

# STEPPING STONES TO PROMINENCE: ILLINOIS SUPREME COURT JUSTICES AND U.S. SENATORS

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## I. INTRODUCTION

Of matters of great importance that loom large in the rich historical legacy of the Prairie State in this, our Bicentennial year,<sup>1</sup> the Illinois Supreme Court, with its roots firmly planted in the fertile fields of statewide jurisprudence, tells a remarkable and compelling story. For two hundred years, justice and equality in Illinois have been eloquently served by a judicial tribunal of eminent legal practitioners who took their place on the bench after the Supreme Court came into existence on December 3, 1818, when the first Illinois Constitution became effective after President James Monroe signed an Act of Congress admitting Illinois as the twenty-first state in the Union.<sup>2</sup>

Carved out of the remnants of the Old Northwest Territory when governance and the common law were minimal along the ragged frontier trails and tall grass prairies of Illinois, the state lacked an effective judicial system in its earliest, formative years despite the existence of territorial courts and publication of the first statute book of law in 1815.<sup>3</sup>

Framed by the Ohio and Mississippi Rivers, the southern tier of Illinois accounted for the highest concentration of migrating settlers entering the state after 1795.<sup>4</sup> For a time, economic activity within the region flourished. However, after 1820, the stirrings of a profound demographic shift had already commenced as the settlement around Fort Dearborn, a strategic but isolated military installation at the confluence of Lake Michigan and the Chicago River, would gain prominence as an important hub of nautical and rail shipping, overland transportation, and manufacturing.

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1. *Join the Ill. Bicentennial Celebration*, ILLINOIS, <https://www2.illinois.gov/about/history/GOV/join-bicentennial-celebration> (last visited Mar. 5, 2018).
2. *A Third Branch—A Chronicle of the Ill. Supreme Court Home*, <http://www.illinoiscourts.gov/SUPREMECOURT/Historical/judicialsystem.asp> (last visited Jan. 26, 2018).
3. ROGER L. SEVERNS, *PRAIRIE JUSTICE: A HISTORY OF ILLINOIS COURTS UNDER FRENCH, ENGLISH & AMERICAN LAW* 78 (2015); NATHANIEL POPE, *LAWS OF THE TERRITORY OF ILLINOIS* (1815).
4. NICOLE ETCHESON, *THE EMERGING MIDWEST: UPLAND SOUTHERNERS AND THE POLITICAL CULTURE OF THE OLD NORTHWEST, 1787–1861*, at 4 (1996).

The Town of Chicago, growing up outside of the palisades of the old fort and home to just 200 settlers in 1820, received its city charter on March 4, 1837. Three years later the U.S. Census counted 4,470 inhabitants of this busy commercial lakefront port. The number would swell to over a million by 1890. In less than fifty-years the once remote hamlet on the edge of civilization had become the fastest growing city in the world.

Over time, the rapid pace of re-settlement, displacement, urbanization in the northern half of the State, and powerful social forces of change altered the dynamic of the Illinois Supreme Court; the selection and apportionment of its justices, and the location, method and manner in which cases were heard.

If it is true that “men make history and not the other way around,”<sup>5</sup> as former President Harry S. Truman observed, then the history of the Court is made more authentic when viewed through the prism of the lives of 116 Justices whose names are inscribed on the wall of the Supreme Court Building in Springfield.<sup>6</sup> As we celebrate the two-hundredth anniversary of the creation of Illinois, John Lupton, Executive Director of The Supreme Court Historic Preservation Committee (created in 2007 by an Act of the General Assembly),<sup>7</sup> and I have assessed and re-examined the evolution of the Court and the legacy of each of its members through the lens of legal scholarship and careful research.

Each of the seven justices profiled herein represented Illinois in the United States Senate, some at a critical juncture in our nation’s history. One would go on to become a candidate for president.<sup>8</sup> Another would become a general and hero in two wars,<sup>9</sup> and a third would be the author of the 13th Amendment to the United States Constitution.<sup>10</sup> All were committed to public service. Along the way, they would demonstrate how one person can truly make a difference.

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5. See Hon. Paul P. Panepinto, *The Trial Judge As the CEO*, 18 WIDENER L.J. 499 (2009).

6. *History of the Building*, ILL. ST. REG., Feb. 5, 1908, at 12. The wall currently contains the names of 114 Justices. Justice William Foster and Justice David Woodson are not included on the wall. Justice Foster was one of the first Justices elected in 1818, but resigned in June 1819 before hearing any cases. Justice Woodson was appointed to fill the seat vacated by retiring Justice Samuel Lockwood immediately before the 1848 Constitution took effect. Woodson heard no cases, served only one month, and his term expired when the new Constitution became effective.

7. *Ill. Supreme Court Historic Pres. Comm’n*, <http://illinoiscourthistory.org/> (last visited Jan. 26, 2018).

8. *U.S. Senate: Stephen A. Douglas: A Featured Biography*, U.S. SENATE, [https://www.senate.gov/artandhistory/history/common/generic/Featured\\_Bio\\_Douglas\\_Stephen.htm](https://www.senate.gov/artandhistory/history/common/generic/Featured_Bio_Douglas_Stephen.htm) (last visited Jan. 26, 2018).

9. *Shields, James—Biographical Information*, Congress, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=S000362> (last visited Jan. 26, 2018).

10. David Kopel, *Lyman Trumbull: The Anti-Slavery and Pro-Second Amendment Senator and Lawyer*, THE WASH. POST (Feb. 25, 2015), [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/02/25/lyman-trumbull-the-anti-slavery-and-pro-second-amendment-senator-and-lawyer/?utm\\_term=.2d0af2cc9810](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/02/25/lyman-trumbull-the-anti-slavery-and-pro-second-amendment-senator-and-lawyer/?utm_term=.2d0af2cc9810).

In doing so, a great drama of human interaction unfolds, and one that is set against the backdrop of two-hundred years of state history. The story of the Illinois Supreme Court justices is not one of absolute moral perfection; however, it is the story of real people, not mythic Gods perched upon the throne of Mount Olympus. Like everyone else, they faced up to the challenges, uncertainties, and daily hardships of their time. Of course, several were vulnerable to the foibles of ambition, jealousy, and greed. During the intervening years, the misdeeds of the few inspired many colorful and anecdotal tales handed down through the oral tradition of story-telling.

Justice Joseph E. Daily of Peoria, who served on the Court from 1948 to 1957, enjoyed recounting the real-life drama of one of his early predecessors. Justice Theophilus W. Smith had been impeached in 1832 following corruption charges but was acquitted of wrong-doing in the Illinois State Senate.<sup>11</sup> Governor Thomas Carlin, who had looked upon this verdict with consternation, confronted Justice Smith and a violent quarrel ensued, whereupon Smith produced a gun and threatened to shoot the Governor. Carlin managed to pry the weapon away and then used it as a club to subdue the volatile Smith, ending the row without bloodshed.

Justice Daily, quite a historian and storyteller in his own right, described Justice Thomas C. Browne of Shawneetown, Illinois, as “the judge with the least energy.” Browne wrote only forty-seven opinions in his thirty years on the bench. Then in 1843, Justice Browne faced removal by a consortium of indignant lawyers from Galena on charges of gross incompetence, and attorney Abraham Lincoln intervened to save his job.<sup>12</sup>

For the first ninety years of the Supreme Court’s existence, the justices lacked a permanent home. Beginning in 1849, with their law books, legal records, and briefs in tow, they circulated from Ottawa to Mount Vernon and to Springfield in a cumbersome fashion once every year to hear cases. The Supreme Court was given the nickname the “Court on Wheels.” Of course, early on, or at least up until the rapid advance of the railroads beginning in the 1850s, wayfaring Justices “rode the circuit” on horseback moving from town to town in the same fashion as traveling circus performers or patent medicine sellers.

Their load was much lighter during the Court’s infancy. Saddle bags accommodated the sheaf of papers they carried with them as they made their way from town to town. With increasing complexities in the civil and criminal law and more ponderous caseloads, justices of the 1870s and 1880s traveled with trunk-loads of documents, writs, and case files that had

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11. SEVERNS, *supra* note 3, at 119–21.

12. BRYON ANDREASEN, *DEFENDING JUDGE BROWNE: A CASE STUDY IN THE LEGAL, LEGISLATIVE, AND POLITICAL WORKINGS OF ABRAHAM LINCOLN’S ILLINOIS* (2013).

to be loaded into the storage cars of trains. A larger caseload meant that the justices began making two trips to Ottawa, Mt. Vernon, and Springfield annually.

It was an arduous and highly undignified practice for these men of the law to endure, although former Vice President Adlai Stevenson noted that former Governor Thomas Ford remarked that judges and lawyers traveled the circuit on horseback. Ford referred to Judge Richard M. Young, whose district stretched from Quincy to Chicago, he “possesses in rare degree one of the highest requisites for a good circuit judge,—he is an excellent horseback rider.”<sup>13</sup>

The Illinois Supreme Court established headquarters in the Capitol Building in Springfield on April 3, 1897, ending the peripatetic journeys of the itinerant justices.<sup>14</sup> For the first time, plaintiffs and defendants were required to go to the Court instead of the Court coming to their nearest district. It was a welcome relief, although the outraged officials of Mount Vernon and Ottawa strenuously objected to surrendering their status as host cities to Supreme Court sessions.<sup>15</sup>

Our modern-day Supreme Court Building opened at Second and Capitol Streets in Springfield on February 4, 1908.<sup>16</sup> The history of this remarkable building carries with it an interesting caveat. When I came onto the Court in 2006, the story was passed down to me that Republican Governor Charles Deneen and one or more of the Justices made a wager over a card game and a bottle of good whiskey. If the outcome proved favorable to the Justices, the Governor promised to sign legislation to give the Court its own building. Good fortune and lady luck smiled favorably down upon the Justices who were guaranteed their permanent home that same evening.

The grandeur of the State Supreme Court building, constructed with the finest pink and green marble and modeled after the U.S. Treasury Building in Washington D.C., is accented by thirteen beautifully designed wall and ceiling murals crafted over a four-year period between 1907 and 1911 by Albert Henry Krehbiel, an instructor at the Art Institute of Chicago. Visitors cannot help but marvel at Mr. Krehbiel’s elegant depictions of “The Attributes of the Law;” “The Function of the Law;” “The Continuity of the Law;” “The Supremacy of the Law;” “Law and Equity;” and “The Light of the Law.”<sup>17</sup>

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13. ADLAI E. STEVENSON, SOMETHING OF THE MEN I HAVE KNOWN 3 (1909).

