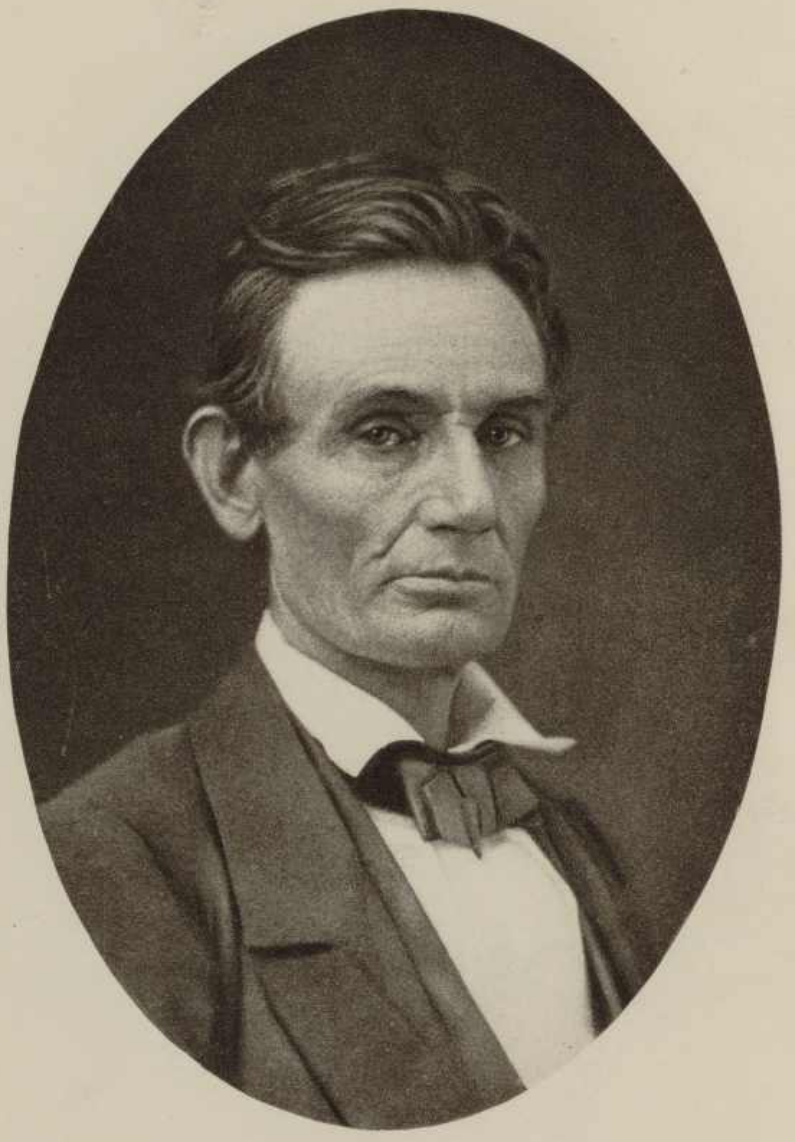

A. Lincoln

ABRAHAM LINCOLN

THE LAWYER-STATESMAN

BY

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CHICAGO BAR ASSOCIATION

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PREFACE

THIS volume is not a biography, but is intended only as a presentation of the results of an investigation into the record of Abraham Lincoln as a lawyer, his views upon the subjects of universal suffrage and the reconstruction of the Confederate State Governments at the close of the Civil War, and his attitude toward the judiciary, upon which there has been considerable misunderstanding in recent years. To these has been added a chapter devoted to some consideration of his standing as an orator.

Many biographies of Lincoln have been written, but no adequate review of the subjects before mentioned has appeared. It has been frequently said that Lincoln was not a great lawyer. Much misinformation is current in relation to Mr. Lincoln's career at the bar. Indeed, statesmen and lawyers of renown, relying upon the erroneous statements of some of Lincoln's contemporaries, have been led to underestimate greatly his standing as a member of the legal profession. The facts presented in this volume, it is believed, will remove the erroneous impression which has been thus created, and convince

even the most skeptical that Mr. Lincoln was one of the truly great lawyers of his generation.

The attitude of the great President toward the Southern States throughout the Civil War, and in relation to the reconstruction of state governments in them, was always friendly. He sought to aid and encourage those States to reëstablish themselves as members of the Union. He was never inclined to force negro suffrage upon them, but believed that the States should be left free to grant or withhold the right of suffrage as each State might determine for itself. The facts clearly prove that Mr. Lincoln was opposed to the system which has become known as "Carpet-Bag Government," but believed that the loyal white citizens of every State should be allowed to control its political affairs. It has been said that he favored woman's suffrage also, but there is not sufficient evidence to warrant this conclusion, as will be seen from a perusal of these pages. Lincoln's criticism of the decision of the Supreme Court of the United States, in the case of Dred Scott *vs.* Sanford, has been often referred to in recent years as a justification for assaults upon the courts, but a careful review of all that he said upon that subject shows that he was a firm believer in and champion of the independence of the judiciary.

This volume is submitted in the hope that it will

lead to a better understanding of the subjects of which it treats. The accomplishment of this purpose is all that the author has attempted, and the attainment of that end will furnish ample justification for an undertaking which has been inspired by a desire to aid in doing complete justice to the memory of the great President.

JOHN T. RICHARDS

CHICAGO, *February, 1916.*

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THE LAWYER-STATESMAN

CHAPTER I

LAYING THE FOUNDATION

THAT Abraham Lincoln was endowed with a mentality which has been equaled by few men must be admitted by all who are familiar with his remarkable career; for in no other way can the intellectual force which he displayed throughout his mature years be explained or accounted for. As he himself said, when he came of age he "could read, write, and cipher by the Rule of Three, but that was all."[1] He had, as he stated in an autobiography which he wrote in 1860, attended school in all less than one year, and the teachers were required to teach only the three subjects before mentioned. Therefore, if the term education is confined to its primary meaning, as generally accepted, which may be defined as a training which results from the pursuit of a complete course in an institution of learning, it must be conceded that Mr. Lincoln was not an

[1] See *Letters*, vol. II (Centenary Edition), p. 212.

educated man; but if by education is meant a "systematic development and cultivation of the normal powers of intellect, feeling, and conduct so as to render them efficient in some particular form of living, or for life in general," then, indeed, Lincoln was an educated man in the truest and best sense of the term.

The chief purpose of the pursuit of an orderly curriculum in schools and colleges is not so much to store the mind with knowledge as to train and discipline the intellect to grasp readily the subject presented, to reason correctly and think deeply, so to control the mind as to enable one to concentrate all one's energies upon the subject under consideration; and while such a systematic training enables its possessor to acquire knowledge more rapidly and with less arduous labor, it is by no means essential to success in any field of human activity.

That Lincoln's deprivation of that systematic mental training, considered so important in the twentieth century, added greatly to the task which confronted him when he attained the age of twenty-one years, is beyond dispute. The great thirst for knowledge which possessed him as boy and man made him a constant student throughout his entire career. Such of his early speeches and writings as have come down to us, though few in number, dis-

play a familiarity with history and a knowledge of the English language which, in such an environment as that which surrounded him, could not have been acquired except by deep study.

It is unfortunate that, beyond the general statement that, while a youth in Indiana, Lincoln read, besides the Bible, Shakespeare, "Pilgrim's Progress," and Weems's "Life of Washington," such other books as he could borrow, there is no evidence available as to the books which aided in the development of his mind up to the time when he removed to Illinois. After he was twenty-three years of age he studied English grammar, and he practically mastered the six books of Euclid after he had passed forty years of age, as stated in the autobiography before mentioned.

Lincoln arrived in Illinois in the early springtime of the year 1830. Two years later he was a candidate for the legislature. Although he was then but one month past twenty-three years of age, the address which he delivered on the 1st of March of that year, and which was printed and circulated as a campaign document, is remarkable for the lucid presentation of his views upon the questions then before the public. The language employed, as well as the method of statement, is in harmony with that contained in his great speeches delivered in the later

years of his life, and affords abundant evidence of a knowledge of pure English and the ability to think deeply and present forcefully the conclusions reached by his mental processes.

That Lincoln was well esteemed by the people is evidenced by the fact that he received liberal support for the office to which he sought to be elected. At that time the legislature was a much more important body than at present; its powers were far greater in 1832 than in 1914. It had power to grant corporate charters and other special privileges, and it also elected judicial and other officers. Lincoln failed of election, which, considering his youth, is not strange. It is worthy of remark, however, that one so young should have been even considered for that office, and the fact that he was so considered shows that there was something remarkable about him. Two years later he was elected as one of four members of the legislature from Sangamon County (among whom was John T. Stuart, afterwards Lincoln's law partner). Only one of the four received more votes than did Lincoln. He was reëlected to the legislature at the next three biennial elections and became a very influential member of that body. His speeches were of a high order. That on the State Bank, delivered in January, 1837, when he was but twenty-eight years of age, is an able argument,

logical, convincing, and expressed in the best of English.

A study of the record of his career while in the legislature will convince any one that Lincoln was even then a master of the English language and a student of events, and that he was always well informed upon all subjects which he undertook to discuss. His was not a superficial knowledge. He mastered everything which he considered of sufficient interest to demand his attention. His motto seems to have been, "Whatever is worth doing is worth doing well."

The address before referred to, delivered March 1, 1832, bears evidence of thoughtful consideration of the subjects of which it treats. In that address he enunciated also a rule of conduct which seems to have been his guide through life. In speaking of ambition he said, "I have no other so great as that of being truly esteemed of my fellow men by rendering myself worthy of their esteem." Again, his speech on the State Bank, before mentioned, published in the Vandalia *Free Press* in January, 1837, and copied by the Springfield *Journal*, January 28, 1837, reveals not only complete familiarity with the financial questions involved, but also a thorough appreciation of the consequences which would follow the action which he opposed. His mind grasped

readily the most complex questions, and his statement of any proposition, even at that early age, always exhibited a clearness of mental vision which is lacking in many men who have had every educational advantage.

Just when Mr. Lincoln decided to become a lawyer is a matter of uncertainty. It is quite evident, however, that he did not enter upon a systematic study of the law until after his election to the legislature in 1834. During the campaign which resulted in his first election, John T. Stuart had suggested that he ought to study law, and his experience in the legislature and his contact with lawyers who were his fellow members in all probability inspired him with ambition to become a member of the legal profession. He has stated that he had studied law during his legislative period, but he makes no other mention of his law studies, except to say that, after his election, he borrowed some law books from John T. Stuart, took them to his home, and studied them until the legislature met, then took them up again after the session ended.

Mr. Lincoln was admitted to the bar of Illinois March 1, 1837, and on April 15 of that year he removed to Springfield and began practice as a partner of Stuart, being at that time twenty-eight years of age. Some of his biographers have stated that he

was admitted to the bar on September 9, 1836. This is an error. Admission to the bar in Illinois was at that time controlled by a statute which went into effect March 1, 1833. The first rule of court relating to admission to the bar was adopted by the Supreme Court March 1, 1841, and that rule required all applicants for admission to the bar to present themselves in person for examination in open court, excepting only those who had been regularly admitted to the bar in some court of record within the United States. But under the statute of 1833, which remained in force until 1841, the applicant was not required to pass an examination of any kind.

The error into which Mr. Isaac N. Arnold and some others among Lincoln's biographers have fallen in relation to the date of Mr. Lincoln's admission to the bar is doubtless due to the fact that, since the adoption of rules upon the subject by the Supreme Court, all licenses to practice law have been issued by the clerk of that court and the enrollment has been concurrent with the issuance of the license. In consequence of this it has doubtless been assumed by these writers that the issuance of a license to Mr. Lincoln by the judges on September 9, 1836 authorized him to practice law regardless of the time of his enrollment, while the statute of 1833 provided that before one could be "admitted to

practice as an attorney and counselor at law" he must have performed the following acts: (1) He must have obtained a license for that purpose from some two of the judges of the Supreme Court. (2) In order to obtain such license, he was required to procure a certificate of his good moral character from the court of some county in the State. (3) Having obtained the license from the two judges, he was required to take an oath to support the Constitution of the United States and of the State. (4) The officer who administered the oath was required to certify the same on the license. (5) On the presentation of the license, with the oath endorsed thereon, to the clerk of the Supreme Court, the latter was required to enroll the name of the applicant as an attorney and counselor at law, and the same statute provided that "no person whose name is not subscribed to or written on said roll with the day and year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practice as an attorney or counselor at law within this State."

If anything further is needed to settle the question of the date of Mr. Lincoln's admission to the bar, reference is here made to the decision by the Supreme Court of Illinois in the case of E. C. Fellows *ex parte*, 3 Ill. 369, which was an application made by Fellows at the December term, 1840, of the Supreme Court

for an order authorizing the clerk of that court to enter the name of the applicant upon the roll of attorneys as of the 20th of March, 1837. Fellows had obtained from the judges the necessary license to practice law in September, 1835, and had taken the required oath on March 20, 1837. Thus far he had fully complied with the provisions of the statute of 1833, but he had omitted to have his name enrolled until October 6, 1840. The application of Fellows was denied, and in its opinion the court said, "If he has incurred any liability by practicing as an attorney and receiving fees before his name was enrolled, or if he seeks to recover for services performed before his name was entered on the roll, this court cannot aid him by permitting the clerk to make the entry *nunc pro tunc*."

From the foregoing it conclusively appears that the date of Mr. Lincoln's admission to the bar was the date of his enrollment, which was March 1, 1837, and not September 9, 1836, the date of the issuance of the license by the judges. The Supreme Court at the time of Lincoln's admission to the bar was composed of four judges and the court sat only as a court of review, but by an act passed by the legislature February 10, 1841, the judiciary of the State was reorganized; the Circuit Court judges — namely, the judges of the *nisi prius* courts, of whom there were

four in the State — were legislated out of office and the number of Supreme Court judges was increased to nine.

Under the Constitution of 1818 all of the Circuit and Supreme Court judges were elected by the legislature on joint vote of both houses. The judges of the Supreme Court, before the passage of the act referred to, were William Wilson, chief justice; and Samuel D. Lockwood, Theophilus W. Smith, and Thomas C. Browne, associate justices. Three of them belonged to the Whig party, Judge Smith alone being a Democrat. The legislature of 1841 had a Democratic majority. In 1839–40, two political questions were awaiting decision in cases pending in the Supreme Court, one of which involved the power of the governor to remove from office the secretary of state, and the other involved the right of aliens to vote. As the Whigs contended that the governor did not possess the power to remove the secretary of state without cause and that aliens were not entitled to vote, and the Democrats held the contrary view on both questions, and as the Whig majority of the Supreme Court had at the December term, 1839, held against the Democratic contention as to the power of the governor to remove the secretary of state, it was assumed that the same judges would sustain the Whig contention in deciding the other

case, and the legislature by the act referred to added five judges to the Supreme Court, abolished the office of Circuit Court judge, and immediately proceeded to elect five additional judges, all Democrats, to fill the offices then created.

It was also provided by the act referred to that the Supreme Court judges should perform Circuit Court duty. The five additional judges of the Supreme Court, all of whom were elected by joint vote of the two houses of the legislature on the 15th day of February, 1841, were Thomas Ford, afterwards governor of Illinois; Sidney Breese, who afterwards became United States Senator from Illinois and at a later date was elected a judge of the Supreme Court of Illinois and served in that office until his death in 1878; Walter B. Scates; Samuel H. Treat, afterwards, by appointment of President Pierce, the first judge of the District Court of the United States for the Southern District of Illinois, when that court was created; and Stephen A. Douglas, who was destined to become the opponent of Lincoln in the great debate and also his rival for the United States senatorship and the presidency.

Douglas made a speech in the rotunda of the Capitol at Springfield advocating the passage of the act which created the office to which he was later elected by the joint vote of both branches of the legislature

during the same month, and was therefore a direct beneficiary of the act. Lincoln and the other Whig members of the legislature vigorously opposed the act. Three Democrats in the Senate and five in the House also voted against it. By the election of the additional judges, the Democratic majority hoped to secure a decision which would overrule the case decided in 1839 and obtain a decision in favor of the Democratic contention in the other case, even though the three Whig judges should support the Whig contention. This remarkable piece of legislation and the advocacy of its passage by Douglas were repeatedly referred to by Mr. Lincoln in the great debate.

The case first mentioned is entitled Field *vs.* The People, *ex rel.* John A. McClernand, 3 Ill. 79. The Supreme Court held the constitution to be a limitation upon the legislative department of the government, but a grant of powers to the other departments; that therefore neither the executive nor the judiciary could exercise any authority or power not clearly granted by that instrument; and that when the power of appointment had been exercised by the appointing power, it remained suspended until a vacancy occurred; that where an office is created by the constitution, the tenure of which is left undefined and unlimited, the officer so appointed is

entitled to hold during good behavior or until the legislature by law limits the tenure to a term of years or confers upon some government functionary power to remove the officer; that as the office of secretary of state was created by the constitution and the power of his appointment vested in the governor, with the advice and consent of the Senate, and, as the tenure of his office had not been fixed by law, the governor possessed no power to remove that officer at his will and pleasure. A majority of the court held that the attempt of the governor to remove the appellant Field and appoint McClernand was ineffective. Judge Smith, who was the only Democratic member of the court, wrote a long dissenting opinion in support of the Democratic contention. Stephen A. Douglas was one of the counsel for McClernand and made the principal argument for the relator. The Democrats professed to believe that the Whig majority of the court had been influenced by party considerations in rendering the decision.

The case involving the right of aliens to vote was that of Spragins *vs.* Houghton, 3 Ill. 377, decided at the December term, 1840. Mr. Douglas also appeared in this case on behalf of the Democratic contention, which was sustained by the court. As before stated, the case of Field *vs.* The People was

decided at the December term, 1839, and although sound in principle, it displeased the Democrats greatly. Having a majority in both houses of the legislature of 1840–41, they determined upon a reorganization of the courts and proceeded with such reorganization even after the Democratic contention had been sustained by the three Whig members of the court, and the act of February 10, 1841, was passed, as already stated.

From an examination of these two cases there is no doubt but that the majority of the court, in each case, reached a correct conclusion upon the questions at issue. These decisions have frequently been cited with approval, not only in Illinois, but also by the courts of last resort in other states. Mr. Lincoln was not an attorney in either of these cases and reference is made to them here only for the purpose of showing their historical bearing upon the attitude of Senator Douglas toward the courts, to which Mr. Lincoln referred in the great debate. While sitting Supreme Court judges were not "recalled," the legislature in this instance has given us an illustration of what can be done to defeat a decision of the court in the absence of proper constitutional limitations.

In recognition of the great work accomplished by Mr. Lincoln in the State and Nation, the honor-

ary degree of Doctor of Laws was conferred upon him by Knox College at Galesburg, Illinois, on July 3, 1860, and in 1864 the same honorary degree was conferred upon him by the College of New Jersey (now Princeton University).

CHAPTER II

IN THE COURTS

AT the time of Mr. Lincoln's admission to the bar of Illinois he had just entered upon the twenty-ninth year of his age. He had been a resident of the State seven years and at that time was serving his second term as a member of the lower house of the state legislature. The proceedings in all the courts of Illinois were then much less dignified and formal than they have since become in all courts of record. Judges and lawyers held more intimate social relations than can well prevail between members of the bar and the busy members of the judiciary at the present day.

The opening of the Circuit Court in any county of the State at that time brought together many of the people from the surrounding country, and as there were few places of amusement where the evenings could be whiled away, all gathered about or within the country tavern and there regaled each other with songs and anecdotes. When evening came it was not thought improper for the judge who had presided as the minister of justice during the day to cast aside judicial dignity and join with

his professional brethren in unrestrained efforts to contribute his share toward the impromptu entertainment of those assembled.

Life on the circuit in those days, as in every new community, had its sunshine and its shadow; but every hardship had its compensation in the good-fellowship which always prevailed among those sturdy pioneers. The judge was usually a man of genial personality and entered heartily into every enterprise which promised to afford relief from the day's monotony. That they did so detracted not in the least from the respectful deference due them, as the representatives of the judiciary; for when the moment arrived for the opening of court, they resumed their seats on the bench with due solemnity; nor were they less impartial in hearing and determining the cases before them for having mingled with their professional brethren and their clients upon a common level during the time which intervened between the sessions of the court.

The experiences of Mr. Lincoln on the circuit were not unlike those of other lawyers of that day. At the time he began the practice of his profession there was little business which required great skill or much learning in the law. The interests involved in civil cases were chiefly trivial, if measured by a monetary standard, but they involved many of the

same principles of law and equity that invite the attention of the courts and demand the professional consideration of the lawyers of to-day. The catalogue of statutory crimes has been greatly enlarged in both state and nation since those primitive times, and many acts then thought to be morally sound are now condemned by the moral sense of the people and denounced by statute as crimes against the state. By reason of this there has been a vast increase in the business of the criminal courts, and the great development of higher ideals, which an enlightened public opinion demands shall control the methods of conducting commerce and business of all kinds, has created means for affording more effective protection to property rights, such as were unknown in those early days. As a result, the labors of the legal profession, and the jurisdiction of the courts in civil and criminal cases, have been much enlarged.

There were in those days no large manufacturing corporations. Transportation of both passengers and freight was chiefly accomplished by steamboats and flatboats on the navigable streams, or overland by animal power. Luxuries were almost unknown, and the wants of the people were easily satisfied. No lawyer, however prominent in his profession, deemed the most insignificant case un-

worthy of his professional attention, and each attended to whatever business came to him, whether his services were required before a justice of the peace or before the Supreme Court — then as now the highest tribunal of the State; and Mr. Lincoln was no exception to this rule.

In the *nisi prius* courts Mr. Lincoln was called upon to try a great variety of cases. There were in those days no "specialists" among the members of the bar of Illinois. Railroads and other vast corporate interests, as commonly understood to-day, were almost unknown in the western country; but whatever the class of litigation might chance to be, whether civil or criminal, the lawyer of that period prepared himself as best he could to render efficient service to his client.

When Mr. Lincoln was admitted to the bar of Illinois, he was in the midst of his second term of service in the legislature of Illinois and had already acquired a considerable reputation as a member of that body. He was known as a fluent speaker and effective debater and was accustomed to address popular assemblages. The newspapers of those days were few in number and made little pretense of contributing much toward the education of the people as a whole. The people assembled at public meetings to listen to a discussion of the questions of the day

by the most gifted orators of the time, and it was in these discussions that the friendly rivalry between Abraham Lincoln and Stephen A. Douglas began.

The same people listened to the speeches on both sides of every proposition which was of general interest, and thereby became better able to decide for or against the policy which was advocated by one and opposed by the other. As a consequence of this there existed among the people a more comprehensive appreciation of the importance of all public questions than prevails in this generation, when each obtains his information from his favorite newspaper, whose editorial opinions he accepts without reserve and generally adopts as his own, without taking the time or trouble to investigate the arguments of those who hold opposite or divergent views.

It was shortly before Mr. Lincoln's admission to the bar that De Tocqueville wrote his "Democracy in America." At that time the lawyers of respectability throughout the United States were, in their respective communities, leaders of public opinion, and the great Frenchman, recognizing this fact, declared that "As lawyers constitute the only enlightened class which the people do not distrust, they are naturally called upon to occupy most of the public stations." Lincoln, Douglas, and many other lawyers of that day were of that type, and

when they spoke the people listened to the arguments of each and were in a position to form their own opinions by the exercise of independent judgment. The art of public speaking was therefore a most important, if not an almost indispensable, qualification in a lawyer who hoped for success in his profession. Mr. Lincoln early cultivated that art and soon acquired a wide reputation as an advocate at the bar and as an orator and political leader. He was frequently associated with or opposed to many of the ablest and best-known members of the bar of Illinois on the platform in political campaigns, in the trial courts, and in the highest court of the State. His reputation as an advocate before a jury was recognized by his professional brethren as of a very high order.

Stephen A. Douglas declared that Mr. Lincoln had no equal as an advocate before a jury. Leonard Swett, himself one of the greatest advocates and a trial lawyer seldom equaled by any man of his generation, — to many of whose arguments the writer has listened with rapt attention, — has said that if Lincoln ever had a superior before a jury, — and the more intelligent the jury the better he was pleased, — he, Swett, never knew him. Mr. Swett went further and declared that in his younger days he had listened to Tom Corwin, Rufus Choate, and

many others of equal standing at the bar, in the trial of cases, but that Mr. Lincoln at his best was more sincere and impressive than any of them, and that what Mr. Lincoln could not accomplish with a jury no other man need try.

Judge David Davis, the circuit judge for the old Eighth Judicial Circuit of Illinois during the greater part of the time that Mr. Lincoln traveled that circuit, continually trying cases in the several counties of which it was composed, and who was appointed a justice of the Supreme Court of the United States by President Lincoln, said, "In all the elements that constitute the great lawyer he [Lincoln] had few equals. He was great both at *nisi prius* and before an appellate tribunal."

Thomas Drummond, for many years judge of the Circuit and District courts of the United States in Illinois, than whom no greater trial judge ever sat upon the bench, and before whom Mr. Lincoln tried many cases, affirmed that he was one of the ablest lawyers he had ever known.

Mr. Lincoln often appeared in the argument of cases before the Supreme Court of Illinois while Judges Sidney Breese and John D. Caton were members of that court. Both had unusual opportunities to judge of his standing as a lawyer, for in those days cases were argued orally in that court much

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more frequently than in later years, and the estimate of these two distinguished men as to his standing and ability as a lawyer is of great value.

In speaking of the professional standing of Mr. Lincoln, Judge Caton said: —

> The most punctilious honor ever marked his professional life. His frankness and candor were two great elements in his character which contributed to his professional success. If he discovered a weak point in his cause, he frankly admitted it, and thereby prepared the mind to accept more readily his mode of avoiding it. He was equally potent before the jury as with the court.

Judge Breese declared: —

> Mr. Lincoln was never found deficient in all the knowledge requisite to present the strong points of his case to the best advantage, and by his searching analysis make clear the most intricate controversy. There was that within him glowing in his mind, which enabled him to impress with the force of his logic, his own clear perception upon the minds of those he sought to influence.

