We all know Abraham Lincoln (1809-65): 16th U.S. President, the man on the penny and the $5 bill, on Mount Rushmore or seated in the Lincoln Memorial in Washington, D.C. However, what you may not know is that Lincoln not only led the country through the American Civil War and abolished slavery, but also practiced debtor/creditor and bankruptcy law.

Before Lincoln was a lawyer, at 24 years old he went into business to purchase a local general store, but the business failed. The sheriff seized Lincoln’s horse, saddle and surveying equipment, but there was a substantial deficiency debt. It took Lincoln 10 years to pay that debt. As a result, Lincoln had a first-hand education by experience in debtor/creditor law, and his diligence in payment of the debt helped earn him the enviable nickname “Honest Abe.” Both during his business failure and when he became a lawyer in 1836 at age 27, there was no federal bankruptcy law.

The Bankruptcy Act of 1841

The Constitution, effective in 1789, provided for Congress to create laws relating to bankruptcy in Article I, section 8, which gave Congress the power to “establish … uniform Laws on the subject of Bankruptcies throughout the United States.” Congress did not pass a law relating to bankruptcy until the Bankruptcy Act of 1800, which was creditor-oriented and only provided for involuntary bankruptcies of merchant debtors. Debtors soon learned that they could abuse the system by having a friendly creditor file the bankruptcy, and the law was repealed in 1803. The states continued to have state quasi-bankruptcy laws in the absence of a federal law, but most such laws were pro-creditor and many provided for the imprisonment of debtors.1

It is interesting to note the proximity of the timeline between the Constitution and founding fathers and Abraham Lincoln’s time. When Lincoln was born, the Constitution was only 20 years old. When Lincoln became a lawyer in 1836, the Constitution was only 47 years old.

When Lincoln first became a lawyer, there was a financial crisis, as many people could not pay their debts because there was not enough currency in circulation (promissory notes were commonly substituted for cash) and assets were tied up in real estate. In 1841, when Lincoln was 32 and had been practicing law for five years, Congress passed the second bankruptcy law in response to the crisis, called the Bankruptcy Act of 1841, “An Act to Establish a Uniform System of Bankruptcy throughout the United States.”2

For the first time, bankruptcy law permitted voluntary bankruptcies to be filed by debtors, and a debtor could receive a discharge of the debt. In addition, any individual could be a debtor, not just a merchant, as under the 1800 law. The power to grant the discharge and judge other matters relating to bankruptcy was vested with the U.S. district courts.3

As excerpted from the Bankruptcy Act of 1841:

All persons whatsoever, residing in any State, District or Territory of the United States, owing debts, which shall not have been created in consequence of a defalcation as a public officer ... who shall, by petition, setting forth to the best of his knowledge and belief, a list of his or their creditors, their respective places of residence, and the


amount due to each, together with an accurate inventory of his or their property, rights, and credits ... verified by oath, or, if conscientiously scrupulous of taking an oath, by solemn affirmation, apply to the proper court ... for the benefit of this act, and therein declare themselves unable to meet their debts and engagements, shall be deemed bankrupts within the purview of this act.

Section 4 of the Act (the discharge) states the following:

[E]very bankrupt, who shall bona fide surrender all his property, and rights of property, with the exception before mentioned [i.e., certain exempt property], for the benefit of his creditors, and shall fully comply with and obey all the orders and directions which may from time to time be passed by the proper court ... shall (unless a majority in number and value of his creditors who have proved their debts, shall file their written dissent thereto) be entitled to a full discharge from all his debts.4

By 1842, Lincoln was inundated with clients looking for a bankruptcy discharge and fresh start under the new law, and the lanky 33-year-old, 6-foot-4-inch tall Lincoln (without yet his iconic beard) could at that time be seen in the federal court room in Springfield, Ill., petitioning U.S. District Court Judge Nathaniel Pope for discharges of debt under the new law.5