14. *Wanderer No More: Springfield Now the Home of State Supreme Court*, Ill. St. J., Apr. 5, 1897, at 3.

15. *Id.*

16. *New Temple of Justice Dedicated Tuesday with Appropriate Exercises*, Ill. St. Reg., Feb. 5, 1908, at 1.

17. *A Third Branch—A Chronicle of the Ill. Supreme Court Home*, <http://www.illinoiscourts.gov/SUPREMECOURT/Historical/Artwork.asp> (last visited Feb. 15, 2018).

I entered these hallowed corridors for the first time in September 2006, following my appointment to succeed the Hon. Justice Mary Ann G. McMorrow, the first woman to sit on the high Court. Justice McMorrow had announced her intention to retire after fourteen years of service. Throughout her distinguished career, she had forged a powerful legacy, as a pioneering trail-blazer shattering long-entrenched glass ceilings, and as a role model for women aspiring to the legal profession.

I walked in the footsteps of history that day, deeply humbled by the overwhelming sense of custom, tradition and majesty of its chambers and all those who had gone before me. I settled comfortably into the Cartwright Suite—the Justices reside in assigned rooms in the building when Court is in session five times each year—and read up on the storied judicial career of the Hon. Justice James H. Cartwright from Oregon, Illinois in the Fifth Illinois District, who was the first to occupy the room.

During his twenty-eight-year tenure (1895–1924), Justice Cartwright, the son of a Methodist minister from the Iowa Territory, enjoyed an enviable reputation as a great legal mind “who could go to the heart of a case and produce a lucid interpretation of the law,” in the words of the *Chicago Tribune* upon his death at age eighty-one on May 18, 1924. Justice Cartwright authored the decision in *Bliss v. Ward*, one of the landmark cases of the early twentieth century, reaffirming Montgomery Ward’s crusade to keep Chicago’s lakefront “forever open, clear and free,”<sup>18</sup> of a hodgepodge of non-descript, but often obtrusive commercial buildings and retail stores erected with little regard for landscape arrangement, architectural symmetry or the necessity of maintaining a pleasing swath of green space fronting the urban center.

## II. SENATORS/JUSTICES

The story of the Supreme Court from the time of its frontier circuit-riding days through the New Millennium is built upon the lives of the men and women who forged its destiny. It is a compelling story and one worth knowing. It is the sincere hope of John Lupton, and the commissioners of The Supreme Court Historic Preservation Commission, my colleagues on the bench,<sup>19</sup> and I, to reawaken distant memories of those earlier times and to recall the honored members of our profession with the hope of inspiring young Illinois lawyers to emulate the fine example they set forth. Echoing

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18. *Bliss v. Ward*, 198 Ill. 104 (1902).

19. Chief Justice Lloyd A. Karmeier; Justice Charles E. Freeman; Justice Robert R. Thomas; Justice Thomas L. Kilbride; Justice Rita B. Garman; and Justice Mary Jane Theis.

the words of President Truman, the Reverend Dr. Martin Luther King said that, “We are not makers of history. We are made by history.”<sup>20</sup>

|                    | U.S. Senate | Supreme Court of Illinois |
|--------------------|-------------|---------------------------|
| John M. Robinson   | 1830–1841   | 1843                      |
| Richard M. Young   | 1837–1843   | 1843–1847                 |
| James Semple       | 1843–1847   | 1843                      |
| Sidney Breese      | 1843–1849   | 1841–1843; 1857–1878      |
| Stephen A. Douglas | 1847–1861   | 1841–1843                 |
| James Shields      | 1849–1855   | 1843–1845                 |
| Lyman Trumbull     | 1855–1873   | 1848–1853                 |

#### A. John M. Robinson

The son of Jonathan and Jane (Jean) Black Robinson, John McCracken Robinson was born near Georgetown, Kentucky on April 10, 1794.<sup>21</sup> After graduating with honors from Transylvania University in Lexington, he moved to Shawneetown, Illinois, and then to Carmi, Illinois, where in 1818, he was admitted to the Illinois bar.<sup>22</sup> Robinson earned a well-known reputation as a thorough lawyer, and the legislature elected him to state’s attorney for the area, a position he held until 1827.<sup>23</sup> His brother James F. Robinson would later serve as governor of Kentucky.<sup>24</sup> Active and interested in military affairs, John Robinson rose to the rank of Major General in the Illinois militia, which led to him being commonly referred to as “General Robinson” the rest of his life. At six feet, four inches, Robinson towered over most people and “in personal appearance he could scarcely be excelled.”<sup>25</sup> In January 1829, Robinson married Mary B. D. Ratcliff, daughter of prominent Carmi resident James Ratcliff.<sup>26</sup> The Robinsons became the parents of two children, James S. and Margaret Robinson, and resided in the town’s oldest house, a building that had earlier served as the first White County courthouse.<sup>27</sup>

20. *Virginia’s Dr. Martin Luther King Jr. Mem’l Comm’n*, <http://mlkcommission.dls.virginia.gov/mlk.html> (last visited Jan. 26, 2018).

21. Daniel Berry, *Forgotten Statesmen of Ill. Hon. John M. Robinson*, 7 J. ILL. ST. HIST. SOC’Y 77 (1914–1915).

22. *Id.*

23. *Id.*

24. JOHN M. PALMER, 1 THE BENCH AND BAR OF ILL.: HISTORICAL AND REMINISCENT 43 (1899).

25. Berry, *supra* note 21, at 78.

26. *Id.*

27. *Id.*

Upon the death of U.S. Senator John McLean, Illinois legislators elected Robinson to the position in 1830 to complete McLean's unexpired term.<sup>28</sup> He routinely supported the programs of Presidents Andrew Jackson and Martin Van Buren.<sup>29</sup> Robinson chaired the Committee on Engrossed Bills and served on the Post Office and Post Roads committees.<sup>30</sup>

After McLean's term expired, the legislature re-elected Robinson to a full term in 1835.<sup>31</sup> During that tenure, he followed a majority of state legislators' wishes in voting against President Jackson's proposal for an independent treasury, even though he personally favored the measure.<sup>32</sup> "My political tenets lead me to believe," he explained, "that the representative is bound by the will of his constituents; and that so far as relates to a Senator in Congress, the Legislature is presumed to be the true exponent of that will."<sup>33</sup>

After his completing his term in the Senate in 1841,<sup>34</sup> legislators elected Robinson on January 14, 1843 as a justice of the Illinois Supreme Court.<sup>35</sup> While handling circuit duties in Ottawa, in the Ninth Judicial Circuit, Robinson died on April 25, 1843.<sup>36</sup> His remains were returned to Carmi for interment in the Old Graveyard Cemetery.<sup>37</sup>

Since he died before being able to serve on the Supreme Court, he did not participate in any arguments nor write any opinions.<sup>38</sup> Opening the January 1844 Illinois Supreme Court term, Chief Justice William Wilson expressed regret that Robinson "was not permitted to take his seat among us," then memorialized his "mature judgment, sterling integrity, and strong sense of the obligations of a public trust. . . . While steadfast in his principles, he was courteous and liberal to his opponents, and true to his personal friends."<sup>39</sup> The Crawford County, Illinois, seat of Robinson is named in honor of him.<sup>40</sup>

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28. JOHN CLAYTON, *THE ILLINOIS FACT BOOK AND HISTORICAL ALMANAC*, 1673–1968, at 99 (1970).

29. CARYN HANNAN, *ILL. BIOGRAPHICAL DICTIONARY 2008–2009 ED.*, at 581 (2008).

30. *Id.*

31. *Id.*

32. Berry, *supra* note 21, at 79.

33. *Id.*

34. *Id.* at 77.

35. *Robinson, John McCracken—Biographical Information*, Congress, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=r000344> (last visited Jan. 27, 2018).

36. Obituary Justice Robinson, 5 *Ill. (4 Scam.)* vii (1842).

37. *Id.*

38. *Id.*

39. *Id.*

40. EDWARD CALLARY, *PLACE NAMES OF ILLINOIS* 298 (2009).

## B. Richard M. Young

Born on a Fayette County, Kentucky, farm on February 20, 1798,<sup>41</sup> Richard Montgomery Young was the son of Abner and Frances Bourne Young.<sup>42</sup> After attending country schools, Young enrolled in Forest Hill Academy, an exclusive school in Jessamine County. Completing the academy course at age sixteen, he studied law under a prominent area attorney, Colonel James Clark, and gained admission to the Kentucky bar in 1816.<sup>43</sup>

One year later, Young opened a law office in Jonesboro, Illinois. His practice took him beyond Union County as Young rode circuit between Shawneetown to the east and Kaskaskia to the north, and even into Missouri Territory beyond the Mississippi River. He was an “interested observer of the transition of Illinois in 1818, from a territorial form of government to that of a state, and actively participated in its embryo politics.”<sup>44</sup>

In June 1820, a newly commissioned Captain in the Illinois militia, Young married Matilda James, daughter of Judge William James of St. Genevieve County, Missouri. They became the parents of two daughters, Matilda James and Bernice Adelaide Young. At the general election just weeks after his military commissioning, Young was elected to represent Union County in the second Illinois General Assembly.<sup>45</sup>

In his single term at Vandalia, Young championed controversial legislation that established a state bank. The bank system operated for four years before failing, a loss to the State of \$300,000. Most likely, “Young’s constituents did not approve of, or forgive him for, his aid in establishing that State bank.” He did not win endorsement for reelection, nor did he ever again win a popular-vote election to public office.<sup>46</sup>

In the 1824 judicial reorganization, the Illinois General Assembly chose five judges for newly created circuit courts. On December 30, 1824, the legislature elected Young to the Third Judicial Circuit. He and his family moved from Jonesboro to Kaskaskia near the center of the circuit. “He conducted his courts with dignity and conscientious rectitude, but neglected no opportunity to keep himself in the limelight of popular favor.”

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41. Young, *Richard Montgomery—Biographical Information*, Congress, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=y000050> (last visited Jan. 27, 2018).

42. ILLINOIS BIOGRAPHICAL DICTIONARY 347 (1993).

43. J. F. Snyder, *Forgotten Statesmen of Illinois: Richard M. Young*, TRANSACTIONS OF THE ILLINOIS STATE HISTORICAL SOCIETY 302–03 (1906).

44. *Id.* at 303.

45. *Id.* at 303–04, 326; DAILY HERALD, Oct. 19, 1905, at 5.

46. Snyder, *supra* note 43, at 306; THOMAS FORD, A HISTORY OF ILLINOIS, FROM ITS COMMENCEMENT AS A STATE IN 1818 TO 1847, at 27 (1854).



