

An 1851 political cartoon depicting the antagonism between abolitionists and supporters of the Fugitive Slave Act of 1850. Courtesy of the Library of Congress, Prints and Photographs Division, Washington, D.C.

The Kidnapping of Charley Fisher: Questioning the Legal Boundaries of Slavery in Bleeding Kansas

by Kristen Epps

On a frigid winter night in January 1859, a twenty-seven-year-old black man named Charley Fisher was kidnapped from a room at the Planters Hotel in Leavenworth. Fisher worked as a barber at this bustling business, serving locals and military personnel from the nearby fort. The kidnapers, two of whom were members of local law enforcement, detained Fisher under the claim that he was a fugitive slave who had escaped from his legal owners, Anna and John, the minor children of Rain C. Hutchison.¹ Fisher was able to escape from custody, and—handcuffed and in tattered, muddy clothes—he received help from sympathetic whites. The situation galvanized abolitionists in Leavenworth to help him resist enslavement, in violation of the federal Fugitive Slave Act of 1850. They, as well as their proslavery opponents, used the territorial courts to engage in a protracted legal battle over Fisher’s status. The results affected Fisher personally, but they would also have profound implications for the nationwide conflict over the expansion of slavery, human rights, and the rule of law.

Slavery’s extension into the West was of national relevance, and Kansas affairs were politically charged from the territory’s inception. The Kansas-Nebraska Act of 1854 dictated that slavery’s expansion would be left in the hands of local voters who, according to the doctrine of popular sovereignty, would determine whether the territory entered the Union as a free state or a slave state. However, Congress and the president intervened in the political process (and would continue to do so), as had proslavery Missourians in the territorial elections of 1855, when they crossed into Kansas and fraudulently voted, electing a proslavery legislature and territorial representative to Congress. Owing to increased emigration from free northern states, antislavery northerners gained a numerical majority in the legislature in October 1857, but earlier that year, delegates at the Lecompton Constitutional Convention and their allies in the national Democratic Party had crafted a proslavery constitution.² Contrary to its supporters’ claims, the Lecompton

Kristen Epps is an assistant professor of history at the University of Central Arkansas. She is the author of *Slavery on the Periphery: The Kansas-Missouri Border in the Antebellum and Civil War Eras* (Georgia, 2016). Her research centers on slavery, abolition, and Bleeding Kansas.

1. Court records spell his first name as “Rain,” but other documents, including census records, list it as “Rane” or “R.C.” “Rain” has been used here for consistency.

2. Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004), 52–54; Gary Cheatham, “‘Kansas Shall Not Have the Right to Legislate Slavery Out’: Slavery and the 1860 Antislavery Law,” *Kansas History: A Journal of the Central Plains* 23 (Autumn 2000): 157.

Constitution did not represent the people's will, and it failed when put to a popular vote in Kansas in 1858.³ Although slavery had existed there since the 1820s, the dwindling slave population suggested that Kansas would enter the Union as a free state. Despite the political successes of antislavery northern emigrants, however, the territory had not yet been admitted to the Union. Questions remained regarding whether slavery could be "legislated out" or whether such actions violated the spirit of popular sovereignty. Still, it appeared that by 1859, partisan political violence was growing less common and the territory had weathered the worst of the "bleeding" years.⁴

In this struggle over slavery's expansion, legal actions could provide some recourse for antislavery proponents, but it remained to be seen whether territorial laws would be based on antislavery or proslavery principles. Kansas lay at a literal and metaphorical crossroads, the progeny of northern, southern, and western influences. The territorial legislature and constitutional conventions tasked with crafting Kansas's government wielded significant power over the judicial branch (as did Congress, which would accept or reject Kansas's bid for statehood). The demographic makeup of the territorial government was a crucial determinant of the outcome. As historian Thomas Morris has noted, there were already "two conflicting systems of law" that existed simultaneously within the United States. In the northern free states, law held to the basic notion that all men were free unless proven otherwise and that a person could not be deprived of that freedom without due process of law. Territorial leaders who hailed from free states generally operated under this assumption as they passed laws and statutes. However, in slave states (which included neighboring Missouri), slavery's existence meant that the legal system was designed to further slaveholding interests. Thus, the legal

personhood of black Americans was not guaranteed by law. One's legal status as a free person must be proved—and the default assumption in the South was that all people of African descent were slaves.⁵ With northerners and southerners serving side by side in the same territorial legislature and constitutional conventions, these "two conflicting systems of law" came into direct competition, with high stakes at both the territorial and the national level.

It was of great concern to antislavery Kansans, then, that the proslavery legislature had garnered support from the current president, Democrat Franklin Pierce, who had the power to appoint territorial justices. Pierce's expansionist dreams, when combined with the proslavery forces on the ground, meant that in 1855 the territorial courts were, for the time being, beholden to slaveholding interests. The judicial branch consisted of three district courts (in Leavenworth, Lecompton, and Fort Scott) as well as a supreme court. The chief justice of the territorial Supreme Court was a slaveholder, Samuel Lecompte, who blatantly used his office to support the proslavery cause. He also served as the district court judge in Leavenworth. His interpretation of the law and his partisan proclivities were a continual source of friction.⁶ He personified the "Slave Power," which antislavery Americans described as slaveholders' carefully orchestrated national project to maintain control over the government and ensure the primacy of slaveholding interests, manipulating and distorting the Constitution to the point of tyranny. This Slave Power relied on a block of well-connected vocal southerners in Congress, but men such as Lecompte were—for antislavery Kansans—the local incarnation of this enemy. Even as late as 1858, in the judicial realm, Kansas slaveholders and their allies, including locals as well as national support from the prosouthern Democratic Party, wielded considerable power. The struggle over slavery had been fought on the rolling fields of eastern

3. Free staters boycotted the first vote in 1857 and then held their own, nonbinding referendum in January 1858. The final vote in August 1858 (in which free staters participated) was a sound defeat—1,788 for the constitution and 11,300 against (Etcheson, *Bleeding Kansas*, 184). See also Pearl T. Ponce, "'The Noise of Democracy': The Lecompton Constitution in Congress and Kansas," in *Bleeding Kansas, Bleeding Missouri: The Long Civil War on the Border*, ed. Jonathan Earle and Diane Mutti Burke (Lawrence: University Press of Kansas, 2013), 81–96.

4. In the 1860 federal census, there were only two documented slaves in Kansas, although this number was inaccurate. See U.S. Bureau of the Census, *Eighth Census of the United States*, 1860, Slave Schedules (Washington, DC: Government Printing Office, 1860). For more on slavery in Kansas, see Kristen Epps, *Slavery on the Periphery: The Kansas-*

Missouri Border in the Antebellum and Civil War Eras (Athens: University of Georgia Press, 2016). It was unclear when the territorial government could take the vote on whether to allow slavery. See Nicole Etcheson, "The Great Principle of Self-Government: Popular Sovereignty and Bleeding Kansas," *Kansas History: A Journal of the Central Plains* 27 (Spring/Summer 2004): 14–29; Cheatham, "'Kansas Shall Not Have the Right to Legislate Slavery Out,'" 169; Dale E. Watts, "How Bloody Was Bleeding Kansas? Political Killings in Kansas Territory, 1854–1861," *Kansas History: A Journal of the Central Plains* 18 (Summer 1995): 124.

5. Thomas Morris, *Free Men All: The Personal Liberty Laws of the North, 1780–1861* (Baltimore, MD: Johns Hopkins University Press, 1974), 1, 2.

6. Etcheson, *Bleeding Kansas*, 137.



Leavenworth, Kansas, depicted here in an 1858 lithograph, was the site of the Charley Fisher case. Situated on the Missouri River, the town had an urban environment with opportunities that attracted emigrants of all races from across the United States. Despite having a proslavery reputation, the town contained a sizable antislavery minority and a growing free black community composed of former fugitives and free people of color. It was this antislavery population that rallied to Fisher's defense following his kidnapping, acting to help him resist enslavement in violation of the Fugitive Slave Act of 1850.

Kansas, at the ballot box, and in the legislature. The battle now turned to the courts.

Charley Fisher's kidnapping and the civil and criminal cases that resulted from it exemplify competing definitions of what constituted the legal boundaries of slavery. Was slavery even legal in the territory? In terms of constitutional law, did territorial courts have to submit to federal authority? Who had the power to enforce the Fugitive Slave Act, and to what extent were everyday citizens obligated to assist in capturing fugitive slaves? While everyday folk formulated their own opinions, the role of territorial and federal statutes in remanding slaves meant that these questions fell under the courts' jurisdiction. The whirlwind of events surrounding Fisher illustrates both the growing sectional divide that would culminate in civil war and the role of the legal system in navigating the intersection of property rights and morality.