Lincoln was handling numerous Sangamon County bankruptcy cases, as well as referral cases from lawyers outside the county for the one District of Illinois. The referral lawyers found it too expensive to come to the federal court in Springfield to handle uncontested bankruptcies at $10 per case. On the other hand, it was profitable for Lincoln to handle them in volume, requiring referral lawyers to pay $10 in advance and up to $20 more for court costs and newspaper ads. The newspaper ads required by the court as a notification to creditors about debtors provide the best existing record of Lincoln’s bankruptcy cases, since the Chicago fire of 1871 destroyed most of the case files of the federal courts in Illinois.6

Before 1842, Lincoln had been involved in only seven federal cases. By 1842, he had now litigated 73 federal cases in 17 months, including 19 during October 1842. Congress repealed the Bankruptcy Act on March 31, 1843, and Lincoln brought his last known bankruptcy petition before the federal court in June 1843.7 Bankruptcy was so new that Lincoln did not know what a fee for a discharge petition should be, stating that “I can not say there is any custom on the subject.”

Debtors in bankruptcy had to disclose their financial affairs, as they do today, by filling out detailed schedules of debts and assets. Omissions in the schedules were grounds for denial of a discharge.9 Lincoln advised one referral attorney: “Be sure that [the schedules] contain the creditors names, their residences, the amounts due each, the debtors names, their residences, and the amounts they owe, also all property and where located.”10

By the time Congress repealed the bankruptcy law, Lincoln had handled 77 bankruptcy cases, the most of any Springfield lawyer. The repeal did not mean that Lincoln stopped practicing debtor/creditor law, because Illinois law included actions for debt, assignments for the benefit of creditors and compositions (settlements).11

Lincoln, like other businessmen of his time, often received promissory notes instead of cash for fees. He could obtain payment up front from out-of-town referral lawyers, but usually not from Sangamon County clients, who were often broke when they filed for bankruptcy, and Lincoln had to accept their notes for fees as well as expenses. One such note called for payment to be made in firewood; Lincoln reckoned that the client would not likely be able to pay cash.12

A State Court Debtor/Creditor Lawyer

Lincoln’s bankruptcy work was ancillary to his large state law practice of debtor/creditor law. Of the approximately 4,000 to 5,000 cases in which Lincoln was an attorney of record, more than 2,500 involved some form of debt litigation. In his first full year as a lawyer in 1837, he was involved in 91 cases, 65 of which were for debt collections. Five years later, Lincoln was involved in 219 cases, 175 of which were for debt collections.13

For a general practitioner like Lincoln, debtor/creditor litigation, including collection of the notes used in lieu of cash in most commercial transactions, was the better part of his civil practice. If Lincoln specialized in any area of the law, it could be said to be debtor/creditor law.14

Lincoln was the defendant’s attorney in 713 debt-related cases during his career; he represented the plaintiff in such cases more than 1,300 times.15 In a typical year, like 1853, Lincoln could claim victory, meaning that his client was not required to pay the debt or reach a settlement in only three of the 29 cases in which he represented a debtor. In 1856, in 36 cases, he was victorious in only three.16

Two years later, Lincoln represented 13 debtor defendants, and they all lost or settled out of court. “There was no ground upon which to stand the case off,” he informed one client. Most of his debtor clients who went before a judge with their signature on a valid note found their defenses limited. If others owed the debtor money, however, Lincoln might get them time to collect. Retaining Lincoln to defend a hopeless case could delay collection long enough to collect elsewhere. A lost case could be a victory if it still allowed a debtor to put his affairs in order.17

In 1850, Lincoln litigated 42 debtor-creditor cases, including promissory notes, and other disputes between businesses and farmers. Of those cases, only eight involved witness or deposition testimony, and only four required a jury trial.18

In his often-quoted notes for a law lecture, Lincoln made his philosophy as a lawyer clear. “Discourage litigation,”

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5 See Dirck, fn.1, p. 63-64.
6 See fn.3 (Kindle locations 1902-1906).
7 10 Id. (Kindle locations 1540-1545).
8 See Dirck, fn.1, p. 64.
9 See fn.3 (Kindle locations 1906-1912).
10 Id. (Kindle locations 1903-1909 and 1909-1915).
11 Id. (Kindle locations 1921-1924).
12 Id. (Kindle locations 1548-1551).
13 Id.
14 See Dirck, fn.1, p. 59-60
15 Id. at p. 61.
16 Id. at p. 64.
17 Id. at p. 64-65.
18 Id. at p. 66.
Honest Abe famously said. “Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time.” Lincoln practiced what he preached, achieving a negotiated settlement in a little over 380 of his debt-related cases.  

