

LINCOLN LORE

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LINCOLN'S FIRST SUCCESSFUL VENTURE IN LAW MAKING

Abraham Lincoln became eligible to assist in drafting the laws of Illinois on Monday, December 1, 1834 when "he qualified and took his seat" as a representative from the county of Sangamon. Four days after the session opened Lincoln addressed the speaker in this manner, "I now give notice that Monday next, or some day thereafter I shall ask leave to introduce a bill entitled 'an act to limit the jurisdiction of Justices of the Peace.'" He was not privileged to see this bill which he presented on December 9th become a law. However, the day following the announcement of December 4th, he submitted in writing some additions and revisions on "An Act Concerning Estrays," which were approved with minor changes on February 10, 1837. This project might be called Lincoln's first successful venture in law making.

The effort may have been an attempt to carry out some campaign pledges made as early as 1832 when he stated in the speech announcing his candidacy: "Many respectable men have suggested that our estray laws . . . are deficient in their present form and require alterations."

Lincoln was well prepared to make intelligent observations with respect to the "Estray Laws" which were of much importance in the unfenced areas of the pioneer country, where horses, cattle, swine, sheep and goats strayed through the country and often became lost. Barges, ferryboats, flatboats and skiffs adrift on the rivers or washed ashore were also items to be listed by the finders.

There were eleven sections in An Act Concerning Estrays which covered these questions: Duty of persons taking up estrays, Duty of county clerks, Property vested in taker up, Penalty for selling estrays out of the state, Taker up shall be householder, Sale of estray, Charges of taker up to be paid out of proceeds and balance to be paid to county treasurer, Penalty for justice not paying over such balance, Taker up not liable for escapes, Penalty for persons taking up other than on own plantation, How recovered, Duty of takers up of water craft, Fees for the different officers in the estray cases.

Section three of the act as prepared in Lincoln's handwriting follows:

"Sec. 3. And if no owner appears and proves his property within two years, after such publication, the property shall be vested in the taker up; nevertheless the former owner may at any time thereafter, by proving his property, recover the valuation money."

The alterations in the bill as passed changed the time of possession from two years "to one" and this concluding clause at the end of the writing was added, "Upon payment of costs and all reasonable charges." A part of the Section 3 in the same act also received some attention from the new representative from Sangamon.

Possibly the incentive which prompted the presentation of Lincoln's amendments to the then existing estray law was some observations made by him about three weeks before when he served as an appraiser of a stray horse taken up by Thomas Dowell at his Clary Grove residence near New Salem.

The very year Lincoln arrived in Illinois he was asked to serve as an appraiser of an estray horse and the written report is possibly the earliest document of any length in his hand writing which has been preserved. The clear description of the animal, the excellent English used and the neatness of the document indicate that Lincoln had some valuable literary training before he reached the town of New Salem where he is alleged to

have received much of his education. A copy of the report follows:

"December 16, 1830

We the under signers having been called on to appraise an Estray Mare Taken up by Jonathan B. Brown on Monday the 12th day of Decr. 1830: Do find her to be four years old next Spring a bright bay 14 hands high—a Small blaze and a Snip in her face—right hind foot white—right fore foot with a white Stripe down the hough and white hairs around the edge of the hough no brands perceivable black mane and tail appraised to 30 Dollars Given under hands this 16th. day of December 1830

A. Lincoln
John W. Reed"

From the time Abraham was a very small child he must have been familiar with the procedure when an estray animal was taken up as he lived for five years in a cabin on the much traveled old Cumberland Road near Knob Creek. The first record we have of the Lincolns residence there appears in an old estray book of 1811. Thomas Lincoln, Abraham's father, reported the taking up of a gray mare which was appraised at \$20.00. The estray books of that day make very important historical records as they tell where the taker up lived, certify that he was a householder and that the estray was taken up on his land. This estray notice proves the Lincolns lived at Knob Creek two years earlier than was recognized before the notice was first discovered by the editor of *Lincoln Lore*.

The form of the estray notice is of interest and the margin caption recording each estray animal noted the sex and color. The many colors by which horses were designated indicates that only a keen observer could prepare a description. Here are some of the colors used in describing horses taken up in Hardin County, Kentucky about the time Abraham was living on Knob Creek. They are arranged in the order of the basic colors for horses and then followed by the variations noted in that color: Bay—bright, brown, dark, yellow; Black; Brown—dark; Chestnut; Dun, Gray—bright, bright iron, dapple, dark, flea bitten, iron; Roan—black, blue, red, strawberry; Sorrell—bright, chestnut, dark, dark chestnut, light; White—flea bitten; Yellow. This makes a total of thirty-two different colors used in describing horses.

After the color of the horse had been noted the age of the animal was determined by examining its teeth, then the height of the horse was measured in hands (hand—4 inches). A more detailed description such as white feet, blaze on forehead, color of mane, and especially any brand or mark which would assist in the identity of the estray were important factors. The gait of the horse was often mentioned and whether or not it was broken to saddle and then its money value appraised. All of this detailed description with terminology now nearly obsolete reads like language from another era in this almost horseless day.

It is not strange that Lincoln's early interests in the legislature were centered in the laws which most concerned the common people in a frontier land.

See *Lincoln Lore* No. 651.