Charley Fisher was a physical manifestation to Kansas abolitionists of the Slave Power's reach; thus, his situation represented an opportunity to challenge a federal government that, in their mind, was no longer serving the needs of the American people. Kansas abolitionists took advantage of the territorial context and the instability of the nascent legal system to refashion legal precedent and assert legal rights for African Americans. They privileged local authority over federal control, likely emboldened by popular sovereignty's formative role in building Kansas. Meanwhile, slaveholders such as Rain Hutchison (father and guardian of Fisher's alleged owners) relied on the rule of law to protect their property rights. Slaveholders resisted any attempt to strip away territorial or federal power in fugitive slave cases. While states' rights arguments are normally associated with proslavery ideology, slaveholders could embrace federal power when it suited their interests. This contest was therefore

THE FUGITIVE SLAVE LAW.

A bill to amend the act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the persons who have been, or may hereafter be, appointed commissioners, in virtue of any act of Congress, by the circuit courts of the United States, and who, in

thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respec-

mentioned shall be conclusive of the right of the person or persons in whose favor granted to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of said person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

SEC. 7. And be it further enacted, That any person who shall knowingly and willingly obstruct, hinder, or prevent such

ing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitive from service or labor be ordered to be delivered to such claimants

At the heart of the Charley Fisher case was the 1850 Fugitive Slave Act, passed as part of the Compromise of 1850. It replaced the 1793 Fugitive Slave Act, which many slaveholders deemed ineffective due to abolitionist intervention and personal liberty laws in northern states that made it difficult for slaveholders (or their representatives) to detain fugitives. The new law consisted of several controversial components, including penalties for any citizen who attempted to circumvent the law and the appointment of special commissioners acting outside regular judicial parameters. It served as a major catalyst for the sectional strife that ultimately led to secession and civil war. Courtesy of the Library of Congress Rare Book and Special Collections Division, Washington, D.C.

between territorial power and federal power and was not merely a localized struggle between antislavery and proslavery citizens.

At the heart of the case was the Fugitive Slave Act of 1850, passed as part of the Compromise of 1850. Decisions about the future of the massive Mexican land cession made after the Mexican War precipitated a prolonged conflict in Congress. When the final series of compromise bills passed, southerners did not obtain concrete assurances about slavery's existence in the West, but they did receive a major concession—a stronger fugitive slave law. It replaced the Fugitive Slave Act of 1793, which many slaveholders deemed ineffective due to cumbersome evidentiary requirements, abolitionist intervention, and antikidnapping, "personal liberty" laws in northern states that made it difficult for slaveholders or their representatives to detain fugitives. Procedures for claiming an escaped slave in the southern slaveholding states were already enshrined by law, since chattel property could not be kidnapped in a legal sense, but pursuit of a fugitive into northern free states required federal intervention.⁷

This stronger fugitive slave law included several controversial components and was a major catalyst for sectional strife in the 1850s. Under it, special fugitive slave commissioners would be appointed to exercise power over fugitive slave cases and would exist outside normal judicial parameters. What might otherwise be considered normal judicial processes were also ignored—

there was no provision for a jury trial, for issuing a writ of habeas corpus, or for appealing to a higher court. The alleged fugitive was not allowed to testify on his or her own behalf. The alleged fugitive could be secured with or without a warrant; members of law enforcement, who were obliged to help retrieve slaveholders' property, were usually expected to have a warrant, but the claimant (i.e., the alleged slaveholder) was not. The only proof required from the claimant that he or she legally possessed this human being as chattel was a deposition or affidavit from the claimant or, alternately, documentation from a local court in the state from which the alleged fugitive had escaped. In reality, commissioners had wide-ranging leeway in determining what constituted the "satisfactory proof" required to remand a fugitive to slavery. They were paid ten dollars if they found in favor of the claimant, but they received only five dollars if they found in favor of the alleged fugitive. This system was ripe for corruption.⁸

Additionally, the law instituted steep penalties for any citizen who "shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive . . . or shall rescue, or attempt to rescue, such fugitive." Anyone who aided fugitives faced a thousand-dollar fine and six months'

7. Stanley W. Campbell, *Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill: University of North Carolina Press,

1970), 5, 8-10; John C. Waugh, *On the Brink of Civil War: The Compromise of 1850 and How It Changed the Course of American History* (Wilmington, DE: Scholarly Resources, 2003), 91, 183-84; Morris, *Free Men All*, 3-4.

8. Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (New York: W. W. Norton, 2015), 24; "Fugitive Slave Act of 1850," Avalon Project: Documents in Law, History and Diplomacy, http://avalon.law.yale.edu/19th_century/fugitive.asp.

imprisonment if convicted.⁹ Northerners who were anti-slavery in principle, and who were otherwise law-abiding citizens, were now expected to assist in the recapture of fugitives, even when it violated their conscience. As abolitionist Theodore Parker wrote, “injustice mounted on a statute is not the less unjust; only the more formidable.” Like-minded abolitionist men and women protested the Slave Power with their actions as well as with attacks on the law’s constitutionality in such disparate places as Boston, Massachusetts (in the famous case of Anthony Burns), and Racine, Wisconsin (where Joshua Glover, a fugitive from Missouri, was captured).¹⁰

The Dred Scott decision in 1857 further complicated matters. Dred Scott, who had first sued for his freedom in Missouri in 1846 (along with his wife, Harriet), saw his case appear before the Supreme Court in 1856. He claimed that although he had been born enslaved, his recent residence in free territory now made him free.¹¹ When the Supreme Court handed down its decision after almost a year of heated deliberation, it determined in a 7–2 decision that Dred Scott, being a slave, was not a citizen and thus should not have been allowed to bring suit in federal court. It also declared that the 1820 Missouri Compromise, which prohibited slavery north of the 36°30′ parallel (except in Missouri), was unconstitutional. This decision essentially legalized slavery in the former Louisiana Purchase by stating that slavery there could not be prohibited by an act of Congress.¹² When combined with the Fugitive Slave Act, it is clear that by 1857, not only was the deck stacked against enslaved people who escaped bondage, but the legal structures of the free northern states were being reshaped to accommodate southern slaveholders and their interpretation of the U.S. Constitution.

Meanwhile, out west in Kansas, the struggle over slavery’s expansion continued. Kansas’s territorial government initially toed a proslavery line, which caused much controversy locally and nationwide, and the proslavery

legislature passed a statute on September 15, 1855, titled “An Act to Punish Offences against Slave Property,” which promised steep punishments for anyone who aided fugitives, promoted abolitionist ideas in either the spoken or written word, or questioned slavery’s legality. It seemed to antislavery northerners that government power, at all levels and in all branches, was merely a tool to advance proslavery interests. Although the incoming, predominantly antislavery legislature convened in December 1857, it was not until February 9, 1858, that the full statute was repealed.¹³

Despite the statute’s repeal, Kansas abolitionists remained cautious. Even with a growing antislavery population, slaveholding Missouri’s close proximity meant that proslavery influences were a significant threat. The violence that was commonplace in the territory’s early years still bubbled under the surface. On May 19, 1858, a group of Missouri “border ruffians” captured eleven free-state settlers and took them to a remote ravine in Linn County near the Marais des Cygnes River, where they executed five men and severely wounded several others. In December of that year, John Brown and his men crossed the Missouri border and helped free eleven slaves in Vernon County. The group managed to escape despite heated pursuit, with the enslaved men and women eventually settling in Canada.¹⁴ Even as late as 1858, every public act could be parsed for political meaning. Kansas’s fate was tied to slavery’s very existence in the republic.

It was in this heated context that Charley Fisher entered Kansas. Sadly, we have no surviving records in his own words of his rather tumultuous life. According to Hutchison’s later testimony, Fisher (who at that time was known as Peter, not Charley) was originally from New Orleans and Baton Rouge, Louisiana. Hutchison purchased him around 1854. About three years later, Hutchison gave Fisher official papers that allowed him to hire himself out on steamboats plying the Mississippi and Missouri Rivers as long as Fisher returned ten dollars per week to his owners, Hutchison’s two minor children,

9. “Fugitive Slave Act of 1850”; Campbell, *Slave Catchers*, 24, 36, 40–41.

10. Theodore Parker, *Life and Correspondence of Theodore Parker, Minister of the Twenty-Eighth Congregational Society, Boston*, vol. 2, ed. John Weiss (New York: D. Appleton and Company, 1864), 119; Campbell, *Slave Catchers*, 124–32, 157–61. For a summary of these constitutional concerns, see Campbell, *Slave Catchers*, 28.

11. Freedom suits were not uncommon in Missouri. For more examples, see Kelly M. Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens: University of Georgia Press, 2017).

12. Earl M. Maltz, *Dred Scott and the Politics of Slavery* (Lawrence: University Press of Kansas, 2007), 118–23.

13. *The Statutes of the Territory of Kansas; Passed at the First Session of the Legislative Assembly* (Shawnee Manual Labor School: John T. Brady, 1855), 715–17; *Laws of the Territory of Kansas; Passed at the Third and Fourth Session of the Legislative Assembly* (Lecompton, KS: S. W. Driggs and Co., 1858), 345.

