

OREGON STATE BAR  
**BULLETIN**

OCTOBER 2016



**A Chuckle  
in the Chain**

*The Case for Bicycle Commuting*

# OREGON STATE BAR BULLETIN



Many Oregonians, and many Oregon lawyers, favor two-wheeled over four-wheeled transportation. With its orange "Bike Town" stations, its "bike boulevards" and its dedicated on-street bicycle parking, Portland has the highest percentage of bike commuters in the nation. Indeed, cyclists use their bikes for commuting all around the state, with reasons as numerous as the riders themselves. The main reasons fall into five categories, as lawyer and writer Jennie Bricker reports. Pictured: Portland lawyer Ray Thomas near his downtown law office.

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# Strangely Absent from

# History

## Carson vs. Smith, 1852-1857

By Bob Zybach

**D**uring the mid-1850s in Oregon Territory, a former Kentucky slave woman filed two suits against a wealthy white landowner in a Benton County court and won both times. The most remarkable — and politically interesting — thing about these events is that nobody noticed. Newspaper reporters didn't report on these unlikely occurrences, and historians have never given them more than a sentence or two — and then almost invariably with misspelled names.

The woman filing the legal actions was an illiterate former slave woman and 1845 Oregon Trail pioneer named Letitia Carson. The person she sued was named Greenberry Smith, for whom the small community just south of Corvallis is named and who had mysteriously served as executor to the estate of David Carson — who had died in September 1852, leaving property behind in Benton County and in Missouri. Carson also left behind his self-proclaimed widow, Letitia, and their two children, 8-year-old Martha and 4-year-old Adam.

In 1852, slavery was still legal in the southern United States, but not in its territories, including Oregon Territory. Oregon became a state in 1859, and the Civil War did not begin until 1860. In each politically related instance, the central issue was slavery and whether it should be legal or not and, if legal, how the legal rights of owners and slaves might vary in the different states and territories.

In March 1857, the U.S. Supreme Court, in *Dred Scott v. Sandford*, declared: "A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'citizen' within the meaning of the Constitution of the United States... Consequently ... they are not entitled to sue in that character in a court of the United States."

Letitia Carson filed her first suit against Greenberry Smith on Feb. 27, 1854, three years before the infamous *Dred Scott* decision — which most historians agree was one of the worst decisions ever made by the Supreme Court — but much public and political sentiment at that time in both the North and South ran strongly in favor of that eventual determination, and few slaves or former slaves were allowed to file legal actions against whites in many courts throughout the states and territories.

However, thanks to an apparently accidental quirk in Oregon law (which had previously held that it was not only illegal for Carson to file a legal action in an Oregon court, it was also illegal for her and her children to even live in Oregon), Carson was allowed to go forward with her action and to follow that up with additional filings. Which she won. This is her story.

### Who Was Letitia Carson?

Letitia Carson was likely born sometime from 1814 to 1818 as a slave in Kentucky. Nothing is known of her early life or how she got to Missouri at some point before 1845. Very possibly she was involved in the hemp or tobacco farming industries, whether as a field hand or house servant or both. She was probably a Baptist or a Methodist and attended Sunday services in her owner's church or with an all-black congregation — possibly some of each.

In May 1845, Letitia began a six-month journey across the Oregon Trail with Irishman David Carson, a 45-year-old Platte

**Background Image:** Oct. 20, 1856, judgment for \$1,200, plus expenses, written by Judge George H. Williams, chief justice of Oregon Territory, on behalf of "Lutisha" Carson vs. Greenberry (G.B.) Smith, administrator of the estate of David Carson.



County, Missouri, landowner who had become an American citizen in October 1844. Three weeks later, on June 9, somewhere along the banks of the North Fork of the Platte River in present-day Nebraska, Letitia gave birth to the couple's first child, Martha.

Soon after arriving in Oregon, the family of three settled down in a cabin they built on David's 640-acre Soap Creek Valley provisional government land claim, in present-day Benton County. At that time, Oregon was outside United States (or any country's) jurisdiction, which is why a provisional government had been established in 1843 to recognize emigrant claimed property rights.

