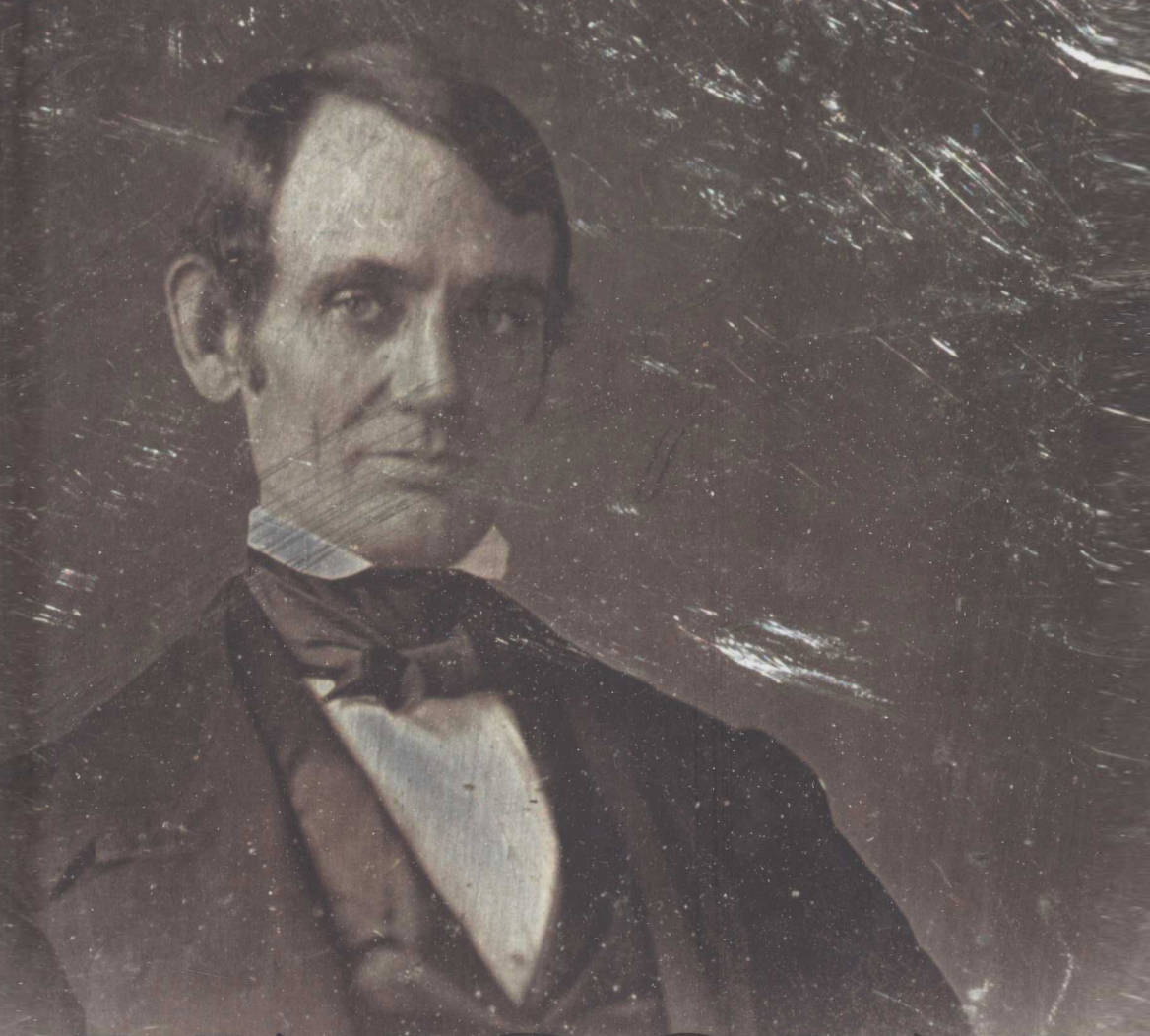

LINCOLN APOSTATE

THE MATSON SLAVE CASE

CHARLES R. McKIRDY

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THE MATSON SLAVE TRIAL

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LINCOLN APOSTATE

To my wife, Kathie,
for forty wonderful reasons and still counting

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LINCOLN APOSTATE

INTRODUCTION

ABRAHAM LINCOLN WAS DEAD. HE HAD BEEN DEAD FOR MANY YEARS. The deification process had begun long ago. The old man did not care. He could not forgive. To his dying day, he maintained that "Lincoln arrived at the trial with chains to be used to take the slaves back to captivity."[1] He could not forget. "[J]ustice demands," he insisted, "that it be said that neither [Lincoln's] speeches nor his conduct at or during the litigation was worthy of his name and subsequent fame."[2]

The old man was Dr. Hiram Rutherford. He died in 1900 after sixty years as a physician in Coles County, Illinois. The "litigation" in question was a trial in the Coles County Circuit Court in 1847. In that trial, Abraham Lincoln represented a slave owner named Robert Matson in his efforts to recover five slaves—a mother and her four children—who had escaped from slavery on Matson's Illinois farm and taken refuge with Dr. Rutherford. The physician had known Abraham Lincoln back then—known him and liked him. He was angry and dumbfounded when Lincoln chose to take Matson's side and argue that the fugitives be returned to slavery.

Historians differ in their reactions to Lincoln's role in the so-called "Matson Slave Case." Some share Rutherford's bewilderment. To some, Lincoln's actions seem a profound aberration in the life of the "Great Emancipator." One of his earliest biographers, his fellow lawyer Henry Clay Whitney, described the incident as "one of the strangest episodes in Lincoln's career at the bar."[3] Writing about a century later, legal historian John J. Duff agreed. He called Lincoln's representation of Matson "one of the oddest anomalies in the life of this man of paradox."[4] Some found Lincoln's action very disturbing. In his often insightful *Lincoln and the Negro*, Benjamin Quarles mourned the episode as Lincoln's "one fall from grace" and, more recently, in a book directed at young readers, author Peter Burchard characterized it as an "inexplicable mistake."[5]