Mr. Lincoln was not what is termed a "case lawyer," which is defined by the Standard Dictionary as a lawyer "better versed in reported cases." He did not, as some lawyers do, rely wholly or chiefly upon decided cases or precedents. But the statement made by some of his biographers that he was not a well-read lawyer and not well grounded in the principles of the law, is an error, for no careful

student of Mr. Lincoln's career at the bar can arrive at any other conclusion than that he was thoroughly familiar with the standard works of his day on the various branches of the law. He had read them all to good purpose and understood the legal and equitable principles which they laid down.

A distinguished United States Senator declared, in an address at Springfield, Illinois, February 12, 1909, that he did not believe Lincoln was a great lawyer, giving as a reason for that belief that "he practiced law without a library," etc.[1] It is true that he owned few law books, but he had access to the library of the Supreme Court of Illinois at Springfield, and whenever he had any matter in hand which required special research, he availed himself of the use of that ample library; so that, whenever he appeared in court, he was fully prepared to present his side of the case to the very best advantage.

All of Lincoln's biographers admit that he possessed a wonderfully logical mind, an equipment not infrequently lacking in lawyers who have met with unusual success in that profession, if success be measured by the amount of business passing through their hands. To him the common law was, in fact as well as in name, "the perfection of reason,"

[1] Senator Dolliver before the Lincoln Centennial Association.

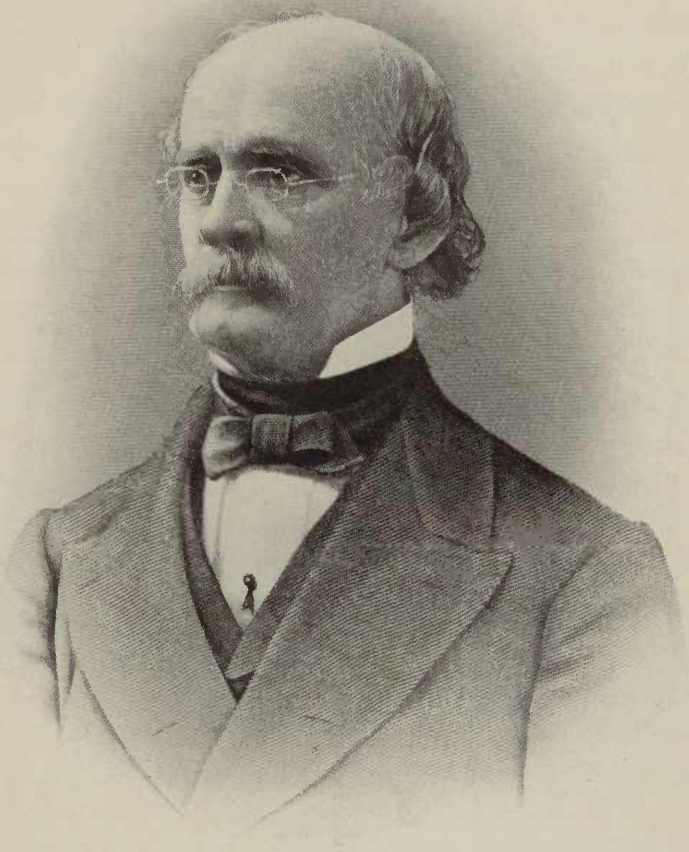
and a court of equity was in reality "a court of conscience." He was not in the habit of citing a great number of authorities on any proposition, but depended chiefly upon the statement of the principles and the presentation of the reasons for the rule for which he contended, as well as for its application to the case before the court. His strong common sense and clear understanding of the principles of the common law enabled him to see clearly what the law ought to be, and with all the force of his great mind he endeavored with invincible logic to convince the court of the correctness of his contention. Or, if the case were one involving the principles of equity, his appeal was to the conscience of the court to right a wrong which had been committed, or to prevent an impending injury.

Like other high-class lawyers of his time, Mr. Lincoln tried on the circuit cases of every kind, both civil and criminal. His success in the defense of persons charged with crime seems to have been extraordinary, for while his contemporaries inform us that he defended many such cases, the records of the Supreme Court of Illinois reveal the astonishing fact that he never appeared in that court on behalf of any person charged with a felony. Had he been defeated in such cases in the trial court, in many instances, it is scarcely conceivable that some

of them would not have been taken by appeal or writ of error to the Supreme Court and that he would not have appeared as counsel in that court on behalf of the accused.

It has been said that Mr. Lincoln never knowingly defended a person charged with crime unless he believed the accused to be innocent. This may be true, and if so, it will account in some measure at least for the fact before stated. The only other explanation must lie in his great ability as an advocate, in that power to win before a jury, mentioned by Mr. Swett and others.

In his career at the bar Mr. Lincoln crossed swords in the arena of his profession with the greatest lawyers of his time. Among them were Orville H. Browning, who succeeded Stephen A. Douglas as United States Senator from Illinois; James A. McDougall, United States Senator from California during the Civil War; Edward D. Baker, a United States Senator from Oregon, who was subsequently killed at the battle of Ball's Bluff while a colonel of volunteers in the war between the states; Stephen T. Logan, at one time a circuit judge and for many years the leader of the bar of Central Illinois; Leonard Swett, who, through many years, ending only with his death, was one of the acknowledged leaders of the bar of the Northwest, if not of the nation;



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Lyman Trumbull, at one time a justice of the Supreme Court of Illinois and who served as United States Senator from Illinois during the whole period of the Civil War and was recognized as one of the ablest constitutional lawyers in that assembly, which, during that period, numbered among its members probably the greatest aggregation of profound lawyers ever gathered together in one legislative body; J. T. Stuart, at one time a member of Congress, who was acknowledged by all who knew him to be a worthy opponent in any legal battle; Burton C. Cook, afterwards general counsel for the Chicago and Northwestern Railway Company; Isaac G. Wilson, a profound lawyer, who, upon the organization of the Illinois Appellate Court in 1877, became one of the judges of that intermediate court of appeal in civil and quasi-criminal cases, and who was for many years a judge of the Circuit Court; and many others whose names are impressed upon the jurisprudence of the State of Illinois, and with all of whom Mr. Lincoln held the most cordial relations.

Mr. Lincoln was also at one time one of the counsel for the Illinois Central Railroad Company, and in that capacity was recognized as a lawyer of no ordinary learning and ability. In a little volume issued by that company it is stated that Mr. Lin-

coln's opinion was sought by the officers of the company upon important questions involving the construction of the company's charter. Among other matters of interest which the volume contains is a photographic copy of an opinion given by Mr. Lincoln on the rights of settlers under the national preemption laws and the relative rights of the railroad company growing out of grants made to the latter. The questions were complicated, but the opinion was short and concise. It reveals abundant evidence of careful research and a thorough familiarity with the legal questions involved, and is in entire harmony with an opinion afterwards rendered by the Supreme Court of Illinois in the case of Walker *vs.* Hedrick,[1] which involved a decision of the same questions.

Mr. Lincoln was employed in many cases in the United States Circuit and District courts at Chicago, but in consequence of the destruction of the records of those courts by the great fire of October 9, 1871, it is impossible to obtain an extended record of his activities there.

It is probable, however, that the most important case with which Mr. Lincoln was connected in either of the Federal courts was the case of Hurd *vs.* Rock Island Bridge Company, the trial of which began

[1] 18 Ill. 570.

September 8, 1857, before Mr. Justice McLean, who was then a justice of the Supreme Court of the United States and was one of those who dissented from the conclusions reached by the majority of the judges of the latter court in the case of Dred Scott *vs.* Sanford.

The counsel on behalf of the plaintiff were Hon. H. M. Wead of Peoria, Illinois; T. D. Lincoln of Cincinnati, Ohio, familiarly known as "Tim" Lincoln, one of the ablest and best-known admiralty lawyers of that day; and Corydon Beckwith of Chicago, afterwards a judge of the Supreme Court of Illinois, and at a later date general counsel for the Chicago, Alton and St. Louis Railroad Company. The counsel for the defendant were Norman B. Judd, of Chicago, afterward one of the chief promoters of Mr. Lincoln's campaign for the presidency; Joseph Knox of Rock Island; and Abraham Lincoln.

The case attracted unusual interest, not only because of the importance of the questions involved and the rivalry between the city of Chicago and the river towns, especially St. Louis, but on account of the eminence of the counsel employed on both sides. In the issue of the Chicago *Daily Press* of September 8, 1857, there appeared the following editorial: —

The important suit brought by the owners of the Effie Afton against the Rock Island Bridge Company opens before the United States District [Circuit] Court to-day. It will excite much attention among all in railroad and river interests of the West and Northwest. We have made such arrangements as will secure for our readers a full synopsis of each day's proceedings. The evidence is very voluminous and mostly by depositions. A share, however, will be oral. Messrs. Wead of Peoria and Lincoln of Cincinnati are the prominent counsel for the plaintiffs. Messrs. Judd and "Abram" Lincoln of this city and state appear on behalf of the bridge company.

It is a singular fact that until after Mr. Lincoln was nominated for the presidency there were comparatively few who knew that his Christian name was Abraham. Up to that time he habitually signed, "A. Lincoln," and it was not uncommon to see his name in print as "Abram Lincoln." After his nomination to the presidency he undertook to correct this very common error. In a letter to Hon. George Ashmun, chairman of the convention which nominated him, dated June 4, 1860, he stated: —

> It seems as if the question whether my first name is "Abraham" or "Abram" will never be settled. It is "Abraham" and if the letter of acceptance is not yet in print, you may, if you think fit, have my signature thereto printed "Abraham Lincoln."

It appears from the files of the Chicago *Daily Press* that the time of the court was occupied from

T. D. LINCOLN

day to day until September 20 in the presentation of the evidence, and that on the morning of September 21, 1857, the arguments were begun. During the introduction of the evidence questions of law which arose from time to time were argued by Messrs. Knox and Abraham Lincoln on behalf of the defendant and on behalf of the plaintiff by Messrs. Wead and T. D. Lincoln. Some of these questions were important and were argued at considerable length by the gentlemen who participated from time to time in these discussions.

This case was of absorbing interest to the river towns as well as to those centers of population whose future prosperity was dependent upon the development of railroad transportation. The people of the country were divided in accordance with local self-interest. The people of St. Louis, Cincinnati, and other cities and towns similarly situated believed that, if the railroad companies were permitted to build bridges across the navigable rivers of the country, they would lose the commercial advantages which they had enjoyed from traffic upon the Mississippi and the Ohio rivers; and the owners of the steamboats, who, for many years had enjoyed a monopoly of the transportation of freight from points west of the Mississippi, foresaw that, if the railroads were to be allowed to transport freight

from the vast territory west of that great artery of commerce, across that river and through to the eastern seaboard, without the expense of reloading on the banks of the streams over which it must pass to reach its destination, that monopoly would be destroyed. Hence the interests referred to combined in the case against the bridge company for the purpose of preventing the building of other bridges which would further interfere with river traffic.

The contention of the plaintiff was that the building of piers in the river constituted an obstruction to navigation; and while the particular case here mentioned was a suit to recover damages which were sustained by the owners of the steamboat Effie Afton, in consequence of that steamboat having been driven by the current, as was claimed, against a pier of the bridge at Rock Island, it was hoped by the plaintiff and those in sympathy with him that such an amount of damages would be recovered as to make the maintenance of that and other bridges across the navigable streams unprofitable to the railroad companies, thereby compelling them to unload their freight on the banks of the rivers, transport it across by ferry-boats, and reload it for shipment to the points of destination. If this could have been accomplished, the cost of trans-

portation by railroad would have been made prohibitive and the steamboat monopoly would have continued.

For these and similar reasons the war between the respective interests was relentless, and it is safe to say that those in control of both sides of the controversy employed the best legal talent obtainable; so that the case, which was familiarly known as the "Effie Afton Case," attracted general attention. The Cincinnati *Enquirer* called attention to it, under the headline EFFIE AFTON CASE, as follows: —

This important case, to which the attention of the whole country has been directed, will be tried Tuesday at Chicago. Judge McLean leaves Cincinnati to-day for the purpose of opening court. The decision will appear in this paper as soon as ascertained by us.

The same newspaper in its issue of September 17, 1857, contained the following news item: —

The Effie Afton case. This famous case is exciting much interest in Chicago. The trial is slowly progressing in the United States Circuit Court at that place. On Friday last the depositions of George Neare and David Brickell, Pittsburg captains, were read. They united in saying that the Rock Island bridge was the greatest obstruction on the western waters, — worse than the Rapids. The testimony thus far goes to show that the bridge is a serious obstruction — that the Effie Afton was worth $50,000 — that she was a first-class

boat, and that at the time the accident occurred, she was as well managed as could be.

The trial of this case was not concluded until September 24. The charge to the jury by Mr. Justice McLean was published in full in the issue of the Chicago *Daily Press* of September 25, and occupied nearly four columns of that paper. The same issue contained also the announcement that the jury had disagreed, and the following editorial comment with reference to the case: —

> The trial, lasting as it did for weeks, seemed to be occupying an unnecessary amount of time; but it must be remembered that grave interests were at stake, not to be treated in a hasty manner, and worthy of the most patient and searching investigation. It was fitting that a case of such magnitude should be heard before such a court — John McLean, a man of whom not only the Supreme Court, but the nation, may be proud. The counsel employed on both sides were among the most distinguished members of the bar in the country, and in conducting the case and arguing it before the jury they fully sustained themselves. Mr. Judd, who managed the case on the part of the defense, and Mr. Lincoln of Cincinnati, on the part of the plaintiff, displayed untiring industry and great ingenuity. Mr. A. Lincoln, in his address to the jury, was very successful, so far as clear statement and close logic was concerned.

The Cincinnati *Gazette* also contained reports, from time to time, of the progress of the case, and finally, on September 29, published copious ex-

tracts from the charge of Judge McLean and the announcement of the disagreement and discharge of the jury, while the Cincinnati *Enquirer* of September 30, after giving the important points in the judge's charge, stated editorially: "The charge is clear and explicit, and how an intelligent jury could have failed to agree is a matter of mystery." The Cincinnati newspapers mentioned gave a summary of the testimony favorable to the river-men, and their opposition to the railroads was quite as apparent as the fact that the Chicago press was opposed to the contentions of the river-men.

The intense feeling which had been excited between the contending interests is revealed by the Chicago *Daily Press* of September 26, 1857, which contained an extended editorial comment upon the case, in the course of which it said: —

> The combination initiated by the St. Louis Chamber of Commerce at its meeting on the 16th of December last, one object of which was the rigorous prosecution of the Effie Afton suit, was represented by three of the committee at this trial, who carefully supervised the proceeding during its progress and gave to the looker-on the impression that Captain Hurd and other plaintiffs were mere spectators of the fight. The declaration on our streets by two members of the committee that half a million of dollars had been subscribed under lead of the St. Louis Chamber of Commerce by the river interests between Pittsburgh and St. Paul to

prosecute this suit to the bitter end, to institute another proceeding against the bridge company in the name of one of the company, and to resist the attempt to construct any more bridges across the Mississippi River, shows such a fanatical intent to accomplish an object regardless of right or justice that we deem it our duty thus specifically to direct public attention to it. The iron bands that connect the East with the West are to be severed at the Mississippi — every ton of freight that passes in either direction must have an additional dollar added to its cost to be paid by the consumer, and all at the dictation of the St. Louis Chamber of Commerce. That additional dollar added to its cost might send the ton of freight to St. Louis instead of Chicago. Shall it be added? Will the great east and west lines of transportation and commerce stand idly by and see that result produced? Shall Iowa, Minnesota, and Northern Missouri be taxed for all time to come for the benefit of a single town on the banks of the Mississippi? The first grapple with that monopolizing spirit had taken place, and nine men upon the jury stood for the great principle that rail transportation and traffic are to be as much protected as in the past up and down the river and that the rights of commerce must be carefully guarded in each instance.

The *Missouri Republican*, then the leading newspaper of St. Louis, published daily reports of the testimony and other proceedings in the case, and on September 26, 1857, published, in full, Judge McLean's charge to the jury.

As stated in the editorial already quoted from the Chicago *Daily Press*, the St. Louis Chamber of

Commerce was active in the prosecution of the Effie Afton case. That body had called meetings of the citizens of St. Louis, which were held at the Merchants' Exchange in that city, the purpose of which, as shown in the local newspapers, was to take action "in relation to the bridge at Rock Island and the obstruction formed by it to the navigation of the upper Mississippi." "Merchants, river-men and all others interested in its removal" were requested to attend. The first meeting was held December 15, 1856, and on the following day resolutions were adopted at an adjourned meeting, declaring in favor of the removal of the bridge as an obstruction to navigation, and appointing a committee to raise funds, etc. These resolutions were published in the St. Louis newspapers on the 18th of the same month.

The address of Abraham Lincoln to the jury, the principal parts of which were published in the Chicago *Daily Press*, also shows how intense was the opposition of the river-men. They foresaw in the bridging of the Mississippi River the death-knell of the steamboat transportation monopoly which they had so long enjoyed.

The city of St. Louis was jealous of the young giant which was destined to become the greatest railroad center in the world. That city — Chicago — had then a population of about 100,000, while

St. Louis contained a population of approximately 150,000. The rivalry for position as "the metropolis of the West" had excited the people of the respective communities, and continued until Chicago had so far outstripped the Missouri city that the rivalry ceased, and each has since been content within its sphere. But at the time of the pendency of the "Effie Afton case" feeling ran so high that it is not conceivable that the Rock Island Bridge Company would have been so unwise as to employ any but the best legal talent to defend that case.

The record of that trial shows that Abraham Lincoln was accorded the most important position among counsel for the defendant. He made the closing argument to the jury on behalf of the defendant, and was otherwise active during the trial. Had he been other than a high-class lawyer, he would not have been employed as the leading counsel for the defendant, or employed in connection with that case. His address to the jury was a forceful presentation of the contentions of the defendant. His careful analysis of the plaintiff's claims and of the evidence introduced at the trial shows also a thorough familiarity with the questions involved.

At the time of this trial Mr. Lincoln had not the wide reputation which he afterwards acquired, for it was not until the following year that he met

Senator Douglas in the great debate, and it is therefore evident that only his standing as a lawyer led to his employment in this important case.

Prior to October, 1855, the Circuit and District courts of the United States for Illinois embraced within their jurisdiction the entire State, which constituted but a single judicial district, and all the sessions of those courts for the district were held at the state capital, the capital being first established at Kaskaskia, then at Vandalia, and finally at Springfield. All the records of the courts were therefore kept at the capital until October, 1855. Mr. Lincoln was admitted to the bar of these courts December 3, 1839. Nathaniel Pope was the first judge of the District Court for the District of Illinois, and served as such until his death in November, 1850, when he was succeeded by Thomas Drummond.

In February, 1855, Congress divided the State into two judicial districts, one of which was designated as the Northern District of Illinois, to which Judge Drummond was assigned, to preside at Chicago, while Samuel H. Treat, then a judge of the Supreme Court of Illinois, was appointed by President Franklin Pierce to preside at Springfield in the other district, which was designated as the Southern District of Illinois.

Upon the division of the State by act of Congress,

as above mentioned, all the files and records of cases which had been instituted in the Circuit and District courts for the District of Illinois prior to October, 1855, were transferred to Chicago, and were, as before stated, destroyed by the great fire of 1871, so that the only records of cases in which Mr. Lincoln appeared in these courts are those to be found in the Southern District, the records of which begin with the date of its organization, October, 1855. But, unfortunately the dockets do not contain the names of counsel for defendants, and the files in many cases have been lost, so that it is impossible to ascertain who appeared for the defendant in many of the early cases.

An examination of the files of the Circuit and District courts at Springfield shows, however, that Mr. Lincoln frequently appeared for the defendant in those courts. The great number of cases in which he appeared on behalf of the plaintiff or complainant warrants the conclusion that his appearance on behalf of the defense was quite as common.

The docket of the Circuit Court of the United States for the Southern District of Illinois contains sixty cases in which he appeared for plaintiff or complainant during the five years preceding his election to the presidency; and during the same period he frequently appeared in the District Court for the de-

The court instructs the jury.

That if they have any reasonable doubt as to whether Metzker came to his death by the blow on the eye, or by the blow on the back of the head, they are to find the defendant "Not guilty" unless they also believe from the evidence, beyond reasonable doubt, that Armstrong and Norris acted by concert, against Metzker, and that Norris struck the blow on the back of the head.

That if they believe from the evidence that Norris killed Metzker, they are to acquit Armstrong, unless they also believe beyond a reasonable doubt that Armstrong acted in concert with Norris in the killing, or purpose to kill or hurt Metzker.

FACSIMILE OF INSTRUCTIONS, IN LINCOLN'S HANDWRITING, GIVEN ON BEHALF OF DEFENDANT IN PEOPLE *vs.* ARMSTRONG

fense in criminal prosecutions brought by the government. He also appeared in that court in a number of admiralty cases. The cases in which he was an attorney or solicitor in the United States Circuit Court consist of a great variety of actions, including suits involving questions of infringement of patents, bills in equity, and the common law actions of debt, covenant, ejectment, assumpsit, etc. The pleadings in these cases on the part of those for whom he appeared are generally signed with the firm name of Lincoln and Herndon, but are, with scarcely an exception, in the handwriting of Lincoln, which furnishes a refutation of Herndon's statement in his life of Lincoln,[1] that Mr. Lincoln did little of the technical work of the firm, and paid little attention to details; for these records clearly indicate that he was familiar with every detail of such work in every case. Even the *præcipe*, or direction to the clerk of the court to issue process, as a rule, will be found to be in the handwriting of Mr. Lincoln. He must have been a tireless worker to be able, with all his other duties, to perform the labor which these records show was accomplished by him.

Judging from the number of cases in which Mr. Lincoln appeared as counsel in the Federal courts for the Southern District of Illinois after the organ-

[1] Herndon's *Life of Lincoln*, vol. II, pp. 312, 337.

ization of the court, he must have had a much larger experience in the court presided over by Judge Drummond both before and after the division of the State of Illinois into two districts; but with the exception of the Effie Afton case and the case of Johnson *vs.* Jones, frequently referred to as the "sand-bar case," there is no record of any of them, the court records having been destroyed by fire, as already stated. Indeed, all that is known about the case of Johnson *vs.* Jones is the meager account which has been given by those more or less familiar with the incidents of the trial, as the court record is not in existence.

It is not the purpose to review in this volume the record of the cases which engaged the professional attention of Mr. Lincoln in the state courts of original jurisdiction. During his career at the bar of Illinois these courts consisted of county courts, the jurisdiction of which was limited, and circuit courts whose jurisdiction was, and still is, general in suits at law and in chancery as well as in criminal cases, excepting in the County of Cook, for which, by the Constitution of 1870, a criminal court, known as the Criminal Court of Cook County, was created. This court holds its sessions in the city of Chicago and is vested with general jurisdiction of all criminal cases within that county.

As a result of the diversified jurisdiction of the circuit courts, lawyers traveling the circuit tried all manner of cases in which their services were sought, and Mr. Lincoln, like other lawyers of his time, was employed in a great variety of professional work. The records of the trial courts of Illinois show that in the number and importance of the cases which he tried, he stood second to no lawyer of that period.

It has been a matter of surprise to the writer to hear members of the legal profession, themselves men of high standing and generally well informed, declare that Lincoln was not a great lawyer. The opinions thus expressed have been found to be based chiefly upon the assumption that he devoted too much time to political affairs to allow sufficient time for a proper pursuit of the work of a lawyer, by which alone a man can become proficient as a member of that profession which Judge Sharswood declared to be "a jealous mistress," who would not permit attention to other affairs. The opinion above mentioned has been very general, but it is nevertheless erroneous; this is doubtless due to the fact that, while much has been written in relation to Lincoln's life, his biographers have said very little upon the subject of his career at the bar, and that little, with some exceptions, has greatly distorted, if not entirely misrepresented the facts.

That Lincoln found time to become the leading champion of a great cause which concerned the whole people is indeed surprising when his vast accomplishments at the bar are understood; and it can be explained only on the hypothesis of his unceasing industry, for by that alone could he have become a great political leader and also a recognized leader of the bar of his State.

It is unnecessary to review his record in the trial courts in order to establish the fact that Mr. Lincoln was a great lawyer. The record which he has left in the Supreme Court of Illinois, as found in the published reports of decided cases, affords abundant proof of this, and that record is honorable in every respect. It reveals no resort to reprehensible conduct of any kind, or conduct in the least degree calculated to deceive either the court, the jury, or opposing counsel.

No lawyer could possess higher ideals as to the ethics of his profession than did Mr. Lincoln. His superb honesty and fairness in his dealings with all men are sufficient to refute any charge of chicanery or resort to subterfuge. Candor was one of the chief elements of his character, and his contemporaries at the bar have given abundant testimony in support of his unyielding devotion to truth and his abhorrence of fraud or deception. In view of his exalted charac-

ter it is remarkable that stories which have attributed to him conduct unworthy of any honorable member of the bar should be given currency; and stranger still is the fact that such stories have been told by some who have professed great admiration for Lincoln, and who have recited these fictions as an evidence of the resourcefulness of their hero at some crisis which had arisen in the course of the trial of some case in which he was engaged. The most remarkable fiction of the class mentioned is that which purports to recite the facts in relation to the dramatic use of an almanac by Mr. Lincoln, during his defense of William Armstrong, in 1858, in Cass County, Illinois.

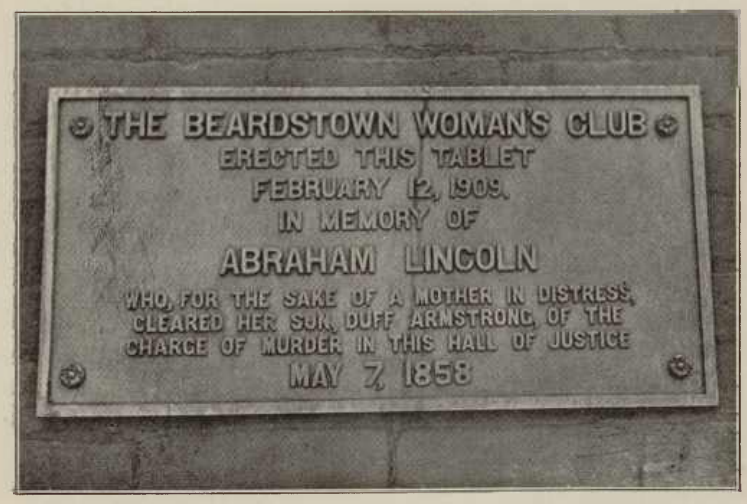
Armstrong (known among his intimates as "Duff") was a son of Jack and Hannah Armstrong. His father, who was the leader of the "Clary Grove Boys" and the man with whom Lincoln engaged in the wrestling match at New Salem, is mentioned in nearly all biographies of Lincoln. As a result of this intimacy Jack Armstrong and his family became stanch supporters of Lincoln and held him in great respect.

