

**Sidney Breese**  
1841-1843, 1857-1878

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With expansion of the Illinois Supreme Court in 1841, legislators elected Circuit Judge Sidney Breese as an associate justice. The son of wealthy aristocrats Arthur and Catharine

Livingston Breese, Sidney Breese was born in Whitesboro, upstate New York, on July 15, 1800.<sup>1</sup> He attended Hamilton College and graduated at age eighteen from Union College in Schenectady, New York. A first cousin, Samuel Finley Breese Morse, invented the electric telegraph and devised the set of telegraph signals known as Morse code.<sup>2</sup>



Moving to Illinois in December 1818, Breese studied law in the Kaskaskia office of Secretary of State Elias Kent Kane, a New York schoolmate and later a United States Senator.<sup>3</sup> Admitted to the bar at age twenty, Breese, “from that time,” wrote 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>4</sup>

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>5</sup> To supplement his law-practice income, the following year he became the Kaskaskia postmaster. His fortunes improved in 1822, when Governor Shadrach Bond appointed Breese as state’s attorney for the Third Judicial Circuit, which included Kaskaskia.<sup>6</sup>

On September 4, 1823, Breese married Eliza Morrison, daughter of a wealthy pioneer Kaskaskia family, “a part of the aristocracy of commerce and land,” wrote a Breese biographer, “which had already developed on the western frontier.”<sup>7</sup> Through marriage, Breese shared in that social prominence, becoming acquainted with influential political friends of the Morrison family. Eliza and Sidney Breese would become parents of fourteen children.<sup>8</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. Breese did not, however, take an active role against the call for a constitutional convention on the issue.<sup>9</sup>

In 1827, President John Quincy Adams named Breese the U.S. District Attorney for Illinois. Breese published the *Illinois Reporter* newspaper at Kaskaskia from 1826 to 1828, editorially supporting the Adams administration. That public stance resulted in his dismissal as U.S. Attorney by President Andrew Jackson in 1829, cutting short his four-year term.<sup>10</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. In addition to his Kaskaskia law practice, he made a contribution to the state’s legal community—a compilation of Illinois Supreme Court decisions. He published *Breese’s Reports, 1819-1831*, in 1831, even setting the type, while Kane assisted with proofreading.<sup>11</sup>

During the period covered in the *Reports*, Breese argued more than a dozen cases before the Supreme Court, primarily involving debts and land ownership—the two most common types of litigation in Illinois. Of his cases, Breese lost only two arguments. In an unusual case, Breese represented a black woman against a defendant who claimed her as an indentured servant under 1807 laws of the Illinois Territory. The Supreme Court reversed a lower court decision, finding in favor of Breese’s client.<sup>12</sup>

During the 1832 Black Hawk War, Breese enlisted as a private and rose in rank to become a lieutenant colonel of volunteers. After the war, he resumed the practice of law, by now recognized for clear and precise statements in addressing juries.

Breese's legal defense in the 1833 impeachment trial of Supreme Court Justice Theophilus W. Smith brought him statewide attention. Both Smith and Breese had come to Illinois from New York, had become embroiled in factional politics, and evolved as supporters of Andrew Jackson and his policies. During the Senate proceedings, Breese prepared ten pleas in helping gain Smith's acquittal. Thereafter, Smith's friends and associates assisted Breese in beginning his own judicial career by supporting his candidacy for a circuit judgeship.

Appointed a judge of the Second Judicial Circuit in 1835, Breese traveled the circuit encompassing the state's ten most populous counties: Madison, St. Clair, Monroe, Randolph, Washington, Clinton, Bond, Fayette, Montgomery, and Shelby. Realizing the necessity of moving from his "favorite" Kaskaskia, he settled with his family at Mound Farm, overlooking the village of Carlyle in Clinton County.<sup>13</sup>

Breese "looked the judge while on the bench," recalled John M. Palmer. "He was industrious, prompt, energetic, and patient; he knew the law, and applied it to the cases before him."<sup>14</sup> In the 1839 case of *People ex rel. McClernand v. Field* brought in the Fayette County Circuit Court, Judge Breese ruled for McClernand, but the Supreme Court later reversed the decision.<sup>15</sup>

After an unsuccessful gubernatorial bid, Breese won legislative election in 1841 as one of the five additional Supreme Court justices.<sup>16</sup> He also continued as judge for the Second Judicial Circuit but resigned from the Court in December 1842, after legislators elected him to replace Richard M. Young in the U.S. Senate.<sup>17</sup> During his one senatorial term from 1843 to 1849,

Breese advocated a transcontinental railroad as well as a north-south railroad through Illinois. He became the primary author of federal land grants to 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>18</sup> Breese also introduced legislation that established a naval depot and dockyard at the confluence of the Ohio and Mississippi rivers.<sup>19</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, when he became Speaker of the House. In 1855, he was again elected a circuit court judge, and in 1857, won popular election to return to the Illinois Supreme Court. During his judicial tenure, Breese heard 73 cases involving Springfield attorney and future U.S. President Abraham Lincoln.<sup>20</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 he would quite as likely leave out the only point in it that would make it mirth-provoking.”<sup>21</sup>