14. Etcheson, *Bleeding Kansas*, 193–94; Kristen Tegtmeier Oertel, *Bleeding Borders: Race, Gender, and Violence in Pre-Civil War Kansas* (Baton Rouge: Louisiana State University Press, 2009), 53–54.



Rain Hutchison purchased Charley Fisher around 1854 and three years later gave Fisher permission to hire himself out on steamboats traversing the Mississippi and Missouri Rivers. After several months of this arrangement, Fisher broke contact with Hutchison, moved to Leavenworth, and gained employment as a barber at the Planters Hotel, pictured here around the time of the Civil War. Completed in 1856 and containing over one-hundred rooms, the hotel later played a role in Fisher's kidnapping case, with the fugitive housed there before being transferred to the Mansion House.

John and Anna. Shortly thereafter, Hutchison moved from Louisiana to Harrodsburg, Kentucky.¹⁵ Hiring out enslaved laborers was not an uncommon practice in the South, but slaveholders who participated in the hiring system ran the risk of losing valuable property, since they were often unable to maintain strict control over slaves' movements. For the slaves, the experience of hiring out could be liberating. In Fisher's case, it allowed him a significant degree of mobility and independence; provided opportunities for resistance; and, as some sources noted, allowed him to gain some education, since he reportedly spoke several languages. After a few months of steamboat life, Fisher broke off all contact. Hutchison became concerned and contacted "his agent" in St. Louis,

authorizing him to contact the police and offer a \$200 or \$300 reward for Fisher's return.¹⁶ Hutchison also provided advertisements with Fisher's description.

While Hutchison sought to learn Fisher's whereabouts, Fisher made a new life in Leavenworth, marrying and obtaining employment as a barber at the Planters Hotel. He also changed his name from Peter to Charley. Even towns in Kansas that had a reputation for being proslavery—such as Leavenworth—often had a sizable antislavery minority and a growing free black community composed of former fugitives and free people of color. The 1860 census states that of the 625 free black persons residing in Kansas, 295 were in Leavenworth County, and 268 of these men and women lived in either the town of Leavenworth or the

15. "The Trial of the Kidnappers and the Rescue of Charlie," *Weekly Kansas Herald* (Leavenworth), January 29, 1859; "The Kidnapping Case—Preliminary Examination of the Accused—Tenth Day," *Leavenworth Daily Times*, February 4, 1859; Testimony of R.C. Hutchison, *Territory of Kansas v. F. Harrison et al.*, Evidence and Briefs, Henry Miles Moore Papers, Collection 450, State Archives Division, Kansas Historical Society, Topeka (hereafter KSHS). Hutchison was a farmer who had previously owned a sugar plantation. His children, John and Anna, are regularly referred to as "infants" in court documents, per legal language of the day. According to the 1860 census, they were ten and thirteen,

respectively. Their voices do not appear in the historical record. Their father acted as their guardian, but in his testimony, he sometimes refers to himself as Fisher's owner.

16. For more on slave hiring, see Jonathan D. Martin, *Divided Mastery: Slave Hiring in the American South* (Cambridge, MA: Harvard University Press, 2004). Testimonies of Julius Weikart, John Dally, and Justus Skeen, *Territory of Kansas v. F. Harrison et al.*, Henry Miles Moore Papers, KSHS; Testimony of R.C. Hutchison, *Territory of Kansas v. F. Harrison et al.*, Henry Miles Moore Papers, KSHS.

neighboring fort.¹⁷ The hustle and bustle surrounding the fort, along with the town's position on the Missouri River, created an urban environment with opportunities that attracted emigrants of all races from all areas of the United States. As a settlement on the outskirts of southern culture, flanked on the east by slaveholding Missouri, Leavenworth inhabited a space that was between the South, the West, and the North but was not fully part of any region.

Around 9:00 p.m. on January 13, 1859, two members of local law enforcement, Frank Campbell and Frank Harrison, strode up the stairs to the barbershop on the upper story of the hotel. They claimed that they were there to arrest Fisher, as one witness said, for "stealing."¹⁸ A heated discussion ensued. Several locals and boarders gathered in the crowded hallway while Campbell, Harrison, and Fisher conversed through the closed door. Eventually Campbell squirmed through the transom above the door, and after a brief encounter, he handcuffed Fisher. Although his initial arrest was generally peaceful, according to witnesses, Fisher "hollered" several times and "said he was afraid they were going to murder him." By this point, Campbell and Harrison had enlisted other whites, including T. I. Jeffords, to help control Fisher and remove him from the premises.¹⁹ The secretive nature of their actions implies that they knew there would be questions about whether Fisher's detainment was legal and that they were likely motivated by the monetary reward and were not acting under a warrant.

The kidnapers attempted to find a boat to carry them across the Missouri River, but they were initially unable to do so and instead spent part of the night at the Wild Cat Tavern outside Leavenworth. Here Fisher asked to see the warrant for his arrest, but Harrison refused. If he had not realized it already, by now Fisher would have recognized that he was not being arrested for a crime—he was being taken back into slavery. According to witnesses, Harrison washed blood off his hands while arguing with Fisher

over the warrant. Fisher's clothing was torn, and he lacked a hat. According to one witness, "The negro looked as if he had just come out of a fight where a good many hands had hold of him." Both Campbell and Harrison were reportedly armed with revolvers and perhaps Bowie knives as well. Fisher offered his watch to one of the tavern's proprietors in exchange for helping him escape, but his pleading was unsuccessful. After a few hours, still unable to access a ferry, the group traveled on a stolen boat across the river. While his captors slept, Fisher somehow escaped and returned to the Kansas side, where he made his way to Justus Skeen's home. There he was able to saw off his handcuffs before hiding at several different houses in the countryside outside Leavenworth.²⁰

Fisher's harrowing nightmare did not end there. Hutchison received word of these events and set out for Leavenworth. Although he did not arrive until around January 20, he acquired legal representation and demanded that Fisher, who had now been located, be jailed until the slave commissioner could hear the case. Local abolitionists refused. Fisher was instead put under guard, first at the Planters Hotel and later at the Mansion House.²¹ Hutchison demanded that local authorities respect the Fugitive Slave Act and follow appropriate procedure, and he held fast to that demand throughout the events of 1859. What Hutchison perhaps failed to realize was that the tenor of local politics in Bleeding Kansas meant that the "simple" remanding of a slave had implications for the status of slavery in the territory as well as in the nation. Other cases of slave renditions (such as those in Boston and New York) occurred in free states where legal precedents already existed. Fisher's was the first such fugitive slave case to occur in a territory, and even more, a territory where slavery's status was hotly contested.

Although Fisher's thoughts and feelings remain hidden from us, as no records in his own voice have survived, it is clear that he found himself in a fraught position. Hutchison's discovery of his location may not have been a total surprise, but the extensive legal complications that ensued were perhaps unexpected, and no doubt Fisher felt a heavy weight as he witnessed the

17. Joseph C.G. Kennedy, *Population of the United States in 1860; Compiled from the Original Returns of the Eighth Census* (Washington, D.C.: Government Printing Office, 1864), 161–64.

18. Testimony of Dan B. Smith, *Territory of Kansas v. F. Harrison et al.*, Henry Miles Moore Papers, KSHS.

19. Testimony of John P. Lane, *Territory of Kansas v. F. Harrison et al.*, Henry Miles Moore Papers, KSHS. Several sources refer to Jeffords as Jeffries. "Jeffords" is what appears in the evidence and briefs that Moore compiled; it would seem that Moore, as defense attorney, would have known the name of his client, so Jeffords is used in this article. It is also unclear what these men's exact positions were, whether they were specially deputized or had previous law enforcement experience. Lane's testimony refers to Harrison only as a "constable."

20. Testimonies of Julius Weikart, John Dally, and Justus Skeen, *Territory of Kansas v. F. Harrison et al.*, Henry Miles Moore Papers, KSHS.

21. "History Made There; The Planters' House at Leavenworth Sold at Auction," *Topeka Capital*, June 7, 1903, Leavenworth County Clippings, vol. 1, KSHS. Interestingly, in February 1859, another of Hutchison's alleged fugitive slaves, named Ned, was caught and held in a St. Joseph jail. See "A Runaway Negro," *Leavenworth Daily Times*, February 4, 1859.

unraveling of his new life as a free man. He likely knew that he would find allies in the Leavenworth community and in predominantly antislavery parts of Kansas such as Lawrence, but a vocal minority of slaveholders existed in Kansas. Given his past experience living in slaveholding states, he was surely aware of how fiercely slaveholders fought to protect their property rights.

