), while four justices were northerners who had always lived in free states (John McLean, Robert Grier, Samuel Nelson, and Benjamin Curtis). Although the Court seemed to be balanced geographically, the party-line division is glaring. The only justice appointed by a Northern Republican was Benjamin Curtis, who John McClean joined after rejecting his Democratic roots and aligning himself with the Republican Party. McLean was the only member of the Court at the time who openly opposed slavery.[65] The other two northerners, Nelson and Grier, could be counted to vote with the southern majority of

[64] This table is a modified version of a similar table found in Fehrenbacher's *Slavery, Law, & Politics*, pg. 149.
[65] Finkelman, *Dred Scott v. Sandford*, 31.

the Court.[66] While the *Dred Scott* decision may have been a byproduct of North vs. South tension, it clearly goes far beyond that scope. Justices Nelson and Grier prove that even when living in the North, typically "southern" ideology still existed. This case calls for a deeper understanding of political ideology rather than regional ideology, with the Court clearly splitting along ideological lines in the *Scott* ruling.

On March 6, 1857, Scott's eleven-year legal battle came to conclusion with the 7-2 Supreme Court decision in favor of Sanford. As discussed above, the Court's decision fell along the presumable lines, with Justices McLean and Curtis dissenting in the case. The Court's decision was twofold. First, the majority argued that under Article III of the Constitution, African Americans were not considered to be federal citizens and therefore had no standing to sue in federal court. In his majority opinion, Chief Justice Taney wrote:

> The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.[67]

In claiming this as the central question of the case, Taney shifted examination to African Americans' ability to be *federal* citizens, not state citizens, making a clear distinction between the two categories of citizenship. Here, the idea of dual citizenship was established, as free African Americans could be citizens of a state and not citizens of the United States. Interestingly, Taney's argument seems to contradict the text of the Constitution itself. The Privileges and Immunities clause of Article IV, Section 1 requires that states do not discriminate against citizens of other states, which led to the assumption of most Americans that "anyone who was considered a citizen

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[66] Ibid., 29.
[67] *Scott v. Sandford*, 60 U.S. 393 (1857).

of a state was also a citizen of the United States."[68] According to Finkelman, the relatedness of federal and state citizenship was not just a social norm but also a judicial norm. He claims that by 1857, the United States had a judicial tradition of considering state and national citizenship as inseparable.[69] While this tradition may or may not have existed, Finkelman's argument that citizenship was not a wholly new idea for the courts to contemplate remains valid. However, Taney's opinion broke from this traditional line of reasoning and declared that African Americans did not have access to federal citizenship or to the Privileges and Immunities Clause. In essence, states that prohibited slavery could not force their notions of citizenship on slave states, and slave states, additionally, did not have to recognize any rights of African Americans from free states.

Further, Taney's explicit language referring to the "political community formed and brought into existence by the Constitution of the United States" diverts attention to a more circumstantial question of the intentions of the Founding Fathers. Because, in Taney's view, African Americans were not considered to be members of the sovereign people at the time of the writing of the Constitution, he argued that they were not granted the same rights as whites. He declared that African Americans

> Are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, there were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.[70]

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[68] Finkelman, *Dred Scott v. Sandford*, 35.
[69] Ibid.
[70] *Scott v. Sandford*, 60 U.S. 393 (1857).

Taney took aim at the entire community of African Americans within the country, whether free or enslaved, by claiming that their racial identity was what made them subordinate to the "dominant race." Taney's repeated use of words such as "inferior," "subordinate," and "subjugated" illustrate the way in which this decision sought to solidify the supremacy of whites over African Americans in a rather politically charged climate. This majority opinion effectively created a divide that Scott was not seeking to create. Instead of acknowledging the distinction between free African Americans and enslaved African Americans, the decision placed all African Americans into one category of individuals who were inferior to the white race, and therefore only made a distinction between African Americans and whites. The majority opinion did not acknowledge the Three-Fifths Compromise of the Constitution (Article I, Section 2), which apportioned representation and taxation of a state according to the number of "free persons" in the state, plus three-fifths of the number of slaves. Here, the Constitution seems to distinguish between free African Americans, who would be part of a state's "free persons," and African Americans that were enslaved.

What is perhaps most interesting about Taney's language in this part of the decision is the way in which he manipulated history to adhere to his view of the Framer's intentions. In fact, when the Constitution was ratified in 1787, five of the thirteen states (New Hampshire, Massachusetts, New York, New Jersey, and North Carolina) had free African Americans that were able to vote in their elections.[71] Because African Americans were given the right to vote in these states, it meant that African Americans were not only granted rights, but that African Americans were able to vote to show their opposition or support for the Constitution. However, Taney's view of history failed to acknowledge the minimal rights of African Americans at the

[71] *Scott v. Sandford*, 60 U.S. 393 (1857).

founding of the country. It is important to note that Taney's view of the country was not far from what was socially accepted to be true. In his essay "Lincoln Versus Taney: Liberty, Power, and the Clash of the Constitutional Titans," Timothy Huebner claims that Taney's assessment of African Americans "remained well within the antebellum constitutional mainstream and in keeping with the Supreme Court's other pronouncements on slavery."[72] Even while analyzing this case in a modern context, it is of the utmost importance to separate modern definitions of race from those of the past.

Because Dred Scott was not considered a citizen under the majority opinion, the Court could have dismissed his case for lack of jurisdiction. Instead, Taney's opinion continued to discuss the constitutionality of the Missouri Compromise, something that was beyond the scope of the case if Scott did not actually have standing to sue in federal court. While Republicans argued that Taney's discussion of the status of slavery in the territories was dictum,[73] Taney was still determined to reach a decision about the Missouri Compromise. Finkelman argues that Taney's goal was to "settle, finally and forever, and in favor of the South, the status of slavery in the territories,"[74] which could only be done by overcoming the territories clause and Fifth Amendment of the Constitution. Article IV, Section 3 of the U.S. Constitution provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," which seems to undoubtedly grant Congress the right to regulate slavery in the territories. If the territories clause was held to be true, then the Missouri Compromise was inherently constitutional. Taney argued that while the

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[72] Timothy S. Huebner, "Lincoln Versus Taney: Liberty, Power, and the Clash of the Constitutional Titans," *Albany Government Law Review* 3, no. 2 (2010): 631.
[73] Dictum: A statement that is unnecessary to the outcome of the case and thus not legally binding.
[74] Finkelman, *Dred Scott v. Sandford*, 36.

territories clause did allow Congress to regulate slavery in some areas, it only applied to the territories the United States owned in 1787. Therefore, the clause was

> Confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more.[75]

Chief Justice Taney again attempted to reconstruct the original intentions of the Constitution and its framers in a way that benefitted his argument.[76] Because the Louisiana Purchase was made after the adoption of the Constitution, Taney believed that the Constitution had "no force of any kind" in this territory.[77] According to this interpretation, Scott's time spent at Fort Snelling, which was a federal territory created after 1787, did not grant him freedom. The logical further extension of Taney's argument would be to prohibit Congress to regulate anything discovered or created after 1787.[78]

Taney further utilized the Constitution to proclaim that the Missouri Compromise was in direct violation to the Fifth Amendment, as it denied citizens the access to property in the form of slaves.[79] Because the Missouri Compromise made slavery illegal in the Louisiana Purchase territory above the 36°30' parallel, individuals that lived there were not allowed to own slaves. Taney argued that this was a direct violation of a person's Fifth Amendment rights, which

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[75] *Scott v. Sandford*, 60 U.S. 393 (1857).
[76] While the lack of presentation of evidence from the Framers or other cases may point to an inability for Taney to find support for his decision, it also may have been a byproduct of the time period in which the Court decided the case. Although it has increasingly become the norm to include multiple references in court rulings, that simply was not the judicial climate in the 1850s.
[77] Fehrenbacher, *Slavery, Law and Politics*, 200.
[78] Finkelman, *Dred Scott v. Sandford*, 39.
[79] The Fifth Amendment guarantees that "no person shall be deprived of life, liberty, or property, without due process of law."

allowed him or her to own slaves as a form of property. Congress had considered slaves to be a special sort of property, but one that could both be supported by positive law or banned.[80] Although Taney agreed with the notion that slavery was a special sort of property, he thought it deserved greater protection, writing:

> The right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that may desire it, for twenty years… And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.[81]

Thus, Chief Justice Taney declared that the Missouri Compromise and any other prohibition of slavery in the territories was a direct violation of an individual's Fifth Amendment rights. Even though the Constitution never explicitly states that slavery is a form of property, Taney adhered to this assumption that slaves fell under the umbrella of property.

After discussing Dred Scott's inability to attain freedom based on his residence at Fort Snelling, Taney moved to Scott's time spent in the free state of Illinois. Taney largely cited his *Strader v. Graham* opinion,[82] claiming that Scott's status as free or slave depended on the laws of Missouri, not the laws of Illinois. Because *Strader* was the precedent of the Court, Taney adhered to its argument and ruled that Scott was therefore a subject to the laws of Missouri and was still a slave. Taney dedicated only one page out of his fifty-five-page decision to Scott's time spent in Illinois,[83] which largely reflected Taney's decision to use the precedent of *Strader*. On both counts of his time spent at Fort Snelling and in Illinois, Scott was denied his status as a free man.

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[80] Finkelman, *Dred Scott v. Sandford*, 41.
[81] *Scott v. Sandford*, 60 U.S. 393 (1857).
[82] See page 16 of this thesis for a further explanation of *Strader v. Graham*.
[83] Fehrenbacher, *Slavery, Law, and Politics,* 184.

Although Chief Justice Taney wrote the majority opinion of the Court, the rest of the justices each wrote their own opinions, demonstrating the pervasiveness and importance that they granted to the issues of slavery and citizenship. Justice Samuel Nelson was originally charged with writing the majority opinion. At this point, the Court had decided not to rule on the constitutionality of the Missouri Compromise. Nelson claimed in his drafted majority opinion that Dred Scott had been taken to Illinois for a temporary residence, and upon return to Missouri, he was still under the rule of Missouri law. Nelson further argued that Scott did not become free at Fort Snelling because "a territorial law of Congress had no extraterritorial force superior to that of a state law."[84] Nelson's opinion would have affected relatively few slaves who had been taken from a slave state to a free state, never mentioning or attempting to decide the constitutionality of the Missouri Compromise. Instead, the Court majority departed from the drafted majority opinion and decided that it needed to look at the issue that it had once decided to ignore. Justice James Wayne motioned for Chief Justice Taney to write the majority opinion,[85] claiming that the public expected the Court to decide on the issue of the Missouri Compromise.[86] However, in Justice John Catron's letter to President-elect James Buchanan, he indicated that the Court majority had only changed its plan after Justices Benjamin Curtis and John McLean presented extensive dissenting opinions that discussed all aspects of the case, including Negro citizenship and the Missouri Compromise.[87]

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[84] Fehrenbacher, *Slavery, Law, and Politics,* 165.
[85] Based on letters from Justice Catron to President-elect Buchanan, the reversal of the Court majority's decision to discuss the Missouri Compromise happened in less than five days. On February 14, 1857, Justice Catron wrote to Buchanan that the Court would not decide on the Missouri Compromise; however, in a letter written on February 19, Justice Catron said that the Court would decide on the Missouri Compromise. See Fehrenbacher, *Slavery, Law, and Politics,* 164.
[86] Fehrenbacher, *Slavery, Law, and Politics,* 166.
[87] Ibid.