In the landmark *Munn v. Illinois* case, Justice Breese upheld the assertion that government could regulate a business in the public interest. In 1877, the U.S. Supreme Court, in the first of the “Granger” cases, affirmed every point in his ruling of the state’s regulatory power over public service corporations.<sup>22</sup> Breese also maintained involvement in Democratic politics through his judicial tenure. In 1868, party leaders considered him as a presidential candidate, but, wrote historian Arthur Charles Cole, “it became evident that this was largely a compliment to a favorite son.”<sup>23</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. He served as a justice on the Court under three different Illinois Constitutions. He wrote opinions on nearly every question affecting the welfare

of the state, 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>24</sup>

Breese died of heart disease on June 27, 1878, in Pinckneyville, Illinois. 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*. After services at the Clinton County Courthouse, Breese was buried in Carlyle Cemetery in Carlyle, Illinois.<sup>25</sup> The town of Breese in Clinton County is named in his honor.

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<sup>1</sup> *Chicago Tribune*, 29 June 1878, 2; General Usher F. Linder, *Reminiscences of the Early Bench and Bar of Illinois* (Chicago: Chicago Legal News Co., 1879), 141.

<sup>2</sup> *Illinois Biographical Dictionary*, Somerset Pub., 1993, p. 62; John W. McNulty, “Sidney Breese; His Early Career in Law and Politics,” *Journal of the Illinois State Historical Society*, 61 (1968), p. 164.

<sup>3</sup> David W. Lusk, *Eighty Years of Illinois; Politics and Politicians* (Springfield, IL: H. W. Rokker, 1889), 269; John M. Scott, *Supreme Court of Illinois, 1818*, (Bloomington, IL: John M. Scott, 1896), 328.

<sup>4</sup> Scott, 329.

<sup>5</sup> Paul E. Stroble Jr., *High on the Okaw’s Western Bank: Vandalia, Illinois, 1819-39* (Urbana: University of Illinois Press, 1992), 18; Robert P. Howard, *Illinois, A History of the Prairie State* (Grand Rapids, MI: Eerdmans, 1972), 120.

<sup>6</sup> McNulty, 168.

<sup>7</sup> McNulty, 168-69

<sup>8</sup> McNulty, 168-69.

<sup>9</sup> Scott, 165.

<sup>10</sup> McNulty, 175.

<sup>11</sup> 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 Illinois, from Its First Organization in 1819, to*

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*the End of the December Term 1830*; an appendix includes 1831 cases. 1 Ill. (1 Breese); McNulty, 177.

<sup>12</sup> Under the Act of 1807, contracts of service could not pass to an heir but only to legatees or legal representatives. The defendant failed to meet that requirement. McNulty, 178-79; *Phoebe, a woman of color v. Jay*, 1 Ill. (1 Breese) 268 (1828).

<sup>13</sup> John W. McNulty, "Sidney Breese, the Illinois Circuit Judge, 1835-1841," *Journal of the Illinois State Historical Society*, 62 (1969), 172.

<sup>14</sup> John M. Palmer, ed., *Bench and Bar of Illinois* (Chicago: Lewis Pub. Co., 1899), 34.

<sup>15</sup> *Field v. People ex rel. McClernand*, 3 Ill. (2 Scammon) 79 (1839).

<sup>16</sup> Theodore Calvin Pease, *The Frontier State, 1818-1848* (1918, rpt. Urbana: University of Illinois Press, 1987), 250.

<sup>17</sup> Palmer, 34; David Kenney and Robert E. Hartley, *An Uncertain Tradition: U.S. Senators from Illinois, 1818-2003* (Carbondale: Southern Illinois University Press, 2003), 27.

<sup>18</sup> Scott, 340.

<sup>19</sup> Lusk, 266-68.

<sup>20</sup> Susan Krause and Daniel W. Stowell, *Judging Lincoln: The Bench in Lincoln's Illinois Cases* (2002, rev. ed. Springfield: Illinois Historic Preservation Agency, 2008), 6-7.

<sup>21</sup> Scott, 334.

<sup>22</sup> Howard, 364; *Munn v. People of the State of Illinois*, 69 Ill. 80 (1873); *Munn v. People of the State of Illinois*, 94 U.S. 113 (1876).

<sup>23</sup> Arthur Charles Cole, *Era of the Civil War, 1848-1870* (1919, rpt. Urbana: University of Illinois Press, 1987), 410.

<sup>24</sup> Scott, 342.

<sup>25</sup> *Chicago Tribune*, 29 June 1878; *Carlyle Constitution and Union*, 4 July 1878, 2.