Son Adam (later "Jack" and "Andrew") joined the family in 1849, during the California Gold Rush and while Oregon was being made into a U.S. territory. In 1850, the Oregon Donation Land Act reduced Carson's claim to 320 acres awarded single men because Letitia was not David's wife; it was illegal for them to get married, and illegal for a black person to make an Oregon land claim.<sup>1</sup>

In September 1852, David Carson died intestate after a short illness, leaving Letitia and their two children behind. A wealthy white neighbor, Greenberry Smith, volunteered for and was appointed executor of Carson's estate and declared that, as slaves, Letitia and the children were themselves property and therefore not entitled as heirs to the family's possessions. This was in Oregon, though, so they weren't individually appraised or put up for distribution or sale as would have happened had David died in Missouri.

On Jan. 4, 1853, Smith held a public auction of the Carson estate, attended mostly by neighboring landowners, many of whom were also "Old Oregonian" pioneers of 1845. Everything except the land was sold, including half-acres of potatoes, David's underwear, the family's Bible, bedding, dishes and tableware, jars, farm tools and equipment, two yokes of oxen, a wagon, a velvet vest, a watch, a clock, a gun, a thermometer, 35 cattle, 26 hogs and a 14-year-old horse.

The sale garnered \$1,538.80, of which \$104.87 was spent by Letitia for her own bed and bedding, a skillet and an iron pot, six plates, two cows and a calf. It appears that sometime in mid-March, she and the children left with a family headed south and relocated in Douglas County with the Elliff family in Upper Cow Creek Valley. Shortly thereafter, Smith removed the livestock from her former home.

On Feb. 27, 1854, Letitia served a Notice of Complaint against Greenberry Smith, representing the estate of David Carson, as written by her legal representative, Andrew Thayer.<sup>2</sup>

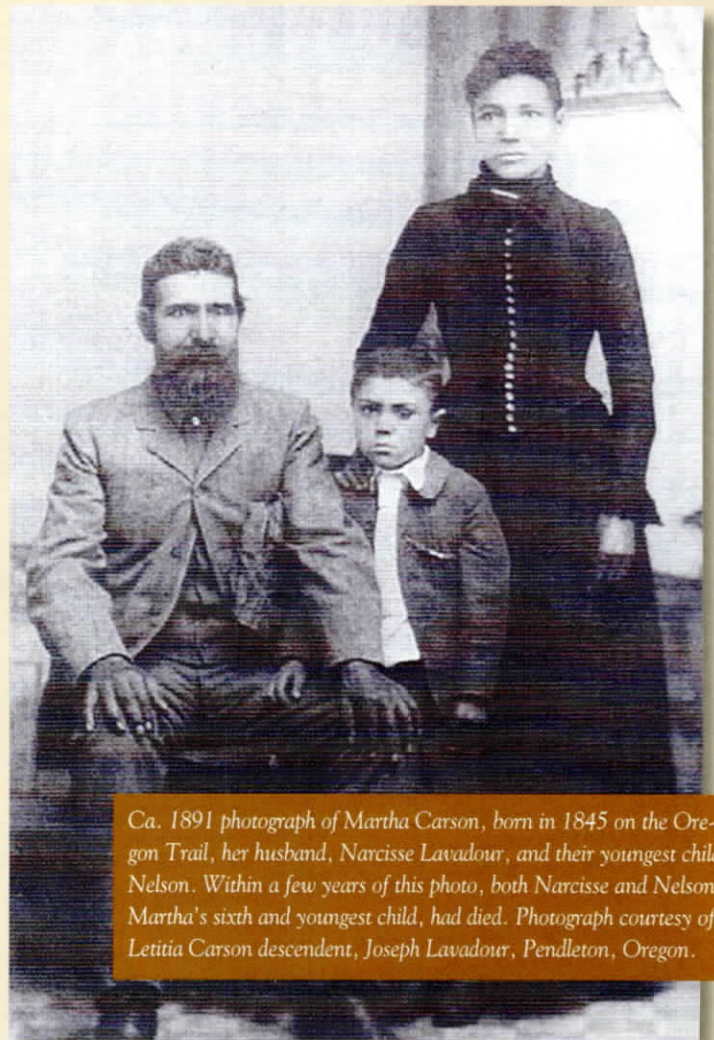
Letitia's notice stated that she would file a claim to the Benton County Probate Court the following month for:

