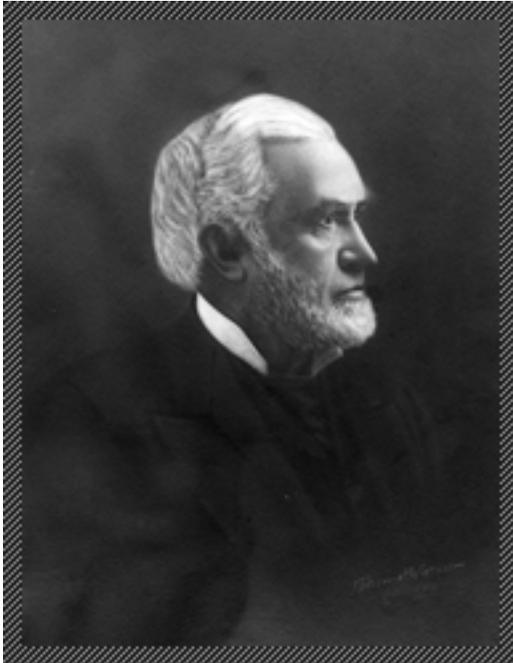


## John M. Scott 1870-1888

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The first Illinois-born resident to become a member of the Illinois Supreme Court, John Milton Scott was born near Belleville, St. Clair County, on August 1, 1824, the son



of Samuel and Nancy Briggs Scott. She was a Kaskaskia native, daughter of pioneer William B. Briggs, who arrived in Illinois with George Rogers Clark in 1778.<sup>1</sup> Young Scott attended public schools, supplemented by private instruction in English, Latin, and mathematics. He studied law in the Belleville office of William C. Kinney and future Illinois Governor William H. Bissell, then “among the most accomplished

lawyers in the west,” according to John M. Palmer.<sup>2</sup>

Scott was admitted to the Illinois bar in 1847 and moved to Bloomington, McLean County the following year to establish his practice. “While an undeveloped section of the state,” explained historian Frederic B. Crossley, members of its bar included Abraham Lincoln and Judge David Davis. “Scott soon became well known throughout the country and acquired a remunerative clientage.”<sup>3</sup> Fellow attorney John Wickizer related one interaction between Scott and Lincoln in a court case in which the two lawyers were opposed to each other. The case lasted late in the evening before finally being submitted to the jury. Scott learned the next morning that he had lost the

case. Lincoln saw him at the court house and asked what had become of it. Scott replied that “it’s gone to h—ll.” ‘Oh, well, said Mr. L., ‘then you’ll see it again.’”<sup>4</sup>

In 1849, Scott won election as county school commissioner in his first elective office. In 1852, he won election as judge of the McLean County Court, while also serving as Bloomington city attorney. In 1853, he married Charlotte A. Perry daughter of Presbyterian minister David Perry, the first Bloomington city clerk. Both of their children died in infancy.<sup>5</sup>

An ardent Whig, Scott became a member of the new Republican party and in 1856, won the party’s nomination for state senator. “Although he made an active campaign,” Crossley wrote, “and appeared as the first openly avowed anti-slavery man to deliver political speeches in his county, his district was overwhelmingly anti-republican,” causing his defeat by a small majority to Joel S. Post of Decatur.<sup>6</sup>

Serving on the county court for ten years, Scott succeeded David Davis on the bench of the Eighth Judicial Circuit in 1862, after President Lincoln appointed Davis to the U.S. Supreme Court. Scott “held the circuit court,” explained Palmer, “during the most troublous times of the civil war, and was called upon, in the discharge of his duties, to repress the violence of both sides, which he did with a fearlessness and courage worthy of the best age of the judiciary.”<sup>7</sup>

With the 1870 Illinois Constitution increasing the number of Supreme Court justices from three to seven, Scott received the endorsement of the bar and in August 1870 won a nine-year term on the Supreme Court, representing the Third Judicial District. “At the time Judge Scott became a member of the court,” wrote Palmer, “he was in the prime and vigor of his life, and had acquired at the bar and on the bench a capacity

for legal information which fitted him to deal intelligently and ably with all the questions which came before the court.”<sup>8</sup>

In the 1874 *Lenfers et al. v. Henke et al.* case, Scott reversed the decree of the Jo Daviess Circuit Court. The case involved the dower interest of a widow in the mineral lands of her husband. That issue, according to Palmer, “had never been passed upon by any court, either in England or the United States.” Judge Scott delivered the opinion “in a remarkably clear, original and well reasoned argument, showing his ability to deal with questions upon the broad ground of original thought, unaided by express authority.”<sup>9</sup>