In 1824, he participated in welcoming and entertaining the visiting French statesman Marquis de Lafayette.<sup>47</sup>

Young lost his judgeship after legislators returned circuit court duties to the Supreme Court justices in 1826. He resumed the practice of law, partnering with U.S. Senator Elias Kent Kane. Then in 1829, the General Assembly formed the Fifth Judicial Circuit, comprising all of the state north and west of the Illinois River, and elected Young to serve that circuit. The Youngs moved from Kaskaskia to the populous and busy lead-mining town of Galena.

Two years later, “desiring a quieter place of residence for his family than Galena,” he purchased a 120-acre farm east of Quincy and built a two-story frame farm house. “He was a fine-looking, complaisant Kentuckian,” wrote fellow attorney Charles Ballance, “who possessed not much legal learning, but a fine, high-blooded Kentucky horse, and knew well how to ride him.” In May 1833, according to Ballance, Young “made his appearance in the Village of Peoria, and announced that he was on his way to Chicago to hold court. He had traveled about 130 miles, from Quincy, where he lived, and had to travel, as the trail then run, not less than 170 miles further, to hold the first court on his circuit. Just think of a horseback ride of at least 300 miles to hold a three days’ court!”<sup>48</sup>

In addition to his circuit duties, Young traveled to Vandalia to attend Supreme Court and legislative sessions. “He was personally known to all the officials and politicians in the State and was himself one of the most popular and highly esteemed of the State’s public men.” When legislators brought impeachment charges against Justice Theophilus W. Smith in 1833, Young won respect for his association with Sidney Breese and Thomas Ford in Smith’s defense and acquittal.<sup>49</sup>

In 1835, Young sold his farm and the family moved to Quincy. One year later, the state legislature elected Young to the United States Senate in 1836 to succeed William L. D. Ewing, who had completed the unexpired term of Elias Kent Kane, who died in 1835. Young resigned his judgeship on January 3, 1837 to begin his term in the Senate. He chaired the Committee on Roads and Canals, supporting improvements within Illinois in the aftermath of the Panic of 1837.<sup>50</sup> “The march of Illinois is forward,” he told fellow Senators, “and if her legislative guardians at home shall promptly discharge their duty in the preservation of her credit at home and abroad, who can not foretell that her destiny is no less than that of the Empire state?”<sup>51</sup>

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47. Snyder, *supra* note 43, at 307.

48. CHARLES BALLANCE, HISTORY OF PEORIA, ILLINOIS 63 (1870).

49. Snyder, *supra* note 43, at 314; PALMER, *supra* note 24, at 43.

50. FREDERIC B. CROSSLEY, 1 COURTS AND LAWYERS OF ILLINOIS 233 (1916).

51. PALMER, *supra* note 24, at 43.

In 1839, Illinois Governor Thomas Carlin, having exhausted money market possibilities in New York, sent Senator Young and former Supreme Court Justice and Governor John Reynolds to London, where they unsuccessfully sought loans of \$4 million for completing the Illinois and Michigan Canal.<sup>52</sup> The failed mission reflected poorly on both men; “it is doubtful if two other men so conspicuous in public life at that time could have been found, so little qualified—so destitute of financial skill, for such a difficult and important mission.”<sup>53</sup>

Young failed to win a second term in the Senate, and the state legislature elected him on January 14, 1843 to succeed Illinois Supreme Court Justice Theophilus W. Smith. Young “accepted the Supreme [C]ourt Judgeship because nothing better was then accessible, and found its laborious obscurity in too marked contrast with the dazzling eminence of the Senate.”<sup>54</sup> In his new position, Young also had trial-level responsibility for the northern Illinois Seventh Judicial Circuit.

Young acquitted himself on the bench “with much credit . . . a superior lawyer and judge.” In his first year, he delivered four court decisions and one dissenting opinion. In 1844, he wrote six decisions, one separate, and one dissenting opinion, and in 1845, delivered ten decisions, two separate, and two dissenting. Well written, the opinions were “all clear and accurate judicial statements supported by ample references and sound reasoning.”<sup>55</sup>

In the celebrated 1845 *Jarrot v. Jarrot* case, Young delivered a lengthy separate opinion upholding Justice Walter B. Scates’s majority decision. The St. Clair County Circuit Court had ruled for slave-owner Julia Jarrot against slave Joseph (Pete) Jarrot, who brought legal action against her for services rendered.<sup>56</sup> The *Jarrot* case “practically removed from the statutes the last vestige of authority for slavery in Illinois.”<sup>57</sup>

In another 1845 case, *Eldridge v. Rowe*, Justice Young, writing for the majority, rejected the argument of Springfield attorney Abraham Lincoln regarding release of a contract. Barnabus E. Eldridge had hired Nelson Rowe as a farm worker for eight months, but Rowe worked for only four months before asking to be released from the contract.<sup>58</sup> When Eldridge offered three options for completing the work, Rowe rejected the offers and hired Lincoln to sue for payment.<sup>59</sup> Young wrote that Rowe had fairly

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52. THEODORE CALVIN PEASE, *THE FRONTIER STATE, 1818–1848*, at 225–26 (1918).

53. DAVID KENNEY & ROBERT E. HARTLEY, *AN UNCERTAIN TRADITION; U.S. SENATORS FROM ILLINOIS, 1818–2003*, at 22 (2003); Snyder, *supra* note 43, at 318.

54. Snyder, *supra* note 43, at 321.

55. *Id.* at 320.

56. *Jarrot v. Jarrot*, 7 Ill. (2 Gilm.) 1 (1845).

57. Snyder, *supra* note 43, at 320.

58. *Eldridge v. Rowe*, 7 Ill. (2 Gilm.) 91, 94 (1845).

59. *Id.* at 95.

entered the contract but failed to fulfill his obligations and rejected Eldridge's compromise options.<sup>60</sup> Therefore, Young reasoned, Rowe should receive no compensation.<sup>61</sup>

Seeking a return to public prominence, Young made an unsuccessful attempt to become the Democratic nominee for governor in 1846. Senator Stephen A. Douglas then convinced President James K. Polk to appoint Young as Commissioner of the General Land Office, succeeding fellow Illinoisan James Shields.<sup>62</sup> On January 25, 1847, Young resigned from the Illinois Supreme Court to accept the federal appointment, and the Youngs moved from Quincy to Washington, D.C. From 1850 to 1851 he served as clerk of the U.S. House of Representatives, and then resumed the practice of law.<sup>63</sup> Later in the decade, he began suffering physical decline and mental illness, spending several months in 1860 in the Government Hospital for the Insane.<sup>64</sup> Upon discharge, he remained secluded at his home, where he died on November 28, 1861, at age sixty-three.<sup>65</sup> He was buried in the Congressional Cemetery in Washington, D.C.<sup>66</sup>

### C. James Semple

James Semple was born on January 5, 1798, the eldest of nine children of John Walker and Lucy Robertson Semple. He received a basic education in Greensburg, Kentucky, supplemented by legal courses in Louisville. In 1814, at age sixteen, he joined the Kentucky militia and became active in Kentucky politics as early as 1817.<sup>67</sup>

Semple moved to Edwardsville, Illinois, in 1818, but soon returned to Kentucky. In 1820, he married Ellen Duff Green, sister of journalist and politician Duff Green. The couple moved to Chariton, Missouri, where Semple served as assistant postmaster and then land office commissioner, while also commanding a regiment of the Missouri militia. After the death of his wife, Semple returned to his home state, resumed the study of law, and was admitted to the Kentucky bar.<sup>68</sup>

In 1828, he again moved to Edwardsville, where he maintained a successful law practice. "He was diligent and careful," wrote fellow lawyer

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60. *Id.* at 99.

61. *Id.*; SUSAN KRAUSE & DANIEL W. STOWELL, *JUDGING LINCOLN: THE BENCH IN LINCOLN'S ILLINOIS* 75 (2002).

62. ROBERT W. JOHANNSEN, *STEPHEN A. DOUGLAS* 188 (1973).

63. PALMER, *supra* note 24, at 43.

64. Snyder, *supra* note 43, at 325.

65. *Id.* at 326.

66. PALMER, *supra* note 24, at 43; Snyder, *supra* note 43, at 326; KENNEY & HARTLEY, *supra* note 53, at 22.

67. William L. Burton, *James Semple, Prairie Entrepreneur*, 80 *ILL. HIST. J.* 67 (1987).

68. *Id.* at 67; KRAUSE & STOWELL, *supra* note 61, at 48.

John M. Palmer, “and, being a man of magnificent presence and fine manners, he rose rapidly to distinction.”<sup>69</sup> During the Black Hawk War, Semple served on the staff of General Samuel Whiteside. In late summer 1832, he won election to the Illinois House of Representatives from Madison County as a Jacksonian Democrat.<sup>70</sup> He briefly held the office of Illinois Attorney General before returning to the legislature.<sup>71</sup> In 1833, Semple married Mary Stevenson Mizner, a widowed niece of Shadrach Bond, the state’s first Governor.<sup>72</sup> The Semples became the parents of two daughters and a son.<sup>73</sup> From 1834 to 1838, he served as Speaker of the Illinois House. A colonel of the Eighth Illinois Militia, Semple was commissioned brigadier general in 1835.<sup>74</sup>

At the urging of senators and representatives from Illinois, President Martin Van Buren appointed Semple the Minister to Colombia, a position he held from 1837 to 1841.<sup>75</sup> “On his return from Bogota,” recalled fellow attorney Usher Linder, “I being a member of the legislature, heard him deliver many interesting lectures in reference to that country.”<sup>76</sup>

Semple returned to Edwardsville, and on January 14, 1843, the legislature elected him to the Illinois Supreme Court to succeed Sidney Breese.<sup>77</sup> In *Bradley v. Case*, Case had sued Bradley in the circuit court and recovered payment from a promissory note.<sup>78</sup> In his appeal to the Illinois Supreme Court, Bradley claimed that the consideration of the note had failed because of a conflict between federal and state laws on selling certain sections of land for school purposes.<sup>79</sup> In his opinion affirming the judgment, Justice Semple compared at length federal and state legislation, concluding that these “considerations are, in my opinion, proper for investigation here. They form part of the history of the country. They throw light on the compact itself, and show conclusively, that the true construction to be given to the compact, is, that the lands were to be leased, or sold, as the state legislature, the sole manager of them, should think most beneficial to the people of the country.”<sup>80</sup>

Three months later after his appointment to the Supreme Court, Governor Thomas Ford appointed Semple to fill the unexpired term of

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69. PALMER, *supra* note 24, at 42.