While Hutchison, and Fisher too, might have expected that a hearing before a slave commissioner would decide Fisher's status, what occurred instead was a "preliminary examination" of Harrison, Campbell, and Jeffords for "rekidnapping a nigger." The phrase is telling. One can only be "rekidnapped" if a kidnapping had occurred previously, so this charge operated under the premise that enslavement was itself a form of kidnapping, as it deprived a person of his natural liberty. This terminology is significant because, as historian Steven Lubet notes, "fugitive slave trials help us understand the way that law—as reflected in the tactics of practicing lawyers—can be influenced by public opinion."²² There were enough antislavery citizens in Leavenworth and its environs to mount a vocal defense of Fisher's right to freedom. This dissent manifested itself through a sidestepping of proper legal procedure. The kidnapping case, called *Territory of Kansas v. F. Harrison et al.*, was central to determining Fisher's legal status, but it was also indicative of the continued national contest over the Fugitive Slave Act and the tensions between personal rights and property rights.

The hearing began on January 21, 1859, and was a public spectacle. In this preliminary examination, the county recorder, M. S. Adams, would hear testimony and determine whether to indict the three alleged kidnapers. If indicted, they would face trial in the First District Court, which met in Leavenworth and was one of three district courts in the territory.²³ It occurred in Stockton Hall over the course of twenty-three days, and reportedly six hundred locals attended, a significant number for a county of approximately twelve thousand people. Its very public nature proved a powerful forum for addressing questions about the legal limitations on slavery. News of

Fisher's arrest precipitated a "great excitement" among Kansans, and according to one newspaper, the spectators in the gallery were quite raucous.²⁴

The prosecution (composed of Lewis L. Weld, John C. Douglass, David Bailey, A. M. Sawyer, and A. W. McCauslen, who were antislavery residents of Leavenworth County) employed both direct and indirect strategies to prove that Harrison and the other defendants had illegally kidnapped Fisher. These lawyers argued that the Fugitive Slave Act—which applied only to fugitives found in free states and territories—protected the owner or his agents in their pursuit of fugitives only if they followed the provisions of this law and not when the owner or his representatives circumvented the law by detaining an alleged fugitive without adequate documentation.²⁵ This claim was procedural, but it was relatively easy to prove a lack of documentation. Everyone in the courtroom understood the potential national implications if this case were to go to trial. Despite the common impression that the law is rigid and absolute, the American legal system is built for flexibility; this case demonstrates how, as legal historian David T. Konig has explained, "the ways that rules are applied and procedures are chosen reveal deliberate choices about morality, power, communal norms, and ideology."²⁶ The prosecuting attorneys clearly believed that by highlighting procedural concerns, they might counteract the preternatural sway of the Slave Power, which consistently worked to circumvent core antislavery values such as the fundamental human right to freedom.

When possible, however, the prosecution intended to redirect the court's attention to the charge of kidnapping, which was these attorneys' central strategy. Reframing the case as an attack on Fisher's person and a violation of his rights emphasized Fisher's humanity rather than his alleged status as chattel. The prosecution argued that "a crime was committed against the person of the

22. Steven Lubet, *Fugitive Justice: Runaways, Rescuers, and Slavery on Trial* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), 2.

23. M. H. Hoeflich, "In Judge Lecompte's Court," *Kansas Law Review* 62 (June 2014): 1170.

24. "The Third Day and Its Results," *Leavenworth Daily Times*, January 25, 1859; "The Kidnapping Case—Preliminary Examination of the Accused—Third Day," *Leavenworth Daily Times*, January 25, 1859; George A. Moore, "Reminiscence of Early Days in Kansas (1858–1873) and the Formation of the Pacific Mutual Life Insurance Co. of California," Huntington Library, San Marino, California.

25. Lawyers in Kansas were required in their oath before the bar to uphold the Fugitive Slave Act. See Hoeflich, "In Judge Lecompte's Court," 1179.

26. "Trial of the Kidnappers—the Argument—Closing of the Case," *Leavenworth Daily Times*, February 9, 1859; David Thomas Konig, "The Long Road to Dred Scott: Personhood and the Rule of Law in the Trial Court Records of St. Louis Slave Freedom Suits," *UMKC Law Review* 75 (Fall 2006): 54.



On January 13, 1859, three men—Frank Campbell, Frank Harrison, and T. I. Jeffords—kidnapped Charley Fisher from the Planters Hotel, likely motivated by the monetary reward offered for the return of runaways under the Fugitive Slave Act. One week later, in direct opposition to the procedures laid out in the law, the three men were brought before the county recorder in a preliminary examination to determine whether they should be indicted on charges of kidnapping. The hearing occurred at Stockton Hall, seen here after the Civil War, over the course of twenty-three days and was attended by hundreds of people.

man Charley Fisher, and in direct violation of the laws of the territory.” Lewis Weld at one point stated that “the question whether the man was bond or free was a question for another Court and for another time,” since this was merely a “preliminary examination” to determine whether to bring charges against the alleged kidnappers.²⁷ This argument shifted the conversation into a territorial context, where territorial antiskidnapping statutes had jurisdiction. No federal antiskidnapping law existed, thanks to the protests of proslavery congressmen who feared that it would be used in fugitive slave cases.

States (or in this case territories) had to rely on their own statutes. In Kansas, the 1855 proslavery legislature passed “An Act Concerning Crimes and the Punishment of Offences against the Persons of Individuals,” of which sections 40 and 41 of Chapter 48 dealt with kidnapping.²⁸ The prosecution maintained that under the wording of this statute, “seizure without lawful authority” was illegal. It was this territorial statute that they had violated by detaining Fisher without a warrant. In so doing, these men left themselves open to criminal charges of kidnapping.

27. “Trial of the Kidnappers—the Argument—Closing of the Case”; “The Kidnapping Case—Preliminary Examination of the Accused—Tenth Day.”

28. Morris, *Free Men All*, 34; *Statutes of the Territory of Kansas*, 244.

When it came to kidnapping charges, there was precedent for states to use courts to circumvent the Fugitive Slave Act, though with limited success. The most famous example was *Prigg v. Pennsylvania* (1842), which asserted that federal statutes superseded state law. At the same time as the Fisher hearing, another slave case was being argued before the Supreme Court—*Ableman v. Booth*. In 1854, newspaperman Sherman Booth assisted in the escape of Joshua Glover, a fugitive slave in Wisconsin who had been detained under the Fugitive Slave Act. Booth was later arrested. The Wisconsin Supreme Court, however, released him, setting off a lengthy conflict between state and federal authority. The case then proceeded to the U.S. Supreme Court, although as of the date of this preliminary examination in Kansas, the court had not presented its opinion.²⁹ Fisher’s lawyers were aware of these legal controversies, but they pursued this line of reasoning because they believed states should rightfully weigh in on any issue that affected their residents.

In arguing that Fisher was a person, not property, they also asserted that he deserved certain protections from the law. It was here that their more indirect strategy became apparent, as they challenged established precedent regarding both slaves’ personhood and their civil rights. Southern law maintained that slaves were not persons except in certain criminal cases, such as murder. As an antislavery publication described it, slaves’ “relation to society and to civil government is, accordingly, the relation of BRUTES. . . . Not being accounted a person, but a thing, he can have no personal rights to be protected.”³⁰ Prosecuting attorney McCauslen reportedly stated that “the Fugitive Slave Act had nothing to do with this case. Colored men were regarded as persons in these parts,” an interesting turn of phrase.³¹ If the newspaper accurately

recorded this statement, such phrasing implies that in this territorial context, abolitionists sought a refashioning of legal assumptions to match local custom. All residents, regardless of their race, should be treated as persons deserving of basic civil rights. Thus, this argument was an appeal to morality and an implicit rebuke of the federal government, which had given in to the Slave Power and endorsed (and attempted to enforce) the Fugitive Slave Act.

Other prosecuting attorneys repeated this refrain and insisted that the Kansas kidnapping statute did not distinguish between the kidnapping of a free person or a bondsperson but simply referenced *persons* who were seized. Section 40 of the statute stated that “every person who shall, without lawful authority, forcibly seize and confine, or shall inveigle, decoy, or kidnap *any other person* with intent . . . to cause *such person* to be sold as a slave, or in any way held to service against his will, shall, upon conviction, be punished” (emphasis added). They maintained that the statute agreed that Fisher was a person with basic rights—as a fellow human being, he deserved the same protection from unlawful seizure as other parties. Section 41 included similar wording but focused on the kidnapping and selling of “any free person or persons entitled to freedom.”³² There is no doubt that the prosecution understood the radical nature of this claim, at least within the context of southern legal precedent; it serves as an excellent illustration of the competing systems of law that existed in the United States.