Regardless of who was in charge of writing the majority opinion, the entire Court did not agree on every issue presented in the *Scott* case. Because historians like Fehrenbacher have been unwilling to accept that Taney's opinion was the definitive statement of the Court, they have attempted to reconstruct and count the votes of each of the justices on the five major issues. The chart below is based on a modified version of a table presented by Fehrenbacher in *Slavery, Law, and Politics* and is a useful way to see where each of the justices stood on the multiple issues present in the rather complicated ruling.

Table 2: Box Score[88]

	McLean	Wayne	Taney	Catron	Daniel	Nelson	Grier	Curtis	Campbell
Plea in abatement was properly before the Court		✓	✓		✓			✓	
A Negro could not be a citizen of the United States		✓	✓		✓				
Missouri Compromise restriction was invalid		✓	✓	✓	✓		✓		✓
Laws of Missouri determined Scott's status as a slave after his return from Illinois		✓	✓	✓	✓	✓	✓		✓
Scott was still a slave		✓	✓	✓	✓	✓	✓		✓

[88] Based off of table and information from Fehrenbacher, *Slavery, Law, and Politics*, 175.

Based on the chart above, it is evident that there was not a complete judicial decision on the question of Negro citizenship. Not only did a minority of justices believe that the issue was even before the Court (Question 1), but only two other justices would have endorsed Taney's ruling that a Negro could not be a citizen of the United States. These tabulations show the possibility that Taney's majority decision was in fact extrajudicial. Additionally, it is possible to argue that the Court did not even make a decision on the constitutionality of the Missouri Compromise. Six of the justices voted that it was unconstitutional; however, three of the six justices making up that majority voted that Scott was not a citizen of the United States and therefore had no standing to sue in federal court (Taney, Wayne, and Daniel). While the decision may be viewed in this light, it is important to differentiate between the individual justices and the decision-making of the Court. Once the Court decides to accept jurisdiction, then all justices have a right to review the case on its merits, regardless of their views on the jurisdictional question.[89] Ferhenbacher argues:

> In short, critics of the Dred Scott decision cannot have it both ways. Either the Court did rule authoritatively against Negro citizenship, or else it did legitimately consider and settle the substantive issues in the case. It cannot have done *neither*; presumably it must have done *one or the other*; but what greatly complicates matters is the possibility that it may have managed to do *both*.[90]

It is impossible to truly understand what went on behind the closed doors of the Supreme Court and using the Box Score has its limitations. While I can continue to theorize about what the Court *actually* decided, I will move beyond this question and look at the opinions that I have as evidence for what the justices not only believed but what they wanted to become policy of the United States.

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[89] Fehrenbacher, *Slavery, Law, and Politics*, 176.
[90] Ibid., 177.

While six justices wrote concurring opinions, all six differed at least marginally from the Court's majority opinion. Justice Nelson's opinion (what was to originally the opinion of the Court) concurred with Taney on only one major point. Nelson argued that Scott's status depended completely on the laws of Missouri. Although he did not explicitly discuss the validity of the Missouri Compromise, Nelson commented that "many of the most eminent statesmen and jurists of the country" believed that the Missouri Compromise "was not authorized by any power under the Constitution."[91] No further remarks were made on this topic, but from this brief mention of the Missouri Compromise, it appears that Nelson endorsed the idea that the Compromise was unconstitutional. Nelson's opinion also confirmed the right of a military officer to take a slave to a free state. He claimed that Dr. Emerson went to his post for a "temporary purpose"[92] and did not intend to mark himself or his slaves as citizens of that state. Perhaps the most controversial piece of Justice Nelson's concurring opinion was his concluding remark. Nelson wrote:

> A question has been alluded to, on the argument, namely, the right of the master with his slave of transit into or through a free State…This question depends upon different considerations and principles from the one in hand, and turns upon the rights and privileges secured to a common citizen of the republic under the Constitution of the United States. When that question arises, we shall be prepared to decide it.[93]

Nelson's language hinted at a desire to cast judicial doubt on the power of free states to restrict the entry of slaves defined as "temporary residents." In fact, Nelson's acknowledgement that the Court was "prepared to decide" the issue of the residence of slaves in free states demonstrated his previous thought and study on the subject. Though Nelson did not explicitly state his opinion on

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[91] *Scott v. Sandford*, 60 U.S. 393 (1857).
[92] Ibid.
[93] Ibid.

whether slaves could legally be transported to free territory, his tone and allusion to an instance in which this question could be decided, coupled with his previous remarks supporting the institution of slavery, appear to demonstrate his support for the transportation of slaves into free territory.

Justices Robert Grier and James Wayne wrote the shortest opinions of the Court, with Justice Wayne's only amounting to a few sentences. Both justices concurred with the opinion of the Court, stating that they sided with the Chief Justice and the majority opinion in its entirety.[94] While the *Scott* case has gained recognition for the sheer number of opinions represented, the fact that Justices Grier and Wayne side with Taney's complete opinion shows that the Court may have been less divided than it first seemed. The remaining opinions of the southern justices (Daniel, Campbell, and Catron) were placed after the previously discussed opinions. Only Justice Peter Daniel supported Taney on the plea in abatement and was consequently the only one of the three to discuss the question of Negro citizenship. Daniel argued that Scott could not be a citizen because "the conferring of citizenship was an act of sovereignty which no slave-owner or other individual could perform."[95] Daniel, Campbell, and Catron all treated Scott's residence in Illinois as temporary, but Catron was the only justice to explicitly state this in his opinion.

On the territorial question, the three justices all concluded that the Missouri Compromise was unconstitutional, but they arrived at their conclusion through different reasoning. Daniel was perhaps the most extreme, arguing that the antislavery clause of the Northwest Ordinance was void, and that the Constitution's specific protection of slavery placed it above any other sort of property rights.[96] Campbell agreed with Taney and Daniel on minimizing the scope of the

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[94] Ibid.
[95] Fehrenbacher, *Slavery, Law, and Politics*, 217.
[96] *Scott v. Sandford*, 60 U.S. 393 (1857).

territory clause, but he utilized a rather Taney-like tactic to do so. Justice John Campbell claimed that the Framers would never have written a clause that would be used to establish an American colonial system after having just rebelled against the British.[97] Such an idea adhered to the Douglas principle of territorial self-government, preventing any restrictions from being placed on the ability to self-govern. Campbell argued that this right to self-govern extended to the ability of state governments to make their own laws regarding slavery,[98] ensuring that a master could take his slave anywhere without fear of federal interference. While Catron reached the same conclusion as Daniel and Campbell, his reasoning diverged immensely from his fellow justices, specifically Chief Justice Taney. Catron believed that Congress had the power to govern in the territories based on the territory clause but that this power to govern did not necessarily include the right to prohibit slavery. Instead, the land cessions made by the states and the terms of the Louisiana Purchase were to determine whether the outlawing of slavery was legal in the respective areas. According to Catron, the Louisiana Purchase had guaranteed the then-citizens and the future inhabitants "the free enjoyment of their liberty, property, and the religion which they profess."[99] Such an agreement forbid Congress from enacting any laws that inhibited the enjoyment of the aforementioned rights; however, Catron's argument elevated treaties to virtually the level of the Constitution, which might have led to many legal problems and could have challenged the balance of power amongst the three federal branches of government.

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[97] Ibid. Campbell argued here that Americans had acknowledged British supremacy in regard to land titles, but insisted that political power must remain in the hands of the citizens. Inherently, this struggle over the authority to govern as either a right of the central government or a local right led to the Revolution.

[98] Ibid.

[99] Ibid.

It becomes clear that although seven of the justices voted with the majority, their reasons for doing so were far from homogenous. The common line of reasoning between the majority justices was the opinion that slavery was no different than any other form of property. If slaves were property, Congress had a constitutional duty to protect slave property and must remain uninvolved in the process of regulating each state's slave laws. The division between justices who ultimately agreed to the same majority opinion demonstrated the foundational nature of the slavery issue and the multiplicity of ways in which individuals, even of the same party, could disagree.

Even among the Court's two dissenters, Justices McLean and Curtis, complete agreement was not reached. Although both justices wrote opinions, McLean's opinion has been taken less seriously by historians such as Fehrenbacher, as "Curtis's contribution was more thorough, scholarly, and polished."[100] The incoherence of McLean's argument stems from his insistence that the plea in abatement was not before the Court and his decision to write about Negro citizenship anyway. Curtis, on the other hand, joined Taney in his belief that the Court could review the plea in abatement; however, the similarities between Taney and Curtis seemingly end here. Curtis deemed anything outside of the actual plea in abatement as beyond the scope of the Court. The only question before the Court, then, was whether Scott's African ancestry was "inconsistent with his own citizenship in the State of Missouri, within the meaning of the Constitution and laws of the United States."[101] Curtis's wording is important here because he indicated that he would discuss Scott's *federal* citizenship, not his state citizenship.

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[100] Fehrenbacher, *Slavery, Law, and Politics*, 221.
[101] *Scott v. Sandford*, 60 U.S. 393 (1857).

Curtis's argument for Scott's United States citizenship was both clever and complicated. Utilizing the Marshall Court formula,[102] Curtis argued that any citizen of the United States who resided in any state was a citizen of that state for purposes of jurisdiction.[103] While Taney cited the Constitution as a means of restricting the availability of citizenship to African Americans, Curtis used it to his advantage and constructed it according to his needs. Article Four, Section Two of the Constitution says that "a citizen of the United States at the time of the adoption of the Constitution" was granted citizenship, which Curtis cites as evidence that United States citizenship preceded the creation of the Constitution. Because the Confederation (pre-Constitution government) had no jurisdiction on citizenship, states were the ultimate sources of authority on this matter. Therefore, state citizenship determined United States citizenship in 1789. And further, because African Americans were granted citizenship in five states of the Confederation[104] and the Constitution did not explicitly deny citizenship, or even define citizenship,[105] to any class of people, Dred Scott was a United States citizen and resident of Missouri. Dred's status as a citizen allowed him to bring suit in federal Court.[106]

Curtis's argument then moved to the constitutionally of the Missouri Compromise and the ability for Congress to have power over slavery in the territories. This position aligned with the

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[102] According to the Marshall Court formula, status as a citizen of the United States translates into state citizenship. See Fehrenbacher, *Slavery, Law, and Politics*, 223.
[103] Ibid.
[104] Curtis names New Hampshire, Massachusetts, New York, New Jersey, and North Carolina as these states.
[105] The only mentions of citizenship within the Constitution all essentially conclude that "persons born within the States, who, by force of their respective constitutions and laws, are citizens of the State, are thereby citizens of the United States." Because Scott was indeed born in the United States and was considered to be a citizen of Missouri (by Curtis), he was a citizen of the United States. See Alexander Bickel's *The Morality of Consent* (1975). His chapter titled "Citizen or Person?" argues that citizenship did not enter American jurisprudence until *Dred Scott*.
[106] *Scott v. Sandford*, 60 U.S. 393 (1857).