On the evening of August 29, 1857, Duff Armstrong had become embroiled with one of his companions named Metzker, on the outskirts of a grove where a camp-meeting was being held in Mason

County. On the same evening Metzker was struck on the back of the head with some hard instrument by a man named Norris, who had been drinking heavily. Within three days thereafter Metzker died, and Duff Armstrong and Norris were jointly indicted on the charge of murder. Armstrong claimed that he had struck Metzker only with his fist, while the marks found upon the body showed plainly that at least two blows, either of which might have caused death, had been struck with some heavy instrument, and it was charged that one of them had been struck by Armstrong with a slung-shot.

Popular excitement ran high in Mason County and a change of venue was asked on behalf of Armstrong. The case was transferred to Cass County, where it was called for trial in Beardstown, then the county seat, at the May term of the Circuit Court, 1858, James Herriott, Circuit Judge, presiding. Mr. Lincoln, learning of the predicament of young Armstrong, wrote to his mother, offering his services in defense of her son, without charge. Jack Armstrong, father of the young man, died shortly after the arrest. The widow had already retained William Walker of Havana, Illinois, to defend her son; but Mr. Walker willingly consented that Mr. Lincoln should participate in the defense; and Mr. Lincoln's offer was gratefully accepted.

THE OLD COURTHOUSE, BEARDSTOWN, ILLINOIS, IN WHICH THE CASE OF THE PEOPLE *vs.* ARMSTRONG WAS TRIED, NOW USED AS THE CITY HALL



TABLET ON THE FRONT OF THE CITY HALL
AT BEARDSTOWN, ILLINOIS

Norris, who was tried separately in Mason County, had been convicted of manslaughter and sent to the penitentiary, so that the trial in Cass County involved the guilt or innocence of Armstrong only, and the principal witness against him was one Allen, who testified that at about eleven o'clock on the evening of August 29, 1857, he saw the accused strike Metzker with a slung-shot. Lincoln conducted the cross-examination of the witness, Allen, and in the course of it he asked him how near he was to Metzker at the time the blow was struck, and other questions, the answers to which indicated that Allen was a considerable distance away at the time — tradition fixes the distance at about 150 feet.

Lincoln then inquired of the witness how at that distance he was able to see the blow struck at that hour of the night. Allen replied that he saw it by the light of the moon. Lincoln caused the witness to repeat this answer several times, so that there could be no doubt in the mind of any one as to the statement of the witness. Allen also testified very positively that the moon was shining brightly at the hour named.

Among other evidence on behalf of the accused, Mr. Lincoln introduced an almanac, by means of which he showed that on the night in question the moon had just completed its first quarter, that it set

before midnight, and that at the hour named by Allen it was so dim, because so near the western horizon, as to render it impossible that Allen could have seen, by its light, a blow struck by Armstrong. The result was that the jury disregarded the testimony of Allen and returned a verdict of not guilty. The foregoing is a substantially correct version of the almanac incident.

The apocryphal account of it, however, pictures Mr. Lincoln as stooping to a piece of chicanery to deceive the court and jury, which, if true, would render his conduct worthy of the contempt of all men, in that it charges him with imposing upon court and jury, as well as opposing counsel, an almanac of an earlier year,[1] which showed that on the night of August 29, at the hour named by the witness, there was no moonlight. This latter version of the incident is so absurd and so inconsistent with the character of Mr. Lincoln that it is surprising that it should have been believed by any one, and yet there have been, and doubtless still are, those who profess to believe it. That it is false is easily proved.

Such an imposition could not have escaped the notice of the presiding judge and the counsel for the prosecution, for it is inconceivable that they would not have carefully examined the almanac before per-

[1] Lamon's *Life of Lincoln.*

mitting it to be presented to the jury, and such examination would have revealed the attempted fraud. That such an examination was in fact made is shown by an account of the incident written by James L. King, librarian of the State Library of Kansas, which was published in the *North American Review* for the month of February, 1898. Mr. King there states that Abram Bergen, a lawyer of high standing at the Topeka bar, was present at the trial of Armstrong. He was at that time a young man but recently admitted to the bar. As Lincoln was then well known as one of the leaders of the bar of Illinois, it was but natural that young Mr. Bergen should pay close attention to everything which he said or did, and that the same should be deeply impressed upon his mind; for two years later, while the incidents of the trial must have been fresh in Bergen's mind, Lincoln was the most-talked-of man in the country by reason of his nomination to the presidency.

Mr. King, in the account mentioned, states that Mr. Bergen told him that after the production of the almanac by Mr. Lincoln, the counsel for the prosecution produced another almanac for the year 1857, for comparison with the one introduced by Lincoln, and that both agreed as to the position of the moon on the night of August 29 of that year.

The most complete answer, however, to the dis-

torted version of the incident mentioned will be found in an examination of any almanac for the year 1857. "The Old Farmer's Almanac" for that year, which has been examined by the writer, and a copy of which is before him while writing these lines, gives the phases of the moon for the period in question. From this it appears that the moon completed its first quarter on August 27, 1857, and that on the evening of August 29 of that year, the moon set at twenty-one minutes before twelve o'clock, or at eleven o'clock and thirty-nine minutes.

The time of the rising and the setting of the sun and moon is the same in the same latitude everywhere if measured by the time of the day or night in any particular locality. To illustrate: if the moon rises at seven o'clock in New York, measured by New York time, it will rise on the same evening in Chicago at seven o'clock measured by Chicago time, but at eight o'clock measured by New York time; for although the time of its rising in Chicago is actually one hour later than in New York, there being one hour's difference in the time as measured by the clock, the hour of its rising is identical. That this is true is shown by the "Chicago Daily News Almanac" for 1914, by which it appears that on August 29, 1914, the moon set in New York and throughout northern Illinois at eleven o'clock and forty-three minutes.

NUMBER SIXTY-FIVE.

THE

(OLD)

FARMER'S ALMANACK,

CALCULATED ON A NEW AND IMPROVED PLAN,

FOR THE YEAR OF OUR LORD

1857;

Being first after BISSEXTILE or LEAP YEAR, and (until July 4) 81st of American Independence.

FITTED FOR BOSTON, BUT WILL ANSWER FOR ALL THE NEW ENGLAND STATES.

Containing, besides the large number of Astronomical Calculations, and the Farmer's Calendar for every month in the year, as great a variety as any other Almanack of

NEW, USEFUL, AND ENTERTAINING MATTER.

ESTABLISHED IN 1793.

BY ROBERT B. THOMAS.

God of the sunshine! God of the storm!
Thou makest the seasons Thy will to perform;
The Summer, the Autumn, the Winter, the Spring,
Thy goodness proclaim, Thy praises do sing.
Ever calmly resigned, let us bow to Thy will,
And Thine arm shall sustain us, Thy care guard us still.

ANON.

BOSTON:

PUBLISHED BY HICKLING, SWAN & BROWN.

Sold by the Booksellers and Traders throughout New England.

FACSIMILE OF TITLE PAGE OF ALMANAC FOR 1857

From this it will be seen that Mr. Lincoln was correct in his argument that because the moon had set before midnight on the evening of August 29, 1857, it was so near the western horizon at eleven o'clock on that evening, that it could not have furnished sufficient light to have enabled the witness, Allen, to see the striking of a blow by Armstrong at the distance at which he claimed to have seen it struck.

Some doubt has been expressed as to whether an almanac was in fact introduced in evidence during the trial. There is abundant evidence, however, that Mr. Lincoln did introduce the almanac.

The indictment in the case was returned to the October term, 1857, of the Circuit Court of Mason County and is still on file in the office of the clerk of the Circuit Court of Cass County. This indictment charges that Norris struck "with a certain piece of wood about three feet long James Preston Metzker on the back of the head," and that "William Armstrong, with a certain hard metallic substance called a slung-shot," struck Metzker "in and upon the right eye." On file in Cass County there are also the written instructions given on behalf of Norris at his trial in Mason County, which refer to the time of night and the distance of the witness Allen from Metzker when the blow was struck by Norris;

but neither the time nor the distance is stated in the instructions. This indicates that there was evidence introduced on both these questions at the trial of Norris, and as Walker and Lacey of Havana were attorneys for Norris and as Mr. Walker was associated with Lincoln in the defense of Armstrong, there is no doubt that these same questions arose in the defense of the latter.

An account of this famous trial, written by the late J. M. Gridley of Virginia, Illinois, and published by the Illinois State Historical Society in 1910, contains an extract from a letter received by Mr. Gridley from John T. Brady, who served on the jury in the trial of Armstrong. In this letter Mr. Brady said:—

> The almanac that was introduced was examined closely by the court and the attorneys for the state, and the almanac showed that the moon at that time was going out of sight; was setting; and the almanac was allowed to be used as evidence by Judge Herriott.

It will be noted that this statement by Mr. Brady is in harmony with the account given by Mr. King in the *North American Review* before mentioned.

That Mr. Lincoln did not rely wholly upon his ability to discredit Allen by the introduction of the almanac and thereby acquit his client is evident from an examination of two instructions which were given on behalf of Armstrong, both of which, now

1857. AUGUST, eighth Month.

Astronomical Calculations.

☉'s Declination.

Days.	d.	m.	Days.	d.	m.	Days.	d.	m.	Days.	d.	m.	Days.	d.	m.
1	18	N. 0	7	16	24	13	14	38	19	12	44	25	10	42
2	17	44	8	16	7	14	14	19	20	12	24	26	10	22
3	17	29	9	15	49	15	14	1	21	12	4	27	10	1
4	17	13	10	15	32	16	13	42	22	11	44	28	9	39
5	16	57	11	15	14	17	13	23	23	11	24	29	9	18
6	16	40	12	14	56	18	13	3	24	11	3	30	8	57

○ Full Moon, 5th day, 1h. 44m., evening.
☾ Last Quarter, 12th day, 0h. 57m., evening.
● New Moon, 19th day, 11h. 42m., morning.
☽ First Quarter, 27th day, 10h. 21m., morning.

Days of Month.	Days of the Week.	☉ Rises. h. m.	☉ Sets. h. m.	Length of Days. h. m.	Day's Decre. h. m.	☉ S.	☽ h.	Full Sea, Boston. Morning h. m.	Full Sea, Boston. Evening h. m.	☽'s Place.	☽ R. S. h. m.	☽ Souths. h. m.
1	Sa.	4 52	7 20	14 28	0 49	6	11	7 31	8 9	thi.	0 10	8 58
2	SU.	4 53	7 19	14 26	0 51	6	12	8 47	9 24	kn.	0 56	9 52
3	Mo.	4 54	7 18	14 24	0 53	6	13	9 55	10 21	kn.	1 54	10 47
4	Tu.	4 55	7 16	14 21	0 56	6	14	10 45	11 7	kn.	3 0	11 41
5	W.	4 56	7 15	14 19	0 58	6	○	11 30	11 47	legs	rises.	morn.
6	Th.	4 57	7 14	14 17	1 0	6	16	——	0 9	legs	8 13	0 32
7	Fr.	4 58	7 13	14 15	1 2	5	17	0 28	0 45	feet	8 35	1 21
8	Sa.	4 59	7 11	14 12	1 5	5	18	1 3	1 20	feet	8 57	2 9
9	SU.	5 0	7 10	14 10	1 7	5	19	1 39	1 58	h'd	9 21	2 55
10	Mo.	5 1	7 9	14 8	1 9	5	20	2 16	2 36	h'd	9 43	3 43
11	Tu.	5 2	7 8	14 6	1 11	5	21	2 54	3 15	n'k	10 10	4 31
12	W.	5 3	7 7	14 4	1 13	5	22	3 36	3 58	n'k	10 43	5 23
13	Th.	5 4	7 5	14 1	1 16	5	23	4 22	4 49	arm	11 28	6 19
14	Fr.	5 5	7 4	13 59	1 18	4	24	5 19	5 57	arm	morn.	7 19
15	Sa.	5 6	7 2	13 56	1 21	4	25	6 38	7 21	arm	0 19	8 21
16	SU.	5 7	7 1	13 54	1 23	4	26	8 10	8 57	br.	1 25	9 23
17	Mo.	5 8	6 59	13 51	1 26	4	27	9 34	10 8	br.	2 36	10 22
18	Tu.	5 9	6 58	13 49	1 28	4	28	10 37	11 5	h'rt	sets.	11 18
19	W.	5 10	6 56	13 46	1 31	3	●	11 27	11 48	h'rt	7 0	eve. 9
20	Th.	5 11	6 55	13 44	1 33	3	1	——	0 8	bel.	7 22	0 55
21	Fr.	5 12	6 54	13 42	1 35	3	2	0 27	0 45	bel.	7 43	1 38
22	Sa.	5 14	6 52	13 38	1 39	3	3	1 2	1 18	rei.	8 0	2 19
23	SU.	5 15	6 51	13 36	1 41	2	4	1 34	1 50	rei.	8 20	3 0
24	Mo.	5 16	6 49	13 33	1 44	2	5	2 7	2 21	rei.	8 41	3 41
25	Tu.	5 17	6 48	13 31	1 46	2	6	2 37	2 52	sec.	9 4	4 24
26	W.	5 18	6 46	13 28	1 49	2	7	3 7	3 24	sec.	9 30	5 9
27	Th.	5 19	6 44	13 25	1 52	1	8	3 41	4 0	thi.	10 4	5 57
28	Fr.	5 20	6 42	13 22	1 55	1	9	4 21	4 44	thi.	10 48	6 48
29	Sa.	5 21	6 41	13 20	1 57	1	10	5 16	5 56	thi.	11 39	7 41
30	SU.	5 22	6 39	13 17	2 0	0	11	6 40	7 26	kn.	morn.	8 35
31	Mo.	5 23	6 36	13 14	2 3	0	12	8 9	8 52	kn.	0 42	9 29

FACSIMILE OF CALENDAR FOR AUGUST, 1857, AS IT APPEARS IN THE FARMER'S ALMANAC

among the files in the case, are in the handwriting of Mr. Lincoln, and on the margin of each of which the word "Given" is written in the handwriting of Judge Herriott, in conformity with the statute of Illinois. These instructions are as follows: —

The court instructs the jury, —

That if they have any reasonable doubt as to whether Metzker came to his death by the blow on the eye, or by the blow on the back of the head, they are to find the defendant "Not guilty" unless they also believe from the evidence, beyond a reasonable doubt, that *Armstrong and Norris acted by concert*, against Metzker, and that Norris struck the blow on the back of the head.

That if they believe from the evidence that Norris killed Metzker, they are to acquit Armstrong, unless they also believe beyond a reasonable doubt that Armstrong acted in concert with Norris in the killing, or purpose to kill or hurt Metzker.

The purpose of these instructions was evidently to direct the attention of the jury to the reasonable doubt which existed as to which of the two blows inflicted upon Metzker caused his death, in the absence of proof which would satisfy the jury "beyond a reasonable doubt that Armstrong and Norris acted by concert," and also to direct the attention of the jury to evidence that Norris struck the blow which caused the death of Metzker; because, if the jury believed from the evidence that Norris killed Metz-

ker, that fact would entirely exonerate Armstrong unless the latter acted in concert with Norris. The facts here stated are sufficient to refute any charge of trickery on the part of Mr. Lincoln in connection with the Armstrong case.

The fact is that so little is known of Mr. Lincoln's career as a lawyer that there has existed among many men in the legal profession a tendency to belittle his standing at the bar and to attribute to him acts and motives of which he never dreamed, and even to make it appear that he had not a very high appreciation of ethics or professional honor.

The writer has heard the charge made that Mr. Lincoln had, in one case, after having been employed as an attorney by one party to a law-suit, asked to be relieved from rendering the service for which he had been employed in order that he might accept a retainer from the other party in the same case. This charge is based entirely upon a letter written by Mr. Lincoln November 25, 1858, to Joel F. Matteson, a former governor of Illinois, in which he said:[1]—

> Last summer, when a movement was made in court against your road, you engaged us to be on your side. It has so happened that so far we have performed no service in the case, but we lost a cash fee offered us on the other side. Now, being hard run, we propose a little

[1] *Life and Works of Abraham Lincoln*, Centenary Edition. "Letters," vol. II.

compromise. We will claim nothing for the matter just mentioned if you will relieve us at once from the old matter at the Marine and Fire Insurance Company, and be greatly obliged to boot. Can you not do it?

It will be noted that Mr. Lincoln did not ask to be relieved from rendering service in the case first mentioned in which his firm (Lincoln & Herndon) had "lost a cash fee offered . . . by the other side"; but he expressed a wish to be relieved from another matter, namely: "the Marine and Fire Insurance Company" matter. The letter contains nothing which justifies the conclusion that he wished to accept employment against Matteson. He said, "Now, being hard run," etc., but whether from too much work or from lack of funds or some other cause does not appear. The letter to Matteson was written soon after the close of the debate with Douglas, and it is probable that the accumulation of other matters during his absence from Springfield while touring the State with Douglas had caused him to be "hard run" for time to attend to the "Marine and Fire Insurance Company" matter referred to, and hence his desire to be relieved from giving it attention. By way of inducement he stated that, by accepting employment in the case first mentioned he had lost a cash fee while he had rendered no service to Matteson in that case, thereby giving a reason why Matte-

son should be willing to relieve him from the duty of continuing in charge of the other matter mentioned.

If Lincoln was "hard run" for money, why should he be desirous of relinquishing the opportunity to earn fees in the Marine and Fire Insurance Company matter? It should also be noted that Mr. Lincoln declared that he had "*lost* a cash fee offered" by the other side. If he had expected to accept a retainer on the other side of the case, he would not have said that the fee had been lost, for it would not have been lost as he would have received it as soon as he was able to accept the employment. It should be further noted that the letter contains nothing from which it can be inferred that the other party to the case was ready to employ him at that time, nor is there anything in it to justify the conclusion that he would have accepted such employment if offered.

Herndon, in his life of Lincoln, relates an account of Mr. Lincoln's first appearance in the Supreme Court of Illinois, as given to him by Justice Samuel H. Treat of that court, as follows: Mr. Lincoln stated that he appeared for the appellant and was ready to proceed with the argument. He then said:—

> This is the first case I have ever had in this court, and I have therefore examined it with great care. As the court will perceive by looking at the abstract of

the record, the only question in the case is one of authority. I have not been able to find any authority to sustain my side of the case, but I have found several cases directly in point on the other side. I will now give these authorities to the court and then submit the case.

This same story has been related in substance by others of Lincoln's biographers, but nevertheless it is unworthy of belief. Herndon, however, is the only writer who gives any definite authority for it and that authority no other than a distinguished judge of the court in which the incident is said to have taken place. The inference is that the occurrence took place in the presence of Judge Treat, who was not elected a justice of the Supreme Court until February 15, 1841. Mr. Lincoln had argued the case of Scammon *vs.* Cline before that court at the December term, 1840. That, apparently, was his first case in the Supreme Court of Illinois, but in that case he did not appear on behalf of the appellant, but for the appellee, and with him was associated another lawyer, so the incident could not have happened in that case.

The first case which Lincoln had in the Supreme Court, after Justice Treat became a member of that court, was the case of Cannon *vs.* Kinney, which he argued at the July term, 1841, soon after Justice Treat took his seat on the bench. In this he appeared alone for the plaintiff in error, and presented a very

elaborate brief and argument and cited numerous authorities in support of his contentions, as appears from the published report of the decision of the case. These contentions of Mr. Lincoln on behalf of the plaintiff in error were sustained and the judgment of the Circuit Court was reversed, from which it is evident that the alleged incident could not have taken place in this case.

The truth is that this so-called incident never occurred, for Mr. Lincoln would not have taken an appeal to the Supreme Court in any case in which the authorities were all against him unless he believed that those authorities were not sound or did not correctly state the principles of law involved; and under such circumstances he would have argued the case from first principles and used his best endeavors to convince the court that the adverse authorities should be disregarded. It seems apparent that the memory of Mr. Herndon or that of Judge Treat was at fault, in that they connected Mr. Lincoln with an experience which might have happened in relation to some other lawyer, but which certainly did not happen in any case with which Mr. Lincoln was connected.

Many of the stories relating to cases supposed to have been tried by Mr. Lincoln, which have been told by his biographers and others, cannot now be

verified or disproved. Some of them may be true, but many bear evidence that they are pure fiction. It is impossible, with certainty, to separate the true stories from the false in every instance, for the records and files of cases, other than such as found their way into the Supreme Court, contain nothing more than the formal documents. There were in those days no stenographic reports of the proceedings, and accounts given after the lapse of years and solely from memory are not always reliable, however honest the narrator may be. Sufficient has been said here, however, to prove that, like many other great men, the reputation of Mr. Lincoln has suffered for the sins of his biographers.

Mr. Lincoln's high standing as a lawyer will sufficiently appear from a review of his work in the courts of last resort of the State of Illinois and the nation. The first volume of the reports of decisions of the Supreme Court of Illinois was compiled by Sidney Breese, afterward one of the judges of that court, and was published less than six years before Mr. Lincoln's admission to the bar. It contains all the decisions of the court prior to and including those rendered at the December term, 1831, with the exception of those rendered at the December term, 1821, which were destroyed with the burning of the building in which the records of the court were kept. In the

second volume of the reports, the reporter, Mr. Scammon, declares that "In many cases, from the neglect of counsel to sign their names to their abstracts [a summary of the record of the proceedings in the trial court], and from the manner in which the docket is kept, it has been difficult to ascertain with precision who appeared as counsel; mistakes have doubtless occurred in this particular." This volume contains all of the opinions rendered after the date of the previous volume to and including the December term, 1839, a little more than two and one half years after Mr. Lincoln's admission to the bar. While the case of Scammon *vs.* Cline, the particulars of which will be hereafter stated, is the first case in which his name appears in the Illinois Supreme Court Reports, it is possible that he may have appeared as counsel in one or more cases prior to that time.

Some of Mr. Lincoln's biographers have sought to make it appear that he refused to take advantage of a so-called technicality in order to win a case. This view, however, is not borne out by the record, for while he possessed many attributes which all admit are above and beyond those possessed by ordinary mortals, as a lawyer he seems to have been no less human than other honorable members of the profession; and while truth requires that it be said that he took no mean advantage of his professional breth-

ren, he did not hesitate to press upon the attention of the court any legitimate advantage which the record of the case might furnish.

The point upon which the plaintiff was defeated in the Circuit Court of Boone County in the case of Scammon *vs.* Cline, already mentioned, was of this character, as the merits of the case were not disposed of in either the Circuit Court or the Supreme Court, but the decision of the former was reversed on appeal. The case was remanded to the Circuit Court for trial on the merits, notwithstanding the contention of Mr. Lincoln that the plaintiff, by taking his appeal from the Justice of the Peace to the Circuit Court of Boone County, instead of to the Circuit Court of Jo Daviess County, had lost his right to a trial of the case in the Circuit Court, and that therefore the decision and judgment of the Justice of the Peace should stand as final.

Another case which was decided in Mr. Lincoln's favor on a technical point raised by him was the case of Maus *vs.* Worthing, 4 Ill. 26, which was an appeal to the Supreme Court from the Circuit Court of Tazewell County. Mr. Lincoln represented the appellee and presented a motion in the Supreme Court to dismiss the appeal on the purely technical ground that the appeal bond filed in the case was signed on behalf of the surety by his agent whose

authority, though in writing, was not under seal, the contention of Mr. Lincoln being that as the bond itself was required to be under seal, the authority of the agent to sign it on behalf of his principal must also be under seal. This motion made by Mr. Lincoln was sustained by all of the judges with the exception of Justice Breese, who rendered a very vigorous opinion in which he took occasion to say that he could not yield up his judgment in any case because others had decided a point in a particular manner unless he could see the reason of the decision; that he could see none in that case, and believing, as he did, that the purposes of justice "are not at all subserved by an adherence to such antiquated rules and unmeaning technicalities," he refused to concur with the majority of the court. He then proceeded to say that several of his brother judges coincided in the views which he expressed, but believing the rule laid down in the majority opinion to be the law, they considered themselves bound by it, notwithstanding its unreasonableness; but he was of the opinion that if the alleged reason is absurd, it should not bind the court.

The files and records in many of the cases in which Mr. Lincoln appeared in the courts of first instance prove that he was no less inclined to take advantage of a technical defense than any other member of the

bar whenever the interests of his client seemed to justify that course. That he did so is no reflection upon his desire that justice be done in every instance, for the very purpose of the establishment of technical rules of procedure is the proper administration of justice, and without such rules the instances of injustice under the forms of law would be multiplied.

Abraham Lincoln appeared as counsel in the Supreme Court of Illinois (the highest court of the State) in one hundred and seventy-five cases, a record rarely equaled by any lawyer, even at the present time. The ninth and tenth volumes of the reports contain decisions in cases submitted during the period beginning with the December term, 1847, and ending with the June term, 1849. In November, 1846, Mr. Lincoln was elected a member of Congress and he entered upon his duties in December, 1847. That his name does not appear as counsel in either of these volumes is doubtless due to that fact, because he appeared in seventeen cases reported in volume 8, in six cases reported in volume 11, and in thirteen cases reported in volume 12 of the reports. Again, volume 20 contains no cases in which his name appears as counsel. The last mentioned volume contains the opinions in cases submitted in 1858, which was the year of the great debate with Douglas. The

absence of Mr. Lincoln's name from cases submitted to the Supreme Court during the terms of the court mentioned reveals the singleness of purpose which possessed him in every undertaking, and indicates that he gave to whatever task he entered upon his undivided attention.

If we subtract the three years referred to from the period between the date of his admission to the bar of Illinois and his inauguration as President, the entire period of his work at the bar covers but twenty-one years, and the average annual number of his cases in the Supreme Court of Illinois is eight and one-third. In addition to his record in the State Supreme Court he appeared as counsel in two cases in the Supreme Court of the United States.[1] He was admitted to the bar of that great tribunal on March 7, 1849.