70. Burton, *supra* note 67, at 68.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* at 68, 82–83.

75. USHER F. LINDER, REMINISCENCES OF THE EARLY BENCH AND BAR OF ILLINOIS 219 (1879).

76. *Id.*

77. Burton, *supra* note 67, at 72.

78. *Bradley v. Case*, 4 Ill. (3 Scam.) 585 (1842).

79. *Id.*

80. *Id.*

deceased U.S. Senator Samuel McRoberts.<sup>81</sup> In Semple's short few months on the Supreme Court bench, he authored the opinion in at least four cases and dissented in one. "It is difficult to predicate as to the judicial merits of Judge Semple," explained Palmer, "as he remained upon the bench but for a short time. He was bold, outspoken and frank; as a politician he was fearless, never hesitating to commit himself to any line of policy which his judgment approved. He was prompt in his decisions, assumed all the responsibilities of his place, and was popular with the bar and the public."<sup>82</sup>

In Washington, D.C., Senator Semple enjoyed the friendship of fellow former Supreme Court justice Stephen A. Douglas, a newly elected Illinois Congressman. "I am glad we will spend the winter in Washington together," Douglas wrote to Semple, "and propose that we make a mess of the entire delegation. They are all good fellows and would make pleasant companions."<sup>83</sup>

With the outbreak of the Mexican War in 1846, Semple sought a commission as brigadier general. President James K. Polk adamantly rejected the request, confiding in his diary that the solicitation was "disreputable" and stating that as a matter of policy he would not nominate members of Congress for military commissions. A month later, as Semple prepared to leave Washington to deal with a personal financial situation in Illinois, the Senate prepared to vote on a tariff bill supported by Polk. Without Semple's vote, the measure would be lost. At a White House meeting, the President appealed to Semple's patriotism and party loyalty; the Senator remained in Washington and helped pass the bill.<sup>84</sup>

In the fall of 1846, Semple announced that he would not be a candidate for the Senate seat. "I was never so sick in all my life as at present," he wrote shortly after Congress adjourned. "We have not yet heard a word of who is likely to take my place here, but suppose it will be Douglas." The Democratic caucus of the Illinois legislature unanimously nominated Douglas for the seat, which he won by a large margin over the Whig candidate.<sup>85</sup>

Semple retired to Edwardsville. There he created a model "prairie car," a steam-powered carriage that would operate on the open prairie, "with no rails or elaborate right-of-way." Lacking the necessary financial resources, Semple eventually abandoned the venture that came to be known in folklore as "Semple's Folly."<sup>86</sup> Financially depleted, he settled with his

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81. CROSSLEY, *supra* note 50, at 388.

82. PALMER, *supra* note 24, at 42.

83. JOHANNSEN, *supra* note 62, at 124.

84. *Id.* at 72–73.

85. *Id.*

86. Burton, *supra* note 67, at 74–80.

family in Jersey County.<sup>87</sup> In 1852, he became postmaster at Jersey Landing, on the banks of the Mississippi River, and joined a partnership to operate a ferry to St. Louis.<sup>88</sup> A year later, Semple began developing a new town, named Elsay, at the Jersey Landing location.<sup>89</sup> To encourage settlement, Semple offered free lots for home construction and built his own imposing residence.<sup>90</sup> The town flourished, with grain-storage and shipping facilities, a distillery, and flour mill.<sup>91</sup> In 1857, Semple erected a stone schoolhouse for the community.<sup>92</sup>

He died at Elsay on December 20, 1866 and was buried at Bellefontaine Cemetery in St. Louis.<sup>93</sup> “Optimism and ambition informed Semple’s public career, his experimentation with the prairie car, and his enthusiastic town building. He was representative of the class of men who moved in and out of public office and who capitalized on experience and personal contacts to promote business enterprise.”<sup>94</sup>

#### D. Sidney Breese

The son of wealthy aristocrats, Arthur and Catharine Livingston Breese, Sidney Breese was born in Whitesboro, New York, on July 15, 1800.<sup>95</sup> He attended Hamilton College and graduated at age eighteen from Union College in Schenectady, New York.<sup>96</sup> He began his legal studies in New York, completing them after moving to Illinois in December 1818.<sup>97</sup> He was appointed Assistant Secretary of State in Kaskaskia, serving under Elias Kent Kane, a New York schoolmate and later a United States Senator.<sup>98</sup> Admitted to the bar at age twenty, Breese, “from that time,” wrote fellow attorney John M. Scott, “was prominent in both the legal and political history of the State. Writing his biography would be the history of the State during his active life.”<sup>99</sup>

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87. *Id.* at 81–82.

88. *Id.* at 80.

89. *Id.* at 81.

90. *Id.* at 81–82.

91. *Id.* at 82.

92. *Id.*

93. Linda Davis, *James Semple*, FIND A GRAVE, <https://www.findagrave.com/memorial/22851/james-semble> (last visited Feb. 13, 2018).

94. Burton, *supra* note 67, at 83.

95. CHICAGO TRIBUNE, June 29, 1878, at 2; LINDER, *supra* note 75, at 141.

96. U.S. CONG., BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774–2005, at 702 (Andrew R. Dodge and Betty K. Koed eds., 2005).

97. JOHN M. SCOTT, SUPREME COURT OF ILLINOIS 1818, at 328–29 (1896).

98. *Id.* at 329; DAVID W. LUSK, EIGHTY YEARS OF ILLINOIS; POLITICS AND POLITICIANS 269 (1889).

99. SCOTT, *supra* note 97, at 329.

In 1820, Breese earned \$25 for moving the state archives by wagon from Kaskaskia some one hundred miles to the new capital at Vandalia.<sup>100</sup> To supplement his law-practice income, the following year he became the Kaskaskia postmaster.<sup>101</sup> His fortunes improved in 1822, when Governor Shadrach Bond appointed Breese as state's attorney for the Third Judicial Circuit, which included Kaskaskia.<sup>102</sup>

On September 4, 1823, Breese married Eliza Morrison, daughter of a wealthy pioneer Kaskaskia family, who was a part of the local "aristocracy of commerce and land."<sup>103</sup> Through marriage, Breese joined the ranks of social prominence and became acquainted with influential political friends of the Morrison family.<sup>104</sup> Eliza and Sidney Breese would become parents of fourteen children.<sup>105</sup>

While not opposed to slavery where it existed in other states, Breese joined the Governor Edward Coles faction in opposing its extension into Illinois.<sup>106</sup> Breese did not, however, take an active role against the call for a constitutional convention on the issue.<sup>107</sup> In 1827, President John Quincy Adams named Breese the U.S. District Attorney for Illinois.<sup>108</sup> Breese published the *Illinois Reporter* newspaper at Kaskaskia from 1826 to 1828, editorially supporting the Adams administration.<sup>109</sup> That public stance resulted in his dismissal as U.S. Attorney by President Andrew Jackson in 1829, "cutting short his four-year term."<sup>110</sup>

In 1830 and again in 1832, Breese ran unsuccessfully for the U.S. Congress, on a platform "of federal assistance for internal improvements and a high protective tariff."<sup>111</sup> In addition to his Kaskaskia law practice, he made a contribution to the state's legal community—a compilation of the first Illinois Supreme Court opinions.<sup>112</sup> In 1831, he published *Breese Reports, 1819-1831*, commonly known as 1 Ill., even setting the type, while Kane assisted with proofreading.<sup>113</sup>

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100. PAUL E. STROBLE JR., *HIGH ON THE OKAW'S WESTERN BANK: VANDALIA, ILLINOIS, 1819-39*, at 188 (1992); ROBERT P. HOWARD, *ILLINOIS, A HISTORY OF THE PRAIRIE STATE* 120 (1972).

101. LUSK, *supra* note 98, at 269.

102. John W. McNulty, *Sidney Breese: His Early Career in Law and Politics in Illinois*, 61 J. ILL. ST. HIST. SOC'Y 164, at 168 (1968).

103. *Id.* at 168-69.

104. *Id.*

105. *Id.*

106. SCOTT, *supra* note 97, at 171.

107. *Id.* at 165.

108. McNulty, *supra* note 102, at 172.

109. *Id.* at 175.

110. *Id.*

111. *Id.* at 176.

112. *Id.* at 177.

113. *Id.*; see also *id.* at 177 n.34. The full title of the volume is *REPORTS OF CASES AT COMMON LAW AND IN CHANCERY, ARGUED AND DETERMINED IN THE SUPREME COURT OF THE STATE OF*

During the period covered in the *Breese Reports*, Breese argued more than a dozen cases before the Supreme Court, primarily involving debt and land ownership—the two most common types of litigation in Illinois at that time.<sup>114</sup> Of his cases, Breese lost only two arguments.<sup>115</sup> In an uncommon case, Breese represented a black woman against a defendant who claimed her as an indentured servant under an 1807 law.<sup>116</sup> The Illinois Constitution, which allowed indentured servitude, conflicted with the Northwest Ordinance, which banned slavery. The Supreme Court allowed the defense to raise the issue of the indenture contract but reversed the lower court's decision, finding in favor of Breese's client because of the defendant's attorney failure to plea the case properly.<sup>117</sup>

During the Black Hawk War, Breese served as lieutenant colonel of volunteers.<sup>118</sup> After the war, he resumed the practice of law, by now recognized as a leading lawyer in Illinois.<sup>119</sup> Breese's legal defense in the 1833 impeachment trial of Supreme Court Justice Theophilus W. Smith brought him statewide attention.<sup>120</sup> Both Smith and Breese "had come to Illinois from New York, had become embroiled in factional politics," and evolved into active supporters of Andrew Jackson and his policies. During the Senate proceedings, Breese prepared ten pleas in helping gain Smith's acquittal.<sup>121</sup> Thereafter, Smith's friends and associates assisted Breese in beginning his own judicial career by supporting his candidacy for a circuit judgeship.<sup>122</sup>

Appointed as judge of the Second Judicial Circuit in 1835, Breese traveled the circuit encompassing the state's most populous counties from St. Clair to Madison to Fayette.<sup>123</sup> Realizing the necessity of moving from his "favorite" Kaskaskia, he settled with his family at Mound Farm, an area "overlooking the village of Carlyle, in Clinton County."<sup>124</sup> Breese "looked the judge while on the bench," recalled John M. Palmer.<sup>125</sup> "He was

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ILLINOIS, FROM ITS FIRST ORGANIZATION IN 1819, TO THE END OF THE DECEMBER TERM 1830; an appendix includes 1831 cases.

114. McNulty, *supra* note 102, at 178.

115. *Id.*

116. *Id.*

117. *Id.* at 178–79; *see also id.* at 178 n.39, 179 nn.40–42; *Phoebe, a woman of color v. Jay*, 1 Ill. (1 Breese) 268 (1828).