Republican tendency to interpret the territory clause broadly enough to ensure the delegation of power to govern. Curtis attacked Chief Justice Taney and the majority's view that the Framers had neglected the need for temporary government in western territory, in spite of the clear need for it. Curtis wrote:

> That Congress has some power to institute temporary governments over the Territory, I believe all agree; and, if it be admitted that the necessity of some power to govern the Territory of the United States could not and did not escape the attention of the Convention and the people, and the necessity is so great that, in the absence of any express grant, it is strong enough to raise an implication of the existence of that power, it would seem to follow that it is also strong enough to afford material aid in construing an express grant of power respecting the Territory; and that they who maintain the existence of the power, without finding any words at all in which it is conveyed, should be willing to receive a reasonable interpretation of language of the Constitution manifestly intended to relate to the Territory, and to convey to Congress some authority concerning it.[107]

Curtis's interpretation of the territory clause presented a great challenge to Taney's argument. Taney and Curtis both attempted to interpret the Constitution based on the presumptive intentions of the Founders, which may weaken the overall status of both arguments. The Court had no way of knowing the intentions of the Founders and such presumptions, on either side, have no way to be proven.

Curtis's second point addressed the effect of taking a slave to reside in free territory, which he said granted the slave his freedom. Since slavery was entirely a product of municipal law, it had no existence when outside of the boundaries of its protections. Because of this, Missouri law had no effect at Scott's residence either at Fort Snelling or in Illinois as long as his residence was assumed to be permanent.[108] Justice Curtis, along with Justice McLean, agreed that Scott's time in both free areas was "sufficiently permanent" and constituted domicile. [109] In this

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[107] Ibid.
[108] Ibid.
[109] Fehrenbacher, *Slavery, Law, and Politics*, 227.

understanding, any residence that was not temporary ensured freedom. Both Curtis and McLean note that because Scott resided in both a free state and a free territory, his freedom was absolute and irrevocable. This conclusion rendered the principle of reattachment as incorrect, and further limited the impact that *Scott v. Emerson* had as the precedent of Missouri law. Curtis further argued that Scott's status as a free man was evidenced by his ability to take a wife at Fort Snelling: "the consent of the master that his slave, residing in a country which does not tolerate slavery, may enter into a lawful contract of marriage…is an effectual act of emancipation."[110] Curtis's notion here is the idea of the ability to take part in a contract. Since only citizens could enter into government contracts that were legally binding, a slave entering into a legal marriage appears to be an impossibility; however, many slaves in the South were permitted to "marry" by owners. Because Dred and Harriet Scott entered into a union, Curtis argued that their contractual rights evidence their status as citizens. Justice Curtis's notion that the ability to marry means that slaves were recognized persons seems to be simply one interpretation of the facts rather than the only interpretation.

The consensus of the two justices also differs largely from the heterogeneity of the majority's opinions. In response to Curtis's analysis, to which Taney had access, Taney refused to release his opinion for newspaper publication and would not grant Curtis any access to the written decision.[111] The actual publication of the Court's decision (and the first publication of Taney's opinion) was not until May, two months after the oral decision had been delivered, which was a direct violation of the Supreme Court's *Rules of Practice*.[112] Taney argued that he took the time to

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[110] *Scott v. Sandford*, 60 U.S. 393 (1857).
[111] Fehrenbacher, *Slavery, Law, and Politics,* 170.
[112] The Supreme Court's *Rules of Practice*, rule 25 says: "All opinions delivered by the Court shall, immediately upon the delivery thereof, be delivered over to the clerk to be recorded."

add historical facts and legal principles to support the elements in his decision that had been denounced by the dissent. Justice Curtis, on the other hand, claimed that Taney added as much as eighteen pages to his decision compared to Curtis's recollection. Curtis believed that Taney wrote the extra pages in direct reply to the dissenting opinion in an attempt to strengthen the argument of the majority. Although Taney's original oral opinion was not preserved, handwritten notes on the page proofs of Taney's opinion constitute about eight pages of the version published in May 1857.[113] The so called "majority opinion" seemingly included an immense amount of information that few, if any, of the other justices had access to before the newspaper publication.

The publication of the Court's decision and the concurring and dissenting opinions in 1857 led to not only a conflict among the justices, but an immense conflict in society as well. Because the decision split the Court among ideological lines,[114] such a division would presumably occur in the public as well. The polarized opinions of the case, as evidenced by the unprecedented multiplicity of opinions, further demonstrated the pervasiveness of the slavery issue within politics and in the country.

[113] See Fehrenbacher, *Slavery, Law, and Politics*, 170 for further information about the process used to verify Curtis's claims.
[114] More clearly, the seven Democrats versus everyone else.

Chapter 3

The Women of the Case – Irene Emerson

The analysis of the *Scott* case as presented in the previous chapter marks the traditional storyline of the case. Irene Emerson has been forgotten after the case made its way to federal court under the name *Dred Scott v. John Sandford*. Harriet Scott has become little more than a footnote in the federal case, as her case was conflated with result of her husband's. And the Scotts' two daughters, Eliza and Lizzie, the ones whose future the case impacted the most, are rarely referenced. While the male-oriented view of *Scott v. Sandford* represents much of what we remember as history, the case's proceedings and verdict largely impacted these four women. The erasure of the women from the case gives us an incomplete view of the nature of the case and its shattering personal effects. The ensuing chapters will focus on reconstructing the stories of Irene Emerson and Harriet, Eliza, and Lizzie Scott in an effort to alter the traditional narrative. My version of the narrative will also demonstrate the immense role that women played throughout all aspects of the landmark case, especially the presence of women in the legal system.

Eliza Irene Sanford was born in 1815 in Winchester, Virginia to Mr. and Mrs. Alexander Sanford.[115] The Sanfords descended from an old Virginia family that had been in the state as early as 1679.[116] Eliza Irene and her six siblings moved to St. Louis some time before any of

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[115] Fehrenbacher, *Slavery, Law, and Politics,* 125.
[116] Charles E. Snyder, "John Emerson, Owner of Dred Scott," *The Annals of Iowa* 21, no. 6 (Fall 1938): 451.

them were married,[117] where her father worked as a manufacturer.[118] Miss Sanford, who traditionally went by her middle name, Irene, travelled to Fort Jesup, Louisiana, in late 1837 or early 1838 to visit her sister and her sister's husband, Captain Henry Bainbridge.[119] This is where she apparently met Dr. John Emerson. Few details exist on their courtship or the relationship between Irene Sanford and Dr. Emerson, but the two were married on February 6, 1838. By September of the same year, Dr. Emerson transitioned back to Fort Snelling, Minnesota, where Mrs. Emerson and the Scotts accompanied him.[120]

In marrying Dr. Emerson, Irene Emerson had a legal right to her husband's property should she be widowed, both in the form of land and slaves. Irene's access to her husband's property was not a matter of concern until his death on December 29, 1843, in Davenport, Iowa. It was not until the day of his death when he realized "the gravity of his condition"[121] that Dr. Emerson drew up a will. In this rather brief document, Dr. Emerson willed his entire estate[122] to his wife, allowing her to sell all or any part of his land or tenements to benefit her and their four-month-old daughter, Henrietta (b. November 27, 1843):

> All the rest residue & remainder of my estate & effects real & personal whatsoever & wheresoever & of what nature & kind soever which at the time of my decease I or any person or persons in trust for me am or are possessed…I give, devise, & bequeath unto my wife Eliza Irene Emerson to have & hold to my said wife & to her assigns for & during the term of her natural life…And I do hereby authorize & empower my said wife if she shall judge it expedient to sell & convey for such price as she shall deem proper in fee simple or for any less estate

[117] Ibid., 452.
[118] Fehrenbacher, *Slavery, Law, and Politics*, 125.
[119] Ibid.
[120] On this journey back to Fort Snelling, the Scotts and Emersons traveled on the *Gypsy* steamboat, where one passenger writes that the Scotts were servants to the Emersons but "belonged to the lady," meaning Mrs. Emerson. It is interesting that such a judgment would be made because it illustrates both the control that Mrs. Emerson had over the slaves but also the manner of respect in which the Scotts treated Mrs. Emerson.
[121] Snyder, "John Emerson, Owner of Dred Scott," 441.
[122] Except for his books, which he willed to his brother, Edward Emerson.

> all or anypart of my land & tenements & the proceeds of such sale or sales or any part thereof…as she may judge expedient to appropriate to her own maintenance & support the education & support of my daughter.[123]

The repeated use of words synonymous with "all" indicates a clear desire to ensure that Mrs. Emerson received access to every part of the couple's shared property in both Iowa and Missouri.[124] Dr. Emerson made it quite clear in his will that his wife had access to both "land & tenements," which would directly refer to the Scotts. Interestingly, Dr. Emerson made no clear statement in the will that limited any of his wife's power as a widow or if she remarried. And Mrs. Emerson took full advantage of her husband's promise in his will by renting the Scotts to two different families. Immediately after Dr. Emerson's death, Irene loaned the Scott family to her brother-in-law, Captain Henry Bainbridge, who was transferred to Jefferson Barracks[125] in 1843.[126] The Scotts may have been under Bainbridge's control until March 1846, when Mrs. Emerson hired Dred and Harriet out to Samuel Russell.[127] Only a month later, the Scotts filed suit against Irene Emerson for assault and false imprisonment in an attempt to establish their right to freedom.