Historians do not like the word "inexplicable." After all, attempting to explain the past is a part of the essence of their profession, and Lincoln's representation of Robert Matson is a task certainly worthy of the attempt. Their general consensus seems to be that, when all is said and done about Lincoln and Matson, it comes down to this: "business is business." Abraham Lincoln was a lawyer, Robert Matson was a client in need of a lawyer, and everything else, in particular Lincoln's feelings about slavery, was irrelevant.

In his 1952 biography, Benjamin Thomas put it this way: Lincoln "took slave cases, like other business, as they came."[6] The great Lincoln historian David Donald agrees: "Like most other attorneys, Lincoln . . . took on whatever clients came [his] way. . . . [H]is business was law, not morality."[7] Quite recently, Brian Dirck's *Lincoln the Lawyer* reiterates this explanation: "The Matson case . . . may have given Lincoln a moment of pause before he sighed and got on with his job; but got on with his job he did. Lincoln always drew a line between the moral and legal aspects of slavery. . . ."[8]

This "line" has become a particular focus of attention—how was Lincoln able to draw such a line "between the moral and legal aspects of slavery," especially when the distinction moved from the theoretical to the actual as it did in the Matson case? In his *An Honest Calling: The Legal Practice of Abraham Lincoln*, Mark Steiner looks to find an answer in what he sees as Lincoln's Whiggish view of the legal system. Steiner argues that Lincoln viewed the legal system as a neutral means to resolve disputes and maintain order in which the lawyer's role was to effectively represent clients and not to make moral judgments about their clients' causes.[9]

Others have been less kind. They maintain that there was no "line." They contend that Lincoln's representation of Matson demonstrates that he had little or no genuine antipathy for slavery and no real empathy for its victims. Allen C. Guelzo is representative of this school of thought. In *Abraham Lincoln: Redeemer President*, Guelzo argues that Lincoln's advocacy on Matson's behalf merely underscored "his indifference to slavery as injustice to blacks."[10]

With all due respect, it is not that simple. Lincoln's actions in the Matson case defy easy explanation because not only do they seem inconsistent with many actions and statements that he made earlier and later in his career, they also seem inconsistent with one another. Lincoln did not simply opt to represent Robert Matson. That was only the beginning. After he met with Dr. Rutherford, who asked him to represent Jane and her children, Lincoln attempted to switch sides. Then, when Rutherford rejected his belated offer of assistance, Lincoln returned to Matson's corner.