In a particularly bold move, the prosecution also went so far as to claim that slavery was not legal in the territory. This approach could appropriately be described as a Hail Mary pass, an attempt to parlay the trial into a case that would have implications beyond the parties directly involved. They stated, “Kansas is *in law* a free Government. Free by the Ordinance of 1787, in its spirit. Free by the law of nations. Free by the Missouri Compromise of 1820. Free by the treaties with the various Indian tribes that inhabited it previous to 1853; and left free by the Organic Act. Slavery has not since been introduced by any positive law. Custom or usage cannot introduce it within the short space of four years.”³³ Given the lack of specificity in the

29. For a concise analysis of the Prigg case, see Campbell, *Slave Catchers*, 10–12. For more on *Ableman v. Booth*, consult Earl M. Maltz, “Slavery, Federalism, and the Constitution: *Ableman v. Booth* and the Struggle over Fugitive Slaves,” *Cleveland State Law Review* 56, no. 1 (2008): 83–110, and Michael J. C. Taylor, “‘A More Perfect Union’: *Ableman v. Booth* and the Culmination of Federal Sovereignty,” *Journal of Supreme Court History* 28 (July 2003): 101–15.

30. As historian Thomas Morris has noted, indirect strategies were often the only option open to opponents of slavery. See Morris, *Free Men All*, ix, and Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Athens: University of Georgia Press, 2006), 3; William Goodell, *The American Slave Code in Theory and Practice: Its Distinctive Features Shown by Its Statutes, Judicial Decisions, and Illustrative Facts* (New York: American and Foreign Anti-Slavery Society, 1853; New York: Johnson Reprint Co., 1968), 289, 291.

31. “The Kidnapping Case—Preliminary Examination of the Accused—Third Day.”

32. *Statutes of the Territory of Kansas*, 244; “Trial of the Kidnappers—the Argument—Closing of the Case.” In February 1859, the incoming free-state legislature repealed most of the territorial statutes passed by the 1855 proslavery legislature.

33. “Trial of the Kidnappers—the Argument—Closing of the Case”; “The Kidnapping Case,” *Leavenworth Daily Times*, February 12, 1859. The closing arguments were continued over multiple issues of the newspaper.

Kansas-Nebraska Act and the difficulties of implementing popular sovereignty, they were only partially correct. It was true that the territorial legislature had not passed a statute legalizing slavery.³⁴ In practical terms, however, slavery had existed in Kansas since it was Indian country. And if slavery was already unlawful, as the prosecution claimed, there was no need for the antislavery legislation that had just been introduced in both houses of the territorial legislature. This argument, quite simply, would not ring true to many Kansas residents, regardless of their political persuasion.

Furthermore, claims that slavery was illegal were not germane to this case, if indeed the kidnapping statute did not distinguish between free persons and bondspople (as the prosecution also claimed). The inclusion of these statements in the prosecution's arguments must have had another purpose, then, such as reinforcing how the case had a greater significance in the sectional conflict. The prosecutors hoped to see morality and higher law triumph over human law. Perhaps they conceived of this trial as a complement to other antislavery efforts being conducted in the territory, including those on the legislative front. The prosecution was intently aware of the public scrutiny that the case engendered, and their previous experience with the heated political climate of the territory meant that they could frame the examination within this larger scope of resistance and attempt to halt slavery's spread.

This tension between morality and the law arose out of Fisher's specific situation, but such questions did not rely on his presence, so the examination continued even after Fisher escaped custody a second time. He had been sequestered in the Planters Hotel, but on January 21, Hutchison obtained a warrant for Fisher's arrest from Judge Lecompte, who was both chief justice of the territorial Supreme Court and judge of the First District Court. Lecompte gave the warrant to a deputy, John C. Spencer, who was supposed to provide it to the marshal, William P. Fain.³⁵ Apparently Fain ignored the warrant, so Hutchison and his allies formulated another plan,

34. The 1855 slave code certainly assumed that slavery was legal, but it did not explicitly state as much. As Nicole Etcheson has noted, claims to slavery's legality relied on public comments such as that of Governor Andrew Reeder, who stated in an address to the legislature that it could "temporarily prohibit, tolerate or regulate Slavery in the Territory" (Etcheson, "The Great Principle of Self-Government," 23).

35. This is what the plaintiffs (Hutchison and his children) alleged in their petition in later civil suits against several abolitionists. For one example, see Petition, May 20, 1859, *Rain C. Hutchison v. Daniel R. Anthony*, Case File 413, Admiralty, Chancery, Civil, Equity, and Law Cases (1855-1860), Records of the U.S. Territorial Court, First District Court of Kansas, Records of District Courts of the United States, Record



Among the prosecutors for Fisher's case, officially called The Territory of Kansas v. F. Harrison et al., was Lewis L. Weld. Originally from Connecticut and currently an antislavery resident of Leavenworth County, Weld and his fellow attorneys consistently employed both direct and indirect strategies to prove that Harrison and the other defendants had illegally captured Fisher. Weld was later the defendant in U.S. v. Lewis Weld, a federal criminal case brought by the U.S. district attorney. Charged with aiding and abetting Fisher's final escape—a clear violation of the Fugitive Slave Act—Weld's attorneys filed a pretrial motion to quash the indictment, which was sustained, leaving Weld free to continue his practice. Courtesy of "Accounts of the Deaths of Charles Theodore and Lewis Ledyard Weld," State Archives, Connecticut State Library, Hartford.

which involved moving Fisher from the Planters Hotel to the nearby Mansion House. The prosecution argued that this was nothing more than an illegal arrest and that Fisher "had a right to be protected against any crowd who would take him. . . . He had a home and a wife and a right to go there." The abolitionists were likely not overreacting in their objections, since Frank Harrison, one of the men accused of kidnapping Fisher in the first place, had been released on bail and was apparently one of those guarding Fisher at the Mansion House. Rumors of a kidnapping plot spread through the Leavenworth grapevine.³⁶

Group 21, National Archives and Records Administration—Central Plains Branch, Kansas City, Missouri (hereafter RG21, NARA-CPB). Although the plaintiffs were the children, Anna and John, the case folders are filed under their father's name.

36. "The Kidnapping Case—Preliminary Examination of the Accused—Third Day"; "The Third Day and Its Results." It is unclear how solid these rumors were, but the newspaper was owned by

Thus, it is not surprising that a group of sympathetic locals asked probate judge George Gardner to issue a writ of habeas corpus, which Deputy Sheriff George Boyle delivered to the Mansion House at 2:00 a.m. on the morning of January 25.³⁷ By seeking a writ, Fisher's allies used established legal means to question his incarceration, declaring that as a person, he had a fundamental right to liberty. Fisher's guards refused to open the door and barricaded it with the bedstead, but Boyle and his posse "slashed [the door] to splinters" and took Fisher on horseback to Gardner's house just outside the city. At some point, several abolitionists, including Daniel Anthony and Champion Vaughan, threatened or inflicted violence in their attempt to protect Fisher, although it is unclear whether this happened at the Mansion House or elsewhere. From Gardner's, unidentified men escorted Fisher out of the territory. As the local antislavery newspaper victoriously stated, "Charley is, or shall be, his own master; and humanity as well as justice has triumphed over inhumanity, injustice, and the administration of an oppressive law."³⁸ The contest between morality and the law may have lost the person who embodied slavery, but the larger questions about the intersection of law and morality remained relevant. The aftermath of Fisher's kidnapping and escape reverberated for months to come.

Locals' interpretations of the kidnapping trial were colored by events occurring elsewhere in Kansas; thus Fisher functioned as the personification of a debate over slavery that would rage on without him. On January 25, 1859, the same day that Gardner issued the writ of habeas corpus, an abolitionist named John Doy, along with his son Charles and a group of thirteen fugitive slaves and free blacks, left Lawrence for Nebraska and Iowa. That same day, while rumbling along the road, they encountered a group of approximately twenty Missourians who claimed that the Doy's had "stolen" this slave property. The Missourians rounded up the entire party, dragged

it back to Missouri, and placed John and Charles Doy in jail pending a hearing. The alleged fugitives were either returned to their owners or sold into slavery. That same month, five antislavery bills were introduced in the territorial legislature, reinvigorating the political question of slavery's viability.³⁹

Meanwhile, the defense lawyers in the kidnapping case (H. Miles Moore, G. W. Purkins, and B. I. Monroe) presented their arguments and countered the prosecution at every turn.⁴⁰ They argued that slavery was legal in the territory, per the existence of slavery in the Louisiana Purchase, the Dred Scott decision two years earlier, and the 1855 territorial slave code (which had been repealed in 1858). They conveniently ignored the antislavery bills before the territorial legislature. Harrison, Campbell, and Jeffords had followed the normal process that existed in slave states, where the simple apprehension of a fugitive was acceptable and no federal involvement was required. In their mind, then, the Fugitive Slave Act did not apply, since it was intended only for renditions in free states. Furthermore, only citizens could be kidnapped in a legal sense, and per the Dred Scott decision, slaves were not citizens. They even subpoenaed Fisher to testify, although he did not appear; slaves were not allowed to testify in southern states, but there was no statute preventing it in Kansas, and the attorneys apparently wanted him to speak to his own status.⁴¹ The kidnapping line of argument, they claimed, was irrelevant and a distraction from the root issue: Hutchison's children were the rightful owners of Charley Fisher and thus had the legal right to seek his return by whatever means necessary, even if it meant offering a reward or enlisting help from local law enforcement.