Conventional understanding of Mrs. Emerson's continued pursuit of the Scotts in court points to her reluctance to lose her four slaves.[128] It is essential to remember that Mrs. Emerson used the Scotts as a source of income while renting them out as valuable chattel property.[129] However, Charles Snyder, the original historian of John's death and Irene's bequest, believed

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[123] Snyder, "John Emerson, Owner of Dred Scott," 455.
[124] Fehrenbacher, *Slavery, Law, and Politics,* 127. See Snyder's "John Emerson, Owner of Dred Scott" for more information on Dr. Emerson's purchase of property in Davenport, Iowa.
[125] Jefferson Barracks is located on the Mississippi River in Lemay, Mississippi, slightly south of St. Louis.
[126] Fehrenbacher, *Slavery, Law, and Politics,* 128.
[127] Ibid.
[128] Finkelman, *Dred Scott v. Sandford,* 22.
[129] VanderVelde and Subramanian, "Mrs. Dred Scott," 1062.

there was "evidence of Dred's general worthlessness,"[130] which would seemingly make Mrs. Emerson foolish for wanting so badly to keep slaves who did little work for her. Writing in 1938, Snyder's judgment could likely be prejudiced, as slaves seemingly had no motive to work hard.[131] But if Dred Scott could not perform work that benefitted those to whom Mrs. Emerson hired him out to, he may have been more of a burden than an investment. If that was the situation, why did Mrs. Emerson continue to fight a legal battle for such slaves? Notably, Dred Scott was fifty-one in 1846, exceeding the normal forty-year-old life expectancy of male slaves. At such an age, Dred's value would decrease because of a similar decrease in his productivity.[132] Regardless of Dred's age, if Mrs. Emerson was able to hire him out, he still brought income to her and her daughter, which may have been the impetus to continue to hold onto the Scotts. Because freeing elderly slaves would create only another person for limited supplies to care for, some states, including Missouri, passed laws to "prevent the free negro [from] becoming a burden to society."[133] Lea VanderVelde and Sandhya Subramanian conclude that any person over the age of forty-five was deemed to be such a burden, and Missouri law provided that the "person emancipating a slave…shall be held to support and maintain such a slave."[134] The same law also stipulated that any female slaves under the age of eighteen who were freed would have to similarly be paid for by the person emancipating them.[135] Because both of the Scotts' daughters, Eliza and Lizzie, were under the age of eighteen during this stage of the legal process,

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[130] Snyder, "John Emerson, Owner of Dred Scott," 454.
[131] Dred Scott's pursuit of freedom seems to indicate that he was self-possessed and assertive, far from the laziness that Snyder describes.
[132] VanderVelde and Subramanian, "Mrs. Dred Scott," 1064.
[133] Ibid., 1066.
[134] Ibid.
[135] Ibid.

Mrs. Emerson would have had to provide for them as well.[136] Although this economic argument could be valid, the freeing of slaves must be considered far beyond only economic terms. It was very risky to have freed slaves living on their own, so the fear of having freed slaves in society might have been the true impetus to this law that was only stated in economic terms. Regardless of her standing on slavery, Mrs. Emerson's willingness to continue with the case demonstrated a sound economic decision, as she could still profit from the hiring out of the Scotts and would not have to pay the Missouri fine.

Although Mrs. Emerson's status as the defendant of the case might have granted her many rights in how to handle the case's proceedings, her role was overshadowed by a handful of men, primarily her brother, John F.A. Sanford. Irene's attorneys were naturally all men, and Fehrenbacher writes that the Scotts' suits "were to make only slow progress in the face of the determined opposition from Mrs. Emerson and the men handling her case."[137] The language in this sentence is particularly striking because it clearly illustrates the lack of power that Mrs. Emerson had in her role as defendant. While still a figurehead for the case, Mrs. Emerson as a female apparently played a secondary role in comparison to her attorneys and to her brother. However, it is essential to remember that in order for the St. Louis Circuit Court to grant the Scotts their freedom, the plaintiff had to prove that Mrs. Emerson was indeed the family's owner. The Scotts' initial case decided on June 30, 1847 failed to grant their freedom from Mrs. Emerson because of a technicality. The technicality resulted from Samuel Russell's inability to

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[136] Ibid., 1067. Barbara Bennett Woodhouse argues that laws also existed that prevented slave children from being manumitted until they reached the age of twenty-one, even if the master consented. See Woodhouse, "Dred Scott's Daughters," 679. Regardless of the actual age placed in the law, which likely shifted from state to state, scholars seemingly agree that young children were not to be emancipated because of their burden to society.

[137] Fehrenbacher, *Slavery, Law, and Politics,* 130.

assert whether he had hired the Scotts from Mrs. Emerson because he admitted that his wife had made the arrangements and had paid Alexander Sanford, Mrs. Emerson's father.[138] After the Scotts' file for a retrial, however, Mrs. Adeline Russell's testimony in 1850 proved that she had hired the Scotts directly from Mrs. Emerson, clarifying the technicality of the previous case and allowing the jury to rule in favor of the Scotts.[139] Mrs. Russell's testimony demonstrates two important elements of this case. First, a woman's testimony was not only valid in court but could be used to overrule the previous testimony of her husband. The jury's decision to overturn a previous decision because of a woman's testimony increased the legal power of women. Second, such a technicality within the court system that an individual must be proven beyond a reasonable doubt to be the owner of property illustrated a further ability for unmarried women to *legally* hold property and be legally recognized for their rights within property ownership. These two elements are essential to remember in the reframing of the *Scott* case as it is traditionally presented. While the case largely established the contingency of slaves as property and void of any rights, it also reinforces the rights of women both within the court room and as property owners.

While the presence of women such as Mrs. Russell and Mrs. Emerson within the courtroom might be seen by modern observers as evidence of women's progress, the case itself demonstrates a perhaps darker side to the rights of widows within the legal system. Mrs. Emerson was most likely not an expert on property law or the court system, which is why the lawyers taking her case were necessary. However, her brother's continued presence in her life and in the court case began long before *Scott v. Emerson* reached the Circuit Court in 1846.

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[138] Ibid., 131.
[139] Ibid., 132.

While stationed at Fort Snelling, Dr. Emerson attempted to purchase some property in Davenport, Iowa via his friend, Antoine LeClaire. On June 6, 1839, Dr. Emerson wrote that he "placed one thousand dollars in the hands of John Sanford" if LeClaire needed it in order to purchase land in Dr. Emerson's name.[140] While Irene Emerson could not have been in control of buying this property because she was with her husband at Fort Snelling, Dr. Emerson's trust of John Sanford to make decisions regarding his property was evident. This trust expanded with Dr. Emerson's appointment of John Sanford as one of the executors of his will. Although the will gave Sanford this role, he failed to meet certain legal requirements, which barred him from being the will's executor in Iowa.[141] The estate was settled by 1850 with no recorded assistance from John Sanford. Sanford's role as executor, one that he seemingly did not fulfill, did not explain his later legal role in his sister's case. Fehrenbacher hypothesizes that "it is possible that he *thought* himself responsible, as executor, for supervision of the Emerson estate during his sister's lifetime."[142] Such a hypothesis possibly indicates Sanford's desire to help his sister during a particularly difficult time, or it could indicate a desire for control over his sister's property because of her inability, as a woman, to handle such choices. We will never truly know Sanford's intentions in taking such a prominent role in the case, but his participation allows for an exploration of the difference between the legal and the socially accepted rights granted to female property owners.

A notable shift occurred once the case reached the United States Supreme Court by 1854 – the name of the case. While still possessing most of the same arguments as previously found in *Scott v. Emerson*, the Supreme Court case bore the name *Scott v. Sandford*. Such a shift in the

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[140] Snyder, "John Emerson, Owner of Dred Scott," 446.
[141] Fehrenbacher, *Slavery, Law, and Politics,* 128.
[142] Ibid.

name of the case demonstrated the supposed ownership change from Irene Emerson to her brother, John F.A. Sanford. There is no documentary evidence that Irene Emerson had transferred ownership of the Scotts to her brother, and yet many interconnected theories exist that attempt to explain why the Scotts shifted hands from Mrs. Emerson to Mr. Sanford. All of the theories hinge on the marriage of Irene Emerson to Dr. Calvin C. Chaffee in November 1850. Chaffee worked as a physician in Springfield, Massachusetts. Politically, he had antislavery leanings, later becoming a Republican congressman.[143] As a result of the marriage, Irene Emerson Chaffee moved from St. Louis to live with her husband in Springfield. Mrs. Chaffee's decision to move to Massachusetts is the primary reason cited by scholars for Sanford's initial involvement in the case. Still, in 1850, *Scott v. Emerson* was alive and well in Missouri, with the case not reaching the Missouri Supreme Court until 1852. Because Mrs. Emerson did not live in Missouri at the time, her brother stood as her representative during the remaining court proceedings. While Sanford technically resided in New York, he had both personal and professional connections in St. Louis.[144] As part of "the men handling her case,"[145] Fehrenbacher claims that Sanford could have sought to protect Irene throughout the federal legal proceedings by allowing himself to be sued instead of his sister. Fehrenbacher posits this as the most credible explanation for Sanford's involvement before the United States Supreme Court, claiming that he continued to act as his sister's agent and "chose to shield her by permitting himself to be sued in her place."[146] Such an explanation seems rather heroic and admirable, but it demonstrates a lack of faith in Mrs. Chaffee, by the men or herself, to be able to handle the scrutiny of the courts and

[143] Finkelman, *Dred Scott v. Sandford*, 22.
[144] Ibid.
[145] Fehrenbacher, *Slavery, Law, and Politics*,130.
[146] Ibid., 142.

the decade-long legal battle. It also seems to be legally impossible for someone to choose to be sued in place of another individual. Ultimately, it had to be the choice of the plaintiff, Dred Scott, to sue Sanford. Ideally, Sanford acted in good faith, but his decision to act on his sister's behalf indicates a sentiment that men were more capable of handling stressful legal battles than women were. In essence, Sanford (among with many other men) seemed to feel that it was not the role of the woman to be in court.[147]

Sanford's involvement in the case could also have been a result of a sale of the Scotts from Mrs. Chaffee to her brother. Sanford maintained throughout all of the federal court battles that he owned the Scotts; however, no information existed that actually showed this transfer or sale.[148] Interestingly, two months after the Supreme Court decided in his favor, John Sanford died and left no mention of the Scotts in his will or final papers. Three weeks after his death, the Blows, the Scotts' former owners, purchased the freedom of the Scott family from Calvin and Irene Chaffee.[149] Even if Sanford had indeed owned the slaves, the possibility of him returning the slaves back to his sister before his death was highly unlikely. The informal transfer leads to questions over the actual intentions of those involved in the suit, presumably whether or not the case was used to bring the issue of the Missouri Compromise before the Supreme Court. Mrs. Chaffee could not be involved because of the legal precedent of the *Strader v. Graham* case,[150]

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[147] It must be stated that this argument presented by Fehrenbacher removes agency from the Scotts. Because Dred Scott acted as the plaintiff, it was up to him and those around him to decide who to sue. The reason for naming Sanford still remains a mystery, but it is possible that Scott chose to sue Sanford instead of Emerson.

[148] Finkelman, *Dred Scott v. Sandford*, 23, fn 28.

[149] Fehrenbacher, *Slavery, Law, and Politics,* 142.