Mr. Lincoln appeared alone as counsel in the Supreme Court of Illinois in fifty-one cases. Of these the decision was in his favor in thirty-one. He appeared as associate counsel in one hundred and twenty-four cases, in which the parties in whose behalf he appeared were successful in sixty-five. Another fact shown by this same record furnishes additional evidence that he was a sound lawyer. Of twenty-three cases in which he alone appeared for the appellant

[1] See Nos. 176, 177; Appendix A.

or plaintiff in error, he was successful in fourteen, while in seventy-one cases taken to that court by parties represented by him, in which other counsel were associated, his clients were successful in thirty-seven, and of nineteen cases taken to the same court on appeal by Lincoln and his partner, Herndon, reversals of the decisions of the trial court were secured in ten cases. It is proper to assume that the litigation in the cases where he was associated with others than Herndon was not under his control, as he was never a senior partner in any other firm of lawyers.

From this record it would seem to be self-evident that he did not advise an appeal to the Supreme Court in any case unless there was strong ground for believing that error had been committed by the trial court. The record proves that he possessed a thorough knowledge of the law and the ability to impress the court with his view of the application of legal principles. In his study of the law, like everything else which he undertook, he was thorough, and although he was self-taught, his comprehensive mind had grasped and retained a knowledge of the principles of the law as completely as if he had sat at the feet of the most learned men of the profession. He read thoroughly the standard works of his time upon every branch of jurisprudence, and while in attend-

ance upon the courts during the early years of his professional career, he listened to the arguments of others learned in the law, and the crumbs of knowledge gleaned in this way found lodgment in his fertile mind and doubtless instilled in him early in his professional career a determination to press forward until he should attain such high professional standing as would receive general recognition. He knew that only by arduous labor could he hope to succeed in his profession, and his remarkable success at the bar affords ample evidence that he never abated his efforts to acquire by unremitting toil the mastery of every branch of jurisprudence.

In a letter written by him to J. M. Brockman, Mr. Lincoln said, in reply to an inquiry as to the best mode of obtaining a thorough knowledge of the law, "The mode is very simple, though laborious and tedious. It is only to get the books and read and study them carefully. Begin with Blackstone's 'Commentaries,' and after reading it through, say twice, take up Chitty's 'Pleadings,' Greenleaf's 'Evidence,' and Story's 'Equity,' etc. Work, work, work is the main thing." It was by this method that Mr. Lincoln himself became one of the leaders of the Illinois bar, for such indeed he was at the time of his election to the presidency, as the record which he has left, together with the testimony of the distinguished

men who were his intimate associates during his professional career, clearly proves. In all which constitutes the really great lawyer, he stood in the front rank of the profession at a time when many men of renown battled for supremacy at the bar of Illinois; and he, who, by common consent, was classed as the equal of the other distinguished lawyers named in these pages, must be given high place among the lawyers of his generation.

A review of Mr. Lincoln's cases in the Supreme Court of Illinois alone will convince any one that he was one of the ablest lawyers of his time, and at the time of the repeal of the Missouri Compromise he had made such progress in his professional career that had he not then laid aside his professional labors there is no reason to doubt that he would have become known throughout the country as a profound lawyer as well as a great advocate. But when his country demanded his services in that trying hour; when he saw the determination of the supporters of slavery to spread that institution over the free soil of the nation, he left to others the pursuit of the calling of his choice, at a time when that calling seemed more than ever inviting, and when greater professional renown was easily within his grasp, to become more than ever before the champion of human freedom. Before the end of his life this lawyer of Illinois

became the emancipator of a race and the great restorer of the union of the states.

The work of Abraham Lincoln, the lawyer, and the record which he made by years of devotion to his profession were, in consequence of his unselfish devotion to the cause of the Republic which he loved, soon forgotten because overshadowed by the greater labors and accomplishments of Abraham Lincoln, the profound statesman and the savior of his country.

Had he lived to witness the realization of that vision which he saw and so beautifully expressed in his first inaugural address when "The mystic chords of memory stretching from every battlefield and patriot grave, to every living heart and hearthstone all over this broad land" should "swell the chorus of the Union," it is believed that he would have proved himself the greatest constitutional lawyer of the nineteenth century, and many of the mistakes and horrors of the Reconstruction period would have been unknown to our country's history. He would have proceeded "with malice toward none, with charity for all" to "bind up the nation's wounds," and by constitutional government many of the conflicts which have left a blot upon the escutcheon of our national honor would have been avoided, and as a result jewels of still greater brilliancy would have decked the brow of this greatest ruler of modern

times, if not the wisest ruler of any age, for no one ever wielded the scepter of arbitrary power with greater moderation than did he. No chief executive of any nation ever manifested a greater reverence for the constitution and laws of his country or revealed so completely by every official word and act a firm belief in the great political truth that the Republic over whose destinies he was called upon to preside was intended to be and should be in fact, so far as he could make it such, "a government of laws and not of men" and dedicated to that exalted ideal, "Liberty regulated by law."

A list of all the cases with which Mr. Lincoln was connected in the Supreme Court of Illinois and the Supreme Court of the United States, including a short summary of each case, will be found in Appendix A. The last case in which he appeared in the state court was the State of Illinois *vs.* The Illinois Central Railroad Company, in which the State sought to recover certain taxes claimed to be due from the company. The amount involved was in excess of one hundred and thirty-two thousand dollars. The docket of the Supreme Court shows that this case was argued orally by Stephen T. Logan on behalf of the State and by J. M. Douglas and Mr. Lincoln on behalf of the railroad company on January 12, 1860, and that at the conclusion of the arguments

the court took the case under advisement. The court was then composed of a chief justice (John D. Caton) and two associates judges (Sidney Breese and Pinkney H. Walker). The decision was not rendered until the November term, 1861.

Mr. Lincoln was engaged in some cases in the courts of first instance after the argument of the case above mentioned. He tried at least one case of importance in the United States Circuit Court at Chicago shortly before his nomination to the presidency. His career at the bar practically closed when he received that nomination, but the skill in diplomacy and habits of thought and action acquired by him in the study and practice of his profession were continually manifest as he was called upon to decide the greater issues which involved the life of the Republic.

Much has been written about Mr. Lincoln's connection with the Illinois Central Railroad Company and the suit which he brought against that company to recover his fees for services in the case of McLean County against it. The contention of the officers of that company has always been that the suit by Mr. Lincoln was in every respect friendly and that there was no real contest over the matter, while others have sought to make it appear that these same officers sought to belittle the services rendered by Mr.

Lincoln. The version of the officers of the company, including James F. Joy, its general counsel at that time, is probably correct, for had there been any serious disagreement between Mr. Lincoln and the officers or general counsel as to the matter in question, it is not probable that the company would have employed him in the suit of the State of Illinois, which, as we have seen, he argued before the Supreme Court, in January, 1860, nearly five years after the opinion of the court was rendered in the case of the Illinois Central Railroad Co. *vs.* McLean County. Between the time of the decision of this case at the December term, 1855, and January, 1860, he had appeared for that railroad company in the Supreme Court in the Morrison case and also in the Hays case, both of which were decided at the December term, 1857. These facts indicate that there had been no rupture between Mr. Lincoln and the company.

One writer has solemnly stated that Mr. Lincoln's declaration or complaint filed in this case "goes far to demonstrate that the defendant (Illinois Central Railroad Company) did refuse to pay his charges" for the reason that "this document, which is in his own handwriting, after setting forth his claim for $5000," further states that "the said defendant (although often requested so to do) has not as yet paid said sum of money or any part thereof, *but so to*

do has hitherto wholly neglected and refused and still does refuse"; while every lawyer familiar with the forms of common-law pleadings knows that this language is nothing more than the form of words required to be used in every declaration in an action of assumpsit, such as the suit in question, even when it is intended that judgment shall be entered on the confession of the defendant.

Herndon's "Life of Lincoln" has done much to create an impression that Mr. Lincoln was lacking in many of the elements of a great lawyer; but the record made by Mr. Lincoln in cases with which Herndon had no connection conclusively proves that the criticisms of the latter are entirely unwarranted. In the face of those great achievements which the evidence reveals, it is rather surprising that such a mixture of contradictory statements should have emanated from the pen of one whose relations with Mr. Lincoln must have been very intimate. That Herndon did not comprehend his great law partner and that he underestimated his greatness as a lawyer must be apparent to any one who will take the trouble to examine the available records of his career at the bar. That much of the actual preliminary labor of preparing cases for trial was done by Mr. Herndon and others in Mr. Lincoln's office may be true, for such is the case with most of

the great lawyers everywhere. The best evidence of greatness in any lawyer is the ability to take up the matter thus prepared, on short notice to grasp the points in the case and, by a speedy analysis, to comprehend all that is important in the prepared case, to present the points at issue forcibly and sustain them by argument upon the trial. In other words, great lawyers generally prefer to leave the drudgery of the office to the junior counsel and confine their labors to reflection upon the questions at issue and the method to be followed upon the trial. Mr. Herndon seems to have concluded that, because Mr. Lincoln left some, perhaps many, of the details of the office work to himself and others, he sometimes entered upon the trial of cases without due preparation; but his record both in the trial courts and in the Supreme Court reveals no lack of preparation in any case.

That the clients of the office of Lincoln & Herndon placed their dependence upon Mr. Lincoln and not upon his partner is evident from the fact that during the two years of the former's service in Congress, Mr. Herndon had but two cases in the Supreme Court, one of which will be found in the 9th volume of the state reports and the other in the 10th volume. The case first mentioned was a writ of error sued out by him on a judgment against his client for

less than twenty-one dollars and costs, and the other a similar writ of error sued out on a judgment in favor of his client in the Circuit Court for four dollars and ten cents and costs, which was reversed by the Supreme Court.

In view of these facts, it should occasion no surprise that Mr. Herndon, as he himself said,[1] expressed to Mr. Lincoln his wish that the partnership between them should continue after his return from Washington on the completion of his term of service in Congress. Mr. Lincoln's name does not appear in connection with either of the cases of which mention is here made, but the name of W. H. Herndon appears as counsel in both cases. In the 20th volume of the reports, which contains the cases submitted during the year of the Lincoln-Douglas debates, the name of Mr. Herndon does not appear as an attorney in any case. In view of the misleading statements contained in his work, justice to the memory of Mr. Lincoln demands that these facts and others set forth in this volume should be presented. If anything further is required to show that Mr. Lincoln was entirely familiar with the technical work of his profession, the reader will find sufficient evidence in the *fac-simile* copies of documents in his handwriting which appear in Appendix B.

[1] Herndon's *Life of Lincoln*, vol. II, p. 307.

Some of the cases in which Mr. Lincoln appeared as an attorney in the Supreme Court are of more than passing interest. The case of Bailey against Cromwell is of this character. This was a suit brought in the Circuit Court of Tazewell County on a promissory note given by Bailey to one Cromwell for the purchase price of a negro girl sold by Cromwell to Bailey. The attorney for Bailey in the Circuit Court was William H. Holmes, who filed several defenses on behalf of his client, among which were special pleas, in which it was set forth that the note sued on was given for the purchase price of a negro girl who had been, at the time the note was given, represented by Cromwell to Bailey to be a slave and servant when, in fact, she was free; that Cromwell had agreed with Bailey at that time that he would furnish Bailey with proof that the girl was in fact a slave, and that as such Cromwell had the right to make the sale, or, in other words, that Cromwell agreed to furnish Bailey with proper evidence of his title to the property sold to Bailey, but that he had failed to show such title and that the presumption of law in Illinois was that the girl was free and not a slave; that in the absence of proof that she was a slave, there was no consideration for the promise to pay contained in the note, and that for want of such consideration the note was void. Judgment was

rendered on the note against Bailey in the Circuit Court for $431.97 and costs, from which an appeal was taken by Bailey to the Supreme Court, where he was represented by Mr. Lincoln who secured a reversal of the judgment of the Circuit Court.

The Supreme Court found that the evidence showed that the consideration for the note was the sale of the negro girl, and that the presumption of law in Illinois was that all persons were free, regardless of color; that the sale of a free person was illegal, and that there being no proof to rebut the legal presumption that the girl was free, there was no valid consideration shown for the note.

It has been often stated by biographers of Lincoln that the court held in this case that slavery could not be allowed to exist in Illinois. This is an error, as the court held only that there was no proof that the girl was the slave of Cromwell at the time of the attempted sale to Bailey, and that in the absence of such proof the presumption that she was free must prevail.

The appearance of Mr. Lincoln in this case was his fourth appearance before the Supreme Court within a little more than four years. While there is no means of determining just what authorities he cited or what line of argument he followed, the issues formed by the pleadings in the case indicate that the

question as to whether under the Ordinance of 1787 slavery could exist in Illinois was not involved in the case, and no mention of that ordinance is made in the opinion of the court. Many of Lincoln's biographers declare that in the argument of the case Mr. Lincoln called the attention of the court to the ordinance and to the constitution adopted by the State of Illinois in 1818, both of which contained prohibitions against slavery; but as the court in the opinion rendered made no reference to the ordinance or the constitution, it seems unlikely that either entered into the decision.

The case of Turley *vs.* Logan County, in which Mr. Lincoln represented the defendant county, was very important at the time it was decided, as it involved the right to test the validity of an act of the legislature by showing by reference to the journal of the legislative body that the act was not passed by a constitutional vote. The case also involved the question of the method of changing the location of a county seat. These were new questions in Illinois at that time, and Mr. Lincoln's contentions were sustained on both questions involved, and the decree which he obtained in the Circuit Court upholding the act in question was affirmed.

The case of the Illinois Central Railroad Company *vs.* McLean County has been frequently re-

ferred to as the most important case with which Mr. Lincoln was ever connected. That this was a very important case is not denied. It involved consequences which were far-reaching, namely, the constitutionality of the act of the legislature exempting property of the railroad company from taxation in consideration of the payment of a fixed proportion of its earnings to the State. The contentions of Mr. Lincoln and those associated with him on behalf of the company were sustained by the Supreme Court and the decision has been of great value to it, but in the principles involved the case was of no greater importance than the case of The State of Illinois *vs.* Illinois Central Railroad Company, the case of Illinois Central Railroad Company *vs.* Morrison, and Hurd *vs.* Rock Island Bridge Company, and many others which might be mentioned.

Another interesting case in which Mr. Lincoln appeared in the Supreme Court was that of Isaac Smith *vs.* John H. Smith (shown as No. 161 in Appendix A), as it involved the recovery of an election bet growing out of the defeat of Millard Fillmore as a presidential candidate in 1856.

While many, perhaps a majority, of the cases listed in Appendix A involve controversies which in this day would be deemed of little consequence, it must not be forgotten that many of the principles

involved were then unsettled in Illinois, and these cases, though apparently insignificant, served to settle the law of the State and create precedents for the guidance of the people when similar questions should arise.

It must also be borne in mind that the lawyers of those days traveled the circuit, that their presence was necessary at the various terms of court, and that they tried many trivial cases for which they received little or no compensation, as it was no doubt quite as much to their liking to be engaged in actual trial work as to spend their time in any other way.

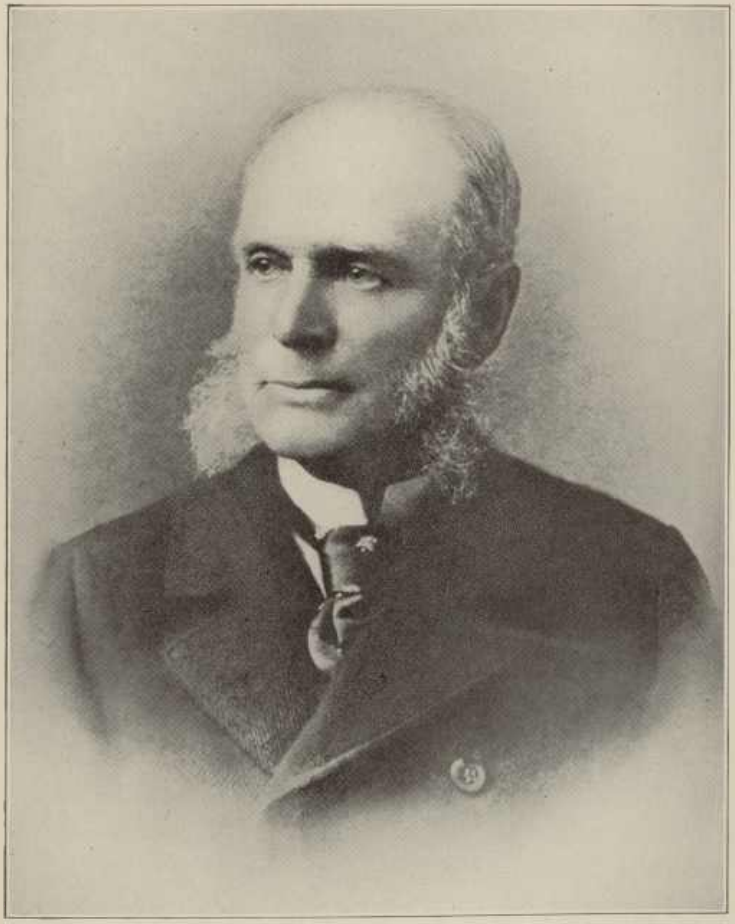
Another matter worthy of consideration is the fact that during the greater part of the period prior to 1860 the expense incident to a writ of error, or an appeal from the Circuit to the Supreme Court in Illinois was very slight. The rules of that court did not require the printing of briefs and abstracts of the record, such as are required at the present time. Lawyers usually argued their cases orally before the Supreme Court and contented themselves with citing their authorities during such argument, and perhaps handed to the court a list of the authorities relied upon. Therefore the labor of the lawyer was much less arduous and his remuneration small.

Nearly all of Lincoln's biographers have undertaken to give an account of his connection with the

case of McCormick *vs.* Manny, which was heard at Cincinnati in September, 1855. One writer, at least, has given an account of the matter as furnished by Mr. George Harding[1] of Philadelphia who, with Edwin M. Stanton, argued the case on behalf of the defendants, Manny and others. This account was so prepared as to relieve these distinguished lawyers, as far as possible, from criticism. The late John Bigelow, of New York, appointed by President Lincoln as United States consul at Paris, France, and afterwards United States minister at the court of France, knew Mr. Harding well, and Mr. Bigelow related to the writer the story as given to him by Mr. Harding. This account, it is believed, is well worth repeating here.

In September, 1911, the writer, while visiting Mr. Bigelow at Highland Falls, New York, discussed the career of Mr. Lincoln. Mr. Bigelow stated to the writer that, many years before, Mr. Harding had informed him that Mr. Stanton, Mr. Lincoln, and himself had each been retained as counsel for the defendants in the case mentioned, which was pending in the United States Circuit Court at Chicago; that the complainant, McCormick, was represented by Reverdy Johnson, the famous Baltimore lawyer, and E. N. Dickerson of Philadelphia.

[1] Tarbell's *Life of Lincoln*, vol. II, p. 54.



GEORGE HARDING

The report of the decision, in 6 McLean, 539, shows that the suit was brought by McCormick to enjoin an alleged infringement of patent. It is a fact well known among lawyers that Mr. Dickerson and Mr. Harding were both patent lawyers of high standing, and they were doubtless employed by the respective parties for that reason. Mr. Ralph Emerson, of Rockford, Illinois, one of the defendants in the case, who knew Mr. Lincoln well, has stated that Mr. Lincoln was retained by the defendants at his suggestion. There seems to be no doubt that Mr. Lincoln made careful preparation for the argument of the case and regarded the prospect of meeting the distinguished counsel who represented the opposition as worthy of his best efforts. The opportunity was one rarely granted to any western lawyer at that time, and Mr. Lincoln went to Cincinnati eager for the contest, arriving the day before that on which the hearing was to begin before Mr. Justice McLean, of the United States Supreme Court, and District Judge Drummond, of Chicago, sitting as circuit judge. It was agreed between the parties that the case should be heard at Cincinnati, as that was the place of residence of Justice McLean. The account of the occurrence at Cincinnati, as related to the writer by Mr. Bigelow, is in substance as follows:—

Messrs. Harding and Stanton were already in Cin-

cinnati when Mr. Lincoln arrived, and had taken rooms at the Burnett House, then a leading hotel of that city. When Mr. Lincoln reached the hotel, Messrs. Stanton and Harding were absent and Mr. Lincoln awaited their return. He stood at the entrance to the hotel as they approached and was greeted indifferently as they passed by him and went to the room of Mr. Harding. How they knew Mr. Lincoln Mr. Harding did not say, but on arriving at his room, a conference was had between the two lawyers, and Mr. Stanton insisted that it would never do to allow a man of Mr. Lincoln's type to make an argument in the case. Mr. Harding described Mr. Lincoln as awkward and ungainly in appearance, his clothing utterly devoid of the tailor's art, ill-fitting and in no wise suited to his angular frame. He wore heavy boots and his appearance was that of the average western farmer of that period.

Having determined that Mr. Lincoln should not be allowed to participate in the hearing of the case, Harding and Stanton sought a method to bring about the desired result, and it was finally determined to send for Mr. Lincoln and inform him that as there were but two counsel on the opposite side of the case, they had decided that it would be unwise that more than two arguments should be made on behalf of the defendants. It was agreed that Mr.

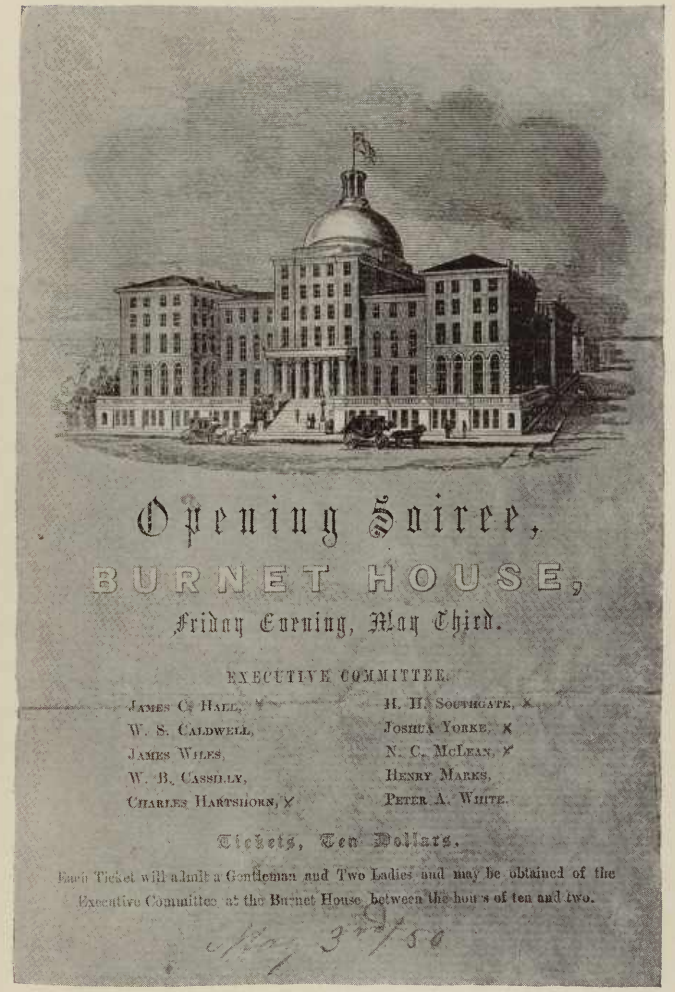
Harding should be the spokesman when Mr. Lincoln came, and upon his arrival at the room of Mr. Harding, the latter informed him of the conclusion which had been reached and told him that he (Harding) would make the argument on the technical questions regarding the infringement and that the other argument would be made by Mr. Stanton. Mr. Lincoln replied, "Very well, gentlemen, I have here some suggestions which I had intended to use in my argument which you are at liberty to use if you see fit"; at the same time taking a manuscript from the inside pocket of his coat and handing it to Mr. Harding. Shortly thereafter Mr. Lincoln left the room and Mr. Harding threw the manuscript into the waste-basket without opening it.

That same evening a dinner was given by Messrs. Harding and Stanton to the judges and the other counsel in the case, with the exception of Mr. Lincoln, who was not invited. Mr. Emerson, who was present at the trial, has said that Mr. Lincoln remained in Cincinnati throughout the trial of the case, but took no part in it. That he was entirely ignored by his associates seems to have been admitted by all who have professed to know anything about the matter.

Mr. Emerson published a pamphlet in the latter years of his life in which he gives his recollections of

Mr. Lincoln, and in it he says that in the trial of the reaper case the parties were limited "to two lawyers on a side"; but he fails to state who fixed this limit, and there is considerable evidence that his memory of the incidents of that distant day was defective when his pamphlet was written. He states that Mr. Lincoln informed him at the conclusion of the trial that he (Lincoln) was "going home to study law," and that when he replied that Mr. Lincoln then stood at the head of the Illinois bar, the latter answered, "Yes, yes, I do occupy a good position there, and I think I can get along with the way things are going there now. But these college-trained men who have devoted their whole lives to study are coming west, don't you see?" In the face of the fact that many of the lawyers who were then practicing law in central Illinois were college-bred men, it does not seem possible that Mr. Emerson's recollection is correct as to what Mr. Lincoln said to him.

Among the college-bred men with whom Mr. Lincoln came in contact at that time in Illinois may be mentioned Orville H. Browning, who received a classical education at Augusta College; Charles H. Constable, a graduate of the University of Virginia; Benjamin S. Edwards, a graduate of Yale; Jesse B. Thomas, a graduate of Transylvania University; Isaac G. Wilson, a graduate of Brown University;



Opening Soiree,

BURNET HOUSE,

Friday Evening, May Third.

EXECUTIVE COMMITTEE.

James C. Hall,	H. H. Southgate,
W. S. Caldwell,	Joshua Yorke,
James Wiles,	N. C. McLean,
W. B. Cassilly,	Henry Marks,
Charles Hartshorn,	Peter A. White.

Tickets, Ten Dollars.

Each Ticket will admit a Gentleman and Two Ladies and may be obtained of the Executive Committee at the Burnet House, between the hours of ten and two.

May 3rd/50

BURNET HOUSE, CINCINNATI, WHERE LINCOLN MET STANTON IN 1855

(FACSIMILE OF ANNOUNCEMENT OF OPENING)

Burton C. Cook, a graduate of the Collegiate Institute of Rochester, New York; John T. Stuart, a graduate of Centre College of Danville, Kentucky; Leonard Swett, a graduate of Waterville College, now Colby University. Many others possessed an academic education. Mr. Lincoln was intimately acquainted with all of these men, and it is therefore probable that if the statement attributed to him by Mr. Emerson was made, it was in a spirit of jest, or that it was uttered because of the attitude of superiority which Messrs. Stanton and Harding had displayed toward him.