118. U.S. CONG., *supra* note 96, at 702.

119. McNulty, *supra* note 102, at 180.

120. *Id.* at 179.

121. *Id.*

122. *Id.* at 180.

123. John W. McNulty, *Sidney Breese, the Illinois Circuit Judge, 1835–1841*, 62 J. ILL. ST. HIST. SOC'Y 170, 172 (1969).

124. *Id.*

125. PALMER, *supra* note 24, at 34.



industrious, prompt, energetic, and patient; he knew the law, and applied it to the cases before him.”<sup>126</sup>

In 1839, Breese was the circuit court judge in the case of *People ex rel. McClernand v. Field*.<sup>127</sup> That case was brought in the Fayette County Circuit Court and “unleashed a torrent of controversy concerning the power of the governor to remove an executive officer.”<sup>128</sup> Judge Breese ruled for McClernand holding “that the governor was empowered, without the advice and consent of the senate, to remove an executive officer whose tenure was left undefined in the Illinois Constitution of 1818.”<sup>129</sup> The Supreme Court reversed Breese’s decision and strictly interpreted the Constitution “that when a secretary is once appointed, the governor’s power of appointment is suspended until a vacancy occurs.”<sup>130</sup>

In 1841, the state legislature elected Breese as one of the five new Supreme Court justices.<sup>131</sup> He also continued as a circuit judge for the Second Judicial Circuit, resigning from the Court in December 1842, after legislators elected him to replace Richard M. Young in the U.S. Senate.<sup>132</sup> During his one senatorial term from 1843 to 1849, Breese advocated for a transcontinental railroad and a north to south railroad through Illinois.<sup>133</sup> He became the primary author of federal land grants for the Illinois Central Railroad, a project that, according to Scott, “did more than any other one thing to develop the resources of the State.”<sup>134</sup> Breese also introduced legislation that established a naval depot and dockyard at the confluence of the Ohio and Mississippi rivers.<sup>135</sup>

Defeated for reelection by James Shields, a military hero of the Mexican War, Breese practiced law until his election to the state legislature in 1850, at which time he became Speaker of the House.<sup>136</sup> In 1855, he was again elected a circuit court judge, and in 1857, won popular election to return to the Illinois Supreme Court.<sup>137</sup> As a justice, Breese heard many oral arguments by future President Abraham Lincoln.<sup>138</sup> Breese “had a liking for some of Mr. Lincoln’s—for whom he had an exalted opinion—stories,” recalled Scott, “and would sometimes try to tell one of them, but

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126. *Id.*

127. McNulty, *supra* note 123, at 184.

128. *Id.*

129. *Id.* at 185.

130. *Field v. People ex rel. McClernand*, 3 Ill. (1 Scam.) 79 (1839).

131. McNulty, *supra* note 123, at 185-86.

132. *See id.* at 186; PALMER, *supra* note 24, at 34; KENNEY & HARTLEY, *supra* note 53, at 27.

133. McNulty, *supra* note 123, at 181.

134. SCOTT, *supra* note 97, at 340.

135. LUSK, *supra* note 98, at 267.

136. PALMER, *supra* note 24, at 34.

137. U.S. CONG., *supra* note 96, at 702.

138. KRAUSE & STOWELL, *supra* note 61, at 6-7.

he would quite as likely leave out the only point in it that would make it mirth-provoking.”<sup>139</sup>

In the landmark case, *Munn v. Illinois*, Justice Breese upheld the assertion that government could regulate a business in the public interest.<sup>140</sup> In 1877, the U.S. Supreme Court, in the first of the “*Granger*” cases, affirmed every point in his ruling of the states’ regulatory power over public service corporations.<sup>141</sup> Breese also maintained involvement in Democratic politics through his judicial tenure.<sup>142</sup> Breese remained on the Supreme Court until his death in 1878, including terms as Chief Justice from 1867 to 1870 and 1873 to 1874.<sup>143</sup> He served as a justice on the Court under three different Illinois Constitutions.<sup>144</sup> He wrote opinions on nearly every question affecting the welfare of the state.<sup>145</sup> According to Scott, “as specimens of elegant judicial statements his opinions delivered in the Supreme Court will lose nothing in comparison with the best opinions of the most distinguished jurists of this country and England.”<sup>146</sup>

Breese died of heart disease on June 27, 1878, in Pinckneyville, Illinois.<sup>147</sup> Fellow Supreme Court justices served as pallbearers at “the Most Imposing and Impressive Funeral Obsequies ever Witnessed in Southern Illinois,” observed the *Carlyle Constitution and Union*.<sup>148</sup> After services at the Clinton County Courthouse, Breese was buried in Carlyle Cemetery in Carlyle.<sup>149</sup> The town of Breese in Clinton County is named in his honor.<sup>150</sup>

#### E. Stephen A. Douglas

One of Illinois’ most prominent statesmen, Stephen Arnold Douglas, was born on April 23, 1813, in Brandon, Vermont, the second child of Sarah Fisk and Stephen Arnold Douglass.<sup>151</sup> The father died when his son was just two months old.<sup>152</sup> “I have often been told,” the younger Douglas

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139. SCOTT, *supra* note 97, at 334.

140. McNulty, *supra* note 102, at 181; *Munn v. People*, 64 Ill. 80 (1873).

141. HOWARD, *supra* note 100, at 364; *Munn v. Illinois*, 94 U.S. 113, 136 (1876).

142. JOHN A. GARRATY AND MARK C. CARNES, 3 AMERICAN NATIONAL BIOGRAPHY 472 (1999).

143. U.S. CONG., *supra* note 96, at 702.

144. Breese served from 1841–42 under the First Constitution in effect from 1818–48; from 1857–70 under the Second Constitution in effect from 1848–70; and from 1870–78 under the Third Constitution in effect after 1870 until his death.

145. SCOTT, *supra* note 97, at 343.

146. *Id.* at 342.

147. U.S. CONG., *supra* note 96, at 702; *CARLYLE CONSTITUTION AND UNION*, July 4, 1878, at 2.

148. *CARLYLE CONSTITUTION AND UNION*, *supra* note 147.

149. *Id.*

150. JAMES M. ADAMS, *ILLINOIS PLACE NAMES* 301 (1969).

151. JOHANNSEN, *supra* note 62, at 5–6.

152. *Id.* at 6.

wrote later, “that he was holding me in his arms when he departed this world.”<sup>153</sup>

The widowed Sarah Douglass moved with her two children to her bachelor brother’s adjacent farm, where young Stephen grew to adolescence.<sup>154</sup> He attended a district school for three months each year, but spent most of his time on farm chores for his uncle, who was “rather a hard master.”<sup>155</sup> At the age of fifteen, Douglas apprenticed with a cabinet-maker, and then moved to Canandaigua, New York, where he resumed academic courses and began his study of law.<sup>156</sup>

Some years later, he migrated westward, earning a position as schoolmaster in the village of Winchester, Illinois.<sup>157</sup> Once he obtained his law license in 1834, Douglas moved to the nearby larger town of Jacksonville, and in 1835, the legislature elected him state’s attorney for the First Judicial Circuit.<sup>158</sup> Dubbed the “Little Giant” for his diminutive physical stature, “his speed of action attracted friends, allies, and enemies equally.”<sup>159</sup>

Active in politics, Douglas became chairman of the Democratic State Committee in 1836, helping the party carry Illinois for Martin Van Buren along with an overwhelming majority in the state legislature.<sup>160</sup> That same year, Douglas won election to the Illinois General Assembly and served with fellow attorney Abraham Lincoln.<sup>161</sup> Near the end of session, legislators voted to move the capital from Vandalia to Springfield. Moving to the new capital city, Douglas served as Register of the Land Office.<sup>162</sup> In 1838, he ran for Congress, but narrowly lost against John T. Stuart, Lincoln’s law partner.<sup>163</sup>

Douglas also participated in several major politically charged lawsuits. In one political case, he represented John McClelland in his attempt to gain the Secretary of State’s position from Alexander P. Field.<sup>164</sup> Douglas lost the case at the Illinois Supreme Court,<sup>165</sup> but when Field later resigned, Governor Thomas Carlin appointed Douglas to the position in

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153. *Id.*

154. *Id.*

155. *Id.* at 7.

156. PALMER, *supra* note 24, at 37.

157. 4 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES 343–44 (Daniel W. Stowell et al. eds., 2008).

158. *Id.* at 344.

159. KENNEY & HARTLEY, *supra* note 53, at 32.

160. JAMES L. HUSTON, STEPHEN A. DOUGLAS AND THE DILEMMAS OF DEMOCRATIC EQUALITY 28 (2007).

161. MARTIN H. QUITT, STEPHEN A. DOUGLAS AND ANTEBELLUM DEMOCRACY 66 (2012).

162. *Id.*

163. *Id.*

164. *Field v. People ex rel. McClelland*, 3 Ill. (2 Scam.) 79 (1839).

165. *Id.* at 124.

November 1840. Douglas also served as an attorney in a lawsuit concerning the right of aliens to vote in elections.<sup>166</sup> Since many of the Irish immigrants tended to vote Democratic, Douglas worked to secure their voting rights.<sup>167</sup> Anticipating the Whig-dominated Supreme Court to limit alien voting rights and after the adverse decision in *Field v. People ex rel. McClermand*, Douglas played a major role in expanding the Supreme Court from four to nine justices in order to gain a Democratic majority.<sup>168</sup> While Douglas did not serve in the general assembly at the time, he shepherded the bill to expand the court through the legislature and secured its passage.<sup>169</sup>

As a reward for his services in managing the Supreme Court bill, also known as “Douglas’s bill,” the legislature elected him to one of the five new Supreme Court justice positions.<sup>170</sup> His election even caused some Democratic politicians to question whether Douglas had the necessary experience to be a judge since he was only twenty-seven years old at the time.<sup>171</sup> As part of his circuit duties, Douglas was assigned to the Fifth Judicial Circuit, a nine-county area in west-central Illinois, so he moved to Quincy and earned the reputation of a hard-working jurist.<sup>172</sup>

On the Supreme Court, Douglas heard twenty-four cases in which Lincoln represented clients. In *Grubb v. Crane*, Samuel Grubb purchased 200 acres of land from William Crane with two promissory notes but failed to pay on the second promissory note.<sup>173</sup> Lincoln and partner Stephen T. Logan represented Crane in suing Grubb in chancery.<sup>174</sup> Crane won a judgment for the balance of the debt, and after Grubb failed to pay, Crane purchased the land at public auction.<sup>175</sup> The circuit court overruled Grubb’s motion to set aside the judgment, and he appealed to the Supreme Court, with Lincoln and Logan again representing Crane.<sup>176</sup> “We are of opinion,” wrote Justice Douglas, “that substantial justice has been done according to the forms of law and the usages of chancery practice, and perceive no good reason for a reversal of the decree. The decree is affirmed.”<sup>177</sup>

As judge in the circuit in which a growing population of Mormons resided, Douglas became involved in several issues regarding the religious

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166. *Spragins v. Houghton*, 3 Ill. (2 Scam.) 377 (1840).