[150] This case involved a group of Kentucky slave musicians who were taken to Ohio for performances. The defense argued that since the slaves were actually free when they hit Ohio soil, but Chief Justice Taney claimed that the status of the slaves upon returning to Kentucky depended solely on the laws of Kentucky, thereby federally approving the idea of reversion.

which would have likely forced *Scott v. Emerson* to be decided in the same manner. Instead, by hearing *Scott v. Sandford*, the Supreme Court could review a case that resulted from the diverse citizenship clause[151] and examine Negro citizenship and the constitutionality of the Missouri Compromise.[152] However, Fehrenbacher notably comments that Sanford's role as agent or owner does not truly matter in the case:

> In a suit for freedom, the matter at issue was not primarily the owner's title to his slave property but rather the right of *anyone* to treat the plaintiff as a slave. Thus the owner or any other person holding the Scotts as slaves was an appropriate target for legal action in the form of a damage suit. Moreover, solving the problem of ownership would not in itself solve the problem of Sanford's motives; for we would still need to know why he acquired the Scotts, or why he misrepresented himself as their owner.[153]

While Sanford's true intentions will likely never be known without the discovery of a journal or some other sort of personal text, Mrs. Chaffee goes rather unexplored in a case that began with her as both owner and defendant. Mrs. Chaffee's willingness to be rid of the Scotts seems to be lost in such a theory, as it is unclear whether or not she wished to sell the Scotts to her brother or if they were forcibly taken from her in an effort to set a legal precedent. The fact that she manumitted them less than three months after the Supreme Court decision could suggest her unwillingness to participate in the federal suit initially or her changing views as a result of her abolitionist husband. And beyond simply the increasing presence of property restrictions discussed below, Mrs. Chaffee's marriage meant that she no longer needed the income provided by renting the Scotts to various individuals. As a widow, she had the right to ownership and most

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[151] The Diverse Citizenship Clause refers to diversity jurisdiction awarded to federal courts by Congress in Article III, Section 2 of the Constitution. The Judiciary Act of 1789 first gave federal trial circuit courts this power to hear civil cases when the two citizens involved reside in different states.

[152] Fehrenbacher, *Slavery, Law, and Politics,*140.

[153] Ibid., 142.

likely needed the income from the Scotts; however, by marrying an affluent man, Mrs. Chaffee no longer needed the income. Additionally, because slavery was illegal in Massachusetts, where the Chaffees resided, it was impossible for Mrs. Chaffee to own the slaves in the state, regardless of her motivations.

Although the two theories discussed above – the relocation of Mrs. Chaffee to Springfield or the sale of the Scotts to John Sanford – receive the most emphasis in traditional scholarship, another valid theory remains rather unexplored. The union of Irene Emerson and Calvin Chaffee very well could have eliminated Mrs. Chaffee's access to the property of her deceased husband, Dr. Emerson. The 1840s were a changing time for married women's property law in some states, as married women gained the right to will their own property, separate from that of their husbands. Rather than simply turning over all rights to property upon marriage, women could now hold individual property and were protecting it in wills at much higher rates than that of their male counterparts.[154] The efficacy of such reforms may have been limited by the fact that individual women had to actively claim these rights. Husbands continued to control their wives' property until the woman initiated a legal change.

At this time, reforms also began that advocated for the enlargement of benefits for widows and abandoned women.[155] Although women made progress throughout most of the mid-nineteenth century in regard to their property rights, some traditional rules were still followed that limited the property rights of widows. Married female children and widows could inherit property, but "wealthier men of the early nineteenth century tended to will assets to women in life estates or other forms that insulated the property from the creditors of present or future

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[154] Richard Chused, "Married Women's Property Law: 1800-1850," *Georgetown Law Journal* 71, no. 5 (June 1983): 1375.
[155] Ibid., 1361.

husbands."[156] The decision to restrict a widow's property rights after her entrance into another marriage ensured that property did not leave a family upon remarriage. Importantly, the husband's will itself had to stipulate that a woman lost all access to her property rights when she remarried.

Upon her husband's death, Mrs. Emerson found herself in the position to acquire all of her deceased husband's property. While Dr. Emerson did not own an extraordinary amount of property, his land holdings in both St. Louis and Davenport, Iowa, along with the monetary value of his slaves, provided Mrs. Emerson with an inheritance that would likely sustain her. Dr. Emerson's will only stipulated that his wife had access to all of his property throughout the "term of her natural life without impeachment of waste," and that the property would belong to his daughter, Henrietta, after her mother's death.[157] While Dr. Emerson made no direct mention that his wife could not retain the property in the case of a remarriage, scholar Barbara Bennett Woodhouse claims that Mrs. Emerson's remarriage "disqualified her as executor" and ultimately allowed John Sanford to become the executor of the estate.[158] Such a stipulation arose from two acts passed by the General Assembly of Missouri in March 1845. The first law, passed on March 3, 1845, read: "No married woman shall be a guardian or curator of the estate of a minor; and if any woman, after her appointment, marry, the marriage shall operate as a revocation of her appointment."[159] From this act, it appears that Mrs. Chaffee could not serve as the guardian of Henrietta's estate because she had married Mr. Chaffee. Her marriage presumably served as a

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[156] Ibid., 1366.
[157] Snyder, "John Emerson, Owner of Dred Scott," 455.
[158] Barbara Bennett Woodhouse, "Dred Scott's Daughters," *Buffalo Law Review* 48, no. 3 (Fall 2000): 686.
[159] Vincent Hopkins, *Dred Scott's Case* (New York: Russell & Russell, 1967), 29, fn 7.

forfeit to any rights that she had belonging to the estate of her first husband. The second act, passed on March 26, 1845, stipulated that

> No married woman shall be executrix or administratrix…If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve upon him, but the marriage shall extinguish her powers and her letters be revoked…If there be more than one executor or administrator of an estate, and the letters of part of them be revoked or surrendered, or a part die, those who remain shall discharge all duties required by law respecting the estate.[160]

This second act provides more insight into the way that the Emerson estate should have been handled in the event that Mrs. Emerson remarried. Essentially, she dismissed all her rights to the estate as a way to protect the value of the estate from the hands of her new husband, Mr. Chaffee. The second stipulation of the March 26th act perhaps illuminates the involvement of John Sanford the best. Even though Dr. Emerson appointed John Sanford as an executor of his will, likely only to give Sanford the power to settle the estate,[161] Sanford assumed the power over the estate in the event that his sister forfeited her rights through a new marriage.[162]

While these two acts were passed in Missouri to limit the way that remarried widows transferred property to their new husbands, it is essential to remember that Dr. Emerson died in December 1843, fifteen months before this new legislation passed. Moreover, he died in Iowa, which did not become a state until December 28, 1846. Since Dr. Emerson's death occurred before the passage of the stipulations, it is difficult to know whether the legislation specifically applied to Mrs. Emerson or whether his will was to be honored as the primary authority. The

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[160] Ibid.

[161] Notably, Sanford failed to meet certain legal requirements, which barred him from being the will's executor in Iowa. The estate was settled by 1850 with no recorded assistance from John Sanford.

[162] What pertains in Missouri may not have pertained in Massachusetts; however, the family could have chosen to have the executor role (Sanford) bypass Mrs. Chaffee.

marriage to Mr. Chaffee did not occur until 1850, which may mean that the law became applicable. It is difficult to exactly pinpoint the way in which the law applied to Mrs. Chaffee and whether by force of law she had to transfer all property to her brother, or whether she used this law to her advantage, even though it may not have directly applied to her, to rid herself of the Scotts and the court battle.

The possibility exists that the record of Dr. Emerson's will found in Charles E. Snyder's 1938 article in *The Annals of Iowa* (the resource used throughout this chapter for such study) does not accurately reflect the will written and followed immediately after Dr. Emerson's death in 1843. However, neither the writings of Don Fehrenbacher nor Paul Finkelman, two leaders in the field of study, make any reference to any legal stipulation that would have prevented Mrs. Chaffee from acting on behalf of her estate once she remarried. This leads to two possible conclusions: 1) The laws were not applicable to Mrs. Chaffee because her husband died before they were passed, or 2) It suggests that these male scholars did not think much about women's property law. However, speculation still exists that the law directly impacted Mrs. Chaffee, perhaps because it took agency away from the men in her life as the sole actors in her case. If she had to surrender the Scotts by force of law, it reflects positively on her involvement in the case and desire to continue fighting, until she was forced to resign by force of law. While multiple theories exist for the reason that Sanford became the defendant in the federal case, no theory seems to tell the entire story, and Sanford's involvement remains an enduring mystery.[163]

[163] The presence of so many different state laws in the case complicates the process even more. Because Dr. Emerson had property in Missouri and Iowa, two different sets of laws applied to his property. Additionally, Mrs. Chaffee's move to Massachusetts involved an entirely new set of anti-slavery laws.

Ultimately, the question of Mrs. Emerson's involvement in the case remains rather unanswerable. The lack of primary sources from Mrs. Emerson, her lawyers, and her male family members leaves many questions, specifically on her participation in the transfer of ownership of the Scotts to her brother. While no exact conclusions can be made, it seems that the men involved in Mrs. Emerson's life attempted to overshadow her decisions and role as defendant, which she seems to have ultimately allowed. It is very possible that Mrs. Emerson wished to shy away from the limelight and have the case handled by her brother, especially when she married the abolitionist Calvin Chaffee. However, it is impossible to view Mrs. Emerson's narrative without seeing the many ways that social customs restricted her involvement and importance. Mrs. Emerson demonstrates the ability of women to own and sell property after their husbands' deaths, the recognition of women as defendants for legal proceedings, and the validity of a woman's testimony in court. The case that bears her last name expanded to be one of the largest and most defining cases in United States Supreme Court history. And as traditional history would have it, *Scott v. Emerson* is nothing more than a small bump on the way to the *Scott v. Sandford* ruling.

Chapter 4

The Women of the Case – Harriet, Eliza, and Lizzie Scott

Three other important women had a role within the *Scott* case – the women of the Scott family. While the case bears the single name of Dred Scott, Barbara Bennett Woodhouse argues that "it also decided the fates of his wife and children, whose cases were treated as if controlled by and subsumed within his."[164] Because of Dred's advanced age, it was actually his wife and teenage daughters who would be impacted most by the outcome of the case. As demonstrated through the summary of the case given in Chapter One, Harriet Scott filed a case at the same time as her husband in the St. Louis Circuit Court. Her case, however, was combined with that of her husband, even though she arguably had a stronger case. This chapter will focus on what is known about the life of Harriet Scott, her involvement in the case, and the effect of the case on the futures of her and her daughters.

Harriet Robinson Scott was born into slavery around 1820 and spent her early life as a slave to Major Lawrence Taliaferro, a federal Indian agent. Scholars know very little about Harriet's life, and some of the information that is available comes from Major Taliaferro's personal papers. Major Taliaferro inherited Harriet Robinson, potentially from his marriage to Elizabeth Dillon in 1828.[165] If Harriet belonged to the Dillon family, she likely served as a chambermaid or housekeeper of the Dillons' inn in Pennsylvania.[166] Harriet could have been

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[164] Woodhouse, "Dred Scott's Daughters," 680.
[165] VanderVelde and Subramanian, "Mrs. Dred Scott," 1045.
[166] Interestingly, the question of where Harriet was registered as a slave plays a large role in her later suit for freedom. If she had been registered to slavery in Pennsylvania, Pennsylvania law required that she be emancipated by the age of twenty-eight. Harriet turned twenty-eight in 1846, which is when the Scotts filed their suits for freedom. The impetus to sue may have been a result of Harriet's promised freedom under Pennsylvania law. If Harriet was born in Virginia, the same

used as part of the dowry and helped Miss Dillon in her move from Pennsylvania to Minnesota.[167] Major Taliaferro often travelled as a result of his status as Indian Subagent, so Harriet travelled with him to Fort Snelling[168] in the early 1830s.[169] Because the Northwest Ordinance and the Missouri Compromise made slavery illegal in the unorganized Minnesota Territory, VanderVelde and Subramanian claim that Fort Snelling's small African American community "presents an obvious legal contradiction."[170] So, as demonstrated through her life in Minnesota and her presence at Fort Snelling, Harriet had already been taken to a free area that put her status as a slave in question.