Their overarching goal was not only to defend their clients but to make clear that remanding Fisher to slavery was not an extraordinary act—it happened regularly in both free and slave states and should be as simple and straightforward as any other attempt to recoup lost property. This was an attempt to normalize slavery. Defense attorneys repeatedly argued against Fisher's

Champion Vaughan, who was intimately aware of the case, and he cites Fisher as stating that he was aware of such a plot. See "Habeas Corpus," *Leavenworth Daily Times*, January 25, 1859.

37. A writ of habeas corpus was used to learn why a person was being restrained or incarcerated; "upon the presentation of a prima facie case for issuing the writ, it would be directed to the person detaining another, commanding him to bring the person detained before the judge and to state the reasons for depriving him of his freedom" (Morris, *Free Men All*, 9). This was allowed under territorial law. See *Statutes of the Territory of Kansas*, 400–01.

38. "Habeas Corpus."

39. Cheatham, "'Kansas Shall Not Have the Right to Legislate Slavery Out,'" 158; Etcheson, *Bleeding Kansas*, 203. Doy was later "rescued" from prison by some Kansas abolitionists.

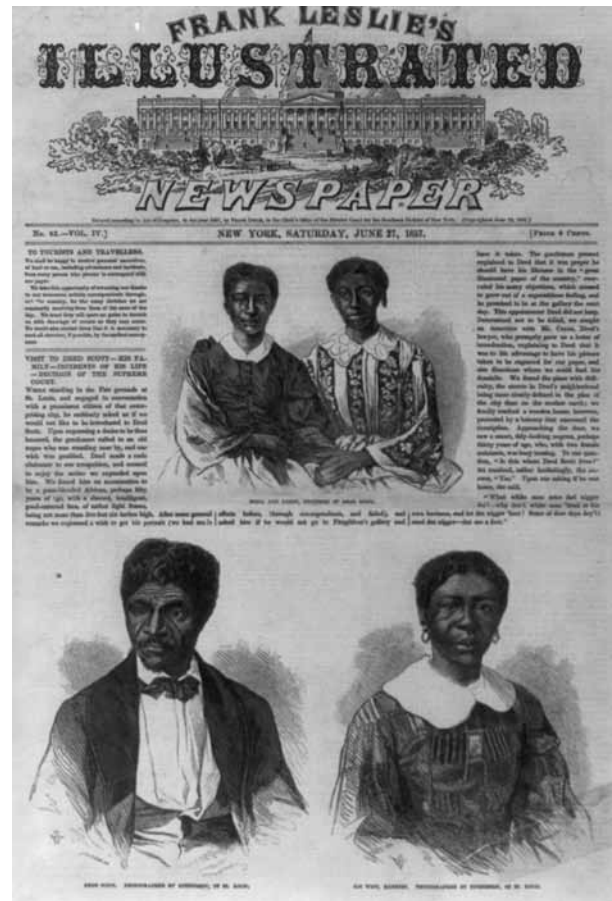
40. Moore, despite his free-state leanings, had previously been a slaveholder in Louisiana. Purkins was from Virginia, and information about Monroe has not been found. See Jesse A. Hall and Leroy T. Hand, *History of Leavenworth County, Kansas* (Topeka, KS: Historical Publishing Co., 1921), 276.

41. "The Kidnapping Case—Preliminary Examination of the Accused—Third Day."

humanity and claimed his status as chattel. Hutchison's own testimony reinforced his claim to ownership by noting Fisher's physical characteristics (for purposes of identification) and matter-of-factly stating that he had inflicted the scar on Fisher's cheek as punishment for some past transgression.⁴² Through this statement, Hutchison demonstrated his mastery over Fisher's body and further cemented his right to this slave's labor.

The defense, unlike the prosecution, had a wealth of established legal precedent on its side. Hutchison's attorneys cited several well-known U.S. Supreme Court cases, including *Prigg v. Pennsylvania* (1842) and *Dred Scott v. Sanford* (1857), as well as territorial statutes and legal treatises such as Blackstone's *Commentaries*. These bolstered their claims to slavery's legality, while other treatises (such as Wharton's *Criminal Law*) supported their argument that only citizens could be kidnapped, and Fisher was not a citizen. The defense used biblical references in its argument and insisted that "the negro was the lowest grade of humanity, if indeed he could lay claim to that—that slavery was his natural condition, and had been from the beginning."⁴³ These were standard arguments familiar to both antislavery and proslavery observers.

The defense's arguments, however, fell on deaf ears—or perhaps ears more attuned to the antislavery cause than to slavery apologists. On February 18, 1859, Recorder Adams (whose political inclinations are not noted) indicted the three defendants, Frank Harrison, Frank Campbell, and T.I. Jeffords, on a two-thousand-dollar bond to appear before the District Court for trial.⁴⁴ No record of these cases appears in the District Court records, so it seems that the district attorney chose not to press charges. This decision might be explained by the territorial and local context, where proslavery settlers wielded some authority over Leavenworth affairs, or by Fisher's absence from the territory, which made the trial less urgent. It also remained difficult for the courts to conduct business: constructing a functioning judicial system in a time when partisan feelings ran high was burdensome, and travel was sometimes difficult and dangerous.⁴⁵ The legislative session had also just ended,



The defense lawyers in the kidnapping case, unlike the prosecution, had a wealth of established legal precedent on their side. Hutchison's attorneys cited several well-known Supreme Court cases, including the controversial *Dred Scott v. Sanford*. Depicted here on the cover of Frank Leslie's Illustrated Newspaper, Scott had sued for freedom in 1856 (the case was decided in 1857) on the grounds of having lived in a free state. Among the elements of the case cited by Hutchison's defense were slavery's legality in the Louisiana Purchase, of which Kansas Territory was a part, and the fact that slaves were not citizens. Thus Fisher could not be kidnapped in a legal sense. Their attempts to normalize slavery through legal precedent did not work, however, and the three men were indicted in February 1859. Courtesy of the Library of Congress, Prints and Photographs Division, Washington, D.C.

and none of the antislavery bills introduced in either house had passed, so perhaps the antislavery population was quietly licking its wounds. As the months ticked by, the continued controversy over the free-state Wyandotte Constitution, adopted in July 1859 and ratified in October, and southern secession that began in December 1860, probably distracted public attention from the case.

It is also possible—indeed, quite probable—that for abolitionists, the preliminary examination had served its

42. Testimony of R.C. Hutchison, *Territory of Kansas v. F. Harrison et al.*, Henry Miles Moore Papers, KSHS.

43. "The Kidnapping Case," *Leavenworth Daily Times*, February 11, 1859.

44. "The Kidnappers," *Leavenworth Daily Times*, February 19, 1859.

45. Hoeflich, "In Judge Lecompte's Court," 1170–71.

purpose: it had raised an opportunity for them to challenge federal power, reframe black civil rights, and strike a blow at slaveholders' property rights. Indictment of these men would not ensure their conviction, so pursuing charges might backfire and damage the antislavery cause. Better to cast this decision as a victory or, as the local antislavery paper said of the indictments, "a most satisfactory result [that] will be hailed with joy by the people of Kansas."⁴⁶

It was a triumph for abolitionists, perhaps, but unfortunately for Fisher, his actual experiences were somewhat immaterial to the abolitionists' cause. They were pleased that he had escaped the territory, and certainly some abolitionists risked their well-being and reputations to aid his escape, but in many respects, he was merely a prop in the play that was this larger sectional conflict. Abolitionists' letters and accounts of his time in Kansas focus less on him as a man than on his relevance as a symbol of those victimized by the Slave Power. In that sense, he had played his role, and another trial of the kidnappers would serve little purpose.

Moreover, persistent concerns about "law and order" in border towns such as Leavenworth remained paramount, and unfortunately for Hutchison, he and his property claims set off a firestorm of public commentary and scrutiny. A group of about three hundred citizens (mostly of the proslavery persuasion) had met on January 28, 1859, to express concern about the community's reputation. Their published resolutions expressed support for law enforcement, repudiated Fisher's "rescuers," and suggested that free blacks be excluded from the territory. They believed abolitionists were "leeches upon the body politic" who "brought odium and disgrace upon us and our city."⁴⁷ Fisher's arrest, a public trial for kidnapping, and his "rescue" from police custody all indicated a threat to community stability. Antislavery residents supported "law and order," although their allegiance was also to a higher law, and some believed that extralegal efforts were sometimes necessary on moral grounds. While Hutchison knew nothing of this local context and likely knew little about Kansas politics overall, the public debacle that ensued meant that Fisher—unlike other fugitives who passed through Kansas—inspired a profound reaction.