Mr. Emerson in the pamphlet before mentioned has stated that William H. Seward, Stephen A. Douglas, and other prominent lawyers were engaged in the case of McCormick against Manny, but the record indicates that this is an error, as the only names which appear there, either in the Circuit Court or the Supreme Court of the United States, are those of Reverdy Johnson and E. N. Dickerson for the complainant and Edwin M. Stanton and George Harding for the defendants. This fact affords additional evidence that Mr. Emerson did not remember clearly the events of which he undertook to give an account after the lapse of so many years.[1]

The account given by Mr. Bigelow to the writer is

[1] The pamphlet referred to was published in 1909.

substantially the same as that which Mr. Harding gave to Robert H. Parkinson, a leading patent attorney and member of the Chicago bar. Mr. Parkinson knew Mr. Harding during many years, and while the account given to him varies from that of Mr. Bigelow in some minor details, it does not differ greatly as to the material facts. According to the version given to Mr. Parkinson, the dinner mentioned was given by Justice McLean at his home, and Mr. Lincoln was not informed of the decision as to the arguments in advance of the hearing. All accounts agree that Mr. Lincoln submitted gracefully to the plan agreed upon between Messrs. Stanton and Harding and delivered his manuscript to Mr. Harding, who did not open it because he deemed it unworthy of examination. The evidence that Mr. Lincoln was badly treated by Mr. Stanton is abundant, and that he was named by President Lincoln as Secretary of War is but another evidence of the latter's unselfish patriotism.

There is no evidence that the Cincinnati incident was ever discussed between President Lincoln and his great Secretary of War, but that the latter became the stanch friend, admirer, and earnest supporter of the President is beyond question. He learned by personal contact with the great President to admire his great intellect, kindly disposition, his

almost superhuman wisdom, patience and courage so often displayed under the most trying circumstances. Whatever of discourtesy may be chargeable to the great Secretary of War in his treatment of Mr. Lincoln at Cincinnati was atoned for abundantly by the subsequent cordiality and earnest devotion which he manifested toward his chief throughout his great and disinterested service as Secretary of War. And it remained for him to immortalize the closing scene in the life of President Lincoln as he stood beside his prostrate form and bowed his head in grief as he uttered those memorable words, "Now he belongs to the ages." Mr. Harding also became a great admirer of Mr. Lincoln, and in relating the account of the Cincinnati incident he did so for the purpose of showing how both Stanton and himself had been led by Mr. Lincoln's external appearance to underestimate the man so greatly.

CHAPTER III

THE LAWYER-PRESIDENT

THE record of Mr. Lincoln while a practicing lawyer, as shown in the preceding chapter, reveals the sources of the greatness that was so manifest when he was called upon to deal with the affairs of the nation. In his work as a lawyer he had acquired a thorough knowledge of the common law and an understanding of its history and purposes. He had learned the important lesson that there are at least two sides to every controversy, that there is usually some merit on each side of every dispute. He had learned to take a comprehensive view of every question requiring his attention, to analyze every problem, to separate the true from the false, to detect and expose sophistry and present the real issue stripped of every immaterial consideration. He had acquired a knowledge of men by means of which he understood the motives which prompt and the impulses which control human action. He was familiar with the history of Anglo-Saxon liberty and the chronicles of that great struggle which gave to the English people the Great Charter and that system of jurisprudence which has been a shield against

oppression wherever the language of the common law is spoken.

His knowledge of the principles upon which the national government was founded, and of the scope and limitations of the Federal Constitution made him an expounder of that instrument no less worthy of confidence than Webster. The knowledge of men and principles which Mr. Lincoln acquired in the practice of his profession were of infinite value to him after he became President, and that knowledge was constantly applied by him in the administration of the affairs of government and contributed greatly to his fame as a statesman. The lawyer was not superseded by the executive, but both were combined in the person of the President. He was confronted with many difficult situations, but he trusted the final decision of none of them to others, but himself decided every question, whether of law or fact. His legal training enabled him to grasp the intricacies of international law and to decide correctly the most important questions arising thereunder. His modification of the answer of his great Secretary of State to the British Government in the Trent affair affords evidence of this; and throughout his state papers will be found abundant proof that every executive act had received the careful consideration of the lawyer-statesman. He carefully weighed and exam-

ined all the angles of every contention which arose, whether with men or nations; and after mature reflection he never failed to arrive at conclusions which his trained judgment approved. He was not of that class of men who have won the plaudits of that great mass of citizens who concern themselves only with immediate results.

The public men who have been the recipients of the applause of this class of citizens have not been unwilling to belittle the framers of the Constitution or to disregard the limitations of that instrument, whenever, in their judgment, the immediate good has seemed to them to demand that they do so. While occupying the executive office, they have not hesitated to take upon themselves the exercise of powers granted by the Constitution to coördinate branches of the government whenever they have believed that the general welfare required it. Mr. Lincoln belonged to that other class of men who, by reason of their thorough knowledge and understanding of the limitations placed upon the executive by the Constitution, have regarded such limitations as sacred and essential to the preservation of the liberties of the people.

The greatest among the Presidents of the United States have been men of the latter class, among them Madison, John Adams, and Jefferson, each of

whom displayed distinguished ability as well as a profound knowledge of the science of government. That they were so well fitted to perform with justice and moderation the duties which devolved upon them was due, in no small degree, to their knowledge of legal principles and their experience at the bar. Each had engaged actively in the practice of law before entering public life. Washington, while not himself a member of the bar, availed himself continuously of the services of that great lawyer, Alexander Hamilton, who was always his friend and counselor, and without whose valuable assistance it is probable that the administration of the first President would not have held its present place in history.

Adams, Jefferson, and Madison were noted lawyers before the Revolution, and when called to the office of chief executive of the nation, their experience and training as lawyers were of inestimable value. So it was with Lincoln. When he became President, he carried with him into that office a ripe experience at the bar. By contact with men in all the relations of life, he had acquired skill in those elements of diplomacy which must be possessed by every successful lawyer. His knowledge of the Constitution and laws enabled him to test from the viewpoint of the trained lawyer all important measures, and made him ever cautious in the exercise

of executive authority and careful to commit no act which was not warranted by the Constitution. Many found it difficult to understand how any man could acquire the nobility of character and high attainments, moral, intellectual, and political, which were reached by Mr. Lincoln, without the systematic training of a university or college.

There are those, not a few, who to this day underestimate the extent of the learning of the great President. A distinguished American lawyer,[1] not long since, addressing a British audience, declared, in substance, that Lincoln, although a great President, was not an accomplished lawyer, although he admitted that his training and experience in the courts aided in the development of his intellect and character; whereas in truth his greatness as a lawyer made him a great President.

As a great lawyer never loses sight of the issue on trial before court or jury and never permits that issue to become obscured by passion or prejudice, so President Lincoln kept ever in the foreground, as the single issue involved in the Civil War, the preservation of the Union, and never under any pretext did he lose sight of that paramount issue. His greatness as a lawyer appears in all his state papers, in his

[1] Joseph H. Choate; address before the Edinburgh Philosophical Institute, Nov. 13, 1900.

examination of the race question, the subject of reconstruction, and his discriminating review of every other question of governmental policy. His training in the school of adversity made him kind-hearted and generous. His education as a lawyer made him cautious, and imbued him with the spirit of justice, and instilled in him a higher regard for the rights of all men before the law. His every act as President was prompted by a desire to deal justly with both friend and foe. He understood thoroughly the point of view of those who fought in the cause of secession, and while unswerving in his devotion to the cause of the Union and in his determination to preserve it, he realized that the right of a State to secede had been proclaimed by eminent statesmen north and south for many decades, and although denying that such right existed, he never questioned the good faith of those who professed a belief in it.

It cannot be doubted that the ability to view with candor both sides of the issue which caused the war between the states was chiefly due to his experience at the bar. After he became President he was surrounded by many able men who entertained views greatly at variance with his own on the subject of slavery and as to the method of carrying on the war; but amidst all the criticisms of friends and denunciation of enemies he never swerved from a determi-

nation to accomplish his supreme mission of saving the Union by the exercise of those powers only which were granted to the executive by the Constitution, or which, by implication, were conferred upon him. His calm self-possession under the most trying circumstances, and his profound wisdom in the solution of all important questions excited the wonder and admiration of mankind. His greatness was everywhere proclaimed, but how this eminence had been attained was a riddle which seemed incapable of solution by any method understood by the cultured statesmen of his time.

Count de Montalembert, who was one of the most distinguished among the French statesmen and writers of his generation, in an article which appeared in the *Revue Correspondante*, May, 1865, on "The Triumph of the Union," referring to President Lincoln said: —

> A man who was first a wood-cutter, then a husbandman, then a boatman, then a lawyer, becomes President of the United States and directs, in this character, a war more formidable, and above all more legitimate, than the wars of Napoleon. . . . He has presented to us in the ripeness of the nineteenth century a fresh example, which is not either a copy or counterfeit, of the calm and worthy from which Washington issued. His glory will not be eclipsed in history even by that of Washington. He honors human nature, not less than the coun-

try whose destinies he directed, and whose pacification he brought about with such intelligent moderation.

That the achievements of President Lincoln called forth such an expression of admiration and surprise from the distinguished Frenchman is not strange, for when he was elected President little was known about him outside of the State of Illinois. At that time he was without experience in the administration of governmental affairs. He was known as a skillful advocate of the principles for which he had contended. His single term of service in the lower house of Congress had not contributed greatly to his reputation as a statesman. It was generally believed that he would use his utmost endeavors to preserve the Union; but many, realizing the gravity of the task with which he was confronted, and his lack of experience in statecraft, awaited with anxiety the proofs of his wisdom in its performance.

It is not strange then that men of other lands should express wonder at his great achievements; but Abraham Lincoln had been, through many years, a student of the science of government, and especially of the subjects of slavery and the relations of the states to the Federal Government. The middle ground which he took in the great debate was not new to him, for as early as 1837 he had declared that Congress possessed no power under the Con-

stitution to interfere with slavery in the states, but insisted that territory which belonged to the national government was entirely under its control and therefore that Congress did possess the power to abolish slavery in the District of Columbia. His love of country was deep-seated and sincere. He believed that no government had ever before existed which was so well calculated to "promote the general welfare and secure the blessings of liberty," as that which the fathers of the Federal Constitution had framed, and thus early in his career he had become a profound student of its history and purposes.

His unselfish devotion to the cause of human liberty led him to become its advocate before the people at a time when such advocacy was unpopular, and when selfish considerations would have prompted him to remain silent. He was from early manhood a teacher of the people, instructing them in the principles which lie back of the formation of the union of the states under the Constitution. His opinions seem to have been always formed after deep study and mature reflection and were adhered to with unusual consistency throughout his life. He believed the object of government to be "to do for the people what needs to be done but which they cannot by individual effort do at all, or do so well for themselves." He declared that "In all that the

people can individually do as well for themselves, government ought not to interfere"; but he also believed that the government should do whatever the "general welfare" of the people required.[1]

It was this belief which prompted him, while a member of the national House of Representatives, to become an advocate of a system of internal improvements. He delivered a strong argument in that body in favor of such improvements by the national government, although many of the leading men of the country denied the power of Congress to appropriate money from the national treasury for that purpose.

President Polk had, on August 3, 1846, vetoed "An act making appropriations for the improvement of certain harbors and rivers" and on December 15, 1847, he had vetoed another act of Congress in which appropriations had been made for a similar purpose. The President supported both these veto messages by lengthy arguments. At that time opinion was greatly divided on the subject. On June 20, 1848, Mr. Lincoln addressed the House in criticism of the President's message. His argument, able and convincing, showed a familiarity with the arguments for and against the exercise of the power by Congress to make appropriations for such improvements. He

[1] *Early Speeches*, p. 215, Centenary Edition.

quoted from Thomas Jefferson, Chancellor Kent, and Justice Story to show that the power had been declared to exist by these distinguished men. He uncovered the fallacies contained in some of the arguments of the President, especially that in support of the building of harbors, canals, and roads from tonnage duties laid by the states within whose borders they were to be constructed; and showed that they must be ready to receive the tonnage before tonnage duties could be collected. He declared by way of homely illustration that the President's argument involved the same absurdity as the remark of the man about his new boots. "I shall never get them on," he said, "till I wear 'em a little."

Mr. Lincoln, while in Congress, made other speeches which show that he was well informed upon the questions which came before that body, and that he was a ready and effective debater. His defense of General Taylor in the House, on July 27, 1848, was a masterpiece of wit, argument, and sarcasm and reveals a thorough knowledge of the history of the Whig and Democratic parties in their relation to governmental affairs. In 1847, after he had been elected to Congress, but before he took his seat, he wrote down his views on the "Home Market" and other matters pertaining to the advantages of a protective tariff. This document discloses a thorough

knowledge of the subject and contains some very forceful illustrations well calculated to show the benefits of the protective tariff system; and it affords abundant evidence of a careful consideration of the subject. It deals with the relation of labor to capital, and discusses the difference between useful labor, useless labor, and idleness. The entire argument is both interesting and instructive, abounding in close reasoning and sound logic; and from the point of view of the advocates of a protective tariff, it would be difficult to find one more satisfactory or so simple and concise as that which is there presented.[1]

In a speech delivered at Springfield in 1839, against the sub-treasury and other policies of the administration of President Van Buren, Mr. Lincoln exhibited also a thorough acquaintance with the history of the finances of the government and other kindred subjects during every administration beginning with that of Washington. His public addresses, delivered prior to his nomination for President, evinced a remarkable familiarity with the constitutional and political history of the nation whose chief magistrate he was destined to become. A large part of that knowledge was acquired by reading the great speeches of the public men of that day and by a study of documents issued from time to time by the

[1] *Early Speeches*, p. 101, Centenary Edition.

Government. His speeches prove that he had studied the available records of the framing of the Constitution, as well as the Constitution itself, until few men possessed a wider knowledge of the purpose and limitations of the Federal Government than he.

While a member of the national House of Representatives, he delivered not less than six speeches of considerable length in that body, all of which seem to have been attentively listened to by the members of the House. Few members in recent years have ventured to address Congress on any question during a first term of service, but all the speeches of Mr. Lincoln bear evidence of careful preparation, and his skill in debate, as revealed in these discussions, indicates a thorough familiarity with the subjects under consideration. He possessed a wide range of vision and was endowed with a penetrating mind. He thought deeply upon many questions and seems never to have hesitated to express his thought upon any question of public concern.

In the year 1836, while a candidate for reëlection to the legislature, one of the questions agitating the public mind was that involving the right of all residents to vote. The Democrats held that alien residents were entitled to vote, while the Whigs contended that none but citizens were entitled to that privilege. In the course of the campaign Mr. Lin-

coln issued a statement of his position in which he took ground opposed to both these views, although he was himself affiliated with the Whig party. He said: "I go for all sharing the privileges of the government who assist in bearing the burdens. Consequently, I go for admitting all whites to the right of suffrage *who pay taxes or bear arms* (by no means excluding females)." This constitutes the only mention of "votes for women" by Mr. Lincoln, and on this alone is based the claim of Woman Suffrage advocates that Lincoln favored it. Had he in fact favored woman suffrage, it is not likely that he would have failed to give expression later in life to a desire to bring it about. At the time he wrote the declaration mentioned he was but twenty-seven years of age, and probably had given little if any serious thought to that subject. The Woman Suffrage movement, under the able leadership of Lucretia Mott and Elizabeth Cady Stanton, was inaugurated in 1848, and the first Woman's Rights convention was held at Seneca Falls, New York, in July of that year. Mrs. Stanton addressed the New York legislature on the subject of Woman Suffrage in 1854. In 1852 Susan B. Anthony — who was also a strong and aggressive anti-slavery advocate — became the active ally of Mrs. Stanton in the suffrage movement. But, although the movement for

Woman Suffrage had reached considerable proportions as early as 1850, there is no evidence that Mr. Lincoln gave it his support in any manner.

At the time of his *obiter dictum* on the question, quoted above, the constitution of Illinois contained no provision restricting the right of suffrage either to males or to citizens, and as a result the controversy before referred to between the Whigs and Democrats had arisen, and at the time of Mr. Lincoln's declaration public opinion was much concerned with it. There were then no party organizations in Illinois, but each candidate for the legislature was expected to present his own declaration of principles, and Mr. Lincoln, in obedience to the popular demand, presented the document referred to. As the constitution of 1818, then in force, was silent on the question of sex as well as on that of citizenship as qualifications for suffrage, it seems probable that Mr. Lincoln believed that under that constitution all residents of the State were entitled to vote after they had resided in the State for the period of six months (that being the period of residence fixed by the constitution), and that as the question of suffrage was likely to come before the legislative body to which he sought to be elected, he thought it proper to declare himself on that subject. That declaration was not, however, in favor of universal

white suffrage, but was a declaration in favor of a property and a military-service qualification, for it favored its limitation to those "who pay taxes or bear arms." By the constitution of 1848 the right of suffrage in Illinois was limited to "white male citizens," and the controversy which called forth Mr. Lincoln's declaration ended. While there is not sufficient evidence to justify the conclusion that Mr. Lincoln did not favor woman suffrage, it is equally true that proof that he was a believer in such an extension of the elective franchise is also lacking.

Mr. Lincoln never supported and never called upon the people to support any policy in which he did not sincerely believe, and never attempted to impose upon their credulity or make use of that credulity for his own advancement. When he became President he carried with him into that great office the honesty of purpose which characterized him while in private life, and applied to the administration of public affairs the same determination to evade no responsibility which duty demanded that he assume.

He believed it to be the duty of the Executive to enforce the law as it was, without regard to the demands of any class. He believed in no governmental policy which would grant immunity to any group or organization of people; and while he declared that

"Gold is good in its place, but living, brave, patriotic men are better than gold," he believed that each individual was entitled to the protection of the laws. This view was elaborated by him in his annual message of December 3, 1861. In that document he said: —

> Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital and deserves much higher consideration. Capital has its rights, which are as worthy of protection as any other rights. Nor is it denied that there is and probably always will be, a relation between labor and capital producing mutual benefits. The error is in assuming that the whole labor of the community exists within that relation.

He called attention in the same message to those classes of the people which are independent of both capital and hired labor, consisting of the farmers and small manufacturers who retain the entire product of their labor and demand "no favors of capital on the one hand nor of hired laborers or slaves on the other," until by industry and frugality they become the employers of the labor of others. His attitude on the relations of capital and labor is shown also in an address to a committee from an association of workingmen of New York, March 21, 1864, when, referring to the then recent labor disturbance in New

York City he deplored the conflicts between working people. Said he: —

It should never be so. The strongest bond of human sympathy, outside of the family relation, should be one uniting all working people of all nations, and tongues, and kindreds, nor should this lead to a war upon property or the owners of property. Property is the fruit of labor; property is desirable; is a positive good in the world. That some should be rich shows that others may become rich; and hence is just encouragement to industry and enterprise. Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself, thus by example assuring that his own shall be safe from violence when built.

Thus, while encouraging working people to become united for their common good, he did not hesitate to condemn violence.

Mr. Lincoln's reverence for the laws of his country affords an example worthy of the thoughtful consideration of people of every age and condition everywhere. In an address delivered January 27, 1837, at Springfield, he said: —

Let every man remember that to violate the law is to trample on the blood of his father and to tear the charter of his own and his children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap. Let it be taught in the schools, in seminaries, in colleges. Let it be written in primers, spelling-books and in almanacs. Let it be preached from the pulpit; proclaimed in legislative halls, and enforced in courts of justice. And, in short,

let it become the political religion of the nation; and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions sacrifice unceasingly upon its altar.

Admitting that there were some bad laws, nevertheless he called upon all to obey them, for said he, "There is no grievance that is a fit object of redress by mob law." He urged obedience to all laws, however obnoxious. "Bad laws," said he, "if they exist, should be repealed as soon as possible; still, while they continue in force, for the sake of example, they should be religiously observed." To these principles he strictly adhered through life. Respect for the law and veneration for the Constitution are stamped indelibly upon his whole career. His knowledge of the principles of the Constitution has never been surpassed by any American statesman, if, in fact, it has ever been equaled.

Webster, "the expounder of the Constitution," has left nothing on record which reveals greater familiarity with that instrument than is disclosed in the state papers and speeches of Lincoln. While President he was careful, always, to guard the line of demarcation between the legislative and executive departments. He never, in a single instance, sought to control Congress by executive influence, and he as jealously guarded the executive depart-

ment against the encroachments of Congress. There are many instances of this to be found in his state papers, but that in which his attitude is most clearly shown is his message of February 8, 1865, returning to Congress with his approval the "Joint resolution declaring certain states not entitled to representation in the Electoral College." As the sole purpose of that message was to advise Congress of his opinion that the two houses of Congress, under the twelfth article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be illegal, in it he declared: "It is not competent for the executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter." Referring to the power of the President in that matter, he proceeded: "He disclaims all right of the executive to interfere in any way in the matter of canvassing or counting electoral votes; and he also disclaims that by signing said resolution, he has expressed any opinion on the recitals of the preamble, or any judgment of his own upon the subject of the resolution."

If Congress, by the preamble and resolution in question, sought to commit the President to the view that the state governments which had been organized in the States of Louisiana and Arkansas were not entitled to the support of the national govern-

ment, as subsequent events would seem to indicate, that purpose was defeated by the very courteous, but none the less effective, language used in the message; and this statement applies with equal force to the proclamation of July 8, 1864, in which he made reference to the governments already established in those states with his approval. He carefully guarded against any inference that by issuing that proclamation he conceded the constitutionality of the provisions of the act of Congress to which it related. Declaring that the act mentioned "expresses the sense of Congress" as to the restoration of the Confederate states to "their proper practical relation in the Union," he went no further than to say: "It is now thought fit" to lay the congressional plan "before the people for their consideration as one very proper plan for the loyal people of any state choosing to adopt it."

It is quite apparent from his refusal to approve the act of Congress and his treatment of the same in the proclamation that he did not concede that Congress possessed under the Constitution the power to demand that the executive enforce the legislation in question, or that the legislative branch could do more than "express the sense of Congress upon that subject." He saw no objection to the application of its provisions in any state where the loyal people

might choose to adopt it; for if the people of any state should voluntarily do so, the question of its constitutionality would be of no practical importance, as that question could only become a practical one in the event that the national government should attempt to impose the provisions of the act upon "the loyal people of any state" against their will.

Mr. Lincoln never devoted his time to the presentation of arguments in support of his views upon subjects other than those of practical importance, and in this instance he, in effect, said that, while he was unwilling to admit the power of Congress to impose conditions upon the states, yet, if the loyal people of those states saw fit to adopt the recommendation of Congress, he would not oppose them. His chief purpose was to have free state governments established in the Southern states; and while he had outlined a plan which he suggested might be adopted by those states, he was not disposed to oppose any plan which the loyal people in them might choose to follow and under which a free state government, republican in form, should be founded.

When he took upon himself the obligation to "faithfully execute the office of President of the United States" and to "protect and defend the Constitution of the United States," he fully realized its import and recognized its great solemnity in the

crisis then impending. Witness his appeal to the Southern people in his first inaugural address: "You have no oath registered in heaven to destroy the government, while I shall have the most solemn one to 'preserve, protect and defend it.'" How well it reveals the earnestness of his purpose to make the Constitution the chart by which he would seek to guide the Republic through what he believed would be the most trying period of its history. Those words were a true index to his purpose to be guided always by the Constitution, a purpose from which no demand of the people, of Congress, or of the military arm of the government, ever swerved him in the least degree, and even his hatred of slavery did not lead him to exercise a power which he believed was not conferred upon the executive by the Constitution.

An examination of his state papers will convince any one of his sacred regard for the limitations placed upon the President by the Constitution; for, while recognizing that these limitations prevented him from undertaking many things in themselves desirable, he was never known to express the wish that the limitations of the Constitution should be removed or the power of the executive be enlarged. On the contrary, he was opposed to the amendment of that instrument, except in cases where such amendment became necessary to carry out his war

policies. He believed that the restraints placed upon the exercise of official power, as well as upon the people, against the adoption of any course which might result from the prejudice or ill-advised and hasty action of a multitude of citizens, stirred into sudden manifestations of passion by some individual instance, were wise and beneficent safeguards of the liberties of the people. On December 28, 1860, when many were demanding an amendment to the Constitution, providing a means by which slavery could be abolished, he wrote to General Duff Green:

> I do not desire any amendment to the Constitution. Recognizing, however, that questions of such amendment rightfully belong to the American people, I should not feel justified nor inclined to withhold from them, if I could, a fair opportunity of expressing their will thereon *through either of the methods prescribed in the instrument.*

He was always opposed to hasty action upon any public question, but believed in the soundness of the deliberate judgment of the people after they had been given ample time for investigation and discussion. In his first inaugural address he said to the people of the states then threatening war upon the Union, "Nothing valuable can be lost by taking time. If there be an object to hurry any of you in hot haste to a step which you would never take deliberately, that object will be frustrated by taking time;

but no good object can be frustrated by it." The wisdom of this advice of the great President should be apparent to all. The Civil War amendments to the Constitution, which have given rise to a vast volume of litigation, thereby imposing heavy burdens upon the courts and upon the people, furnish ample illustration of the wisdom of Mr. Lincoln's advice here mentioned.

Much controversy has arisen as a result of the adoption of the Fourteenth Amendment, relating chiefly to the construction of the provision that

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Growing out of the restraint upon the power of the states contained in this amendment there has developed an amount of legal controversy which has been a burden upon the courts and the people, and yet it has not been found possible to formulate a general definition of its application.[1] The question of the application of this clause of the Fourteenth Amendment must be determined according to the circumstances of each case presented, and out of

[1] See Davidson *vs.* New Orleans, 96 U.S. 97.

this amendment has grown a feeling of distrust of the courts which must be deplored by all.