...the damages which I have sustained in consequence of the non performance of the following personal contract made & entered into by & between the said David Carson during his life time and myself... while on the road from the state of Missouri to the territory of Oregon and after

he had passed the state line of the said state of Missouri stipulated & agreed to & with me that in consideration that I would live with & work for the said David Carson for and during the term of his natural life that at his decease he would make me his sole heir or that he would give me his entire property which he should own or be possessed of at the time of his said decease that in pursuance of said contract I continued to live with & work for the said David until the time of his decease, but the said David not regarding his said contract neglected to make me heir to his entire property or to give me the same or any part thereof either by will or otherwise wherefore I have sustained great damage, to wit \$5,000 dollars...

In addition to the claim of "damages on contract," Letitia's request also included seven and one-half years of labor for \$500/year (\$3,750), the sale of her 29 head of cattle at \$50/head (\$1,450) and the "use" of 10 cows for seven years (\$1,000), for a total of \$11,200.

Smith's attorney, John Kelsay, a prominent pro-slavery Democrat, refuted the claim with a long convoluted counterclaim that



Ca. 1891 photograph of Martha Carson, born in 1845 on the Oregon Trail, her husband, Narcisse Lavadour, and their youngest child, Nelson. Within a few years of this photo, both Narcisse and Nelson, Martha's sixth and youngest child, had died. Photograph courtesy of Letitia Carson descendent, Joseph Lavadour, Pendleton, Oregon.



there was no proof of the seven years' labor nor of the ownership of the 29 cattle or of any agreement to rent or lease 10 cows.

Subpoenas were issued to Andrew Carson and David Carson ("Jr.") and to neighboring landowners Francis Writsman, Albert Writsman, Joseph Hughart and John Wiles. The subpoenas were issued by Probate Judge (and State Representative and County Commissioner) Abram Locke and served by Deputy Sheriff William Jackson. Andrew Carson was David's nephew from Missouri, and there is some reason to believe that David Jr. may have been David's illegitimate son from North Carolina, as he was not considered an heir — or even mentioned by other relatives — in either probate proceedings involving the Carson property in Oregon and Missouri. Attempts to subpoena Henry Knighton, a fellow 1845 Missouri emigrant who had traveled the Oregon Trail with David and Letitia and could testify as to the ownership of the cattle, and William Henry Walker, a close Carson acquaintance who could also testify as to ownership of the cattle, were unsuccessful and the proceedings were postponed.

On July 17, 1854, Letitia appeared in person before Justice of the Peace D.W. Russell to amend her claimed labor charges to \$200/year (\$1,500 total), and also allow for a credit of \$500 for room and board and clothing for her two children, making a total complaint of only \$1,000 — which was also refused by Greenberry Smith.

In September, Attorney Thayer again requested subpoenas for several of Letitia's former neighbors (by then she and the children were living in Douglas County), but excluding the two Carson men. He then filed a complaint in Benton County District Court on her behalf for the modified \$1,000 amount.

On October 10, Smith provided a lengthy enumerated response via Attorney Kelsay, in addition to a sworn statement to Clerk Slater,<sup>3</sup> stating: 1) Letitia had not worked for seven years as stated, nor were her services worth \$1,000; 2) Letitia was David's slave until the time of his death; 3) as a slave and "member of the family," room and board and clothing for her and her children were sufficient payment for the seven years she spent with David; 4) her emancipation from slavery, brought about by her move to Oregon, was "reasonable worth" in itself for her labor; 5) she had been too sick to work for six months in 1851-1852 and David's care and "medical attendance" also constituted fair payment for her work, as did time she spent with the Joseph Gage family in 1849 during the birth of her second child. Smith also claimed to have "a bill of sale of said Letitia Carson plaintiff to deceased David Carson," which was highly unlikely and never produced.