Obviously, there were conflicting forces at work here. Lincoln's still inchoate attempt to reconcile slavery, morality, and law was an important factor. So too were less ideological concerns. Ambition and loyalty may have played a role. The trial took place center stage and Lincoln was not one to avoid the spotlight. Moreover, the case involved a cast of intriguing and powerful personalities. Not the least of these was an attorney named Usher Linder. A racist, a demagogue, and a drunkard, Linder was a friend of Lincoln's and his influence may have been a determining factor in Lincoln's decision to represent Matson.

The situation is further complicated by the fact that although the case involved runaway slaves, it was not a *fugitive* slave case as that term generally is understood, i.e., slaves fleeing from a slave state into a free state, and it involved law that still was in the formative stage in Illinois. Finally, the Matson trial did not take place in a vacuum. It played out against the backdrop of the race hatred, shrill arguments about slavery and morality, and deadly mob violence found in Illinois in 1847. If we are to understand what happened in Coles County in the autumn of that year and why Lincoln did what he did there, that backdrop is the best place to start.

CHAPTER 1

A DARK CANVAS

In 1847, the year that Abraham Lincoln tried the Matson case, Illinois purportedly was a "free" state. That status dated back to 1787 when the Congress of the United States adopted the Northwest Ordinance. This far-sighted legislation mandated a system for creating states out of the territory northwest of the Ohio River. Article VI of the ordinance provided that "[t]here shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted. . . ." The ordinance made it clear that Article VI was one "of compact between the original States and the people and States in the said territory," and that it would "forever remain unalterable, unless by common consent."[1] Illinois was one of the states formed out of the Northwest Territory in which slavery and involuntary servitude seemingly were forbidden.

How then to explain the last will and testament of William R. Adams of Pope County, Illinois? In his will, Mr. Adams freed Lucinda and her eight children from slavery. The will is dated December 28, 1846—almost sixty years after Article VI of the Northwest Ordinance became the law of the land.[2] Congressional edicts aside, slavery was a fact in the life of William R. Adams and in the lives of Lucinda and her eight children as it had been a fact of life in Illinois for about 150 years.

The anomaly of slavery in "free" mid-nineteenth-century Illinois stemmed from the state's location, size, configuration, and history. Although Illinois usually is considered a northern state (its soldiers wore Yankee blue in the Civil War), geographically and politically that description is not wholly accurate. Illinois is a vertical state, running north-south, and is considerably longer (about 375 miles) than it is wide (about 175 miles). This means that while northern Illinois borders on Wisconsin and the shores of Lake Michigan, southern Illinois

touches Missouri and Kentucky. Cairo (pronounced "Kayro") in the state's southern tip is more than 100 miles south of Richmond, Virginia, the capital of the Confederacy. In fact, Cairo is closer to Birmingham, Alabama, than it is to Chicago, and almost one-half of Illinois, including Coles County where Lincoln argued the Matson case, is south of the Mason-Dixon Line.[3]

Slavery in Illinois can be traced back to 1719 when the "Illinois Country" belonged to the French as part of the colony La Louisiane which, anchored by New Orleans at the mouth of the Mississippi River, stretched all the way north to the Great Lakes. In that year, five hundred slaves from Santo Domingo were sold to French settlers in Illinois on the east bank of the Mississippi River.[4]

When Illinois passed to Great Britain in 1763 as a result of its victory in the French and Indian War, the slave population in Illinois increased as settlers, primarily from the southern colonies, moved into southern Illinois. Because the British government did not prohibit slavery there, these settlers brought their slaves with them. Twenty years later, when the treaty ending the American Revolution granted the United States all lands east of the Mississippi River from Spanish Florida to Canada, the state of Virginia, among others, asserted a right to thousands of square miles of this territory including what is now Illinois.[5]