Had the advice of Mr. Lincoln been followed, it is at least doubtful whether the Fourteenth Amendment in its present form would ever have been adopted. Its real purpose was the protection of the colored race, then but recently emancipated, from injustice and oppression, but its effect has been far-reaching and far from satisfactory to the people of the nation. Mr. Lincoln believed that the Constitution as framed by the founders of the Republic was sufficient for its government. While a member of the national House of Representatives, speaking on the subject of constitutional amendment, he said: —

> No slight occasion should tempt us to touch it. Better not take the first step, which may lead to a habit of altering it. Better, rather, to habituate ourselves to think of it as unalterable. It can scarcely be made better than it is. New provisions would introduce new difficulties, and thus create and increase appetite for further change. No, sir; let it stand as it is. New hands have never touched it. The men who made it have done their work and have passed away. Who shall improve on what *they* did?

The controversies before mentioned and other events of recent years have proved the wisdom of this advice of Mr. Lincoln and the truth of his declaration that "New provisions would introduce new difficulties and thus create and increase appetite for

further change." For, since its adoption, a greater number of decisions involving the construction of the Fourteenth Amendment have been rendered by the Supreme Court of the United States than of decisions involving any other section of the Constitution since the organization of the government; and out of the construction of this amendment has arisen more dissatisfaction among the people with reference to the courts than from any other single cause. Thus have new difficulties been introduced as a result of hasty and ill-considered amendment.

It is not intended that it should be understood that Mr. Lincoln was opposed to all amendment of the Constitution. On the contrary, he favored the Thirteenth Amendment, which prohibits slavery, and he also favored an amendment providing for compensated emancipation; but there is no evidence that he favored the Fourteenth and Fifteenth Amendments, which have proved to be so ineffective, particularly in the Southern states. He has left abundant evidence that he deemed it unwise to confer the elective franchise upon the great mass of former slaves who had, at the close of the Civil War, no proper conception of the duties of citizenship. He apparently believed that it would be safe to confer the franchise on those of that race who had sufficient capacity to appreciate the obligations which

that relation would impose upon them, but he went no further than this.

In his last public address, delivered April 11, 1865, on the subject of the reconstruction of the Southern states, referring to the dissatisfaction expressed by some because the new constitution of Louisiana failed to grant the elective franchise to colored men, he said: "I myself prefer that it [the franchise] were now conferred on the very intelligent, and on those who serve our cause as soldiers." Prior to this, in his proclamation of December 8, 1863, he said: —

> Any provision which may be adopted by such state government in relation to the freed people of such state, which shall recognize and declare their permanent freedom, provide for their education, and which may yet be consistent, as a temporary arrangement, with their present condition as a laboring, landless, and homeless class, will not be objected to by the national executive.

That message contained no reference whatever to the elective franchise.

The utterances of Mr. Lincoln, both before and after his election to the presidency, indicate clearly that he was a believer in the colonization of the colored people. He sincerely believed that their happiness and the peace of the Republic could be best secured by the separation of the white and the colored races. The passage above quoted from the speech of April 11, 1865, seems to be his only public utterance

in relation to the granting of the elective franchise to negroes, from which it can be inferred that he favored negro suffrage at all; and from that we must conclude that he favored giving them the franchise only as they became fitted by education to comprehend the duties and responsibilities flowing from it. Had such a course been pursued, it is not probable that negro suffrage would have resulted in the development of the intense prejudice against it now existing in the South.

On August 14, 1862, addressing a deputation of colored men, President Lincoln expressed clearly his belief that the colonization of that race would be the wisest solution of the difficulties which he foresaw would grow out of the emancipation of the race. In the course of that address he said: —

> We have between us a broader difference than exists between almost any other two races. Whether it is right or wrong I need not discuss, but this physical difference is a great disadvantage to us both, as I think. Your race suffer very greatly, many of them, by living among us, while ours suffer from your presence. In a word, we suffer on each side. If this is admitted, it affords a reason, at least, why we should be separated. . . . It is better for us, therefore, to be separated.

Speaking at Peoria, October 16, 1854, he said: —

> My first impulse would be to free all the slaves and send them to Liberia, to their own native land. But

a moment's reflection would convince me that whatever of high hope (as I think there is) there may be in this in the long run its sudden execution is impossible. . . . Free them, and make them politically and socially our equals, my own feelings will not admit of this. . . . We cannot make them equals.

In a letter to General Banks, dated August 9, 1864, President Lincoln said: —

I have just seen the new constitution adopted by the convention of Louisiana; and I am anxious that it shall be ratified by the people.

That constitution did not confer the franchise upon the colored man. In the debate with Douglas, at Ottawa, August 21, 1858, he said: —

I have no purpose to introduce political and social equality between the white and the black races. There is a physical difference between the two which in my judgment will probably forever forbid their living together upon a footing of perfect equality; and inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong having the superior position. I have never said anything to the contrary, but I hold that, notwithstanding all this, there is no reason in the world why the negro is not entitled to all the natural rights enumerated in the Declaration of Independence, the right to life, liberty, and the pursuit of happiness. I hold that he is as much entitled to these as the white man. I agree with Judge Douglas that he is not my equal in many respects — certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without leave of anybody else,

which his own hand earns, he is my equal and the equal of Judge Douglas and the equal of every living man.

Again, at Charleston, Illinois, September 18, 1858, replying to Douglas, he said: —

> I will say then that I am not nor ever have been in favor of bringing about in any way the social and political equality of the white and black races — that I am not, nor ever have been in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor to intermarry with white people.

The evidence is conclusive that Lincoln believed that the welfare of the two races required their separation. It can hardly be supposed that the members of the colored race would have continued to make their homes in the United States to the extent that they do now if their right to the elective franchise had been left entirely with the several states. As a result of the inducement held out to them by the Fourteenth and Fifteenth Amendments to the Federal Constitution they have been led to believe themselves in all things the equal of the white race while they have been in all matters of practical importance treated as an inferior people. Whether they, or some among them, are now, or ever will become, the social, moral, or intellectual equals, or even the superiors, of the average among the white race is of little consequence, for it is apparent that the day is far distant, if indeed it will ever come,

when they will be received by that race on terms of equality. Mr. Lincoln, with that prophetic wisdom which he so often displayed, foresaw all this and advocated the colonization of the negroes, with governmental aid, as the best method of promoting their general welfare as well as the tranquillity of the Republic.

Had that course been followed, it is not improbable that the advancement of the colored people would have been much greater at the end of half a century than we find it to be in the year 1915; and instead of state constitutions adopted for the express purpose of depriving them of the rights guaranteed to them by the Federal Constitution, the few who remained with us would be distributed between the several political parties, all exercising freely the right to vote; and there would be no solid South as a result of "the irrepressible conflict" between the two races. Instead of the deplorable condition which now exists in the Southern states, where the two great political parties are divided by the race question, it is within the realm of reasonable probability that a republic nearly, if not entirely, under the control of former slaves and their descendants would ere this have become a substantial member of the family of nations.

President Lincoln favored Central America as the

place of colonization. In the address to the deputation of colored men, already mentioned, his purpose to aid in the colonization of that race in that region is made plain. Said he: —

The place I am thinking about for a colony is in Central America. It is nearer to us than Liberia — not much more than one fourth as far as Liberia, and within seven days' run by steamers. Unlike Liberia, it is a great line of travel — it is a highway. The country is a very excellent one for any people, and with great natural resources and advantages, and especially because of the similarity of climate with your native soil, thus being suited to your physical condition. The particular place I have in view is to be a great highway from the Atlantic or Caribbean Sea to the Pacific Ocean, and this particular place has all the advantages for a colony. On both sides there are harbors — among the finest in the world. Again, there is evidence of very rich coal mines. A certain amount of coal is valuable in any country. Why I attach so much importance to coal is, it will afford an opportunity to the inhabitants for immediate employment till they get ready to settle permanently in their homes. If you take colonists where there is no good landing, there is a bad show; and so where there is nothing to cultivate and of which to make a farm. But if something is started so that you can get your daily bread as soon as you get there, it is a great advantage. Coal land is the best thing I know of with which to commence an enterprise. To return — you have been talked to upon this subject, and told that a speculation is intended by gentlemen who have an interest in the country, including the coal mines. We have been mistaken all our lives if we do not know that

Whites, as well as Blacks, look to their self-interest. Unless among those deficient in intellect, everybody you trade with makes something. We meet with these things everywhere. If such persons have what will be an advantage to them, the question is whether it cannot be made an advantage to you? You are intelligent and know that success does not so much depend on external help as on self-reliance. Much therefore depends upon yourselves. As to the coal mines, I think I see the means available for your self-reliance. I shall, if I get a sufficient number of you engaged, have provision made that you shall not be wronged. If you will engage in the enterprise, I will spend some of the money intrusted to me. I am not sure you will succeed. The government may lose the money; but we cannot succeed unless we try; and, we think, with care we can succeed. The political affairs in Central America are not in quite as satisfactory condition as I wish. There are contending factions in that quarter; but, it is true, all the factions are agreed alike on the subject of colonization, and want it, and are more generous than we are here. To your colored race they have no objection. I would endeavor to have you made the equals, and have the best assurance that you should be the equals of the best.

In bringing this very interesting address to an end, he urged the free colored men to aid in bringing about the result which he so much desired; and he concluded with language indicating a belief that in following the plan which he had outlined, the future happiness and prosperity of the race would be secured, and the world at large benefited by the experiment.

I ask you, then, to consider seriously, not pertaining to yourselves merely, nor for your race and ours for the present time, but as one of the things, if successfully managed, for the good of mankind — not confined to the present generation, but as

> "'From age to age descends the lay
> To millions yet to be;
> Till far its echoes roll away
> Into eternity.'"

That the experiment made by the government in establishing a colored colony at the Island of Vache on the coast of San Domingo proved a failure does not justify the conclusion that colonization at some point on the continent south of Mexico would have been unsuccessful. The Vache colony labored under many disadvantages which would not have been met with if they had been adequately cared for until they had become able to care for themselves; and the lack of competent leadership among the colonists also contributed greatly to the failure of the enterprise.

Mr. Lincoln believed that the question of suffrage should be left to the respective states; for while, in the speech of April 11, 1865, already referred to, he expressed a wish that the "very intelligent" colored men and those of them who had served as soldiers should be permitted to vote, it nowhere appears that he favored any action by the Federal Government

which would deprive the respective states of the right to control the entire subject. His attitude in relation to the reconstruction of the state governments of Louisiana and Arkansas seems to make it clear that he had no intention of making the question a national issue, for he desired that the new constitution proposed for Louisiana should be adopted. He also favored the reconstruction of the state government of Arkansas under the constitution in force before that state attempted to secede, the same to be amended, however, so as to prohibit slavery.[1]

The situation of the states which had been in rebellion against the Government was anomalous. The question presented was, what was their relation to the Federal Government? They had attempted to withdraw from the Union, but were defeated in that attempt, and therefore, according to the view which President Lincoln seems to have entertained, they were still members of the Union. Their governmental relations with the nation had been suspended, and as no properly constituted state governments existed in them, he held the view that as the national government, under the Constitution, was required to "guarantee to every state in this Union a Republican form of government," it devolved upon the national government to see that

[1] See letter to General Steele, Jan. 20, 1864.

the rebellious states should reëstablish loyal state governments, republican in form, so that their relation to the nation might be properly restored.

That this view was entertained by him is apparent from his proclamation of December 8, 1863, wherein, after providing for the full pardon of certain classes who had participated in the rebellion, upon subscribing to the oath of allegiance prescribed by the same proclamation, he said: —

> Whenever in any of the states [named] a number of persons, not less than one-tenth in number of the votes cast in such state at the presidential election of the year 1860, each having taken the oath aforesaid, and not having since violated it and being a qualified voter by the election law of the state existing immediately before the so-called act of secession, and excluding all others, shall reëstablish a state government which shall be republican and in no wise contravening said oath, such shall be recognized as the true government of the state and the state shall receive thereunder the benefits of the constitutional provision which declares that "the United States shall guarantee to every state in this Union a republican form of government and shall protect each of them against invasion and on application of the legislature or executive (when the legislature cannot be convened) against domestic violence."

A further confirmation of the view here expressed is found in his proclamation of July 8, 1864, issued in pursuance of the act passed at the first session of the Thirty-eighth Congress.

It would seem that President Lincoln's plan for the reconstruction of the governments of the so-called Confederate States was in substantial accord with that for which his successor, President Andrew Johnson, contended. The student of the history of the Reconstruction period is led to wonder what would have been the plan finally adopted to restore the rebellious states to their proper relation to the general government under the guidance of the great President if he had lived to pilot the Republic through that trying period. Evidence is not lacking that the radical views of many of the public men of that day, and their efforts to carry out the repressive measures which were finally applied to those who had lately been in rebellion, would have met with his strong opposition.

Abraham Lincoln entertained no thought of revenge. Uppermost in his mind throughout his public life was a fixed determination to preserve the union of the states. He did not claim that the people of the Northern states were wholly free from blame for the existence of slavery. In his second inaugural address he said: —

> If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He

gives to both North and South this terrible war, as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God ascribe to Him?

His kindly attitude toward the rebellious states is shown by the concluding paragraph of this same address in the words, "With malice toward none; with charity for all; with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in; to bind up the Nation's wounds,"—not the wounds of the Northern states alone, but the wounds of the Nation, for the preservation of which the war had been waged.

That President Lincoln would not have approved a system such as that which subsequently became known as a "carpet-bag government" cannot be denied. In a letter addressed to G. F. Shepley, military governor of Louisiana, under date of November 21, 1862, he said:—

What we do want is conclusive evidence that respectable citizens of Louisiana are willing to be members of Congress and to swear support to the Constitution, and that other respectable citizens there are willing to vote for them and send them. To send a parcel of Northern men here as representatives, elected, as would be understood (and perhaps really so) at the point of the bayonet, would be disgusting and outrageous; and were I a

member of Congress here I would vote against admitting any such man to a seat.

And in another letter to Mr. Shepley, bearing the same date: —

I wish elections for Congressmen to take place in Louisiana, but I wish it to be a movement of the people of the districts, and not a movement of our military or quasi-military authorities there.

In a letter to General Steele, then in command of the federal army at Little Rock, Arkansas, under date of January 20, 1864, referring to the reëstablishment of a state government in Arkansas, he directed that it be assumed that

the constitution and laws of the state as before the rebellion, are in full force, except that the constitution is so modified as to declare that "there shall be neither slavery nor involuntary servitude, except in the punishment of crime whereof the party shall have been duly convicted; but the General Assembly may make such provision for the freed people as shall recognize and declare their permanent freedom, provide for their education, and which may yet be consistent, as a temporary arrangement, with their present condition as a laboring, landless, and homeless class; and also except that all now existing laws in relation to slaves are inoperative and void."

In another letter to General Steele under date of June 29, 1864, he said: —

I understand that Congress declines to admit to seats the persons sent as senators and representatives from

Arkansas. These persons apprehend that, in consequence, you may not support the new state government there as you otherwise would. My wish is that you give that government and the people there the same support and protection that you would if the members had been admitted, because in no event nor in any view of the case, can this do any harm, while it will be the best you can do toward suppressing the rebellion.

President Lincoln never at any time undertook to control the question of the admission by Congress of senators or representatives, but adhered to both the letter and the spirit of Section 5 of Article I of the Constitution, which provides that "each house shall be the judge of the elections, returns and qualifications of its own members"; but as commander-in-chief of the military and naval forces, and under his oath of office which required him to "preserve, protect and defend the Constitution of the United States," he considered himself bound to the best of his ability to carry out the provision of Section 4 of Article IV of that instrument, which requires that "The United States shall guarantee to every state in this Union a republican form of government"; and it was in pursuance of this constitutional provision that he undertook to substitute civil government, republican in form, for military rule as rapidly as, in his judgment, circumstances would justify the change.

The attitude of President Lincoln toward the states which had attempted to secede seems to have been ever consistent with the views which he expressed in his special message of July 4, 1861: —

Lest there be some uneasiness in the minds of candid men as to what is to be the course of the Government toward the Southern states after the rebellion shall have been suppressed, the executive deems it proper to say that it will be his purpose then, as ever, to be guided by the Constitution and laws; and that he probably will have no different understanding of the powers and duties of the Federal Government relative to the rights of the states and the people under the Constitution than that expressed in the inaugural address. . . . He desires to preserve the government, that it may be administered for all as it was administered by the men who made it. Loyal citizens everywhere have a right to claim this of their government, and the government has no right to withhold or neglect it. It is not perceived that in giving it there is any coercion, any conquest, or any subjugation in any just sense of those terms.

The Constitution provides and all the states have accepted the provision that "the United States shall guarantee to every state in this Union a republican form of government." But if a state may lawfully go out of the Union, having done so, it may also discard the republican form of government; so that to prevent its going out is an indispensable means to the end of maintaining the guarantee mentioned.

In his first inaugural address he said: —

I hold that, in contemplation of universal law and of the Constitution, the union of these states is perpetual.

Perpetuity is implied if not expressed in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our national Constitution and the Union will endure forever.

He might have added, what he probably had in mind, that the Constitution provides that "New states may be admitted by the Congress, into this Union," but that that instrument contains no provision for either the voluntary retirement or the exclusion of any state from the Union after it has been admitted. President Lincoln fully understood this and held fast to what must be conceded to be the only reasonable view, namely, that the rebellious states were still a part of the Union, and that upon the suppression of the insurrection in any state, it became the duty of Congress and the executive under the Constitution to execute fully and enforce "the constitutional obligation of the United States to guarantee to every state in the Union a republican form of government." [1]

An examination of the message of December 8, 1863, and the bill passed by the Thirty-eighth Congress entitled "An act to guarantee to certain states whose governments have been usurped or overthrown, a republican form of government," reveals

[1] Message of December 8, 1863.

a divergence of view between the President and Congress upon some important details of reconstruction. In the message referred to, attention is called to the President's proclamation of the same date already mentioned. This proclamation, as before stated, gave to a number of persons, being qualified voters under the law of such state, but not less than one tenth in number of the votes cast in such state at the presidential election of the year 1860, "each having taken the oath of allegiance, etc. the right to re-establish a state government"; while the Act of Congress required an enrollment of all white male citizens of the United States within the state, and further provided that if those taking the oath of allegiance prescribed by the act "shall amount to a majority of the persons enrolled in the state" the loyal people of the state "shall be invited to elect delegates to a convention charged to declare the will of the people of the state relative to the reëstablishment of a state government, subject to and in conformity with the Constitution of the United States." The act further required that the convention should consist of as many members as composed the last constitutional legislature of the state.

President Lincoln believed that the United States was bound to fulfill the constitutional guarantee of a republican form of government to every state

even though "the element within a state favorable to a republican form of government in the Union may be too feeble for an opposite and hostile element, external to or even within the state." [1] Congress, on the other hand, by the act mentioned entirely ignored the requirement of the Federal Constitution and left it to the loyal people of the state "to declare the will of the people of the state relative to the reëstablishment of a state government," thus shirking the responsibility imposed upon the national government by the constitutional guarantee.

The act mentioned also placed vast power in the enrolling officers of the government, and in the military governors, which might easily be used, and which was in fact used, for purposes of oppression. Under this act the election machinery was entirely under the control of officials of the national government which made it easy for them "to send a parcel of Northern men here" (to Washington) as representatives, elected as would be understood (and perhaps really so) at the point of the bayonet, a proceeding which President Lincoln declared, in the letter to General G. F. Shepley, before mentioned, "would be disgusting and outrageous," and of which he said in the same letter, "Were I a member of Congress I would vote against admitting any such man to a

[1] Message of December 8, 1863.

seat." And as if to emphasize his position on this point, he declared also, in the other letter to General Shepley, already referred to, bearing the same date, that he wished the election to be a movement of the people themselves and not a movement of the military or quasi-military authorities of the government.

The work of reëstablishment of state governments in the states which had resisted the authority of the national government had barely been entered upon when President Lincoln was assassinated; and although he declared that he was not wedded to any specific plan as a means of bringing those states into their proper relation to the Union, a careful reading of all that he said, and an investigation of all that he did, in relation to the subject can lead to no other conclusion than that he would not have given his sanction to measures such as were subsequently passed by Congress and which met with such strong opposition from his successor, President Andrew Johnson. The quarrel between Congress and President Johnson was the result of the divergent views entertained by the executive and legislative branches of the Government on the subject of Reconstruction; and while the position of President Johnson seems to have been substantially the same as that of his predecessor, it is not probable that any serious rupture would have occurred between Congress

and President Lincoln on that subject, had he lived through the Reconstruction period; for whatever his personal view might have been as to the merits of any measure enacted by the legislative branch of the Government, his views upon the use of the veto power were such that, unless he believed an act to be a clear violation of the Constitution, it is probable the same would not have been vetoed by him. He never believed in a very free use of the veto power.

As early as July 27, 1848, speaking in defense of General Taylor, then a candidate for president, in the House of Representatives, Mr. Lincoln quoted with approval from a letter written by General Taylor as follows: —

> The power given by the veto is a high conservative power; but, in my opinion, should never be exercised except in cases of clear violation of the Constitution or manifest haste and want of consideration by Congress;

and in a speech delivered at Worcester, Massachusetts, September 12, 1848, he declared that "the will of the people should produce its own results without executive influence"; and also in his speech of July 27, 1848, he quoted with approval from Jefferson as follows: —

> It must be admitted, however, that unless the President's mind, on a view of everything which is urged for and against this bill, is tolerably clear that it is unauthorized by the Constitution, — if the *pro* and *con* hang so

even as to balance his judgment, — a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases where they are misled by error, ambition or interest that the Constitution has placed a check in the negative of the President.[1]

In that same speech he said: —

My friend from Indiana (C. B. Smith) has aptly asked, "Are you willing to trust the people?" Some of you answered substantially, "We are willing to trust the people; but the President is as much the representative of the people as Congress." In a certain sense, and to a certain extent, he is the representative of the people. He is elected by them as well as Congress is. But can he, in the nature of things, know the wants of the people as well as three hundred other men coming from all the various localities of the nation? If so, where is the propriety of having a congress? That the Constitution gives the President a negative on legislation all know; but that the negative should be so combined with platforms and other appliances as to enable him and in fact almost compel him to take the whole of legislation into his own hands is what we object to. . . . To thus transfer legislation is clearly to take it from those who understand with minuteness the interests of the people and give it to one who does not and cannot so well understand it.

The views expressed in the speech referred to are in harmony with the utterances of Mr. Lincoln at various times both before and after that speech was

[1] The language quoted is from an opinion given by Jefferson while a member of the cabinet of President Washington, February 15, 1791.

delivered. In a memorandum made by him about July 1, 1848, entitled "Were I President," he said, with reference to the establishment of a national bank: —

> Should Congress see fit to establish such an institution I should not arrest it by veto, unless I should consider it subject to some constitutional objection from which I believe the two former banks to have been free;

and in this same memorandum he declared: —

> Were I president I should desire the legislation of the country to rest with Congress undisturbed by the veto unless in very special and clear cases.

Again, in a speech delivered at Pittsburg, Pennsylvania, February 15, 1861, he said: —

> By the Constitution the executive may recommend measures which he may think proper and he may veto those he thinks improper, and it is supposed that he may add to these certain indirect influences to affect the action of Congress. My political education strongly inclines me against a very free use of any of these means by the executive to control the legislation of the country. As a rule, I think it better that Congress should originate as well as perfect its measures without external bias.

He recognized the responsibility resting upon Congress and never failed to treat the legislative branch of the government with proper respect. In his annual message of 1862 he said: —

> I do not forget the gravity which should characterize

a paper addressed to the Congress of the nation by the Chief Magistrate of the nation. . . . Yet, I trust that, in view of the great responsibility resting upon me, you will perceive no want of respect to yourselves in any undue earnestness I may seem to display.

It is also a matter worthy of notice that during his occupancy of the office of chief executive, President Lincoln exercised the veto power only twice. In one instance the veto was based upon his opinion that the act was unconstitutional, while in the other it was due to a desire that the provisions of the act should be made more definite. It is therefore improbable that President Lincoln would have exercised that power as freely as the same was exercised by his successor. He would have taken pains to let it become known to congressmen and senators that such drastic legislation as that which was subsequently enacted would meet with opposition from him; and with the assurance already manifested by the people that they would support the President, the members of the legislative branch of the government would have yielded to his wishes rather than risk condemnation at the polls. His views as to the rights of the states to control their internal and domestic affairs were well understood. His record proves that he was a profound constitutional lawyer, always confident of the soundness of his own interpretation of that instrument. He neither sought nor

accepted the opinions of others as to the meaning of any of its provisions; but with a reverence for its limitations seldom equaled and never surpassed, and that strong belief in the wisdom of "the men who made it," so often expressed by him, it cannot be doubted that he would have found its provisions ample for the settlement of every problem growing out of the Civil War.

While President Lincoln never believed that the states which had attempted secession should be treated as conquered territories, he did not regard the question whether they were within or out of the Union as a practical question, and never gave any public expression of his opinion on the subject; but, as before stated, there is abundant reason for believing that he regarded them as members of the Federal Union whose proper relations thereto had been suspended by the Civil War. He would have withheld his approval of repressive measures which he believed to be in conflict with the Constitution, and the strong hold which he had upon the people of the loyal states would probably have compelled Congress to refrain from taking any position which was radically opposed to his own.

This difference between Congress and the people is shown by the defeat of Henry Winter Davis for renomination to Congress after the attack on President

Lincoln by him and Senator Wade in the "Protest" issued by them, an account of which is given in Blaine's "Twenty Years of Congress." At the time of his death he had guided the nation through four years of civil war and was at the zenith of his popularity. The people had learned to trust in his wisdom and profound statesmanship. His pure, unselfish patriotism was everywhere recognized, and it is probable that the policies advocated by President Johnson, if they had been recommended by Mr. Lincoln, would have received the hearty support of the nation. Johnson failed where Lincoln would have succeeded. Providence decreed that the work of the great President should be taken up by another who was almost unknown to the people of the loyal states. Distrust took the place of confidence; conflict between the executive and Congress took the place of respectful consideration of the policies of each by the other. The fact that President Johnson was himself a Southern man caused many to doubt his patriotism; and the history of Reconstruction, in consequence, is little more than a chronicle of strife, oppression, and bloodshed, presenting the darkest page in the annals of the Republic.

