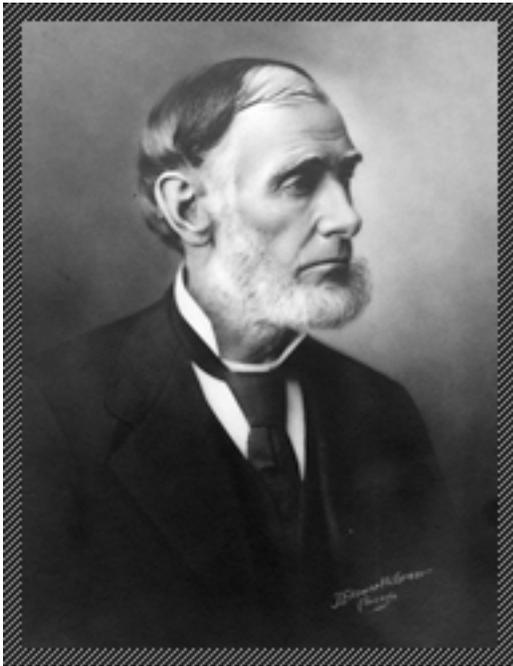


Walter B. Scates
1841-1847, 1853-1857

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A native of South Boston, Halifax County, Virginia, Walter Bennett Scates was born on January 18, 1808, the fourth child of Joseph W. and Elizabeth Eggleston Bennett



Scates.¹ In 1809, the family settled on a farm near Hopkinsville, Kentucky. Young Walter studied law in Louisville, Kentucky before moving to Franklin County, Illinois in 1831. Admitted to the Illinois bar, he served as county surveyor from 1831 to 1834, then as state's attorney pro tem. Two years later he won election to the office of Attorney General.²

Scates moved to the state capital of Vandalia in 1836 and married Mary Ellen Ridgeway, also a Virginia native. They became the parents of five sons and two daughters.³ In December 1836, state legislators chose Scates as judge of the Third Judicial Circuit in southern Illinois. He served in that position until his election in 1841 as one of five new justices, "all nominal Democrats," of the Illinois Supreme Court.⁴ Also in 1841, Scates moved to Mt. Vernon, Illinois.

Justice Scates heard more than 130 Supreme Court cases involving Springfield attorney Abraham Lincoln.⁵ In the 1845 *Wren v. Moss et al.* case, Lincoln represented Clarissa Wren, whose husband, Aquilla Wren, had been granted a divorce based on her proven misconduct. He made a will leaving his property to people other than his former

wife, and then died. An executor sold Wren's land to William S. Moss and Smith Frye, even though Clarissa had not released her right of dower. Moss's attorney argued that according to Illinois statute, a wife divorced for her own fault or misconduct lost her dower rights.

The Supreme Court, however, ruled in favor of Clarissa Wren, with Justice Scates writing the opinion. Clarissa Wren believed she had been injured by an erroneous divorce decree.⁶ The Court granted a "writ of error," entitling her to a new trial. "We should frame such a writ of error," the justices decreed, "as will secure the interests of all who may be affected by it, while it affords a remedy to the plaintiff."⁷

In the 1846 Illinois gubernatorial contest, Scates was among six Democratic candidates, but lost the nomination to Augustus French, who became the state's ninth governor. Scates resigned from the Supreme Court in 1847. He served as a delegate to the 1847 Constitutional Convention and chaired the Committee on the Judiciary and was "one of the more active influences in the convention."⁸ He supported statewide elections for Supreme Court justices, but the convention eventually adopted regional representatives from three grand divisions.

After his retirement from the Supreme Court, Scates returned to the practice of law and entered into several business ventures. His businesses failed, and when Lyman Trumbull resigned from the Illinois Supreme Court, Scates won the popular election to replace him in 1853. After two years on the Court, he became the Chief Justice.⁹

In 1855, Lincoln represented Oliver Browning in *Browning v. City of Springfield*. Browning alleged that while walking on a city sidewalk he fell and broke a leg. He charged that the city was negligent in its duty to maintain the streets and sidewalks. After

the Sangamon County Circuit Court found in favor of the city, Lincoln and his partner William H. Herndon appealed to the Supreme Court. Reversing the lower court, Scates delivered the Supreme Court opinion that found the city liable, citing a legal obligation as well as the taxing authority to make such repairs. “We not only feel authorized,” Scates concluded in the innovative decision, “but required to afford the protection sought.”¹⁰