167. HUSTON, *supra* note 160, at 28.

168. JOHANNSEN, *supra* note 62, at 95.

169. *Id.*

170. *Id.* at 96.

171. *Id.*

172. *Id.* at 96–97.

173. *Grubb v. Crane*, 5 Ill. (4 Scam.) 153, 154 (1842).

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* at 156; KRAUSE & STOWELL, *supra* note 61, at 23.

group.<sup>178</sup> In one case, Douglas ruled that members of the Nauvoo Legion, the Mormon militia, were exempt from state military duty.<sup>179</sup> The decision emphasized the independence of the Mormons from the state of Illinois.<sup>180</sup> In a second case, Douglas ruled that a Missouri indictment against the Mormon prophet Joseph Smith was not valid because a previous indictment had been returned unexecuted.<sup>181</sup> Douglas's actions as judge endeared him to the Mormons, and Smith claimed that Douglas had "proved himself friendly to this people."<sup>182</sup>

On June 28, 1843, after serving on the Supreme Court for slightly more than two years, Douglas resigned to run for the U.S. House of Representatives.<sup>183</sup> Defeating Whig Orville Hickman Browning by a margin of 461 votes, Douglas served as Congressman for two terms.<sup>184</sup> As a powerful and influential member of the national Democratic Party in 1847, Douglas was elected to the U.S. Senate, succeeding James Semple.<sup>185</sup> About this time, Douglas dropped the second "s" in his last name.<sup>186</sup>

In Washington, Douglas met Martha Martin, the daughter of a wealthy North Carolina plantation owner and a cousin of North Carolina Congressman David S. Reid.<sup>187</sup> Senator Douglas married Martha Martin on April 7, 1847, and the couple moved from his Quincy home to the burgeoning city of Chicago, "a fitting base for Illinois' new Senator."<sup>188</sup> In early January 1853, as Douglas was reelected to the Senate, twenty-eight-year-old Martha gave birth to their third child and first daughter.<sup>189</sup> Martha suffered complications from the delivery and died on January 19; she was interred in the family plot in North Carolina.<sup>190</sup> A month later the couple's infant daughter died.<sup>191</sup> On Thanksgiving Day, November 20, 1856, Senator Douglas married Adele Cutts, the daughter of a government clerk and twenty-two years younger than Douglas.<sup>192</sup> She became a popular hostess in Washington and loving stepmother to his two sons.<sup>193</sup> In 1859,

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178. HUSTON, *supra* note 160, at 30.

179. JOHANNSEN, *supra* note 62, at 106.

180. *Id.*

181. Morris A. Thurston, *The Boggs Shooting and Attempted Extradition: Joseph Smith's Most Famous Case*, 48 BYU STUDIES, Jan. 2009, 5, 27 (2009).

182. JOHANNSEN, *supra* note 62, at 105–07.

183. HUSTON, *supra* note 160, at 31.

184. *Id.* at 34.

185. KENNEY & HARTLEY, *supra* note 53, at 32–33.

186. JOHANNSEN, *supra* note 62, at 876 n.7.

187. *Id.* at 207.

188. *Id.* at 207–09.

189. *Id.* at 381.

190. *Id.* at 381–82.

191. *Id.* at 381.

192. *Id.* at 540–43.

193. *Id.* at 713.

the couple became parents of a daughter, who, sickly from birth, died eight months later.<sup>194</sup>

Douglas, as chairman of the Senate Committee on Territories, led the Congress in its pursuit of continental expansion, writing legislation that organized five territories and admitted five states to the Union.<sup>195</sup> Douglas also supported legislation that provided a massive federal land grant for railroads in Illinois.<sup>196</sup> His authorship of the Kansas-Nebraska Act of 1854, revoking the 1820 Missouri Compromise, placed Douglas at the center of the national controversy regarding slavery.<sup>197</sup>

In the 1858 senatorial campaign, incumbent Douglas faced Republican candidate Abraham Lincoln.<sup>198</sup> During one of their celebrated seven debates, Lincoln asked his opponent whether residents of a United States territory could lawfully exclude slavery prior to formulation of a state constitution.<sup>199</sup> Douglas' unhesitating response helped him in the Illinois contest, but would doom his presidential aspirations two years later. Illinois legislators reelected Douglas, but if the election had been a popular vote, Lincoln probably would have defeated Douglas.<sup>200</sup>

In 1860, delegates to the Republican national convention in Chicago chose Lincoln as their Presidential nominee.<sup>201</sup> At the Democratic national convention, Douglas failed to obtain the required two-thirds majority, and the convention ended without a candidate.<sup>202</sup> The northern Democrats met separately from the southern Democrats and nominated Douglas, while the southern Democrats nominated John C. Breckinridge.<sup>203</sup> The split in the Democratic Party allowed Lincoln to win the Presidential election.<sup>204</sup>

With the fall of Fort Sumter in April 1861, Douglas pledged support to President Lincoln and rallied Illinoisans to the Union cause.<sup>205</sup> Later in the month his "Preserve the Flag" address to a joint session of the state legislature encouraged thousands of young men to join the Union army.<sup>206</sup> Shortly thereafter, Douglas contracted typhoid fever and died in Chicago on June 3, 1861.<sup>207</sup> President Lincoln, recognizing Douglas' efforts on behalf

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194. *Id.* at 767.

195. *Id.* at 390–91.

196. *Id.* at 306–17.

197. HUSTON, *supra* note 160, at 93.

198. DAVID HERBERT DONALD, LINCOLN 209–10 (1995).

199. *Id.* at 218.

200. *Id.* at 228.

201. *Id.* at 250–51.

202. JOHANNSEN, *supra* note 62, at 749–59.

203. *Id.* at 767, 772.

204. DONALD, *supra* note 198, at 253.

205. JOHANNSEN, *supra* note 62, at 859–60.

206. MICHAEL J. HOWLETT, KEEPERS OF THE SEAL; A HISTORY OF THE SECRETARIES OF STATE OF ILLINOIS 50 (1977).

207. JOHANNSEN, *supra* note 62, at 872.

of the country, called for thirty days of national mourning. The Little Giant was buried on the grounds of his Chicago home. Douglas County in Illinois is named in his honor.<sup>208</sup>

#### F. James Shields

James Shields was a native of Altmore, Ireland, born on May 6, 1806, to Charles and Anne McDonnell Shields.<sup>209</sup> Shields immigrated to Canada in 1823, then in 1826, settled in Kaskaskia, Illinois, where he taught school while studying law.<sup>210</sup> With a significant French population in Kaskaskia, Shields's "knowledge of the French language and his wit and genial disposition soon made him a general favorite."<sup>211</sup>

Admitted to the Illinois bar in 1832, Shields opened a law practice, for a time partnering with Belleville attorney Gustavus Koerner, and began participating in Democratic Party politics.<sup>212</sup> "In conversation he spoke rapidly and vivaciously," recalled Koerner, "showing very little trace of the Irish brogue. He was not an orator, but a ready debater. . . . He really did not seek popularity, but yet had a sort of winning way about him that made him friends quite readily."<sup>213</sup>

Shields was elected to the Illinois General Assembly in 1836 and he served only one term. In 1841, Governor Thomas Carlin appointed Shields the state Auditor, helping to restore the state's finances following the Panic of 1837.<sup>214</sup> Responding to anonymous newspaper accusations against his policies regarding the State Bank of Illinois, Shields assumed that Whig Representative Abraham Lincoln authored the criticisms and challenged him to a duel.<sup>215</sup> The men traveled to a Missouri location across from Alton because dueling was illegal in Illinois.<sup>216</sup> "Did not wish to kill Shields," Lincoln later wrote, "the very thought was agony."<sup>217</sup> At the duel site, the two men settled their differences and no duel took place.<sup>218</sup>

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208. JESSE WHITE, *ORIGIN AND EVOLUTION OF ILLINOIS COUNTIES* 60 (2000).

209. WILLIAM H. CONDON, *LIFE OF MAJOR-GENERAL JAMES SHIELDS: HERO OF THREE WARS AND SENATOR FROM THREE STATES* 10 (1900).

210. *Id.* at 29.

211. *Id.* at 10, 26, 29. Shields's birth date has also been reported as May 9, May 10, and May 12, 1806 and as 1810. His mother's first name has been variably reported as Catherine Shields. Francis O'Shaughnessy, *General James Shields of Illinois*, *TRANSACTIONS OF THE ILLINOIS STATE HISTORICAL SOCIETY* 114 (1915).

212. CONDON, *supra* note 209, at 29.

213. KENNEY & HARTLEY, *supra* note 53, at 40.

214. O'Shaughnessy, *supra* note 211, at 116–17.

215. CONDON, *supra* note 209, at 46–47.

216. CROSSLEY, *supra* note 50, at 222–23; *THE PAPERS OF ABRAHAM LINCOLN*, *supra* note 157, at 376.

217. *HERNDON'S INFORMANTS; LETTERS, INTERVIEWS, AND STATEMENTS ABOUT ABRAHAM LINCOLN* 31 (Douglas L. Wilson & Rodney O. Davis, eds., 1998).