On February 19, Hutchison, unable to appeal any further to federal law and with Fisher gone yet again, began filing civil suits against several prominent

Leavenworth citizens. These civil suits signaled not only Hutchison's dedication to receiving remuneration for his children's missing property but also his conviction that the courts might still prove useful. Hutchison and his attorneys (the firm of Wilson, Isacks, and Wilson) sought recompense from the law enforcement officers who, in their estimation, had failed to follow the terms of the Fugitive Slave Act, as well as from local abolitionists who had aided Fisher's second (and final) escape. Hutchison sued Marshal William Fain, Judge George Gardner, David Bailey, John C. Douglass, and James Williams, as well as prominent citizens such as Champion Vaughan (editor of the *Leavenworth Daily Times*) and Daniel Anthony (an outspoken abolitionist and Susan B. Anthony's brother). Bailey and Douglass, not coincidentally, had served as prosecutors in the preliminary examination that had ended the previous day, February 18.⁴⁸

The petitions filed in these suits alleged that the defendants "did knowingly, and wilfully, obstruct and hinder the execution of said warrant [by Lecompte] and the arrest of said slave . . . and that said negro did then and there escape."⁴⁹ The defendants demurred (i.e., they filed written responses seeking dismissal of the suits). According to the defendants, the petitions did not state that the plaintiffs were suing "by Guardian or next friend" and failed to provide other details, such as the dates of the alleged escape. These statements were not technically true. They also noted that territorial statutes allowed Hutchison to sue for debts but that this example did not fall under the scope of that law. The case against William Fain was slightly more complicated, since he was a member of law enforcement and his role in the incident involved his failure to apprehend Fisher under Lecompte's warrant.⁵⁰ With the courts being overloaded, it would take some time for these cases to be heard, so Hutchison waited and watched with interest.

48. Hutchison began filing the suits on February 19 and filed the last three (against Douglass, Anthony, and Bailey) on May 20.

49. One example is Petition, May 20, 1859, *Rain C. Hutchison v. Daniel R. Anthony*, Case File 413, Admiralty, Chancery, Civil, Equity, and Law Cases (1855–1860), Records of the U.S. Territorial Court, First District Court of Kansas, RG21, NARA-CPB.

50. Similar language appeared in each suit; for instance, see Demurrer, June 4, 1859, *Rain Hutchison v. Champion Vaughan*, Case File 489, Admiralty, Chancery, Civil, Equity, and Law Cases (1855–1860), Records of the U.S. Territorial Court, First District Court of Kansas, RG21, NARA-CPB; *Rain Hutchison v. William Fain et al.*, Case File 207, Admiralty, Chancery, Civil, Equity, and Law Cases (1855–1860), Records of the U.S. Territorial Court, First District Court of Kansas, RG21, NARA-CPB.

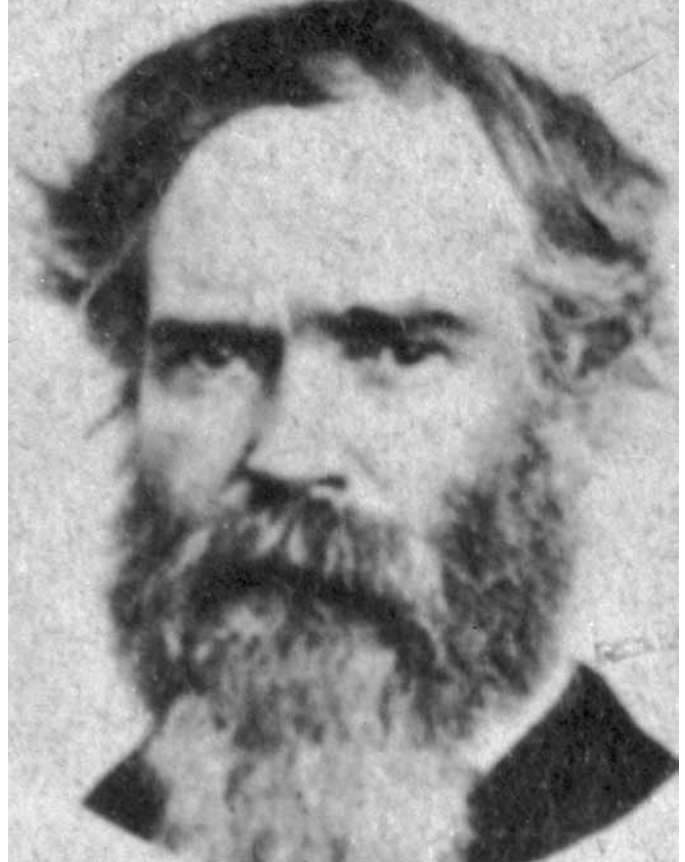
46. "The Kidnappers."

47. "Indignation Meeting," *Kansas Weekly Herald*, January 29, 1859.

Meanwhile, in late 1859, the U.S. district attorney, Alson C. Davis, pursued criminal charges against Leavenworth abolitionists under the Fugitive Slave Act. The law prevented any citizen from interfering in a slave rendition and required cooperation with law enforcement; those convicted could face six months in prison and a one-thousand-dollar fine. After a grand jury hearing, ten men were indicted.⁵¹ The indictments stated that these men did “with force and arms to wit, with a club, knife, pistol and other hurtful weapons knowingly and wilfully aid, abet, and assist the said Peter Fisher, alias Charles Fisher, alias Charley Fisher.”⁵² At some point during the final “rescue,” these abolitionists attempted to protect Fisher. Filing federal charges might provide some degree of closure for the Hutchisons, but it also demonstrated to abolitionists that violating federal law, regardless of any moral convictions, was unacceptable. It was important for the district attorney to reestablish the rule of law.

The Kansas political context of late 1859 and early 1860, though, was much different than that of early 1859. The antislavery Wyandotte Constitution passed by a popular vote in October 1859, and as of February 1860, it was being deliberated in the U.S. Congress.⁵³ On January 21, 1860, a Republican representative named Samuel N. Wood, an abolitionist and conductor on the Underground Railroad, introduced in the territorial legislature an antislavery bill, HB 6, titled “An Act to Prohibit Slavery and Involuntary Servitude in Kansas.” The Republicans enjoyed a numerical majority but faced stiff opposition. The bill finally passed both the House and the Council, although Governor Samuel Medary vetoed it. The territorial legislature overrode Medary’s veto on February 23 and officially outlawed slavery in the territory.⁵⁴ However, abolitionists grew disillusioned when the judicial system failed to enforce this legislation.

In previous years, proslavery justices had dominated the territorial courts, but by 1859, men with either antislavery or neutral viewpoints were in power. In June



For antislavery Kansans, men such as Samuel Lecompte, shown here, were the local incarnation of the hated “Slave Power,” slaveholders’ carefully orchestrated national project to maintain control over the government. Lecompte, who was both chief justice of the territorial Supreme Court and judge of the First District Court, issued a warrant for Charley Fisher’s arrest. The failure of several prominent Leavenworth citizens to act on this, including Marshal William Fain, became the basis for Hutchison’s civil suits in the wake of the kidnapers’ indictment.

1859, John Pettit, a former congressman from Indiana, replaced Samuel Lecompte as chief justice.⁵⁵ He was reportedly a fair judge who understood the stakes of a case that threatened federal power. Yet because of the local vagaries of the case and the court of public opinion, Pettit’s decision was not guaranteed to bolster federal authority.

Only one of these federal criminal cases—*U.S. v. Lewis Weld*—went forward, serving as a test for the other cases. Since the wording of each indictment was identical, it

51. Those charged were Lewis Weld, William Bloss, Robert Hansen, James Williams, David Bailey, Daniel Anthony, George Gardner, Henry A. Baker, Champion Vaughan, and George Boyle.

52. For one example, see Indictment, September 27, 1859, *United States v. Lewis L. Weld*, Case File 128, Admiralty, Chancery, Civil, Equity, and Law Cases (1855–1860), Records of the U.S. Territorial Court, First District Court of Kansas, RG21, NARA-CPB.

53. Gary L. Cheatham, “‘Slavery All the Time, Or Not at All’: The Wyandotte Constitution Debate, 1859–1861,” *Kansas History: A Journal of the Central Plains* 21 (Autumn 1998): 180, 186.

54. Cheatham, “‘Kansas Shall Not Have the Right to Legislate Slavery Out,’” 161–66, 170.

55. Frank Doster, “Kansas: Early Judicial History,” *Medico-Legal Journal* 18 (1900): 59.

appears that Weld was chosen at random, or perhaps his own legal expertise made him an excellent test case. Weld had served as a prosecutor in *Territory of Kansas v. F. Harrison et al.*, so he was well acquainted with the particulars of Fisher's situation. The hearing began on April 18, 1860, and Weld's attorneys (from the firm of Ewing, Sherman, and McCook) filed a pretrial motion to quash the indictment. According to defense lawyer Thomas Ewing, "we had a fierce fight" in the hearing to discuss the motion, but the "general opinion of the bar is that the motion will be sustained."⁵⁶

The defense cited eleven points of objection. Some focused on what might appear to be technicalities, while others focused on substantive complaints. The most substantive referenced the fact that the fundamental terms of the Fugitive Slave Act had been ignored—Hutchison had not made the arrest himself, Harrison and the other members of law enforcement had not proved to be acting as his agents (they had not obtained a warrant), and there was no evidence that a slave commissioner had heard the case. Most significantly, the defense noted that since Hutchison was unable to produce a bill of sale or similar proof of ownership, there was no evidence that Fisher had been enslaved prior to his time in Kansas. There was also no direct evidence to contradict Fisher's claims to freedom: no newspaper advertisement, broadside, or other documentation existed to demonstrate that Fisher had in fact escaped from slavery as opposed to being freed legally. Thus Weld could not be indicted for aiding a fugitive. Other objections, which focused more on technicalities, included the observation that "the alleged fugitive was only 'described by an alias of his Christian name.'"⁵⁷ It appears that the defense adopted a thorough approach, hoping that Pettit would agree with at least one or two of its objections.