In 1784, Virginia was prevailed upon to surrender its claims to the area north of the Ohio River, but it did so with several caveats. One of these was that the French, Canadian, and other inhabitants of Illinois "shall have their possessions and titles confirmed to them and be protected in the enjoyment of their rights and liberties."[6] They could keep their slaves. Arguably, there was language in the ordinance of 1787 reaffirming this promise, but, of course, it also included Article VI's prohibition of slavery in the territory.[7]

Convinced that Article VI was inimical to the growth of Illinois because it inhibited immigration from slave states, which, in the early nineteenth century were its natural sources for new settlers, some of the territory's leading citizens repeatedly petitioned Congress to repeal the provision. All of these efforts failed, but innovation is said to be the hallmark of the frontier.[8]

In 1805, the territorial government of the Indiana Territory (which then included Illinois) promulgated an indenture law that was revised and reenacted in 1809. Under the terms of these acts, a slave over the age of fifteen years could be brought into and kept in the territory if, within thirty days, he or she entered into a formal written agreement (an indenture) to serve as an indentured servant for a specified number of years. If no agreement could be reached, the master had sixty days to remove the slave from the territory. Under the law, a female indentured servant's male children were required to serve their mother's master until they were thirty, female children to age twenty-eight. Slaves under

age fifteen might be brought into the territory and simply registered to serve—males to age thirty-five, females to age thirty-two.[9]

When Illinois became a territory in its own right in 1809, it adopted Indiana's indentured servant law as its own. Despite attempts to give them the trappings of arms-length transactions, by any legal definition the indentures were unconscionable. The agreement between John Beaird and "Harry, a negro boy, aged near upon sixteen" was not unusual:

> *Be it remembered that on the 17th day of October of the year 1814, personally came before me the subscriber, clerk of the court of common pleas . . . , John Beaird . . . and Harry, a negro boy, aged near upon sixteen, and who of his own free will and accord, did in my presence, agree, determine, and promise, to serve the said John Beaird, for the full space of time, and term of eighty years from this date. And the said John Beaird, in consideration thereof, promises to pay him, said Harry, the sum of fifty dollars, at the expiration of his said service.*[10]

With terms of service that often exceeded the life expectancies of the servants, Illinois's Negro indenture system was virtually identical with slavery.[11] The status was inheritable. Indentured servants were taxable property. They were used as consideration to satisfy contracts and as security for notes. They were rented out and sold with the price based on the time of service remaining on the term of indenture.[12]

Its indenture system and remaining vestiges of actual slavery were a problem in 1818 when Illinois applied for statehood and was confronted with the task of drafting a state constitution which did not run afoul of Article VI. By then, Illinois had become a territory divided on the question of involuntary servitude. While the territory's southern counties still were overwhelmingly proslavery, northern Illinois was filling up with settlers from northern states, many of whom brought with them strong antislavery sentiments.[13] This hostility focused on the indenture system especially after neighboring Indiana repealed its indenture laws.[14] The dichotomy over indentures was reflected in the membership of the territory's constitutional convention and resulted in a compromise that protected servitude as it then existed in Illinois.

The Illinois Constitution of 1818 prohibited only the *future* introduction of slavery or involuntary servitude into the state.[15] With regard to Negro indentures, the new constitution prohibited males over the age of twenty-one and females over age eighteen from being held as a servant by any indenture "hereinafter made," unless that person entered into the indenture "while in a state of

perfect freedom" in return for "bona fide consideration."[16] The constitution also invalidated subsequent indentures of blacks that had been entered into out of state or which had a duration of more than one year.[17]

Again, this provision applied only to future indentures. Lest there be any confusion on the subject, the new constitution made it clear that it did not reach existing indentures and stated that "those bound to serve by contract or indenture" under existing law "shall be held to specific performance of their contracts and indentures; and such negroes and mulattoes as have been registered in conformance with the aforesaid laws, shall serve out the time appointed by said laws."[18]