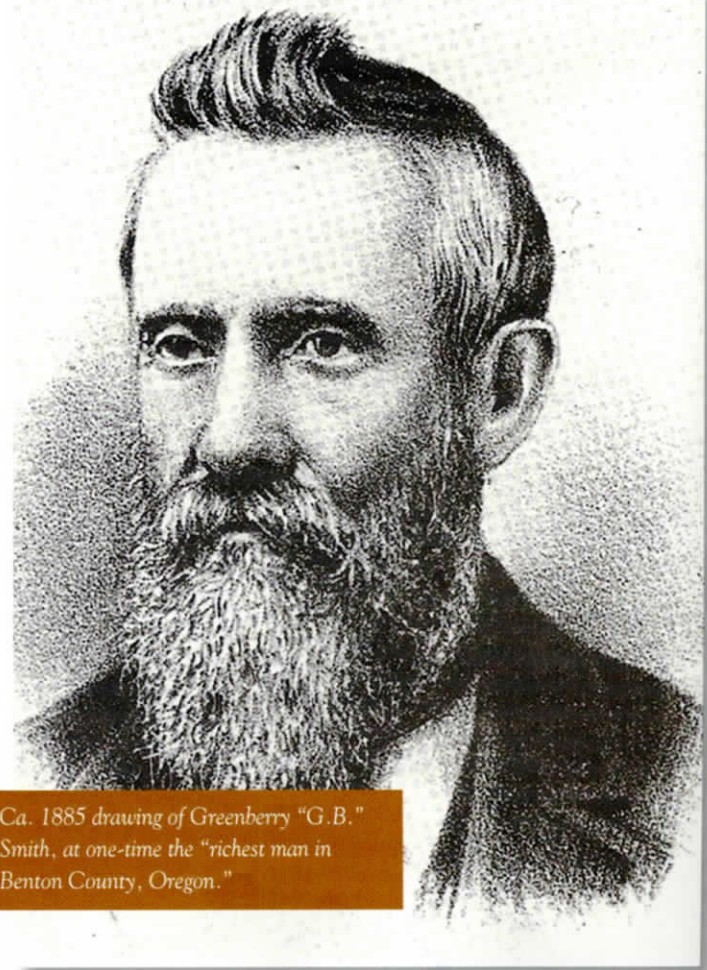
On October 11, Letitia refuted Smith's claims, point by point, "but she avers that she resided in said family as a servant and performed menial [sic] service as such during said period mentioned." The Oct. 17, 1854, *Oregon Statesman* reported "... in the absence of circumstances which could imply an agreement to pay. Jury disagreed — 9 for and 3 against — jury discharged. Cause continued."

On May 7, 1855, an all-white male jury of several prominent

local landowners, decided "for the Plaintiff the sum of three hundred dollars," although Clerk Slater recorded the amount as "\$3,000." Judge Williams ordered that the \$300 judgment be accepted, in addition to \$222.20 costs, for a total of \$522.20. It is unclear as to whether attorney Thayer received any of this amount as sheriffs' fees were \$29, clerk's fees were \$27.10, and "witness fees" were \$166.10.

On Aug. 2, 1855 attorney Thayer filed a second suit on behalf of Letitia, regarding her 29 cattle, which she valued at \$2,000 and which had been sold by Smith at the January 1853 public auction. On September 21, this amount was reduced to \$1,200 "or thereabouts" — which better reflected the price at which they had been sold. Smith responded that he had "no knowledge, information, or belief sufficient to enable him to answer said complaint as to having sold any cattle of any kind for any sum of money whatever." But, in any instance, \$500 should be credited against the "securing and rearing of said cattle from 1845 to the time of said sale."

Depositions, statements and subpoenas were issued throughout most of 1856 and included most of the same individuals, including the two Carson men. A new sheriff, Sheldon Fargo, and



Ca. 1855 drawing of Greenberry "G.B." Smith, at one-time the "richest man in Benton County, Oregon."



a new clerk, Thomas Odeneal, had been elected since the earlier trial, though, replacing Thomas Right and James Slater. Also subpoenaed, but unsuccessfully, was David Davis's wife, Sarah, who was said to be critical to the defense.

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

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

On Oct. 20, 1856 Judge Williams, in the presence of U.S. Marshall John McCracken, Prosecuting Attorney George Shiel, Sheriff Fargo and Clerk Odeneal, issued a judgment for \$1,200, together with \$199.75 costs, in accordance with the jury's verdict in that amount. On June 2, 1857, Letitia Carson received \$778.80 from Smith, via attorney Thayer, "being in full of all demands against estate."