While at Fort Snelling, Harriet did something else that contradicted her slave status – she entered into an apparently legal marriage with Dred Scott. Between May 8, 1836 and September 14, 1837, Harriet Robinson and Dred Scott were married in a ceremony performed by Major Taliaferro.[171] Major Taliaferro's position as a justice of the peace gave him the ability to perform the ceremony;[172] however, slaves could not traditionally enter into marriages because they were considered civil contracts. Paul Finkelman therefore claims that the marriage was "extraordinary and significant" because it broke so many legal boundaries.[173] In his autobiography (1864), Taliaferro discussed the marriage of Dred Scott and Harriet Robinson, "his 'servant girl,' whom

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stipulation would not apply to her life. See VanderVelde and Subramanian, "Mrs. Dred Scott," 1078.

[167] VanderVelde and Subramanian, "Mrs. Dred Scott," 1046.

[168] Fort Snelling's location in Hennepin County, Minnesota at the junction of the Minnesota and Mississippi Rivers made it land technically protected by anti-slaveholding legislation.

[169] VanderVelde and Subramanian, "Mrs. Dred Scott," 1046.

[170] Ibid., 1049.

[171] Ibid., 1050.

[172] Fehrenbacher, *Slavery, Law, and Politics,* 124.

[173] Finkelman, *Dred Scott v. Sandford*, 16. We must also consider that Taliaferro could have simply stood and said nice words during a ceremony but not have made this a real marriage. Without a real license, the event was simply a ceremony and had no legal standing.

he 'gave' to Dred."[174] While VanderVelde and Subramanian argue that Taliaferro's language is particularly important because he refrains from denoting Harriet as a slave, the term was likely less a term of endearment and instead one that allowed masters to disregard the reality of slavery. Harriet may also have been the mistress, forced or consensual, of Major Taliaferro. If Harriet was indeed not a slave of Taliaferro's, her marriage to Dred Scott, if legally licensed, annulled his status as a slave because he entered into a civil contract with a free person. Taliaferro either sold Harriet to Dr. Emerson or willingly gave her up as a slave wife to Dred.[175]

While still at Fort Snelling, Harriet likely heard the news of the successful freedom suit by one of her fellow slaves, Rachel. Rachel lived in the Fort between 1830 and 1831, where she was brought by her master, the Indian Subagent.[176] Rachel also lived at Prairie du Chien on the Wisconsin side of the Mississippi River, making it a free territory.[177] In 1836, Rachel sued for her freedom in the St. Louis Circuit Court in a case known as *Rachel v. Walker*. Rachel's case proved to be a success, illustrating that military posts in free territory adhered to the slavery provisions of the Missouri Compromise and Northwest Ordinance. While Harriet likely knew Rachel from her time spent at Fort Snelling,[178] news also would have travelled to the Fort. Major Taliaferro wrote in his journals that he received letters from two witnesses in the case.[179] This communication about the case demonstrates that people at the Fort knew of the happenings outside of the walls, especially when it had to do with former residents of the Fort. Harriet's

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[174] VanderVelde and Subramanian, "Mrs. Dred Scott," 1054.
[175] Fehrenbacher, *Slavery, Law, and Politics,* 124.
[176] VanderVelde and Subramanian, "Mrs. Dred Scott," 1056.
[177] Fehrenbacher, *Slavery, Law, and Politics,* 130.
[178] Because Dred Scott did not arrive at the Fort until after Rachel had left, he likely had no way of knowing her. Additionally, because of his arrival between May 1836 and September 1837, he may not have even been at the Fort to hear about Rachel's successful lawsuit. This then places much of the burden on Harriet for communicating knowledge of a successful suit to her husband.
[179] VanderVelde and Subramanian, "Mrs. Dred Scott," 1057.

knowledge of Rachel's successful suit could have served as an impetus for her and Dred to file cases. The Scotts' cases had very similar roots to Rachel's, which may have shown Harriet that a future lawsuit could grant her freedom.

In October 1837, Emerson travelled to Jefferson Barracks and left the newly married Scotts at Fort Snelling, where other people rented them.[180] Dr. Emerson did not like his position at Jefferson Barracks, so just one month later, he transferred to Fort Jesup in Louisiana, this time transporting the Scotts with him.[181] While in Louisiana, the Scotts likely witnessed the harsh conditions for Southern plantation slaves. Louisiana's place in the cotton and sugar cane belt would have likely frightened any visiting slaves who had not been subjected to field labor.[182] While the Scotts spent the majority of their time working in towns and military bases, it was possible that the fear of being sold into plantation slavery amplified following Dr. Emerson's death.[183] This fear of the extremely unforgiving plantation slavery may have been a factor in the Scotts' suit for freedom in 1846.

After Dr. Emerson's five months spent at Fort Jesup, he transferred back to Fort Snelling, again taking the Scotts with him. On the trip back to Fort Snelling in the Fall of 1838, Harriet Scott gave birth to her first child,[184] Eliza Scott. Harriet Scott traveled the length of the Mississippi twice while pregnant.[185] Documents list Eliza's birthplace as on the *Gypsy*

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[180] Finkelman, *Dred Scott v. Sandford*, 17.
[181] Fehrenbacher, *Slavery, Law, and Politics*, 125.
[182] VanderVelde and Subramanian, "Mrs. Dred Scott," 1075.
[183] I must concede, here, that all forms of slavery were bad. I can only speculate about the Scotts' fear of potential plantation slavery. From the description of their time spent with Dr. Emerson, they seemed to have avoided some of the traditional abuses of slavery. Without record, though, I cannot say with certainty what the feelings of the Scotts were.
[184] Harriet Scott also gave birth to two sons that died in infancy. The dates of their births are not recorded in any known record.
[185] VanderVelde and Subramanian, "Mrs. Dred Scott," 1075.

steamboat, bordered by the free state of Illinois and the free territory of Wisconsin.[186] Such a birthplace should have made Eliza free, since she was technically born in free territory. Another specific point of interest with the Scotts' oldest child was her name. While many historians claim that "the Scotts gave their baby Mrs. Emerson's first name,"[187] such a rendition of history makes both Harriet and Dred Scott appear to love their master much more than they perhaps did. It was possible that the Scotts named Eliza after Mrs. Emerson; however, many other influential women in the Scotts' lives also had the name "Eliza" or "Elizabeth." Harriet's previous master, Major Taliaferro, had a wife whose name was Elizabeth. Mrs. Blow, a member of the Blow family who continued to be involved in Dred's life, also bore the name Elizabeth.[188] Even this proposition of the reason behind Eliza's name grants an incredible amount of power to the white women present in the Scotts' lives.[189] While living with Major Taliaferro, Harriet worked alongside a slave woman named Eliza. Harriet probably assisted in the births of Eliza's children and may have desired to commemorate their relationship.[190] The Scott's second daughter, born in 1839,[191] was given the name Lizzie.[192] Major Taliaferro also had a slave named Lizzie, which may provide strong evidence for the naming of the Scotts' children after former slave friends.[193] While we will never know who the Scotts named their daughters after, it is essential to include

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[186] Finkelman, *Dred Scott v. Sandford*, 19.
[187] Fehrenbacher, *Slavery, Law, and Politics*, 125.
[188] VanderVelde and Subramanian, "Mrs. Dred Scott," 1057.
[189] And still, the possibility exists that the Scotts had no say in the naming of their daughters. The names could have very well been chosen by their masters.
[190] Ibid., 1058.
[191] While Eliza was born in free territory, her sister was born at Jefferson Barracks in St. Louis. Because Missouri was a slave state, Lizzie would have technically been considered a slave if neither of her parents were free. However, if Harriet, by virtue of an allowed marriage and a transport to free territory, was free at the time of Lizzie's birth, Lizzie would also be considered free. See VanderVelde and Subramanian, "Mrs. Dred Scott," 1058.
[192] Woodhouse, "Dred Scott's Daughters," 689.
[193] VanderVelde and Subramanian, "Mrs. Dred Scott," 1058.

the possibility that the names were not to honor white mistresses but possibly former slave women.

Following Dr. Emerson's death in 1843, Mrs. Emerson hired out the Scotts to various parties including her brother-in-law and the Russell family. On April 8, 1846, both Harriet and Dred Scott brought separate suits before the St. Louis Circuit Court, alleging trespass and false imprisonment by Mrs. Emerson.[194] On February 12, 1850, the Scotts' lawyers agreed to pursue only Dred's case with Harriet's "identical" case being folded into her husband's.[195] Lawyers likely continued Dred's case over Harriet's because he was a man. The so-called "identical" cases that the court had before them were in fact not identical at all. Harriet's residential patterns differed from her husband, as evidenced by her possible birth in Pennsylvania and increased time spent in free territory with Major Taliaferro in Minnesota and her longer presence at Fort Snelling. Lea VanderVelde and Sandhya Subramanian argue:

> [Lawyers] neglected to undertake a similar examination of Harriet's residential history, particularly where her life's residential pattern differed from her husband's and where her life history presented additional complicating issues[196] about the presence of slavery in free territory. When they bracketed the issue of Harriet's freedom within her husband's case, the Scotts' lawyers submerged her claim in his, making his legal reality hers as well. Yet applying even a conventional analysis of residence to determine Harriet's status suggests that, in focusing only on Dred, the Scotts' lawyers actually made it easier for the Taney Court to resolve the case against the Scott family.[197]

Therefore, it seems that the idea of gender played a larger role in the selection of which case to follow than many may admit. Modern historians, like Don Fehrenbacher, fail to discuss the

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[194] Fehrenbacher, *Slavery, Law, and Politics,* 129.
[195] VanderVelde and Subramanian, "Mrs. Dred Scott," 1059.
[196] For instance, if Harriet was born in Pennsylvania, then she should have been guaranteed her freedom by the age of twenty-eight. Additionally, VanderVelde and Subramanian argue that the status of Harriet as a "Mrs." to Dred Scott should have granted her a stronger claim to freedom. See VanderVelde and Subramanian, "Mrs. Dred Scott," 1041.
[197] Ibid., 1040.

differences between Harriet and Dred's cases at all, reducing her claim to freedom as "always a repetition of Dred's."[198] Such a representation in conventional history inevitably removes the importance of Harriet's case and subordinates her to her husband. However, we must not forget that the status of the mother determined the status of the child. Therefore, if Harriet Scott was free, so were her two young daughters.