It has often been said that when Abraham Lincoln passed away, the people of the South lost their truest and best friend, and there seems to be no

reason to doubt the truth of this statement; for he longed to see the states reunited, striving toward a common destiny as a proof that a "government of the people, by the people, for the people" held within itself not only the power of self-preservation, but also sufficient patriotism to bring about, after the struggle for its preservation had ended, a lasting peace within its borders. His one purpose, often expressed, was a restoration of the national authority throughout the country. He cherished no thought of vengeance, no desire to place upon the people of the rebellious states the hand of repression. He sought only to unite in one harmonious whole the scattered fragments of his disrupted country, and to heal the wounds inflicted during four long years of fraternal strife. Abraham Lincoln was a living embodiment of the qualities of the true statesman, philanthropist, and patriot. No better description of this marvelous character has been written than that by Count de Montalembert in the paper already referred to in which he referred to Mr. Lincoln as a

> combination of rectitude and of kindness, of sagacity and simplicity, of modesty and firm courage, which make of him a type so attaching and so rare, a type that no prince, no public man of our age, has equalled. . . . Since his accession to supreme rank no one can cite of him

a single expression of menace or bravado, a single expression vindictive or extravagant.

In a letter to Governor Fletcher of Missouri, February 20, 1865, with reference to the destruction of life and property in that State, notwithstanding that there was then no organized Confederate Army in the State, he urged the people to reach an understanding among themselves by the simplest of methods.

> Each leaving all others alone solves the problem [he wrote], and surely each would do this but for his apprehension that others will not leave him alone. Cannot this mischievous distrust be removed? Let neighborhood meetings be everywhere called and held, of all entertaining a sincere desire for mutual security in the future, whatever they may heretofore have thought, said, or done about the war or about anything else. Let all such meet and, waiving all else, pledge each to cease harassing others and to make common cause against whoever persists in making, aiding or encouraging further disturbance. . . . At such meetings old friendships will cross the memory, and honor and Christian charity will come in to help.

How simple the method suggested, and how well calculated to bring about a "lasting peace"! No threat of repression by the use of the military arm of the government, but a request that in a spirit of fraternity all former differences be swept aside and that the people, by the exercise of plain common sense, unite for the common weal. He sought to en-

force the injunction of the Jewish prophet, "Come now and let us reason together"; and by encouraging a spirit of mutual forbearance he hoped to allay the bitterness engendered by the war and to rebuild just and stable governments in the so-called Confederate States. He believed that the continuance of military governments was opposed to the best interests of the people, and that they should not be allowed to continue beyond a time when the people of any state should be prepared to assume control of their domestic affairs. His chief desire was that those lately in rebellion (excepting certain specified classes) should take up again the duties of loyal citizens; that every cause for friction between those who had remained true to the Federal Government and those who had fought for its overthrow, should be removed; that their differences should be forgotten; that, as stated in his letter to Governor Fletcher, already mentioned, "Whatever they may have thought, said or done about the war," the people should themselves take steps to "reach an understanding" which would restore harmony. In the light of such sentiments it is inconceivable that he would have sanctioned the control of the question of negro suffrage by the National Government, for he foresaw that such action would, as it in fact did, cause greater friction among the people of those

states than any other — a course which the history of the last fifty years has shown has greatly retarded the material development of the southern section of the country.

What Mr. Lincoln evidently believed to be the proper course to be pursued as to such members of the colored race as should refuse the offered colonization was that, as they became fitted by education and training to assume the duties of citizenship, the several states should confer the elective franchise upon them, and that until that right should be granted to them by the states they should be protected by the National Government in their natural right to "life, liberty and the pursuit of happiness."

In his last public address Mr. Lincoln spoke in the most solemn manner of the difficulties confronting the Government in relation to the subject of Reconstruction. In that address he seems to have favored the adoption of free state constitutions, giving the benefit of public schools equally to black and white, and leaving to the legislature the power to confer the elective franchise upon the colored man, whenever the state should deem it proper to do so. In concluding that address he said:—

> In the present situation, as the phrase goes, it may be my duty to make some new announcement to the people of the South; I am considering, and shall not fail to act when satisfied that action will be proper.

Four days later he passed into history, and as nothing is known as to what Mr. Lincoln had in mind when he uttered the words quoted, conjecture would be superfluous. Some things, however, are supported by abundant evidence: first, that he was not satisfied with the method provided by Congress in the act which he permitted to become a law without his approval; second, that he was satisfied with the government established in Louisiana; third, that the question of negro suffrage should be left to the people of the respective states; fourth, that equal opportunities should be provided by the states for the education of both whites and negroes; fifth, that he did not favor granting the elective franchise to the great mass of colored men, but preferred that it should be granted to the "very intelligent" negroes and to those of them who had served in the Federal army. He doubtless foresaw the evil which would follow the bestowal of a right upon former slaves, in disregard of their fitness to exercise it, which might be wielded as an instrument of oppression through the influence which political adventurers, whether from the North or South, might exert over them.

President Lincoln would doubtless have favored a policy which would have protected the former slaves in their new-found freedom; but he believed that the right of the colored man to vote should be left un-

settled until the two races had become accustomed to the changed conditions resulting from the Civil War. The negroes and their former masters were not enemies, but each had a friendly interest in the other, each was accustomed to the other and in many ways dependent upon the other. There was little, if any, lack of harmony between them at the close of the war. The vast majority of the colored people were little more than young children in intellectual development, devoid of self-reliance, incapable of independent action, and easily influenced by designing men of the white race. Had the two races been allowed to live side by side, without any attempt to invest the colored men with political influence until they became familiar with the new conditions, those things which necessarily caused some friction in the reconstructed states would have been gradually removed, and doubtless in due time the colored man would have received at the hands of the white race every political privilege which he became fitted to exercise. Had President Lincoln advocated this course, there is little room for doubting that it would have been very generally approved by the people North and South, for, as Mr. Blaine declares in his "Twenty Years of Congress," —

> He [Lincoln] had acquired so complete an ascendancy over the public mind in the loyal states that any policy

matured and announced by him would have been accepted by a vast majority of his countrymen.

But President Johnson did not possess the confidence of the people either North or South and consequently his efforts toward reconstruction met with intense opposition. To add to his embarrassment, the leaders among those who undertook the reorganization of state governments in some of the Southern states made the very serious mistake of treating the spirit of kindness and toleration shown by the national administration as an evidence of weakness. Instead of accepting the generous terms offered in a spirit of patriotic submission to the national authority, they proceeded to bring about the enactment, in some instances, of legislation which disregarded some of the most important requirements of the proclamation issued by Mr. Lincoln December 8, 1863, and manifested a spirit of resistance to the national authority. Instead of making suitable provision for the freed people, they passed laws the effect of which was to render the condition of the freedmen more intolerable than their former condition of slavery. These men treated white men who had remained loyal to the Union with contempt, and were guilty of many other acts of folly well calculated to inflame the radical people of the North and disappoint the hopes of those who had sought by the most generous

means to restore the spirit of fraternity between the sections. The result was what should have been foreseen by any one not wholly blinded by passion or prejudice. Congress resented the failure of some of the new state governments to recognize the changed conditions which had resulted from the late war, and adopted measures of repression, not only against those governments which were controlled by men who had failed to realize that a new order of things existed, but also against some others which were endeavoring to carry out in good faith the will of Congress; and negro suffrage was forced upon them as the most powerful weapon for the suppression of those who had failed to accept the generous offer of the victorious North.

The people of the Northern states did not then seem to realize fully the extent of the poverty which prevailed among the people of the Southern states at the close of the Civil War. This condition of poverty existed among all the people of those states. Their means of subsistence had been destroyed. Fortunes had been swept away, and all or nearly all of them were in need of the common necessaries of life. The vast army of former slaves living in their midst had no proper conception of the responsibilities imposed upon them by their emancipation. Many of them believed that freedom meant freedom

from labor as well as from slavery, and exhibited no disposition to assume the burdens imposed upon them as freemen. They had always been fed and clothed by their white masters and still looked to the white people to supply them with food and raiment, while the white people were scarcely able to provide sustenance for themselves. Under these circumstances what could be more natural than that the legislature should attempt to put an end to such conditions by the enactment of stringent vagrancy laws to compel the idlers to resume some useful labor, that those communities might be relieved from the peril which threatened them as a result of the presence among them of an unproductive and consequently dangerous class. That the vagrancy laws passed in some states were unjust is not surprising. The white people of the Southern states were dealing with new problems. No similar situation had ever before existed anywhere. They had no precedent to guide them in the solution of the problem, but time, patience, and perseverance would have solved it and such injustice as existed would have been revealed by time and experience without resort to the methods devised by Congress, which failed utterly to better the condition of either the white people or the negroes. It is a lamentable fact that many of the former slaves never became reconciled

to the duties and responsibilities which their freedom imposed upon them.

The writer remembers well a conversation which he had a few years ago with a former slave of more than average intelligence. The man referred to had served his master before the war as a man of all work in the city of New Orleans, his wife being at the same time a cook in the same household, and both were owned by the same master. In order to obtain the point of view of this former slave the writer said to him: "George (for that was his name), you have had long experience as a slave and also as a free man; tell me which you like the best, freedom or slavery." He answered quickly: "It's mighty nice to be yo own boss, but I tell you tha's a mighty sight of 'sponsibility 'bout it." And so it was with many. They enjoyed the freedom, but disliked the responsibility, and no doubt sought to evade that responsibility as far as possible.

It is not the purpose of the writer, however, to enter into a discusion of the subject of reconstruction here, further than seems necessary to suggest that the mere fact that the method attempted by President Johnson led to such deplorable consequences to both the white and the colored people, affords no sufficient reason for believing that Mr. Lincoln would have failed to carry out successfully

and without serious conflict, either with Congress or the Southern people, the reconstruction of the Southern state governments. Mr. Blaine confirms this view, for he says: "It is scarcely conceivable that, had Mr. Lincoln lived, any serious differences could have arisen between himself and Congress respecting the policy of reconstruction." [1] He would doubtless have moved more slowly than his successor, and no step would have been taken by him in any state without mature reflection and a reasonable assurance of the support of the people of such state, for he was never known to act with unnecessary haste. He was ever sagacious, tactful, and firm. The people of the North would not have condemned any plan which he might have proposed, and it is reasonably certain that he would have found a method of reconciling the people of the rebellious states to the new conditions without resorting to the extreme measures which were imposed upon them by the passage, at the Second Session of the Thirty-ninth Congress, of the bill placing ten of the so-called Confederate States under military rule.

State governments had been established in these states, and as a condition of representation in Congress they were required to ratify the Fourteenth Amendment to the Constitution. Ten of the eleven

[1] *Twenty Years of Congress*, vol. II, p. 123.

rebellious states voted against the amendment. Tennessee alone ratified it. That the other ten states committed a serious blunder in this is beyond question. Had they ratified the amendment the question of suffrage would probably have remained entirely within the control of the states, and the only effect would have been, that so long as the right of suffrage was denied to the negro he would not have been included in the enumeration upon which representation in Congress is based. In other words, the enumeration for the purpose of representation would have been limited to whites until such time as colored men should be granted the right to vote.

The defeat of the amendment in the states referred to seems to have excited in Congress a spirit of resentment which brought about hasty action and resulted in the adoption of those extreme measures from the evil effects of which those states have not, after the lapse of almost fifty years, fully recovered. The people of the South were not at the close of the war in a position to impose conditions on the National Government, and whatever of injustice the Fourteenth Amendment imposed upon them should have been endured until time had healed the bitterness which grew out of the Civil War, when a better understanding would have been reached, and substantial justice done to all of both races.

In his annual message of December 1, 1862, President Lincoln recommended the amendment of the Constitution so that means could be furnished to the several states in which slavery existed with which to compensate the owners of slave property who would voluntarily emancipate their slaves on the receipt of fair compensation; and so as to authorize Congress to appropriate money for the colonization of colored persons outside of the United States. He presented strong arguments in favor of the plan. He believed it to be "both just and economical." He declared that "the liberation of slaves is the destruction of property"; and in support of his contention that justice required that the cost of compensated emancipation should be made a common charge upon the nation, he affirmed that "It is no less true from having been often said, that the people of the South are not more responsible for the original introduction of this property than are the people of the North."

He advocated the plan also on the ground of economy. In his message of March 2, 1862, referring to the same subject, he said: —

> In the mere financial or pecuniary view, any member of Congress with the census tables and treasury reports before him can readily see for himself how very soon the current expenditures of this war would purchase at a fair valuation all the slaves in any named state.

He had given the subject of compensation for emancipation careful study and understood what its cost would be to the nation. In a letter to Senator McDougall of California, he declared that less than one-half day's cost of the war would pay for all the slaves in Delaware at an average price of four hundred dollars per head; and that eighty-seven days' cost of the war would more than pay for all the slaves in Delaware, Maryland, the District of Columbia, Kentucky, and Missouri.

That the plan outlined by President Lincoln for compensated emancipation would have proved at the time he proposed it to be the wisest possible solution of the slavery question seems, in the light of subsequent events, to be so self-evident as to require no argument to support it. Viewed as a purely economic question, it would have saved many millions of dollars in the subsequent expenditure necessary to carry on the war. It would have brought many, if not all, of the Confederate States back into harmony with the Union and thus the lives of thousands of brave men would have been saved whose economic worth to the nation can scarcely be computed, but whose brain and brawn would have been of inestimable value in the production of wealth. It would have prevented the vast increase in the pension rolls of the Government which resulted from the

continuance of the war, and the addition to the national debt created by it, distributed as it would have been over so many years, would scarcely have been felt by the people. Add to all this the good feeling which it is probable that it would have engendered between the warring sections, and we can but agree with Mr. Lincoln that it would have secured peace "more speedily and maintained it more permanently" than could have been done by force alone.

The opposition of members of Congress from the Border States brought about the defeat of a bill which was introduced in the House of Representatives, soon after the plan had been suggested by President Lincoln, appropriating ten millions of dollars to the State of Missouri to provide compensation to the loyal slaveholders of that State. The bill passed the House and was amended in the Senate by increasing the amount to fifteen millions of dollars; but when thus amended it was returned to the House and an attempt made to secure its passage under a suspension of the rules, it met with the opposition of three members from the State which would have been its chief beneficiary; and on February 26, 1863, by means of their use of parliamentary tactics, which prevented the further consideration of the bill by the Thirty-seventh Congress, they brought about its defeat.

Thus they deprived their constituents of the generous aid tendered them and prevented a trial of the experiment which might have put an end to hostilities by convincing the secessionists that they could never again hope for aid from the Border States, or be sure that the extension of the plan as outlined in the message of December 1, 1862, would not result in a complete loss of the support which the so-called Confederate Government had hitherto received from the slave states.

The constitutional amendment proposed by President Lincoln in the message last mentioned was never acted upon by Congress, doubtless because of the defeat of the Missouri measure; but of the wisdom of the plan there can be no doubt, and its adoption by the requisite two thirds of the states and its acceptance by the states which it was intended should be benefited by it would have ended the war without impoverishing the people of the insurrectionary states. Instead of years of turmoil, poverty, and oppression, an era of peace, good-will, and prosperity would have dawned upon the Southland; in place of bitterness, strife, and resentment, sectional lines would rapidly have disappeared, and long before the end of the time fixed in the proposed amendment for the final end of compensated emancipation it is not improbable that there would not

have been a slave to be found anywhere in the Republic.

The gradual emancipation provided for would have prevented any serious disturbance of labor conditions in the South or elsewhere, and many of the problems which have disturbed and distracted the nation since the Civil War would never have appeared upon the political horizon. The people of the Southern states, as well as the entire country, will obtain a better understanding of President Lincoln's attitude toward the slavery question by reading his message of December 1, 1862, than from any other single document written by him. That he has been greatly misunderstood by some among the people of those states which formed the Southern Confederacy is beyond question. Such people view him as a tyrant and the oppressor of their ancestors. Those who hold that opinion are, however, few in number. The vast majority of the Southern people agree that no thought which warrants such an estimate of his character was ever uttered by him. It cannot be denied that he was a lover of his whole country, South as well as North, and ever sought by word and deed, in a spirit of fraternity, to restore and preserve the union of her states under the Constitution as he understood it.

The people of those states owe it to themselves and

their posterity, as well as to their country, to present in its true light the life-history and achievements of that true friend of all the people, Abraham Lincoln, whose kindly nature never permitted him to do aught in a spirit of revenge, but who, throughout four long years of civil war, pleaded with the Confederate States to return to their allegiance to the Union under the Constitution which he had taken a solemn oath to "preserve, protect, and defend." The preservation of that Union was his sole purpose in all that he did and in all that he said. He made this known so often and in so many ways that the Southern statesmen were fully advised that to end the war and bring about "domestic tranquillity" the Confederates had but to renew their allegiance to the Constitution and the Union. The war was not fought to liberate the slaves. Their liberation was a mere incident of that war. It was resorted to only after nearly two years had been devoted to an effort to end the war by other means.

Mr. Lincoln recognized the fact that millions of dollars were invested in slave property, and gave the slaveholders every opportunity to save that property from confiscation. No man saw better than he the poverty which such confiscation would bring upon the people whose fortunes were represented by such property. He sought to assist them to avert that

misfortune by providing a method for gradual compensated emancipation, a plan both just and economically sound, and which would have proved advantageous to the freed people as well as to their masters. That his efforts proved unavailing detracts nothing from the statesmanship of him who endeavored to bring it about. He entertained no feeling of enmity toward the people of the Confederate States. He never relaxed his efforts to win them by appeals to their reason and by showing them that they were better off in the Union than out of it. "Can aliens make treaties easier than friends can make laws?" "Can treaties be more faithfully enforced between aliens than laws can among friends?" he asked in his first inaugural address. In the same address he said: —

> A majority held in restraint by constitutional checks and limitations and always changing easily with deliberate changes of popular opinions and sentiments is the only true sovereign of a free people. Whoever rejects it does, of necessity, fly to anarchy or to despotism. Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left. . . . Why should there not be a patient confidence in the ultimate justice of the people? Is there any better hope in the world?

Throughout the entire address there breathed that spirit of kindness and justice which was character-

istic of Mr. Lincoln in both his public and private life. Yet, after the lapse of nearly fifty years, there are many among the descendants of the brave men who for four years fought in the cause of secession who have not learned the true worth of that broad-minded, generous friend of all the people, whose great mind was constantly occupied in the solution of the most difficult problems ever presented to any statesman in ancient or modern times; whose heart-beats were ever quickened by thoughts of the misery inflicted upon both sections of his beloved country by years of fraternal strife.

He knew that he had been grievously misunderstood by a majority of the people of the South. He pleaded for a better understanding of his purposes toward them even as the lowly Nazarene pleaded with the people who surrounded him as he trod the byways and highways of Palestine reviled and rejected. As the Saviour of mankind cried out in the agony of his soul: —

> O Jerusalem, Jerusalem, thou that killest the prophets, and stonest them which are sent unto thee, how often would I have gathered thy children together, even as a hen gathereth her chickens under her wings, and ye would not!

so, in his last great appeal to all the people of his country, Abraham Lincoln implored them: —

With malice toward none; with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds . . . to do all which may achieve and cherish a just and lasting peace among ourselves, and with all nations.

Should not the people, North as well as South, pause amid their many cares, meditate upon these noble sentiments, and consider whether we have done "all which may achieve a lasting peace among ourselves"? May not we of the North as well as of the South inquire whether we have always acted "with malice toward none," and "with charity for all," in the consideration of the grave questions which grew out of the Civil War? Had the people of the whole country approached the consideration of these problems in that spirit of fraternity which was always uppermost in the mind of President Lincoln, the bitterness engendered by the terrible conflict between the sections would soon have passed away, leaving in its wake, not a Union which, after fifty years, is still sectional, but in its stead a Union in sentiment as well as in form, in which the people of each state would have looked upon the states composing the nation as the common heritage of all.

CHAPTER IV

CRITICISM OF THE JUDICIARY

LINCOLN'S criticism of the decision of the Supreme Court of the United States in the famous case of Dred Scott *vs.* Sanford has been frequently referred to in recent years as an indication that he did not have a high regard for judicial authority in cases where it ran counter to the popular will. In support of this contention reference has been made to a speech made by Mr. Lincoln at Cincinnati, September 17, 1859. In that speech he said: "The people of these United States are the rightful masters of both congresses and courts"; and it has been contended that the words quoted indicate a belief on the part of Lincoln that the popular will should be held superior to the decrees and judgments of judicial tribunals. This view is not, however, supported by the evidence. No man entertains a higher regard for judicial authority than did Mr. Lincoln. It is beyond dispute that he severely criticized the judges of the Supreme Court of the United States who concurred in the majority opinion in the Dred Scott Case. He believed it to be the result of the pro-slavery views of Chief Justice Taney and the associate

judges who united with him in the decision. While he admitted its binding force in the particular case in which it was rendered, he insisted that it should not be regarded as a final settlement of the questions involved, and that therefore it should not be followed as a rule of political action.

There were many circumstances surrounding the Dred Scott Case which seem to furnish justification for Mr. Lincoln's belief that the opinion of the Chief Justice, in which a bare majority of the justices concurred, was brought about by "concert of action" between these justices, the executive and Congress, in an effort to settle a purely political question about which the country was greatly agitated, and that the decision was in part based on a false assumption of the judges as to historical facts.

Mr. Lincoln's most thorough analysis of the Dred Scott Case is contained in two speeches made by him at Springfield, Illinois, the first on June 26, 1857, and the second on June 16, 1858. In the first of these he said: —

> I have said in substance that the Dred Scott decision was in part based on assumed historical facts which were not really true, and I ought not to leave the subject without giving some reasons for saying this. I therefore give an instance or two, which I think fully sustain me. Chief Justice Taney, in delivering the opinion of the majority of the court, insists at great length

that negroes were no part of the people who made, or for whom was made, the Declaration of Independence or the Constitution of the United States. On the contrary, Judge Curtis, in his dissenting opinion, shows that in five of the then thirteen states, to-wit: New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, free negroes were voters, and in proportion to their numbers had the same part in making the Constitution that the white people had. He shows this with so much particularity as to leave no doubt of its truth.

He then proceeded to show that there had been a systematic abridgment of the rights of free negroes subsequent to the adoption of the Federal Constitution, as well as an extension of slavery into new territory, notwithstanding the policy of the framers of the Constitution as enunciated in the Ordinance of 1787 establishing the Northwest Territory.

Mr. Lincoln's attack upon the decision of the Supreme Court was directed chiefly against that part of the opinion which declared that Congress possessed no power under the Constitution to prohibit slavery in a United States territory. He proceeded to show that this construction placed upon the Constitution was contrary to that which had been placed upon it by its framers as well as by Congress and the executive, in the act of 1789 providing for the enforcement of the Ordinance of 1787, and in the deeds of cession by North Carolina and Georgia ceding

certain territory to the Federal Government, the right of the Federal Government to interfere with slavery being conceded by the provisions of those instruments which prohibited that Government from excluding slavery from the ceded territory. He cited many instances of the exercise by Congress of control over the subject of slavery during a period of more than fifty years, all of which gave to the Constitution a construction at variance with the decision of the court in the Dred Scott Case on the question of Federal control of slavery in the territories of the United States.

It is worthy of notice that nothing appears to indicate that Mr. Lincoln in his speeches on this subject ever mentioned the provision contained in the Fourth Article of the Constitution, which declares that "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States," as embodying a grant of power to Congress to control the subject of slavery therein. The express grant of power to establish such "Regulations respecting the territory" belonging to the United States would seem to be sufficient to authorize Congress to exclude slavery therefrom; for surely the power to enact such "Rules and Regulation respecting the territory or other property of the United

States" is broad enough to enable Congress to pass such legislation respecting any United States territory as would place in Congress entire control of each territory. It does not appear, however, that this provision of the Constitution entered into the discussion of the question of the extension of slavery. In his great Cooper Union speech in New York City February 20, 1860, Mr. Lincoln again stated his position in regard to the Supreme Court very clearly and concisely in these words: —

> The court has substantially said that it is your constitutional right to take slaves into the Federal territories and to hold them there as property. When I say the decision was made in a sort of way, I mean it was made in a divided court, by a bare majority of the judges, and they not quite agreeing with one another in the reasons for making it; that it is so made as that its avowed supporters disagree with one another about its meaning, and that it was mainly based upon a mistaken statement of fact — the statement in the opinion that "the right of property in a slave is distinctly and expressly affirmed in the Constitution." An inspection of the Constitution will show that the right of property in a slave is not "distinctly and expressly affirmed" in it.

He then proceeded to show that in the opinion of the court it was not claimed that such rights existed under the Constitution by implication, and after declaring that the assumed facts upon which the decision was founded did not exist, he added: —

When this obvious mistake of the judges shall be brought to their notice, is it not reasonable to expect that they will withdraw the mistaken statement and reconsider the conclusion based upon it?

The so-called assaults of Lincoln upon the courts will be found upon examination to have been limited entirely to condemnation of individual judges. In the Cincinnati speech already mentioned he made this very plain when he declared that "The people of these United States are the rightful masters of both congresses and courts, not to overthrow the Constitution, but to overthrow the *men* who pervert the Constitution." Lincoln believed that the Dred Scott decision was a misinterpretation of the Constitution and that every proper means should be used to induce the court to overrule it whenever another case involving the same question should be presented to the court, and in the mean time he insisted that it should not be followed "as a political rule." In a speech at Chicago July 10, 1858, he said:—

If I were a member of Congress and a vote should come upon a question whether slavery should be prohibited in a new territory, in spite of the Dred Scott decision, I would vote that it should; [and again, in the same speech] We mean to have the Court decide the other way. That is one thing we mean to try to do. The sacredness that Judge Douglas throws around this decision is a degree of sacredness that has never been

before thrown around any other decision. I have never heard of such a thing.

He then went into a discussion of the circumstances under which the decision was rendered and the false premises upon which it was based, and declared that no decision of any court "thus placed has ever been held by the profession as law, and it has always needed confirmation before the lawyers regarded it as settled law." In his Springfield speech of June 26, 1857, already referred to, he also defined his position with reference to the Supreme Court of the United States in the following language: —

Judicial decisions have two uses — first, to absolutely determine the case decided; and secondly, to indicate to the public how other similar cases will be decided when they arise. For the latter use they are called "precedents" and "authorities." We believe as much as Judge Douglas (perhaps more) in obedience to and respect for the judicial department of the Government. We think its decisions on constitutional questions, when fully settled, should control not only the particular cases decided but the general policy of the country, subject to be disturbed only by amendments to the Constitution as provided in that instrument itself. More than this would be revolution. But we think the Dred Scott decision is erroneous. We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this. We offer no resistance to it.