### Unprecedented but Apparently Not Newsworthy

These results were politically newsworthy and unprecedented. The hearings were attended by many prominent local and state citizens — including two future Oregon senators and the brother and business partner of a future Oregon governor — and yet were barely acknowledged in the local or state press at that time. Letitia Carson was one of the most noteworthy Oregon Trail pioneers in history, yet she is strangely absent from that history. The reasons are likely mostly political, but also based on the facts that she was a woman, black and illiterate.

On June 17, 1863, Letitia Carson filed a Homestead Act claim for 154 acres on South Myrtle Creek in Douglas County, Oregon; and, although the act included "freed slaves," Letitia didn't identify herself as such. She applied as a "widow" and single mother of two children. In June 1868, exactly five years after first filing, Letitia Carson's land claim was certified by President Ulysses Grant, one of the very first 71 homestead claims — of 1.6 million total — ever certified in the U.S. It was perhaps the only successful homestead claim ever made by a black woman in the Pacific Northwest.

The required "improvements" for certification stated that Letitia had "built a house thereon of hewn logs about 18 x 22 feet 1 and one-half stories high, two doors and two windows a comfortable house to live in." She had also "built a barn granary smoke house and has planted about 100 fruit trees." In 1869, she paid property taxes to Douglas County, including her 39 cows, four hogs and a horse.

Letitia lived on her property for another 20 years with her bachelor son, Jack. Her daughter Martha married a local French Canadian named Narcisse Lavadour and had seven children and a great-grandchild before her mother's death in 1888. Their descendants remain prominent Walla Walla members of the Confederated Tribes of the Umatilla Indian Reservation to this day. **B**

*Bob Zybach is a forest scientist with a Ph.D. in environmental sciences from Oregon State University. He has intermittently researched Letitia Carson's history for nearly 30 years. For much of that time, he has worked with Salem resident Janet Meranda, developing a definitive biography and a documentary screenplay based on Carson's life. To date, their research has resulted in Jane Kirkpatrick's award-winning 2014 historical novel (A Light in the Wilderness), another historical novel and a popular biography in progress, nearly a dozen articles in Benton and Douglas County historical and genealogical society publications, and a Facebook page. A permanent website of their research can be found at [www.ORWW.org/History/Letitia\\_Carson/index.html](http://www.ORWW.org/History/Letitia_Carson/index.html).*

### Endnotes

1. Both Ronald Lansing (*Nimrod: Courts, Claims, and Killing on the Oregon Frontier*) and Gregory Nokes (*Breaking Chains: Slavery On Trial in the Oregon Territory*) have written excellent recent books on Oregon laws during that time. Nokes, in particular, has focused on those laws dealing with black and white residents in Oregon, while Lansing, a former law professor at Willamette University, has focused on a single murder case that involved many of the same people (e.g., Joseph Avery, David Carson, Greenberry Smith, Judge George Williams, Sheriff Sheldon Fargo, lawyers John Kelsay and George Shiel, clerks Albert Hovey and James Slater, witnesses Joseph Hughart and Thomas Read) and in the same Benton County courtroom that the *Carson vs. Smith* trials took place a short time later. Neither Nokes nor Lansing, however, were familiar with the *Carson vs. Smith* trials, filed in 1854, settled by 1857, and not appealed.
2. Thayer was 35 and an established New York lawyer who had immigrated to Oregon in 1852, likely arriving in the Willamette Valley about the time of David's death. Thayer's brother William, also a New York attorney, followed Andrew to Oregon a few years later, at first becoming a partner in his Corvallis legal firm and eventually becoming governor of Oregon in 1878 and chief justice of the Oregon Supreme Court in 1888.
3. Two of the key players in this story, Judge Williams and Clerk Slater, eventually became Oregon senators. Williams was a 30-year-old judge in Iowa in 1853 when President Franklin Pierce appointed him as chief justice of the Oregon Territory Supreme Court. Fifty years later, while in his 80s and after a long, illustrious and controversial career, he became mayor of Portland from 1902 until 1905.