The removal of Harriet from the narrative of the case also excludes her possible role in the development of the idea to sue in the first place.[199] After returning to St. Louis in 1846, the Scotts reconnected with the Blows, who supported the Scotts financially through the case's eleven-year tenure.[200] The Blows' presence in the case cannot be argued, but the possibility that they were the sole reason for bringing the case does not have merit. Additionally, the argument that it was only through Dred's friendships and his desire for freedom that the case reached the court simply cannot be true. Harriet's knowledge of the success of her friend Rachel[201] likely gave the Scotts hope that their cases could be successful before the St. Louis Circuit Court when they filed. And stories like Rachel's were commonly told throughout St. Louis, as slaves who petitioned for freedom won more than 100 cases.[202] Harriet's church membership also significantly impacted the pursuit of the case, as the Scotts' first lawyer, Francis B. Murdoch, was a fellow member at Harriet's Second African Baptist Church of St. Louis.[203] Murdoch interestingly only posted personal bond in Harriet's suit, which may have indicated his thoughts

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[198] Fehrenbacher, *Slavery, Law, and Politics,* 130.
[199] It is difficult to say whether the Scotts were literate or not. Regardless of their literacy, it would have been possible for them to be active participants in the case.
[200] Fehrenbacher, *Slavery, Law, and Politics,* 122.
[201] See page 56 of this thesis for more information on Rachel's case.
[202] VanderVelde, "The Dred Scott Case in Context," 269.
[203] VanderVelde and Subramanian, "Mrs. Dred Scott," 1084; While Harriet is listed as a member of the church, Dred is not. This conclusion seems unlikely if Murdoch was white because African Americans and whites would not have attended the same churches.

on who had the most legally convincing case.[204] The minister at Harriet's church, Reverend John R. Anderson, also had experience with legal suits, as he had purchased his freedom after a lifetime of slavery.[205] Reverend Anderson spent the years after his successful suit working with other slaves in pursuit of their freedom.[206] With a church atmosphere filled with individuals who knew of fellow slaves that had been successful in suits for freedom, Harriet likely had occasion to meet these individuals and discuss the possibility of a similar suit.[207] While VanderVelde and Subramanian conclude that the "choice to sue and the decision as to when to bring suit were Harriet's,"[208] all agency should not be given solely to her. The Scotts both had the opportunity to interact with various individuals that aided them in their suit for freedom, which means that their contributions to the formation of the case should be considered equally.

The impetus for the Scott's suit has another factor – the timing. The Scotts waited twenty-nine months after Dr. Emerson's death before pursuing a lawsuit. While the Scotts did not fight for their freedom while Dr. Emerson was alive, his death brought uncertainty about what the future for the family would hold. Under the ownership of Dr. Emerson, the Scotts were not promised a wonderful life, but they were promised safety and the ability to maintain their family. Mrs. Emerson had the ability to dissolve the Scott family almost instantaneously if she so chose, selling each family member to a different master. The Scotts were faced with the possibility of family dissolution, which they had never had to deal with before.[209] The desire to

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[204] Ibid., 1086. It must also be considered that Murdoch was attracted to Harriet or was in a relationship with her. There are other possibilities for his decision to both take the case and to post bond that may not solely be linked to generosity.
[205] Finkelman, *Dred Scott v. Sandford*, 19.
[206] VanderVelde and Subramanian, "Mrs. Dred Scott," 1085.
[207] A slave could only leave the house with her master's permission, so Harriet's attendance was likely sporadic and not regular.
[208] VanderVelde and Subramanian, "Mrs. Dred Scott," 1083.
[209] Ibid., 1069

sue in 1846, then, may have been a reaction to the threat of a broken family and prolonged separation. This explanation would also explain why the Scotts had not sued for their freedom after time spent in various territories, since Dr. Emerson guaranteed that the family would stay together. One particular story details the way in which Dr. Emerson put his personal reputation on the line in order to guarantee a stove for Dred and Harriet Scott.[210] During one of the times that the Scotts were at Fort Snelling, Dr. Emerson asked for a stove for the Scotts to keep warm in the brutal Minnesota winter. The quartermaster denied Dr. Emerson's request, even though Dr. Emerson suspected that there were still stoves available. After wielding "a brace of pistols" at the quartermaster for the denial of a stove for the Scotts, Dr. Emerson was subsequently arrested.[211] While very few details exist about the way that Dr. Emerson interacted with the Scotts, this episode demonstrates a sense of provision for the family that might not have continued from the Mrs. Emerson and her slaveholding family.[212]

And even further still, the family may have been waiting for Harriet to turn twenty-eight in 1846,[213] the time when emancipation occurred under Pennsylvania law.[214] If Harriet was indeed free at age twenty-eight, her entire family would also be freed. Dred's freedom hinged on

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[210] It is also interesting to consider that the only slaves that Dr. Emerson held were the Scotts, so he possibly had a more personal relationship with them than the traditional master/slave dynamic.

[211] VanderVelde and Subramanian, "Mrs. Dred Scott," 1070.

[212] Mrs. Emerson may have also been more cutthroat because her sole income would have come from the hiring out of the Scotts. Her marriage to Chaffee seems to be fairly quick, which may indicate a desire for stability.

[213] It is important to remember that Harriet's age is based completely on deductive reasoning, as no official date for her birth was recorded.

[214] Harriet only had to be registered as a slave in Pennsylvania for her to reap the benefits of the Pennsylvania state law. Because she likely worked in the state with Major Taliaferro's wife, she would have access to freedom by age twenty-eight. However, it is possible that local laws were what would determine the slave/free status. The Scotts would therefore be only held under Missouri law.

his marriage to a free woman, while the girls' freedom was dependent on the status of their mother.[215] This argument gains traction when exploring the background of the Scotts' lawyers. Francis Murdoch was a Pennsylvania-trained lawyer who had spent much of his time in Bedford, PA, the same place that Major Taliaferro spent his furloughs from his Minnesota post.[216] Murdoch's knowledge of Pennsylvania law would have made him knowledgeable about the significance of Harriet being twenty-eight at the time of the suit. And further, VanderVelde and Subramanian argue that Murdoch and Taliaferro may have interacted, as they lived in the same small town, were around the same age, and belonged to the same Presbyterian church.[217] The interaction between these two individuals may have prompted Murdoch to take the case in the first place and also to place such an emphasis on Harriet, which may explain why Murdoch posted bond for Harriet but not for Dred.[218]

Perhaps the largest motivator for the Scotts to file their suit in 1846 was the age of their two daughters, Eliza and Lizzie. At the time of the suit, Eliza was eight years old, while Lizzie was around seven.[219] Both girls were of the age to be sent to work in other households, away from their family, and faced the threat of possible sale. Young girls' bodies were continuously coveted for their reproductive capacity,[220] as young female slaves ensured that a slave master had access to more free labor or a source of income once the slaves could be sold. And perhaps the value of the property is the exact reason why Mrs. Emerson and her advisors fought to keep the

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[215] Woodhouse, "Dred Scott's Daughters," 684.
[216] VanderVelde and Subramanian, "Mrs. Dred Scott," 1087. Murdoch was Alton, Illinois' city attorney and was openly opposed to slavery.
[217] Ibid.
[218] Ibid.
[219] VanderVelde and Subramanian, "Mrs. Dred Scott," 1076.
[220] Their reproductive capacity would have been abused for not only more slave labor but also likely as a means of sexual pleasure for their masters.

Scotts within her grasp. Eliza and Lizzie's young age likely economically attracted Mrs. Emerson as a source of potential profit more than Dred's old age,[221] and the legal battles to have access to the Scott family likely hinged on the desire to profit off of the Scott girls. While scholars like Woodhouse, and VanderVelde and Subramanian argue that state laws existed that prevented masters from freeing their slaves below a certain age of adulthood, these laws only perpetuated the ability for masters to utilize slave labor when it was most profitable – through the teenage years.

Eliza and Lizzie Scott are essentially invisible to history. While Harriet arguably became second-class to her husband, the Scotts' children, who were also impacted by the case, rarely receive scholarly attention. Barbara Bennett Woodhouse[222] argues that exploring the stories of children is not only a worthy field of historical study, but it is essential to further understand the dynamics within the country at a given time:

> By concentrating on the children in these stories, we expose the ways in which minority (the unexamined category) intersects with race, gender, and class to define and confine their lives. This is especially the case with female children whose agency is even more hidden from view than that of their male counterparts.[223]

The Scott girls fit into Woodhouse's categorization quite well, as their status as slaves placed them below the Emersons and essentially the rest of society; their status as women placed them below their father; and their status as children placed them below their mother. The Scott girls essentially represent the lowest of the low during the 19th century, as an incredible number of

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[221] Dred was fifty-one at the time of the initial suit in 1846.
[222] Woodhouse is one of the only scholars to write in any length about Eliza and Lizzie Scott. Her exploration of their place in history creates a new direction for any study on the *Dred Scott* case.
[223] Woodhouse, "Dred Scott's Daughters," 670.

intersecting identities forced the girls into submission on all fronts.[224] While their status made them unworthy of attention during the 19th century, current scholarship seeks to fill in the missing pieces of the *Dred Scott* case through the lens of Eliza and Lizzie Scott.

Within the case, scholars still struggle with why Justice Taney decided to include the constitutionality of the Missouri Compromise in the Supreme Court's decision. Traditional attribution for the need to decide the fate of the Missouri Compromise lies in the hands of Chief Justice Taney. Finkelman argues that Taney's goal was to "settle, finally and forever, and in favor of the South, the status of slavery in the territories,"[225] which meant that the Missouri Compromise issue had to be settled.[226] While property rights via the Fifth Amendment were possibly an instigator for the decision, Justice Wayne claimed that the Court had to decide on the issue of the Missouri Compromise because the public expected such a decision.[227] However, this traditional line of reasoning fails to consider the impact that Eliza Scott had on the case. While neither of the Scott girls were able to file suits for their freedom, Woodhouse argues that Eliza Scott's birth in free territory may have been an impetus for the Court to decide on the constitutionality of the Missouri Compromise.[228] Eliza was clearly born in free territory,[229] so her status should have been considered free by virtue of the Missouri Compromise. Woodhouse writes, "According to the Missouri Compromise, Eliza was free at birth, and her status depended

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[224] The girls were also the most vulnerable sexually, which leads to another layer of submission.
[225] Finkelman, *Dred Scott v. Sandford,* 36.
[226] The Court did not originally include a discussion of the Missouri Compromise in its ruling written by Justice Nelson. When the Court moved to have Chief Justice Taney rewrite the majority opinion, the Court also decided that the constitutionality of the Missouri Compromise needed to be discussed.
[227] Fehrenbacher, *Slavery, Law, and Politics,* 166.
[228] Woodhouse, "Dred Scott's Daughters," 685.
[229] Eliza's birthplace as on the *Gypsy* steamboat, bordered by the free state of Illinois and the free territory of Wisconsin, makes this free territory by the standard of the Missouri Compromise.

directly on the application of federal law."[230] If the Court did not rule on the Missouri Compromise, the federal government by extension of the Court would be forced to implement Eliza's freedom. While Woodhouse's conclusions seem to put an interesting spin on the events of the case, if the girls were so minor in the historical records, it is just as likely that they were minor in the view of the Court.