Thus, the Illinois Constitution of 1818 confirmed, with minor modifications, the system of involuntary servitude then in place in Illinois. The few limitations that had been tacked on were more apparent than real. For example, the constitution stated that those who indentured themselves were entitled to "bona fide consideration" (i.e., meaningful compensation), but, in practice, this could be merely a promise of room and board, the only "consideration" most slaves could expect to receive anyway.[19] The one-year limit on new indentures quickly led to a system of yearly renewals.[20] The constitution did nothing to shorten the length of existing indentures or to alter the status of those enslaved in Illinois. In fact, it confirmed their status, incorporating it into the fundamental law of the state. Nevertheless, the new constitution passed muster with Congress. Illinois became a state. The advocates of slavery were emboldened.[21]

In 1819, the Illinois legislature passed "An Act respecting Free Negroes, Mulattos, Servants, and Slaves," which, as its name implies, regulated the activities of blacks and servants in the state and mandated punishment for those who disobeyed.[22] It represented a definite and unmistakable proslavery statement. As legal historian Paul Finkelman astutely points out: "While not explicitly declaring that slavery was still legal in Illinois, the statute recognized the existence of slaves in the state, and implied that there was nothing improper about this. Indeed, the statute underscored the presumption that the 1818 constitution was not meant to free all slaves in Illinois."[23]

The act of 1819 represented the high-water mark for the proslavery forces in Illinois. Their efforts to promulgate a new state constitution explicitly legalizing slavery in the state failed in 1824 when, voting primarily along regional lines, 57 percent of the voters cast their ballots against calling a constitutional convention.[24] Then the Illinois Supreme Court began to chip away at the varieties of servitude in the state.

At first, the court was somewhat circumspect. In a series of decisions in the 1820s, it upheld the system of black indentures, but the justices did not wear

blinders.[25] A majority of the court recognized that "nothing can be further from the truth, than the idea that there could be a voluntary contract between the negro and his master."[26] The court clearly understood that the services of indentured servants "were held in the same manner that the services of absolute slaves are held."[27]

This, of course, would seem to violate the antislavery provisions of the Northwest Ordinance, but the Illinois Supreme Court ruled otherwise. The ordinance provided that its articles "shall remain unalterable unless by common consent."[28] The court held that "common consent" had been obtained with regard to black indentured servitude in Illinois when its preservation was included in the Illinois Constitution of 1818, and Congress approved that constitution by admitting Illinois into the union as a state.[29]

While the court recognized the legality and constitutionality of the state's indenture system, it was quick to use technical grounds to strike down claims in particular instances. In 1825, the court voided an indenture that had not been signed by the master.[30] In 1828, it rejected a claim to a servant by the heir of her master as being inconsistent with the state's inheritance laws.[31] In 1836, the court invalidated an indenture that was not entered into within the required time frame[32] and, in the case of *Boon v. Juliet* (1836), declared that "the children of registered [indentured] negroes and mulattoes . . . are unquestionably free."[33]

Five years later, in 1841, the court established an important precedent with regard to whether or not blacks in Illinois were presumed at law to be slave or free. The case was *Kinney v. Cook*.[34] Thomas Cook, a Negro, had sued William Kinney to recover for services that he had rendered Kinney during a period in which Kinney had "pretended to hold such plaintiff as a slave."[35] There was no evidence that Cook ever, in fact, was a slave. Kinney argued that the suit should have been dismissed because, as a black man, Cook had the burden of proving that he was *not* a slave and had failed to do so.[36]

The supreme court disagreed. In a short but surprisingly eloquent opinion, Justice Theophilus Smith declared that, unlike the rule in the southern states, Illinois law presumed that all men and women, black or white, were free:

> *With us the presumption is in favor of liberty, and the mere claim of the defendant to hold the plaintiff as a slave, and the fact of his having resided with the defendant during the time when the services were rendered, devolved no legal necessity on the plaintiff to prove his freedom. . . .*
>
> *The rule, in some or most of the slaveholding States, from consideration of public policy, is undoubtedly that the onus pro-bandi [burden of proof] in such cases, lies with the party asserting his freedom. This rule, however,*