Scates’ greatest contribution to Illinois may have been in 1857 as the principal compiler, along with Samuel H. Treat and Robert S. Blackwell, of *The Statutes of Illinois . . . and . . . Decisions of the Supreme Court Upon the Construction of Each Statute*.¹¹ Scates maintained a reputation “for ability and knowledge of the law,” according to legal historian Frederic B. Crossley. “He was not a brilliant jurist, but his decisions are expressed with unusual clearness and are most noticeable for their conservatism and tendency to follow the existing authorities.”¹²

Resigning from the Court in 1857, Scates and his family moved to Chicago, where he resumed the practice of law. With the outbreak of the Civil War, he joined the Union Army and in 1862 was commissioned a Major on the staff of General John A. McClernand. Three years later, Scates became the Assistant Adjutant-General, with the rank of Lieutenant Colonel. He declined President Lincoln’s offer of Chief Justice of the New Mexico Territory in March 1865. Mustered out of the service in 1866, he was brevetted Brigadier General of volunteers. President Andrew Johnson’s appointed Scates as Collector of Customs in Chicago, where he remained until relieved by President Ulysses S. Grant in 1869.¹³

After retirement from judicial, military, and political offices, Scates practiced with Chicago attorney and Lincoln associate Henry Clay Whitney, who had served as

paymaster of volunteers during the Civil War.¹⁴ Scates died at his Evanston home on October 26, 1886 and was buried in Rosehill Cemetery in Chicago. “He was a grand old man, firm as a rock,” recalled fellow attorney John M. Palmer. “He performed every duty firmly, ably and with an honest purpose. No power could drive him from what he thought was right. Had he been influenced by wealth and power he might have died worth millions instead of a few thousand dollars. The state should not forget the services of such a man.”¹⁵

¹ *Chicago Tribune*, 27 October 1886, 7.

² Daniel W. Stowell, et al., eds., *The Papers of Abraham Lincoln; Legal Documents and Cases*, 4 vols. (Charlottesville: University of Virginia Press, 2008), 4: 375.

³ *Chicago Tribune*, 27 October 1886, 7.

⁴ John M. Palmer, ed., *The Bench and Bar of Illinois; Historical and Reminiscent* (Chicago: Lewis Pub. Co., 1899), 35; John W. McNulty, “Sidney Breese the Illinois Circuit Judge, 1835-1841, *Journal of the Illinois State Historical Society*, 62 (1969), 185.

⁵ Susan Krause and Daniel W. Stowell, *Judging Lincoln; The Bench in Lincoln’s Illinois*, rev. ed. (Springfield: Illinois Historic Preservation Agency, 2008), 47.

⁶ *Wren v. Moss et al.*, 7 Ill. (2 Gilman) 72 (1845); Daniel W. Stowell, ed., *In Tender Consideration; Women, Families, and the Law in Abraham Lincoln’s Illinois* (Urbana: University of Illinois Press, 2002), 11, 216-20.

⁷ Stowell, *In Tender Consideration*, 217.

⁸ Arthur Charles Cole, ed., *The Constitutional Debates of 1847* (Springfield: Illinois State Historical Society, 1919), xviii, 743.

⁹ *Chicago Tribune*, 27 October 1886, 7; Stowell, ed., *Papers of Abraham Lincoln*, 4: 375-76

¹⁰ *Browning v. City of Springfield*, 17 Ill.143 (1855); Krause and Stowell, 46; *Lincoln Legal Briefs*, #75 (July-September 2005), 3.

¹¹ Samuel H. Treat, Walter B. Scates and Robert S. Blackwell, compilers, *The Statutes of Illinois* (Chicago: D.B. Cooke & Co., 1858); Palmer, 233.

¹² Frederic B. Crossley, *Courts and Lawyers of Illinois*, (Chicago: American Historical Society, 1916), 318.

¹³ *New York Times*, 28 October 1886, 3.

¹⁴ Robert W. Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973), 776.

¹⁵ Palmer, 37.