Scott won reelection to the Court in 1879 and served three terms as Chief Justice, in 1875, 1882, and 1886. He delivered the opinion in the 1884 *Ker v. People* case of Chicago bank cashier Frederick M. Ker, who had committed the crime of embezzlement and larceny, then fled to Peru. Since the Chilean military government possessed Peru at that time, American officials were unable to procure his return under any existing treaty. They arranged his forcible placement on a U.S. ship and return to Chicago. There, in the criminal court of Cook County, he unsuccessfully pleaded the illegality of his arrest and extradition.

Justice Scott rendered the opinion that sustained the criminal court decision. “Rejecting, as must be done,” he wrote, “the erroneous assumption defendant had the right of asylum in Peru under the treaty between the two governments, and the argument for the defense is wholly without force. It is plain he had no right of asylum the law of either government would protect. The treaty as to the crime of larceny, with which defendant stood indicted, had provided no asylum that would secure him immunity from

arrest for that crime in the country where he was domiciled.”<sup>10</sup> The U.S. Supreme Court later upheld the opinion.<sup>11</sup>

Justice Scott’s numerous decisions are included in volumes 54 through 125 of *Illinois Reports*, “a contribution to the body of judicial law,” reported historian George W. Smith, “as important as the contribution of any member of the Supreme Court during the history of the state.”<sup>12</sup>

Scott’s terms of service covered a formative period in the state “from which important litigation originated,” including the park systems of Chicago, the railroad and warehouse commission, municipal taxation and real estate, and issues of corporation law. During that lengthy period, wrote Crossley, Scott “endeavored, as have too few judges, to interpret the law as a system of social and political philosophy and not as collection of arbitrary rules based on technical distinction.”<sup>13</sup>

Retiring from the Court in 1888, Scott regularly attended annual meetings of the Illinois State Bar Association and participated in programs of the McLean County Historical Society, while also writing treatises on legal and local history.<sup>14</sup> In 1896, he wrote a history of the early days of the Illinois Supreme Court entitled *Supreme Court of Illinois, 1818, Its First Judges and Lawyers*. Scott died in his Bloomington home on January 21, 1898 and was buried in a granite mausoleum at Evergreen Cemetery.<sup>15</sup>

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<sup>1</sup> David Ward Wood, ed., *History of the Republican Party . . . Illinois Volume* (Chicago: Lincoln Engr. and Pub. Co., 1895), 217; *Portrait and Biographical Album of McLean County, Illinois* (Chicago: Chapman Brothers, 1887), 969-70. In this publication, Nancy Scott’s maiden name is recorded as Biggs.

<sup>2</sup> John M. Palmer, ed., *The Bench and Bar of Illinois; Historical and Reminiscent* (Chicago: Lewis Pub. Co., 1899), 55; Edward F. Dunne, *Illinois: The Heart of the Nation*, Vol. 4, (Chicago: Lewis Pub. Co., 1933), 32.

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<sup>3</sup> Frederic B. Crossley, *Courts and Lawyers of Illinois* (Chicago: American Historical Society, 1916), 320.

<sup>4</sup> Emanuel Hertz, ed., *The Hidden Lincoln from the Letters and Papers of William H. Herndon* (New York: Viking Press, 1938), 320.

<sup>5</sup> *Bloomington Pantagraph*, 22 January 1898, 5; *Portrait and Biographical Album*, 970; Palmer, 59.

<sup>6</sup> Crossley, 320-21; *Portrait and Biographical Album*, 970.

<sup>7</sup> Palmer, 56.

<sup>8</sup> Palmer, 57.

<sup>9</sup> *Lenfers et al. v. Henke et al.*, 73 Ill. 405 (1874); Palmer, 59.

<sup>10</sup> *Ker v. People*, 110 Ill. 627 (1884).

<sup>11</sup> Palmer, 58; Crossley, 323.

<sup>12</sup> 173 Ill. 18; George W. Smith, *History of Illinois and Her People*, Vol. 4, (Chicago: American Historical Society, 1927), 366.

<sup>13</sup> Palmer, 58; Crossley, 321.

<sup>14</sup> 173 Ill. 18.

<sup>15</sup> *Bloomington Pantagraph*, 5.