A Visit to Lincoln’s Law Office

Springfield was Abraham Lincoln’s home, the capital of Illinois and the seat of Sangamon County. You can today take a tour of Lincoln’s restored law office, on the south side of the square facing the Old State Capitol. During his nearly 25-year law career, Lincoln used office space in several Springfield locations, but this is the only building remaining. The street below was unpaved, with wooden sidewalks for pedestrians.

The building was almost new when Lincoln moved into the space in 1843 with his second law partner, Stephen T. Logan, a cousin of Mary Lincoln. They rented offices on the third floor, prime space at the time, above the federal courtroom and across from the new statehouse.

During Lincoln’s time there, the federal government rented the first floor for a post office and the second floor for a district courtroom, judge’s chamber and clerk’s office. Lincoln appeared before District Court Judge Pope in this building concerning 40 regular cases and 77 bankruptcy proceedings.

In 1845, Gibson Harris joined the firm as a student and clerk. Years later, he recalled the office this way: “The furniture, somewhat dilapidated, consisted of one small desk and a table, a sofa or lounge with a raised head at one end, and a half-dozen plain wooden chairs. The floor was never scrubbed... Over the desk a few shelves had been enclosed; this was the office bookcase holding a set of Blackstone, Kent’s Commentaries, Chitty’s Pleadings, and a few other books. A fine law library was in the Capitol building across the street to which the attorneys of the place had access.”

In his Lincoln biography, William Henry Herndon described his law partner’s habits in the office: “When he reached the office, about [9 a.m.], the first thing he did was to pick up a newspaper, spread himself out on an old sofa, one leg on a chair, and read aloud, much to my discomfort. Singularly enough, Lincoln never read any other way but aloud.”

Herndon also described Lincoln’s approach to office organization: “Lincoln had always on the top of our desk a bundle of papers into which he slipped anything he wished to keep and afterwards refer to. It was a receptacle of general information. Some years ago, on removing the furniture from the office, I took down the bundle and blew from the top the liberal coat of dust that had accumulated thereon. Immediately underneath the string was a slip bearing this endorsement, in his hand: ‘When you can’t find it anywhere else, look in this.’”

Conclusion

Abraham Lincoln should be an inspiration to all members of our profession and the author hopes that you enjoyed reading about him as much as he did. The sources cited in this article make wonderful reading for historical perspective on Lincoln, the evolution of debtor/creditor and bankruptcy law, and on Lincoln’s contribution to the profession of law.

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President Abraham Lincoln. 23,732 likes · 608 talking about this. Abraham Lincoln (February 12, 1809 – April 15, 1865) was the 16th President of the... Abraham Lincoln (February 12, 1809 – April 15, 1865) was an American statesman and lawyer who served See more. CommunitySee all. Abraham Lincoln is an attorney in Charlottesville, VA. Practice in Government, General Practice. - Lawyer.com. As president, Lincoln subscribed to the Whig theory, which gave Congress the power for writing laws and had the Executive Branch enforce them. Lincoln signed the Homestead Act in 1862, which made low-cost government lands in the West available for purchase, and the Morrill Land-Grant Colleges Act, signed in 1862, that gave government grants to agricultural colleges in every state. Abraham Lincoln, a self-taught lawyer, legislator and vocal opponent of slavery, was elected 16th president of the United States in November 1860, shortly before the outbreak of the Civil War. He led the nation through the bloody conflict and declared all slaves free under the Emancipation Proclamation.