218. CONDON, *supra* note 209, at 49.

In 1843, Governor Ford appointed Shields to succeed James Semple on the Illinois Supreme Court.<sup>219</sup> Shields also was responsible for the Second Judicial Circuit.<sup>220</sup> In the St. Clair County Circuit Court, he ruled in *Jarrot v. Jarrot* that a slave could not sue his master for wages.<sup>221</sup> He joined justices Samuel H. Treat and Jesse B. Thomas in dissent when the Supreme Court reversed his decision in 1844.<sup>222</sup>

During his two years on the Court, Shields “ranked high as a justice, he was industrious, painstaking, impartial and strictly honest.”<sup>223</sup> In delivering the Court opinion in *Eells v. People*, Shields upheld the 1843 circuit court decision against Quincy physician Richard Eells for aiding a fugitive slave.<sup>224</sup> “If a State can use precautionary measures against the introduction of paupers, convicts, or negro slaves,” Shields wrote, “it can undoubtedly punish those of its citizens who endeavor to introduce them.”<sup>225</sup>

In 1845, soon after legislative election to a full term on the Court, Shields resigned to accept President James K. Polk’s appointment as Commissioner of the General Land Office in Washington, D.C.<sup>226</sup> With the outbreak of the Mexican War one year later, he resigned the Land Office position to become Brigadier General of Illinois Volunteers.<sup>227</sup> Sustaining serious wounds at Cerro Gordo and Chapultepec, he served throughout the war, leading New York and South Carolina troops at Chapultepec.<sup>228</sup>

Brevetted Major General and mustered out in 1848, Shields returned to Illinois a war hero.<sup>229</sup> President Polk offered him the governorship of the new Oregon Territory, but he instead decided to challenge the incumbent Sidney Breese for nomination to the U.S. Senate.<sup>230</sup> The Democratic caucus chose Shields, and he easily defeated a weak Whig opponent.<sup>231</sup> His election was voided, however, because he had not been a citizen for the required nine years. Shields waited a year for unquestioned eligibility, and again won the election.<sup>232</sup>

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219. *Id.* at 50.

220. Justices of the Supreme Court of the State of Illinois, 5 Ill. (4 Scam.) viii.

221. N. DWIGHT HARRIS, THE HISTORY OF NEGRO SERVITUDE IN ILLINOIS AND OF THE SLAVERY AGITATION IN THAT STATE, 1719–1864, at 117 (1904).

222. *Jarrot v. Jarrot*, 7 Ill. (2 Gilm.) 1 (1845).

223. CONDON, *supra* note 209, at 51.

224. *Eells v. People*, 5 Ill. (4 Scam.) 498, 514 (1843).

225. *Id.*

226. PALMER, *supra* note 24, at 45.

227. *Id.*

228. CROSSLEY, *supra* note 50, at 223.

229. PALMER, *supra* note 24, at 45.

230. *Id.*

231. JOHANNSEN, *supra* note 62, at 258.

232. CROSSLEY, *supra* note 50, at 223.



In the Senate, Shields joined fellow Democrat and close friend Stephen A. Douglas.<sup>233</sup> Shields supported agricultural education, land grants for Mexican War veterans and railroad development, like his predecessor Breese and his colleague Douglas.<sup>234</sup> Shields was a moderate on the slavery issue, siding with admitting California as a free state.<sup>235</sup> When Douglas sponsored the Kansas-Nebraska bill, which extended slavery to the territories, Shields was an unenthusiastic supporter.<sup>236</sup> The bill destroyed the Whig Party and seriously fractured the Democratic Party, and opponents of the bill coalesced.<sup>237</sup> Shields lost his 1854 reelection bid to anti-Nebraska candidate Lyman Trumbull.<sup>238</sup> “The Anti Nebraska feeling is too deep,” Shields wrote to Springfield friend Charles H. Lanphier, “more than I thought it was.”<sup>239</sup>

Back in Illinois, ailing former Governor Thomas Ford asked Shields to arrange for publication of his *History of Illinois* book.<sup>240</sup>

Because of its caustic and outspoken criticism of public men, Shields or the publisher reportedly excised more than half of the manuscript, which is regrettable in view of Ford’s personal knowledge of the men and events he wrote about. . . . Even if he wrote with cynicism, his book has been recognized as a superior analysis of American politics and one of the most important volumes printed in Illinois before the Civil War.<sup>241</sup>

Disappointed at the Senate loss, Shields left Illinois in search of an opportunity in the Minnesota Territory.<sup>242</sup> After statehood in 1858, he was elected to a one-year term in the U.S. Senate.<sup>243</sup> Relocating to California in 1859, Shields married Mary Ann Carr, a native of Longhall, Ireland.<sup>244</sup> The couple settled in Mazatlan, Mexico, where he was part owner and manager of a mine.<sup>245</sup> The couple became parents of five children, two of whom died in childhood.<sup>246</sup>

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233. KENNEY & HARTLEY, *supra* note 53, at 40.

234. *Id.*

235. *Id.*

236. JOHANNSEN, *supra* note 62, at 462.

237. David B. Kopel, *Illinois Article: Lyman Trumbull: Author of the Thirteenth Amendment, Author of the Civil Rights Act, and the First Second Amendment Lawyer*, 47 LOY. U. CHI. L.J. 1117, 1139 (2016).

238. KENNEY & HARTLEY, *supra* note 53, at 41.

239. JOHANNSEN, *supra* note 62, at 461.

240. KENNEY & HARTLEY, *supra* note 53, at 39.

241. ROBERT P. HOWARD, *MOSTLY GOOD AND COMPETENT MEN* 67 (1999).

242. KENNEY & HARTLEY, *supra* note 53, at 41.

243. *Id.*

244. *Id.*

245. *Id.*

246. CONDON, *supra* note 209, at 270.

During the Civil War, Shields returned to Washington, D.C. to become a Brigadier General, serving until March 1863.<sup>247</sup> He then returned to San Francisco, but three years later moved to Carrollton, Missouri, where he won election to the Missouri legislature, and was then appointment as railroad commissioner.<sup>248</sup> In 1879, he was elected to complete an unexpired term in the U.S. Senate.<sup>249</sup>

Shields died suddenly on June 1, 1879 in Ottumwa, Iowa, while on a lecture tour.<sup>250</sup> “He was a warm-hearted Irishman,” wrote attorney Usher F. Linder, “and a brave and gallant soldier and was the only Union general to have defeated Stonewall Jackson in battle.”<sup>251</sup> Following memorial services, he was buried at St. Mary’s Cemetery in Carrollton, Missouri.<sup>252</sup> Shields is the only person in U.S. history to represent three different states in the U.S. Senate, and a bronze figure of General Shields stands in the U.S. Capitol Statuary Hall.<sup>253</sup>

#### G. Lyman Trumbull

Lyman Trumbull was born in Colchester, Connecticut, on October 12, 1813, the seventh son of eleven children born to Benjamin and Elizabeth Mather Trumbull.<sup>254</sup> Trumbull attended Bacon Academy in Colchester, and then taught at a nearby school for two years.<sup>255</sup> At age twenty, he moved to Greenville, Georgia, where he continued teaching while studying for the bar.<sup>256</sup>

In 1836, Trumbull traveled by horseback to Belleville, Illinois, the seat of St. Clair County.<sup>257</sup> There he opened a law practice with former Supreme Court Justice and former Governor John Reynolds, developing “not only a prospering law partnership but an even more important political association that lasted for a number of years.”<sup>258</sup> Trumbull possessed

rare intellectual endowments. In politics he was an old-time Democrat, with no leanings toward abolitionism, but possessing

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247. KENNEY & HARTLEY, *supra* note 53, at 41.

248. *Id.*

249. *Id.*

250. *Id.*

251. LINDER, *supra* note 75, at 66; Lee Enderlin, *Battle of Kernstown: Stonewall Jackson's Only Defeat*, <https://www.civilwar.org/learn/articles/battle-kernstown-stonewall-jacksons-only-defeat> (last visited, Mar. 21, 2018).

252. KENNEY & HARTLEY, *supra* note 53, at 41.

253. *Id.*

254. HORACE WHITE, *THE LIFE OF LYMAN TRUMBULL* 1 (1913).

255. *Id.* at 3-4.

256. MARK M. KRUG, *LYMAN TRUMBULL: CONSERVATIVE RADICAL* 23 (1965).

257. WHITE, *supra* note 254, at 6.

258. *Id.* at 24.

an honest desire to see justice done the negro in Illinois. It was a thankless task in those days of prejudice and bitter partisan feeling to assume the role of defender of the indentured slaves.<sup>259</sup>

Trumbull was elected to the state legislature in 1840, but served only briefly, from November 23, 1840, to March 1, 1841.<sup>260</sup> Then he accepted Governor Thomas Carlin's appointment to succeed Stephen A. Douglas as Secretary of State.<sup>261</sup> Maintaining his Belleville residence and law practice, Trumbull took meals in a private home and slept in a statehouse committee room when in Springfield.<sup>262</sup> In letters to his family in Connecticut, Trumbull reported that he found the duties of the Secretary's office "very trifling."<sup>263</sup> Among the duties, he provided hand-written copies of statutes, affixed documents with the state seal, and received election returns.<sup>264</sup> A popular bachelor, Trumbull enjoyed the Springfield social life.<sup>265</sup>

After Thomas Ford succeeded Governor Carlin, Trumbull vocally opposed Ford's proposals to strengthen the state's precarious financial situation.<sup>266</sup> In March 1843, Ford responded by removing Trumbull as Secretary of State.<sup>267</sup> "From the nature of his office," Ford wrote, "he ought to have been my confidential helper and adviser."<sup>268</sup> Ford described Trumbull as "a good lawyer, but no statesman was literally devoured by ambition for office."<sup>269</sup>

One of Trumbull's last duties as Secretary was to make an index for the House and Senate Journals, and the legislature appropriated \$600 for the task.<sup>270</sup> Trumbull did part of the work, received \$400, then left the remainder to Thompson Campbell, his successor.<sup>271</sup> Campbell claimed that Trumbull took more than his fair share, sued Trumbull to obtain payment, and won a judgment for \$200.<sup>272</sup> Trumbull retained Abraham Lincoln and appealed to the Illinois Supreme Court.<sup>273</sup> Justice Samuel Treat reversed the decision, arguing that Campbell could not sue Trumbull, but had to sue the State.<sup>274</sup>

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259. HARRIS, *supra* note 221, at 123.

260. HOWLETT, *supra* note 206, at 51.

261. *Id.*

262. *Id.* at 53.

263. *Id.* at 51.

264. *Id.*

265. *Id.* at 53.

266. FORD, *supra* note 46, at 392.

267. *Id.* at 388.

268. *Id.* at 309.

269. *Id.* at 388.

270. Trumbull v. Campbell, 8 Ill. (3 Gilm.) 502, 504 (1846).

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.* at 506.