Pettit issued his ruling on the motion to quash on April 23, 1860. Indeed, Ewing was correct in expressing his confidence that the charges would not hold, and the reassurance of federal authority that slaveholders like Hutchison sought remained elusive. Pettit stated in his

ruling that the Fugitive Slave Act was constitutional and that it was "the duty of every citizen to obey it." However, he agreed with the defense that since this was a criminal case, "every fact relied upon to constitute the crime, and upon which the conviction depends, shall be set out and described with as much particularity as the nature of the case will allow."⁵⁸ This ruling meant that he agreed with several of the defense's points regarding a lack of evidentiary proof that Fisher had been enslaved, that he owed service to Anna and John Hutchison, and that Weld had been aware of Fisher's legal status. These points may seem to be technicalities, but the burden of proof in criminal cases was higher than that in civil cases, and such evidence should have been briefly stated in the indictment.

The other sticking point revolved around Hutchison's guardianship of his two children and the fact that he acted as their agent and public voice. Pettit noted that under the Fugitive Slave Act, the only parties authorized to arrest a presumed fugitive were the "owner, or his agent or attorney," and that assisting in the escape of someone arrested by "a guardian of infant owners" is not an "indictable offense." Here, Hutchison had the right to file a civil suit, but criminal charges were an overreach. Pettit based this on his conclusion that if Congress had meant to include guardians in the list of approved authorities capable of detaining an alleged fugitive, they would have done so (i.e., the law would have read "owner, or his agent, attorney, or guardian"). Even if this omission was a mere oversight, the District Court could not supply it. Therefore, in aiding Fisher's escape from a guardian who had him in custody, Weld had not violated the Fugitive Slave Act. The defense's motion was sustained, which meant that the other nine federal indictments would not go to trial.⁵⁹ The cases died an unceremonious and quiet death.

Hutchison never found recompense for his children's lost property. Apparently, he and his children (who were presumably present during these various trials), having already spent significant time in Kansas, settled just across the river in Buchanan County, Missouri.⁶⁰ The civil suits never went to trial because, for unknown reasons, Hutchison would not return to the territory to testify; his baffled and annoyed attorneys requested a continuance in

56. Thomas Ewing Jr. to Thomas Ewing Sr., April 21, 1860, Letter Press Book 3, Thomas Ewing Papers, Collection 341, KSHS.

57. C.F. Dassler, *Reports of Cases Argued and Determined in the Supreme Courts of the State and Territory of Kansas*, vol. 1 (St. Paul, MN: West Publishing Co., 1889), 593–94. It appears that Thomas Ewing and Dan McCook took on the most responsibility in the case, since William T. Sherman disliked arguing cases. See Ronald D. Smith, *Thomas Ewing Jr.: Frontier Lawyer and Civil War General* (Columbia: University of Missouri Press, 2008), 89–91.

58. Dassler, *Reports of Cases*, 594, 597–99.

59. *Ibid.*, 597, 599.

60. Hutchison appears in the 1860 census as a resident of Buchanan County, Missouri. He remarried sometime in July 1859. See *Eighth Census of the United States, 1860*, Population Schedules and Slave Schedules.

September 1860, but it appears that the cases were never heard. During the Civil War, Hutchison served as a scout in Texas, and it was presumably at that point that his family left Missouri and joined him in Texas. John died in 1870, but Anna lived until 1936. Their father died in 1909.⁶¹

As for Charley Fisher, when he escaped Leavenworth, he made his way to Lawrence before starting for Canada, but it turns out that he was captured, incarcerated in a Missouri jail, and sold in the New Orleans market. His capture was not well publicized, but Kansans became aware of it around April 14, 1859. Hutchison's failure to claim Fisher at the Missouri jail is a mystery.⁶² Fisher remained in the Deep South, presumably as a slave, until the Civil War. Ironically, if he had stayed in Kansas, he would have been legally free as early as 1861. After the war ended, Fisher traveled back to Lawrence, where he briefly reunited and reminisced with his abolitionist allies.⁶³ It is unclear whether he remained in Kansas. The historical record sheds no light on his wife's identity or whereabouts, but it is possible that he returned to the Kansas-Missouri border area to locate her. Throughout this ordeal, his voice appears only indirectly in newspaper accounts, court testimony, and other available records, but there is no doubt that his experiences in Kansas left lasting scars.

Fisher's apprehension and the ensuing controversy once again laid bare the fundamentally incompatible

worldviews of proslavery and antislavery Kansans. Antislavery advocates made some inroads through legislation and the passage of the contentious free-state Wyandotte Constitution in October 1859, but by 1860, it was Kansas courts that had successfully challenged federal authority without facing repercussions or widespread negative publicity. What is unclear is whether this success was due to Kansas's territorial status (versus that of a state), its geographic location on the outskirts of white settlement (where public perception assumed some legal corruption might occur), the fact that the case received little national attention, or some combination thereof. What is clear is that legal recourse, combined with enthusiastic resistance on the part of a growing antislavery population, had successfully challenged both slavery's legality in the territory and, remarkably, the federal Fugitive Slave Act. Although we might attribute slavery's demise in the territory to the rejection of the Lecompton Constitution, the passage of the antislavery bill, or the passage of the Wyandotte Constitution, it is clear the Charley Fisher case was also central to establishing the legal boundaries of slavery.

Fisher's story illustrates how regional variables made the Fugitive Slave Act an ineffectual means of recovering slave property. Although slaveholders captured other alleged fugitives in Kansas without fuss, Fisher's arrest occurred in an urban setting, before multiple witnesses, and at a time when tensions between proslavery and antislavery Kansans appeared to be on the rise. Violence in the territory had seemed to decrease in 1858 and 1859, but the Fisher incident roughly coincided with John Brown's raid into Vernon County, and the Doy kidnapping happened less than twenty-four hours after Fisher escaped for the second time. The national press publicized and sensationalized these events, which, combined with the Fisher incident, reminded Kansans of how slavery's expansion could—and did—lead to violence. The local context, as was true for other fugitive slave renditions, made the implementation of the Fugitive Slave Act both complicated and controversial.

In the end, despite this triumph over the Fugitive Slave Act, the Civil War was to be the final arbiter of slavery's expansion, and the man at the center of it all—Charley Fisher—would gain his freedom only after emancipation. Abolitionists in Kansas won this battle, using legal means to challenge the peculiar institution, but it was only after four years of bloodshed, and the loss of approximately 750,000 lives, that the issue would truly be settled. [KH]

61. Each civil case file included essentially the same language. For one example, see R.P.C. Wilson Affidavit, September 14, 1860, *Rane C. Hutchison v. Champion Vaughan*, Case File 409, Admiralty, Chancery, Civil, Equity, and Law Cases (1855–1860), Records of the U.S. Territorial Court, First District Court of Kansas, RG21, NARA-CPB; Rane C. Hutchison Pension Card, General Index to Pension Files, 1861–1934, T288–235, National Archives and Records Administration, Washington DC; "Anna Bell Hutchison Priour," Find a Grave, <http://findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=69160920>; "Rane Chastain Hutchison," Find a Grave, <https://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=59239420>. He and his daughter Anna were buried in Nueces County, Texas, in the same cemetery.

62. *White Cloud Kansas Chief*, April 14, 1859; "Runaway Slaves," *Kansas Weekly Herald*, April 16, 1859. Fisher's story did not receive national attention except for a few mentions, such as this one of his capture: "Dr. Doy and Charley Fisher," *Liberator*, September 2, 1859. All surviving sources demonstrate that Hutchison was living in the area in 1859. According to the 1860 census, his household included four enslaved individuals. However, none could logically be Charley Fisher, since two were women, and the two male slaves listed were ages thirteen and fifty-five. Thus, unless he hired Fisher out again, it would seem that Hutchison failed to claim Fisher. See *Eighth Census of the United States*, 1860, Slave Schedules.

63. Hugh Dunn Fisher, *The Gun and the Gospel: Early Kansas and Chaplain Fisher* (Chicago: Kenwood Press, 1896), 148. Reverend Fisher was not related to Charley Fisher.