Abraham Lincoln, like many others, realized the impact of the Court's decision on slaves in general, but also the impact that it had on young slave women, like Eliza and Lizzie Scott. The *Scott* decision landed in the midst of the race for the Illinois Senate seat between Stephen A. Douglas and Abraham Lincoln. After Douglas claimed that the decision would prevent the mixing of the two races, Lincoln responded with a statement on June 26, 1857 that demonstrated the immense need for personhood, especially for young African American women:

> The very *Dred Scott* case affords a strong test as to which party most favors amalgamation, the Republicans or the dear Unionsaving Democracy. Dred Scott, his wife, and two daughters were all involved in the suit. We desired the court to have held that they were citizens so far at least as to entitle them to a hearing as to whether they were free or not; and then, also, that they were in fact and in law really free. Could we have had our way, the changes of these black girls ever mixing their blood with that of white people would have been diminished at least to the extent that it could not have been without their consent. But Judge Douglas is delighted to have them decided to be slaves, and not human enough to have a hearing, even if they were free, and thus left subject to the forced concubinage of the masters, and liable to become mothers of mulattos in spite of themselves.[231]

Abraham Lincoln's powerful rhetoric provides a larger framework for the case that our modern scholarship often fails to highlight. First, he noted that the case included and impacted *all* members of the case and not singly Dred Scott.[232] Second, he argued that while amalgamation

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[230] Woodhouse, "Dred Scott's Daughters," 685.
[231] Ibid., 696.
[232] Harriet Beecher Stowe's writings largely influenced Abraham Lincoln's view of slavery. She had made the slave family the centerpiece of thinking about slavery in *Uncle Tom's Cabin*.

was not socially acceptable, all individuals should still have the ability to be with who they choose. Third, and most importantly, he drew attention to the way that masters used the bodies of young female slaves for reproductive purposes, both to produce slaves and to provide sexual pleasure for the masters. This indication of the nature of slavery for females demonstrated a keen awareness by Lincoln and many others of the sexual abuse that occurred between slaves and masters. Essentially, Lincoln argued that miscegenation would never possibly end, but keeping the institution of slavery only furthered the practice. And perhaps the sexual abuse was the greatest fear of Harriet, Eliza, Lizzie, and the thousands of other female slaves like them.

As evidenced by the narration of the Scott women as noted throughout this chapter, the case did far more than simply impact the life of Dred Scott. Harriet, Eliza, and Lizzie Scott were all largely impacted by the case in a different capacity than Dred. While the Court denied the entire family access to freedom, the continued enslavement of Harriet, Eliza, and Lizzie perpetuated the additional burden of the abuse of their reproductive systems.[233] And for the immense impact that the case had in the lives of the whole family, the women are largely ignored. Harriet likely helped her husband to pursue the initial filing of their case in the St. Louis Circuit Court, and by virtue of residence, had a more compelling case than her husband. The Scott girls, on the other hand, were too young to be involved in the initial filing, but the outcome of the case perhaps impacted them the most. The modern narrative of the case that eliminates the Scott women demonstrates that African American women had limited social and legal power, and all women for that matter, were subjugated to the men around them – be it their masters, husbands, fathers, or brothers. For current scholarship to take a turn toward examining the lives

[233] While the Scotts were manumitted two months after the case, the Court indeed set a precedent in which female bodies could be used in an abusive way to create further labor and capital.

of Harriet, Eliza, and Lizzie Scott means that a shift needs to happen in the mentality surrounding this case. While on the surface the case only deals with slavery, further examination of Mrs. Emerson and the Scott women proves that the case has much more to say about gender than originally thought.

Chapter 5

Conclusion

The *Dred Scott* case, while one of the most infamous cases in Supreme Court history, is not traditionally remembered for the women involved or for what it tells us about the status of women in the 1850s. While scholars like Barbara Bennett Woodhouse, Lea VanderVelde, and Sandhya Subramanian are working to change this, more work still needs to be done. Because of the general lack of public attention to the legal rights of women at the time of the case, very little information exists that provides an unbiased account of Irene Emerson and the Scott women. In today's research, scholars perhaps give the women of the case more significance than they actually held at the time of the 1857 decision. So, with all of the evidence provided in the previous chapters, what role did women truly play in the *Dred Scott* case, and what can it tell us about the status of women at the time?

For Irene Emerson, her role in the case was overshadowed by the men around her. As a widow, she had the ability to own property, both in the form of land and in the form of slaves. Upon her remarriage, however, her property rights seemed to be stripped from her. While Dr. Emerson never stipulated that his wife could not continue to own their property if she remarried, Missouri law or pressures from the men in her life could have forced her to cede ownership of her slave property. Mrs. Emerson, then, acted as a legal agent only for the case until the Scotts could reasonably be transferred to John Sanford. However, Mrs. Emerson could also have had a more active role in this decision. She could have been lukewarm to the idea of slavery from the beginning, and her marriage to Mr. Chaffee may have given her a reason to relinquish ownership of the Scotts, both economically and morally. Dr. Chaffee would have provided Irene Emerson

financial security, allowing her to get rid of the Scotts. Because the newly married Chaffees resided in Massachusetts, it would have been illegal to hold them there as slave property. My inclination is to conclude that that Mrs. Emerson used the Scotts as a form of income and had no strong feelings either for or against slavery. After her quick marriage to Mr. Chaffee, the Scotts were supposedly sold or transferred to John Sanford, and Irene did not seem to worry about them again.

Although Mrs. Emerson did not seemingly act as a proto-feminist, she acted in accordance with the cultural climate of the time. She both played a role and did not play a role in the *Scott* case. In the state level court, Mrs. Emerson's role was defendant. Such a role proved that women were able to own and rent property for economic gain, be objects of a lawsuit, and testify in court. Mrs. Emerson seemed to disappear in federal court, but this cannot solely be blamed on her or the men around her. Dred Scott and his lawyers would have had to choose to sue John Sanford, either because he was truly the new owner of the Scotts or because a suit against Sanford provided the best possibility for a favorable outcome. The lack of primary sources about Mrs. Emerson makes it difficult to attribute motivations to any of her actions. Historians are left to speculate about why events unfolded in the way that they did. In light of the evidence presented in this paper, Mrs. Emerson highlights the role that women were able to play in the legal system, but ultimately demonstrates that many white women sought economic security and accepted their traditionally defined role.

On the other side of the case are the Scott women, who are even less researched than Irene Emerson. Harriet Scott may have exhibited more agency than Irene Emerson, as evidence indicates that Harriet was knowledgeable about successful suits for freedom. Harriet's information from both her slave network and her church network likely impacted the decision to

sue. Harriet's network also provided the Scotts with their first lawyer, Francis Murdoch. While Dred may have heard similar success stories, Harriet also served as an impetus for filing suit. The possibility of Harriet playing a dominant role in initiating the suit shows that black women could attain knowledge about legal outcomes and were encouraged by the African American community to pursue freedom.

Harriet's role in the case stopped after her initial desire to file a suit. While she had a stronger case than her husband because of the greater time that she spent in free territory, the court pursued only Dred's case. Interestingly, both Mrs. Emerson's lawyers and the Scotts' lawyers had to agree to combine the two cases. The lawyers were presumably all men, who hierarchically would have placed the case of a male above that of a female. Harriet's multiple layers of submission, as both a woman and a slave, placed her far below the multitude of white men that would decide her fate. Although Harriet's story was excluded from the court system, the decision on her fate was arguably the most important because it decided the fates of the Scotts' daughters, Eliza and Lizzie. The Scotts' daughters likely had little impact on the case itself, as demonstrated by their nearly complete absence in the historical record. In a case that impacted three women extensively, history has failed to preserve their involvement or motivations.

While the *Dred Scott* case immensely impacted the way that slavery existed within the United States, it also helped define the role of women within the legal system and the country. Women were both present and absent in the case, but it is essential to remember that women influenced the case and were impacted by the case. In looking at *Dred Scott* through the lens of these four women, cultural trends for women become apparent. Women were not absent within the legal system, but their roles were continuously shaped by the men around them. Harriet

Scott's suit for freedom was forcibly undermined by the lawyers of the case, but Irene Emerson may have willingly relinquished her control of the Scotts when she found a new male provider. While one woman in the case acted within the typical societal constraints, the other chose to break this typical mold. Further research and development on the roles of women, both African American and white, should seek to provide more concrete conclusions about how this case involved and impacted women.

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Academic Vita

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EDUCATION

The Pennsylvania State University, College of Liberal Arts — University Park, PA
Bachelor of Arts in Political Science, History (with honors), and English — Class of 2018
Schreyer Honors College Scholar | Liberal Arts Paterno Fellow
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WORK EXPERIENCE

The View — **January 2018 to Present**
Community Assistant — State College, PA

- Lead office opening and preparation procedures, assist resident complaints and feedback, and run online systems
- Create excellent customer service by ensuring that our residents and future residents are satisfied through the leasing process

Griffith Family Foundation / Sideline Cancer — **May 2015 to August 2017**
Logistics Project Manager — Hollidaysburg, PA

- Organized a basketball tournament, golf tournament, and 500-person dinner, which resulted in raising approximately $30,000+ per year to donate to the work of Harvard's Dr. A.J. Moser
- Interviewed by members of WJAC, WTAJ, and Forever Media news channels on behalf of Sideline Cancer
- Advocated for early detection, NIH funding, and healthcare for those with pre-existing conditions at the Digestive Disease National Coalition in Washington, D.C.

COMMUNITY SERVICE

Sideline Cancer Club — **October 2017 to Present**

- Aided in the creation of the Penn State chapter that promotes the Griffith Family Foundation's mission to fund a cure for pancreatic cancer and to offer hope for those in need

THON Volunteer — **August 2014 to Present**

- Collaborated with approximately 16,500 student volunteers to raise an average of $9 million per year to aid the Four Diamonds organization in its efforts to conquer childhood cancer

Tutor at State College Area School District — **January 2017 to May 2017**

- Tutored a 5th grade Taiwanese exchange student weekly to develop her writing and ESL skills through grammar lessons, timed writings, and read aloud exercises

CLUBS AND ACTIVITIES

Alliance Christian Fellowship — **August 2014 to Present**
Life Group Leader — *August 2016 to May 2017*

- Led weekly Bible studies for sophomore girls at Penn State to encourage growth in their spiritual lives as well as fellowship with other students
- Collaborated with other leaders to create a combined freshman and sophomore girls program

Onward State Writer — **January 2015 to January 2016**
Social Media Manager — *May 2015 to January 2016*

- Managed the Twitter, Instagram, and Facebook accounts of Penn State's student-run independent news website, Onward State
- Reported on Penn State breaking news, campus events, and student life through articles published on Onward State's website

AWARDS AND ACHIEVEMENTS

- Liberal Arts Award for Superior Academic Achievement — May 2015, 2016, 2017
- President's Sophomore Honors Award — March 2016
- President's Freshman Honors Award — March 2015
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