In June 1843, in Springfield, Trumbull married Julia Jayne, a close friend of Mary Lincoln, wife of Abraham Lincoln.<sup>275</sup> They became the parents of six sons, only three of whom survived to adulthood.<sup>276</sup>

Trumbull waged an unsuccessful campaign in 1846 for a congressional seat, then in 1848 won the first popular election as one of three Illinois Supreme Court justices.<sup>277</sup> One justice was to serve three years, one six years, and the other nine years, the terms to be decided by lot.<sup>278</sup> Thereafter the term of each judge would be nine years.<sup>279</sup> Trumbull drew the lot for the three-year term, which pleased him.<sup>280</sup> “If I should want to leave the bench,” he wrote his wife, “it is fortunate that I have drawn the short term.”<sup>281</sup>

Trumbull moved his family from Belleville to a house with acreage in Alton.<sup>282</sup> In 1852, he was elected to a full nine-year Supreme Court term.<sup>283</sup> Among the cases in which he authored the Court’s opinion, *McKinley v. Watkins* involved Joseph Watkins and William R. McKinley, who had traded horses in 1845.<sup>284</sup> After McKinley’s horse soon died, they disputed the terms of the trade.<sup>285</sup> McKinley maintained that he offered to pay Watkins \$50 or give him a horse worth \$50 in exchange for not filing a lawsuit.<sup>286</sup> Justice Trumbull reversed the Logan County Circuit Court decision that had favored Watkins, finding no evidence that he had assented to McKinley’s offer.<sup>287</sup> “A mere offer, not assented to,” wrote Trumbull, “constitutes no contract; for there must be not only a proposal, but an acceptance thereof.”<sup>288</sup>

In *Jones v. The People of the State of Illinois*, Trumbull affirmed a Morgan County Circuit Court decision against Samuel B. Jones, convicted of selling and serving liquor in his home.<sup>289</sup> Jones contended that an 1851 statute prohibiting the retail sale of intoxicating drinks to be unconstitutional.<sup>290</sup> “By virtue of its police power,” Trumbull wrote,

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275. Ralph J. Roske, *Lincoln and Lyman Trumbull*, LINCOLN IMAGES: AUGUSTANA COLLEGE CENTENNIAL ESSAYS 65 (1960).

276. WHITE, *supra* note 254, at 431.

277. *Id.* at 18–20.

278. *Id.* at 20.

279. *Id.*

280. KRUG, *supra* note 256, at 68.

281. *Id.*

282. WHITE, *supra* note 254, at 20–21.

283. *Id.* at 21.

284. *McKinley v. Watkins*, 13 Ill. 140, 142–43 (1851).

285. *Id.* at 143.

286. *Id.*

287. *Id.* at 142–44.

288. *Id.* at 143.

289. *Jones v. People*, 14 Ill. 196, 198 (1852).

290. *Id.* at 196.

every State must have the “right to enact such laws as may be necessary for the restraint and punishment of crime, and for the preservation of the public peace, health, and morals of its citizens.” It is upon this principle that the sale of lottery tickets, and of cards, and other instruments for gaming is prohibited; and who ever questioned the constitutionality or validity of such laws? A government that did not possess the power to protect itself against such and similar evils, would scarcely be worth preserving.<sup>291</sup>

Justice Trumbull was not entirely happy on the bench.<sup>292</sup> As a politician first, Trumbull missed the activity associated with Illinois politics.<sup>293</sup> The life of a traveling justice became less interesting to him as the conflict over the extension of slavery intensified.<sup>294</sup> Opposed to any expansion of slavery into the free territories, he resented the threats of secession by Southerners.<sup>295</sup> Lastly, the constitutionally mandated low salary of \$1,200 annually was not sufficient to support his family.<sup>296</sup> “After considerable soul-searching he decided to resign from the bench and to resume the private practice of law in 1853.”<sup>297</sup>

One year later, Trumbull left the Democratic Party in the aftermath of the 1854 Kansas-Nebraska Act.<sup>298</sup> He won election to Congress as an anti-Nebraska opponent of Stephen A. Douglas’s “popular sovereignty” stance on the slavery question.<sup>299</sup> Before he could take his House seat, however, Illinois’s anti-Nebraska state legislators failed to unite over the candidacy of Springfield attorney Abraham Lincoln, and instead elected Trumbull to the U.S. Senate.<sup>300</sup> “This produced some heart-burnings amongst some of Lincoln’s friends,” recalled fellow attorney Usher F. Linder.<sup>301</sup> Trumbull and Lincoln became the de-facto leaders of the new Illinois Republican Party, and Trumbull campaigned for Lincoln when Lincoln tried to unseat incumbent U. S. Senator Stephen A. Douglas in 1858.<sup>302</sup>

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291. *Id.* at 197.

292. KRUG, *supra* note 256, at 76.

293. *Id.*

294. *Id.* at 76-77.

295. *Id.*

296. WHITE, *supra* note 254, at 21.

297. KRUG, *supra* note 256, at 77.

298. Mario R. DiNunzio, *Lyman Trumbull, the States’ Rights Issue, and the Liberal Republican Revolt*, 66 J. OF THE ILL. ST. HIST. SOC’Y, 365 (1973).

299. WHITE, *supra* note 254, at 45, 66.

300. LINDER, *supra* note 75, at 167.

301. *Id.*

302. MICHAEL BURLINGAME, 1 ABRAHAM LINCOLN: A LIFE 541 (2008).

During the Civil War, Trumbull joined with Governor Richard Yates in allowing blacks as soldiers.<sup>303</sup> A black regiment was authorized for Illinois in 1863, but, because of pay and benefit inequities, Illinois blacks in the war numbered fewer than three thousand.<sup>304</sup> Trumbull served as chairman of the Judiciary Committee and helped to write numerous bills in Congress during and after the Civil War, most notably the Thirteenth Amendment, which abolished slavery and involuntary servitude in the United States.<sup>305</sup>

In 1868, Trumbull and six other Republican Senators ignored pressure from the Republican leaders and voted for the acquittal of impeached President Andrew Johnson.<sup>306</sup> “I am a Senator and a judge,” Trumbull explained to a friend. “The President is not guilty in manner and form as charged in any one of the articles of impeachment. I must so find and must so vote, without regard to consequences.”<sup>307</sup>

In August 1868, following a lingering illness, Trumbull’s wife, Julia, died at age forty-five.<sup>308</sup> Eleven years later he married Mary Ingraham, of Saybrook Point, Connecticut. They became parents of two daughters, both of whom died in childhood.<sup>309</sup>

Trumbull broke with the Republicans in 1872 and contended for the presidential nomination of the short-lived Liberal Republican party.<sup>310</sup> Upon the expiration of his third Senate term in March 1873, the sixty-year-old Trumbull and his family moved to Chicago, where he maintained a lucrative law practice. Returning to the Democratic Party, he became the 1880 gubernatorial candidate, “but the tide of Republicanism was too strong,” reported the *Chicago Tribune*, and he lost to the incumbent, Shelby M. Cullom.<sup>311</sup> Trumbull then became a Populist, calling for “governmental ownership of monopolies affecting the public interest.”<sup>312</sup> He and fellow Chicago attorney Clarence Darrow petitioned the U.S. Supreme Court for a writ of habeas corpus on behalf of Eugene V. Debs, president of the American Railway Union.<sup>313</sup> Debs had been convicted in circuit court of violating an injunction during the Pullman railway dispute.<sup>314</sup> The Supreme

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303. KENNEY & HARTLEY, *supra* note 53, at 45.

304. *Id.*

305. KRUG, *supra* note 256, at 11.

306. DiNunzio, *supra* note 298, at 366.

307. In Memoriam: Lyman Trumbull, 165 Ill. 9, at 10.

308. WHITE, *supra* note 254, at 326.

309. *Id.* at 412; KRUG, *supra* note 256, at 343–49.

310. DiNunzio, *supra* note 298, at 370.

311. *At Bier of Trumbull*, CHI. TRIB., June 26, 1896, at 9.

312. DiNunzio, *supra* note 298, at 375.

313. WHITE, *supra* note 254, at 414.

314. *Id.*

Court, however, rejected the petition and affirmed the jurisdiction of the circuit court in issuing the injunction.<sup>315</sup>

Traveling to Belleville for the April 1896 funeral of his friend Gustave Koerner, Trumbull became seriously ill and returned immediately to Chicago.<sup>316</sup> He died there on June 25, at the age of eighty-two.<sup>317</sup> “Judge Trumbull hated war but loved his country,” wrote the *Chicago Tribune*.<sup>318</sup> “He was firm and true.”<sup>319</sup> Orator William Jennings Bryan, who had resided with the Trumbulls while attending Union College of Law, delivered the funeral eulogy. The former Senator’s remains were interred in Oak Woods Cemetery in Chicago.<sup>320</sup> Following his death, a Chicago newspaper publisher wrote:

If he had remained true to his party, Judge Trumbull, I believe, would have died with his name in the roll of Presidents of the United States. I have always thought that he could have been the successor of Grant. He stood so high in the estimation of his party and the nation that nothing was beyond his reach. . . . He could have been President instead of Hayes, or Garfield, or Harrison.<sup>321</sup>

### III. CONCLUSION

The law license was a common first stepping stone to higher aspirations. Even though many viewed the profession poorly, most people also had respect for lawyers as individuals.<sup>322</sup> Lawyers were commonly seen in the Illinois statehouse as legislators. After establishing a successful law practice, some lawyers became judges. In Illinois, judges typically had low salaries, but the Illinois judiciary still attracted high-quality legal minds. There were a few judges who made life-long careers in the judiciary, but others wanted to take the next step into the political arena. Five of the seven men who represented Illinois on the highest court and in Washington moved from being justices to senators, with Robinson and Young moving from the Senate to the Court. Robinson died while on the

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315. *In re Debs*, 158 U.S. 564 (1895).

316. WHITE, *supra* note 254, at 418.

317. *Id.*

318. *At Bier of Trumbull*, *supra* note 311, at 9.

319. *Id.*

320. WHITE, *supra* note 254, at 418.

321. *Id.* at 424–25.

322. J. WILLARD HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS*, 252 (1950); 1 *THE LAW PRACTICE OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES 12-13* (Daniel W. Stowell et al., eds., 2008).

Court, but Young continued to seek higher positions, moving to Washington.

All of the men continued to climb the ladder of success. At this time, the U.S. Senate was one of the most desirable political seats because of its influence in national affairs and its many significant members, such as Henry Clay and Daniel Webster. In the antebellum period, the Illinois Supreme Court was recognized as more of a stepping stone to higher office rather than a prestigious position itself. The Court, under the first Illinois Constitution, was elected by legislative vote, not by popular vote, and this resulted in a more political court. Six of the seven justices were elected by the legislature and two were popularly elected (Breese's second tenure on the Court and Trumbull).

Seven men in early Illinois history shared the common bond of being both an Illinois Supreme Court justice and United States Senator. These seven men saw Illinois transform from a frontier society with vast open prairies to become the third largest state in the country by 1900. Their opinions on the bench and their votes on the Senate floor helped to shape both Illinois and the country. They embodied the philosophy of their colleague Abraham Lincoln, who believed in the right to rise, which was so prevalent in the nineteenth century.