Lincoln defense rested on chicken bones

By Kathy McKinney

Abraham Lincoln: Born 188 years ago today, a great American president, a man of history and legend. But in the 1860s, when his tall, lean frames could be seen strolling Bloomington streets, he was relatively unknown outside of Illinois. And many of the things he did in Bloomington and surrounding counties of the Old 8th Judicial Circuit are the stuff from which his legend is made.

One of the cases he tried in Bloomington, about which little hard evidence remains, was McLean County’s first medical malpractice suit.

Lincoln represented the defense—two Bloomington doctors accused of not using “due and proper care, skill or diligence.”

The defendants were Dr. Eli B. Croters (the fater of playwright Rachel Croters), and Dr. Thomas Rogers. The plaintiff was Samuel Fleming, identified in a 1860-50 Bloomington city directory as a carpenter.

The case began in McLean County in March, but continuance carried it through the fall of 1857. A change of venue sent it to Logan County Circuit Court.

The way they were

Much of what is known about the case comes from the recollections of the Croters family. Fire that destroyed the McLean County court house in 1860 also destroyed court records.

What wasn’t destroyed by fire was taken by Lincoln-lover collectors, a 1938 story in the Daily Pantagraph stated.

Stories of the trial, called the “Chicken Case” in legal, very slightly. But a picture of an Abraham Lincoln, who knew how to argue a case before a jury—shines through in all versions.

On Oct. 16, 1857, a fire destroyed the entire block facing the south side of the courthouse square, later called the Phoenix block because of the way new building grew out of its ashes.

During the fire, many curious onlookers gathered—among them were Samuel Fleming.

Fleming was seriously injured when the spreading flames toppled the Morgan House chimney, which fell on him and broke both of his legs. Sources differ on what happened next, but suffice it to say when the sprites were put to bed, Fleming was happy to find one of his broken bone was not an unusual occurrence.

Fleming filed a malpractice suit in McLean County Circuit Court. He hired a battery of lawyers to represent him.

Leonard Swett and his partner, William Ward Orme, the partners William H. Hanna and John M. Scott, and the firm of Ansel Griffith and John H. Wicker.

Who’s Who

The case began to look like a Who’s Who of McLean County society.

When Dr. Croters hired Lincoln to represent him and Dr. Rogers, the charge was assured a small niche in history.

The Croters family has an interesting recollection of how the Springfield tornado came to be hired by the doctors. The story, related by Henry James Forman, did not make it into the history books, but was reprinted in Louise Keeler’s “Home Town in the Corn Belt” from the Illinois State University Alumni Journal of 1928.

Lincoln was a friend of the Croters family, as well as a friend of the Elijah DePew family, whose daughter, Mary Louise, married Eli Croters. (Mrs. Croters, incidently, took up the study of medicine at 46 and became the first woman physician in this part of the state.)

According to Forman, Croters decided to ask Lincoln to defend him at trial.

"Perhaps Dr. Croters was a little dilatory in his correspondence," Forman said, "or perhaps the broken-legged plaintiff proved too sly.

In any event, Dr. Croters came into the house one stormy night and informed his wife that the disinterested patient had just left on the train for Springfield to see Mr. Lincoln, and that now it was too late to write.

"Why don’t you telegraph?" challenged Mrs. Croters.

"I never thought of that," was the startled answer. The telegraph in Illinois was still young. It was not until the Civil War that telegraph was used in the state.

"But I believe I’ll do it now," went on Dr. Croters, not without a twist for telegraphing was a rare experience.

$1 a word

To telegraph he went to the railway station of Bloomington. The operator creaked to the Springfield operator that Mr. Lincoln was wanted at the telegraph instrument. And there, client standing at one end of the wire, and lawyer standing at the other, the Lincoln was engaged to defend Dr. Croters by the keeping of $1 a word.

When the other person arrived at Springfield and endeavored to engage Mr. Lincoln, he said he was sorry but that he had already been taken by Dr. Croters.

"The story, Forman wrote, ‘remained as a bright tradition in the Croters family.’

At any rate, Lincoln was to defend the doctors in court. Then living in Springfield, Lincoln made a number of trips to Bloomington to be couched by the two doctors in the subject of bones.

Bones, the doctors explained to the young attorney, are springy and less apt to break when a person is young. As a person ages, bones lose their elasticity and become brittle. That makes them more easily broken and less easily repaired.

When the coaching was done, it was said that Lincoln knew as much about the subject as the doctors.

Stage set

A recollection of young Lincoln the self-taught attorney, written in 1909 by Lursan Herr, deputy district clerk in McLean County in 1857, sets the stage for the trial.

"Mr. Lincoln was tall, angular and unruly, and in winter usually wore a large gray shawl in place of an overcoat, as many did in those days. He generally had a book with him, and if he sat down alone was reading or studying. He was not an orator as that word is generally understood, but it was his way of stating things that made everything he said interesting, and whether telling stories, trying cases, or in ordinary conversation, he was always interesting.

Lincoln used chicken bones to illustrate his case to the jury—just as the man said, ‘or perhaps the broken-legged plaintiff proved too sly.

But instead of correctly pronouncing ‘technical and anatomical terms’ taught him, Lincoln forgot or mispronounced them, and as Forman related the story, twisted them ‘into grotesque words and shapes, so that the court roared with laughter.

The historians disagree on whether the young attorney booted the words on purpose, or really couldn’t remember them all called the defense ‘brilliant.

Lulu Croters, Dr. Croters’ elderly daughter, recalled Lincoln’s cross-examination of Fleming, as did a 1931 story in The Daily Pantagraph.

Mr. Fleming,” Lincoln concluded, “instead of bringing suit against these surgeons for not giving you proper attention, you should get down on your knees and thank God and them that you have the leg. Most other practitioners with such a break would have insisted upon amputation. In your case, they exercised their skill and ability to preserve it and did so.

No new methods

"This legal defeat that finally resulted, through nature’s methods of working the surgeon, is nothing compared to the loss of the limb altogether.

The trial was protracted, wrote John J. Duff in his book, “A. Lincoln: Prairie Lawyer.” A trial often ends in the testimony of the parties and their witnesses. The defense, Duff wrote, sub-

posed the remaining 12 doctors in Bloomington.

After 11 hours of deliberation, the jury reported it was hopelessly deadlocked, and was discharged. A brief story in the Daily Pantagraph of April 8, 1857: “(As the case may be tried again, we do not deem it proper to publish the evidence or comment upon now.)

It is stated that Lincoln took much interest and kept the court house filled during its continuances.

Judge Davis put the case over to the next term of court. After several more continuances, at least one because Lincoln was at a federal court session in Chicago, the case was moved from McLean County to Logan County.

On March 15, 1858, Judge Davis, presiding over the court in Logan County, ordered the case dismissed, “as per agreement an Ex.” according to “How Lincoln Became President,” by Sherman W. Meakin.

Lincoln’s pictures scattered

Rosa Kwasirop, Daily Pantagraph reporter at Pekin Grove and Roberts, found a picture of Abraham and Mary Todd Lincoln at her house, which was purchased by Dr. Marie Louise Croters, by that time a widowed woman.

The property passed through several hands before being purchased by Dr. M.L. Croters.

Nooyster

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