Judicial decisions are of greater or less authority

as precedents according to circumstances. That this should be so accords both with common sense and the customary understanding of the legal profession.

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation and with the steady practice of the departments throughout our history, and had been in no part based on assumed historical facts which were not really true; or, if wanting in some of these, it had been before the Court more than once, and had there been affirmed and reaffirmed, through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, not to acquiesce in it as a precedent. But when, as is true, we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country.

Mr. Lincoln never said anything from which it can be inferred that he favored any policy which would curtail even in the slightest degree the independence of the judiciary. He also believed that the majority of the judges had exceeded their duty and had undertaken to decide, in the Dred Scott Case, matters not properly before the court, and that such parts of the opinion as were devoted to a discussion of those questions were what lawyers call *obiter dicta*. This is shown by his speech at Jonesboro during the great debate, when he declared: —

If any points are really extra-judicially decided be-

cause not necessarily before them, then this one as to the power of the territorial legislature to exclude slavery is one of them, as also the one that the Missouri Compromise was null and void.

For this reason, as well as others, he refused to accept it "as a political rule."

In the speech of July 17, 1858, at Springfield, he made it very plain that he intended no assault upon the independence of the judiciary when he said: —

I think that in respect for judicial authority my humble history would not suffer in comparison with that of Judge Douglas. He would have the citizen conform his vote to that decision; the member of Congress his; the President his use of the veto power. He would make it a rule of political action for the people and all the departments of the government. I would not. By resisting it as a political rule, I disturb no right of property, create no disorder, excite no mobs.

Again, in his speech at Quincy October 13, 1858, he recurred to the subject: —

We do not propose that when Dred Scott has been decided to be a slave by the Court, we as a mob will decide him to be free. We do not propose that, when any other one or one thousand shall be decided by that Court to be slaves, we will in any violent way disturb the rights of property thus settled; but we nevertheless do oppose that decision as a political rule which shall be binding on the voter to vote for nobody who thinks it wrong. We propose so resisting it as to have it reversed if we can and a new judicial rule established upon this subject.

In the first inaugural address he again discussed the subject of the binding effect of the decisions of the Supreme Court, and concluded his discussion of the subject with these words: —

> If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, *the instant they are made in ordinary litigation between parties in personal actions*, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal. Nor is there in this view any assault upon the court or the judges. It is a duty from which they may not shrink, to decide cases properly brought before them, and it is no fault of theirs if others seek to turn their decisions to political purposes.

Other utterances of Lincoln might be cited which show that he regarded the independence of the judiciary as of supreme importance under the American system of government. With the single exception of the decision in the Dred Scott Case, there is nothing to indicate a disposition on his part to criticize, much less condemn the judges or show the slightest disrespect for either the courts or the judges who composed them. His intimation that there was "a concert of action" between the judges who rendered the majority opinion in the Dred Scott Case, and the slave-power, was uttered in the course of a heated discussion of a question about which the country

was greatly agitated. The battle had been in progress for many years, in Congress and in the political arena. Everywhere, North and South, East and West, on the rostrum, in private and in public, in the domestic and social circles of the land, it had become a disturbing element. It divided families and parted friends. As stated by Mr. Lincoln in his second inaugural address, those who believed that slavery was right and those who believed it wrong both read the same Bible and prayed to the same God, and each invoked "his aid against the other." Those who had been reared and educated entirely amid an environment wherein slavery was regarded as morally and legally right became, by reason of such environment, impregnated with so strong a belief in its legitimacy that it was a part of their very nature to accept slavery as divinely appointed.

It is not surprising therefore that the men who composed the majority of the Supreme Court should have sustained the "right of property in a slave" and the right to hold that property in a United States territory when that question came before them for judicial determination. Those judges could not have failed to understand fully the danger which confronted the nation by the continued discussion of the question; and it may well be that there was a "concert of action" between the judges, Congress, and

the executive as charged by Mr. Lincoln. The questions involved had never been determined in any other case. The only question really presented for decision in the Dred Scott Case was that involving the right of Dred Scott to bring suit in a court of the United States.

The court might have disposed of the case by simply holding, as it did in fact hold, that Dred Scott was not a citizen of the United States within the meaning of the Constitution and therefore could not bring suit in its courts. The other questions decided in the case were not really before the court and might have been ignored, but the court apparently sought in its decision to put an end to the agitation of the slavery question. Since there was no precedent to follow and since the arguments, for and against the power of Congress under the Constitution to exclude slavery from the territories, were strengthened in the minds of those who urged them, by the education and environment of each individual, it would have been little less than a miracle if those judges who were reared and educated in an environment of slavery had not been influenced by it in a case where the Constitution was open to more than one possible construction. For, as Mr. Lincoln so aptly put it in his Cooper Union speech, "Human action can be modified to some extent, but human

nature cannot be changed." Therefore, if the judges believed that by their decision they would set at rest all further agitation upon the subject of the extension of slavery, they might have felt justified in deciding questions which were of a purely political character, knowing full well that the decisions of those political questions were but the expression of the personal opinions of the judges, merely *obiter dictum*, and of no value as a precedent for any case which should be thereafter presented involving directly the same questions.

It is true that Mr. Lincoln also criticized that part of the decision which held that a free negro could not be a citizen of the United States under the Constitution as it then existed; but his criticism was based upon questions of fact. He showed by his arguments directed against the decision, that Chief Justice Taney erred in his findings of fact upon which the decision of the questions of law was founded. The Chief Justice had declared that at the time of the adoption of the Constitution "the unhappy black race was never thought of or spoken of except as property." The Chief Justice in his opinion displayed an ignorance of historical facts which is really surprising, and Mr. Lincoln had every reason for his often-repeated declaration of a belief that, when the attention of the court should, in a proper

case, be called to the errors in the findings of facts, the Dred Scott Case would be overruled.

Chief Justice Taney was a great lawyer and a great judge. He was also a high-minded and upright man personally; but in the opinion referred to there seems to be no doubt that he descended from the decision of a question fairly before the court to pass upon political questions outside of the record; and that the decision of those questions was the result of partisan bias or a failure to investigate historical records which would have forced the judges to a different conclusion. The criticisms of Mr. Lincoln were fully justified, and his refusal to accept the decision as a guide for political action was in no proper sense a blow at the independence of the judiciary, but rather a demand that the court should assert its independence and refuse in all cases to permit political considerations to be taken into account in determining questions arising in "ordinary litigation between parties in personal actions." There is no ground whatever for a comparison between the Dred Scott Case and Mr. Lincoln's comments thereon and decisions of the courts which have declared state laws unconstitutional because in conflict with the Fourteenth Amendment; for in the latter class of cases there has been none in which it was claimed even by those by whom such decisions were

assailed, that the opinion in any case undertook to decide a question not fairly before the court, or that there was the least indication that the judges had undertaken to do more than to decide the constitutional questions at issue, — "a duty," which Mr. Lincoln said in his first inaugural address "from which they may not shrink."

The cases which have in recent years brought about the most vicious assaults upon the independence and integrity of the courts have generally involved the construction of the Fourteenth Amendment. Those who have attacked the courts because, in the decision of cases before them, they have not responded to what, for the time being, seemed to be the popular will, lose sight of the very important fact that the Constitution itself is the very highest expression of the will of the people; that the people in that instrument have provided a method by which the popular desire to change or amend it shall be expressed; and that until such desire shall have been so expressed, the judges are bound under their oath of office to interpret the Constitution in accordance with their understanding of the popular will as therein expressed, no matter what may appear to be the prevailing popular demand at the time of the decision of the particular case before the court. They also overlook the very important fact that the

judges cannot, without a violation of their duty to the people and the oath they have each taken, hold any law to be constitutional which in their judgment is in conflict with that instrument in which the people have declared that

> this Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

Judges who have been called upon in recent years to pass upon cases involving the constitutionality of so-called "social and industrial legislation" have been subjected to severe criticism, if not worse, because they have declared specific legislative enactments unconstitutional. It has been sought to make it appear that the courts have in such cases undertaken to decide questions involving the wisdom or desirability of the legislative acts under consideration, while an examination of the decisions themselves will show that the question of their wisdom or desirability had nothing whatever to do with the decision in any case, and if referred to at all it has been for the sole purpose of declaring that with the wisdom or desirability of such legislative enactments, or any other, the court was in no manner concerned.

The courts of this country at least have uniformly held, whenever the question has arisen in any case, that questions of the wisdom or desirability of legislation rest solely with the legislature. That the courts, both federal and state, not only have the right, but that it is their duty, to pass upon and determine whether a law passed by a legislative body is or is not in conflict with the Constitution is too well settled to require further discussion. Mr. Lincoln never contended that the courts did not possess that power. On the contrary, he was a firm supporter of it, and believed that when any decision had been affirmed by subsequent decisions it would be "revolutionary not to acquiesce in it." He declared in his speech of June 26, 1857, and elsewhere, that when fully settled, the law as laid down by the Supreme Court should be obeyed even on questions of the general policy, "subject to be disturbed only by amendments to the Constitution as provided in that instrument itself." He never suggested a direct appeal from the courts to the people. He did what many lawyers have done in other cases both before and since his time, namely, declared his belief that the court in its decision of the Dred Scott Case had rendered a judgment which was wrong, and gave his reasons for so believing, as well as for his belief that the judges had been influenced by their political

affiliations; but never throughout his career did he assail the judicial system of his country or seek to cast reproach upon the judicial officers of the state or nation. Those who have sought to make it appear that he did so have cast unwarranted reproach upon the name of one of the most illustrious defenders of the institutions of the Republic.

More than seventy-five years ago, De Toqueville, in his "Democracy in America" wrote: —

> I am aware that a secret tendency to diminish the judicial power exists in the United States. . . . I venture to predict that these innovations will sooner or later be attended with fatal consequences, and that it will be found out at some future period that the attack which is made upon the judicial power has affected the democratic republic itself.

In recent years these attacks have become more formidable than ever in the history of the country and have generally assumed the form of a demand for the recall of judges by popular vote. So far as the writer is aware it has not, however, been claimed by any one that Mr. Lincoln either suggested or approved of that method of compelling submission by the judges to the popular will. This is probably due to the fact that he has left a record of his attitude upon substantially the same subject, wherein he strongly condemned the action of the legislature of Illinois for enacting a law which had the effect of

recalling all of the circuit judges of the State, adding five new judges to the Supreme Court and imposing upon the judges of the latter court the performance of the duties which had theretofore been performed by circuit judges. A protest signed by Mr. Lincoln (then a member of the legislature) and others was presented to the legislature, condemning the action of the majority of that body by whose votes was passed the act in question, and giving the reasons for their disapprobation, among which were the following: —

1. It violates the great principles of free government by subjecting the judiciary to the legislature.
2. It is a fatal blow at the independence of the judges and the constitutional term of their office. . . .
5. It will give our courts a political and partisan character, thereby impairing public confidence in their decisions.
6. It will impair our standing with other states and the world.

This protest was presented to and entered upon the journal of the House of Representatives, February 26, 1841. Mr. Lincoln and five other members of the legislature had issued an address to the people of Illinois on the same subject on the 8th of the same month, in which this "recall of judges" was strongly condemned. When it is remembered that at the time of the passage of the legislation mentioned, the con-

stitution of that State then in force left with the legislature entire control of the election of judges throughout the State, it is difficult to perceive any difference in principle between the interference with the independence of the judiciary which Mr. Lincoln condemned, and that which must result from a system which permits a recall of judges by popular vote.

CHAPTER V

THE ORATOR

OF oratory, Justice David J. Brewer said: —

> Oratory is the masterful art. Poetry, painting, music, sculpture, architecture, please, thrill, inspire; but oratory rules. The orator dominates those who hear him, convinces their reason, controls their judgment, compels their action.

If this be true and the oratory of Lincoln be thus measured, few orators have left on record more substantial evidence of the possession of great oratorical power than he.

Daniel Webster's great reply to Hayne stands out boldly as the greatest of all the speeches of the greatest of all American orators, and closely in its wake follows his oration at the dedication of Bunker Hill Monument; and while their author delivered many great addresses, it is by these that he is chiefly remembered, for the average man has heard little of any other. Henry Clay is known to the world as an orator of extraordinary power, yet few there are who can name a single speech made by him during his long public service. But if the results of the forensic efforts of Webster and Clay be taken as the means of

determining the relative merit of the oratory of these renowned statesmen, who can doubt that to Henry Clay must be conceded the higher honor?

The reputation of Abraham Lincoln as an orator rests almost, if not entirely, in the estimation of his countrymen and the world, upon his Gettysburg Address and his two inaugural addresses. Yet if we measure his oratory by the results that grew out of it, it must be conceded that his greatest orations were the speech delivered at Cooper Union in New York City February 27, 1860, and those made during the debate with Stephen A. Douglas, in 1858. Of the latter speeches, he said, in a letter to Dr. A. G. Henry, November 19, 1858:—

> I am glad I made the race. It gave me a hearing on the great and durable question of the age, which I could have had in no other way; and though I now sink out of view and shall be forgotten, I believe I have made some marks which will tell for the cause of civil liberty long after I am gone.

Prior to the time of the great debate no public man had taken the strong middle ground upon the slavery question upon which Mr. Lincoln planted himself in those speeches. The abolitionists advocated a resort to extreme measures against that institution in the slave states. They looked upon slavery as a violation of the law of God, as an evil with which no

compromise should be made, and contended that it should be abolished everywhere.

Mr. Lincoln took the bold and sound position that the National Government had no power to interfere with or control the subject of slavery in the states, but that it did possess the authority, under the Constitution, to prevent its extension into territory owned by the nation; and the arguments which he advanced were such as to convince the reason, control the judgment, and arouse to action the great mass of the people of the "free states."

As a result of those masterly addresses he became, not only the instrument by which the further spread of slavery was prevented, but also the medium for the accomplishment of the end which had long been the aim of the abolitionists, whose purpose he had in the great debate so strenuously opposed.

There is, however, another type of oratory which never fails to attract and hold the admiration of the listener; which plays upon the imagination and carries the multitude before it; which rises and falls like the waves of the ocean; whose beauty of diction charms and captivates the hearers by its pathos, or bears them aloft by the splendor of its well-rounded periods as a majestic ship is borne by the restless billows. To this class belong the funeral oration of Pericles; the oration of Demosthenes On the Crown;

that of Henry Lee on Washington, of James G. Blaine on Garfield, and President Lincoln's Gettysburg Address.

Mr. Lincoln's reputation as an orator should not rest solely upon the addresses before mentioned, for as early as 1837 he had established an enviable reputation as an eloquent speaker. On the 27th of January of that year he delivered an address at Springfield on "The Perpetuity of our Political Institutions," which, for the beauty of its diction, the sublimity of its thought, and the high ideals and patriotic sentiments which it contains is not surpassed by anything to which he gave utterance in later years. In the course of it, he said: —

> We find ourselves under the government of a system of political institutions conducing more essentially to the ends of civil and religious liberty than any of which the history of former times tells us. We, when mounting the stage of existence, found ourselves the legal inheritors of these fundamental blessings. . . . They are a legacy bequeathed to us by a once hardy, brave and patriotic, but now departed, race of ancestors.

Calling attention to the aim of the founders of the Republic to build "a political edifice of liberty and equal rights," he declared it to be our duty

> to transmit these — the former unprofaned by the foot of an invader, the latter undecayed by the lapse of time and untorn by usurpation — to the latest generation.

It was in the same address that he declared that

All the armies of Europe, Asia and Africa combined, with all the treasure of the earth (our own excepted) in their military chest, with a Bonaparte for a commander, *could not by force take a drink from the Ohio or make a track on the Blue Ridge in a trial of a thousand years.*

He called attention to the importance of a reverence for the law and its duly constituted representatives and to

the growing disposition to substitute the wild and furious passions in lieu of the sober judgments of courts and the worse than savage mobs for the executive ministers of justice.

He dwelt upon the incentives to patriotism and the dangers which might confront the nation by reason of the selfish ambition of such as would pull down what others have built, rather than be denied that distinction which they crave. Referring to the first fifty years of our national life and the influence of the early patriots he declared: —

They were pillars of the temple of liberty; and now that they have crumbled away that temple must fall unless we, their descendants, supply their places with other pillars hewn from the solid quarry of sober reason. *Passion has helped us, but can help us no more. It will in future be our enemy. Reason — cold, calculating, unimpassioned reason — must furnish all the materials for our future support and defense.*

The entire speech bristles with sentiments of exalted patriotism.

The few speeches made by him while a member of Congress contain passages which prove him to have been an orator of great power. At times his oratory was of the fervid type which, while it leads and captivates the imagination, also convinces the reason, and seldom did he fail to display that unusual style so manifest in his later speeches, which swayed his hearers by the force of his logic.

It must not be forgotten that prior to 1858 Mr. Lincoln was not well known outside of Illinois; and as the speeches of others than those who held public office were seldom published in those days, unless they were in manuscript form, and as Mr. Lincoln often spoke extemporaneously, very many of those speeches have been lost, so that we can judge of his oratory only by the few which have been preserved.

His eulogy of Henry Clay, July 16, 1852, at Springfield, Illinois, is among those which have been preserved, and it will not suffer by comparison with similar addresses by other orators of wide reputation for eloquence. Another speech by Mr. Lincoln, which was deemed of sufficient importance to merit publication in the Vandalia *Free Press* and to be later copied in the Sangamon *Journal*, was that on the State Bank, already mentioned in

this volume, which was delivered before the legislature at Vandalia in January, 1837. On reading the speeches which have been here mentioned it will be found that Mr. Lincoln was possessed of unusual powers as an orator, and that many passages will compare favorably with the best to be found in the speeches of those most famous for eloquence among Americans. The method of expression employed at Gettysburg was not new to Mr. Lincoln, but will be found in many of his earlier speeches. He did not expect that the few words spoken at Gettysburg would be regarded as his greatest public address. Indeed, he appears to have regarded his second inaugural address as the best of all his efforts. In a letter to Thurlow Weed March 15, 1865, referring to the latter address, he said he expected it "to wear as well — perhaps better than anything I have produced; but I believe it is not immediately popular." In others of his speeches may be found passages regarded by many as equal to anything contained in either of the two last mentioned.

Note the words with which he concluded his Cooper Union speech: —

> Let us have faith that right makes might; and in that faith let us to the end dare to do our duty as we understand it.

Read his apostrophe to the name of Washington: —

Washington is the mightiest name of earth —long since the mightiest in the cause of civil liberty, still mightiest in moral reformation. On that name no eulogy is expected. To add brightness to the sun or glory to the name of Washington is alike impossible. Let none attempt it. In solemn awe pronounce the name and in its naked deathless splendor leave it shining on.

Or note the sublime conclusion of his speech on the Subtreasury, December, 1839: —

The probability that we may fall in the struggle ought not to deter us from the support of a cause we believe to be just. It shall not deter me. If ever I feel the soul within me elevate and expand to those dimensions not wholly unworthy of its Almighty Architect, it is when I contemplate the cause of my country deserted by all the world beside, and I, standing up boldly and alone, and hurling defiance at her victorious oppressors. Here, without contemplating consequences, before high heaven and in the face of the world, I swear eternal fidelity to the just cause, as I deem it, of the land of my life, my liberty, and my love. And who that thinks with me will not fearlessly adopt the oath I take? Let none falter who thinks he is right and we may succeed. But if after all we shall fail, be it so. We still shall have the proud consolation of saying to our consciences and to the departed shade of our country's freedom that the cause approved of our judgment, and adored of our hearts, in disaster, in chains, in torture, in death, we never faltered in defending.

His warning against the machinations of ambitious men, contained in the speech of January 27, 1837, is entitled to a place in the highest rank of

polemic oratory. Its terse and forceful language presents a picture well calculated to inspire all with a feeling of resentment at the selfish ambition of men who seek to subject the popular will to servile submission to the demands of those whose chief purpose is self-aggrandizement. Note how completely he tears away the mask behind which ambition is concealed, by the following passage: —

> Towering genius disdains a beaten path. It seeks regions hitherto unexplored. It sees no distinction in adding story to story upon the monuments of fame erected to the memory of others. It denies that it is glory enough to serve under any chief. It scorns to tread in the footsteps of any predecessor, however illustrious. It thirsts and burns for distinction; and if possible it will have it, whether at the expense of emancipating slaves or enslaving freemen. Is it unreasonable then to expect that some man possessed of the loftiest genius, coupled with ambition to push it to its utmost stretch, will at some time spring up among us? And when such an one does, it will require the people to be united with each other, attached to the government and laws, and generally intelligent, to successfully frustrate his designs. Distinction will be his paramount object; and although he would as willingly, perhaps more so, acquire it by doing good as harm, yet, that opportunity being past, and nothing left to be done in the way of building up, he would set boldly to the task of pulling down.

These are but a few of the notable passages to be found in the speeches of Mr. Lincoln; but they not

only show the trend of his thought, the alertness of his mind, and the beauty of his diction, but they also reveal that spirit of self-abnegation so characteristic of him throughout his life. The earnestness which is manifest in all his public addresses exhibits that sublime trait of his character — unselfish devotion to the right as he saw it — which was the source of that ability to win the respectful attention of others to his every act and utterance.

Daniel Webster declared that the secret of every great oration was in the occasion, in the cause which called forth the exercise of the gifts of the orator. This was the mainspring of all of Mr. Lincoln's great speeches. His devotion to the cause of the Union gave him a theme worthy of his great talents, and no man ever used the powers of logic and eloquence with greater force than he. In his consciousness of right and his belief that "right makes might" was the secret of his influence over the hearts and minds of men. He was not addicted to idle talk. He made no speeches for self-aggrandizement or to advance any selfish interest. His public addresses were upon subjects in which he felt a deep personal interest. There is no record of any address by him which was not made with a definite and sincere purpose in view. He never delivered an address to amuse or entertain his hearers; and while he fre-

quently made use of anecdotes, it was for the sole purpose of illustration or to simplify and illuminate his argument or reveal some weakness in the argument of an opponent.

He never, in a public address, related an anecdote for the sole purpose of affording amusement to his hearers, to draw to himself their plaudits or add to his own reputation. He possessed none of the attributes of the demagogue. His desire for the welfare of the people was too well founded and deep to permit him to advocate any cause in which he did not sincerely believe. He sought the applause of the multitude, not for himself, but for the cause which he advocated.

He aimed to convince the reason, not to warp the judgment by specious argument, or by arousing that species of enthusiasm among the people which would carry them with him by impelling them to act from impulse or without mature reflection. He never sought to encourage that sort of hero-worship which, from devotion to and admiration for the orator, leads men to a disregard of the doctrines which he proclaims. He endeavored to make men think seriously on the problems presented, and by their mental processes decide for themselves upon the merits or the wisdom of the policies for which he contended. His statements were always clear

and concise, and in his arguments he used language so simple as to be readily understood by all. The people understood all this, and whenever he was announced to speak a vast audience generally awaited him, and when he spoke all listened with that rapt attention which none but a truly great orator can command.

He loved to listen to great speeches made by others and gave to merit unstinted praise. While a member of Congress, after listening to a speech by Alexander H. Stephens on February 2, 1848, he wrote to Herndon: —

> Mr. Stephens of Georgia, a little, slim, pale-faced, consumptive man, with a voice like Logan's, has just concluded the very best speech of an hour's length I ever heard. My old, withered, dry eyes are full of tears yet. If he writes it out anything like he delivered it, our people shall see a good many copies of it.

He read the great speeches made by others with deep interest, and often by reflection upon the gems of truth which they contained developed and enlarged them by the force of his own genius, so that when the same thought was expressed by him, it was presented in such terse and simple language that the people caught its force more readily, and understood.

In May, 1850, Theodore Parker defined a democ-

racy as "government of all the people, by all the people, for all the people." Omit from the phrase quoted the word "all" wherever it occurs, and we have the words embodied in the concluding paragraph of the Gettysburg Address, but presented far more forcefully than in the passage quoted. Daniel Webster expressed the same thought in his great reply to Hayne in 1830 when he said, "The people's government, made for the people, made by the people, and answerable to the people." The phraseology of Webster and that of Theodore Parker, though expressing the same thought as that expressed by Lincoln in the Gettysburg Address, was soon forgotten; but in the new dress in which it was presented by Lincoln, it has become immortal.

The great thoughts found in the speeches of Mr. Lincoln were uttered for no other purpose than to impress some truth upon his hearers. No selfish interest aided in their development or in the development of his arguments. He devoted all his powers to a solution of the momentous questions which confronted the Republic because of his belief in the justice of the cause which he championed. Though one of the busiest practitioners at the bar of Illinois, he put aside his professional duties to become the unpaid advocate of the people's cause, a cause for which he was ready to surrender all, even life itself.

In a speech at Lewiston, August 17, 1858, he said: —

> Think nothing of me, — take no thought for the political fate of any man whomsoever — but come back to the truths of the Declaration of Independence. You may do anything with me you choose, if you will but heed these sacred principles. You may not only defeat me for the Senate, but you may take me and put me to death . . . but do not destroy that immortal emblem of humanity.

This was not idle talk: it was the expression of that unselfish devotion to the cause of human liberty for which he was prepared to die if need be. Is it any wonder that he was recognized as the unselfish leader and intrepid champion of every worthy cause, and as such inspired the confidence of men in every walk of life?

Mr. Lincoln never used words to conceal his thoughts, but every sentence which fell from his lips was intended to convey in crystal-like form the result of his mature reflection. He was not a builder of metaphors or a constructer of catch-phrases intended only to charm the ear. He painted no word-picture which did not contain some valuable thought or wise suggestion. The theme with him was everything; he held himself as naught. The world was slow to recognize the sublimity and wis-

dom of his utterances, but time has worked a revolution, and after fifty years the name of Abraham Lincoln stands enrolled among the foremost orators of any age.

GEMS OF THOUGHT FROM LINCOLN

To add brightness to the sun or glory to the name of Washington is alike impossible. Let none attempt it. In solemn awe pronounce his name, and in its naked, deathless splendor leave it shining on.

The probability that we may fall in the struggle ought not to deter us from the support of a cause we believe to be just.

We know nothing of what will happen in the future but by the analogy of experience.

If at any time all labor should cease, and all existing provisions be equally divided among the people, at the end of a single year there could scarcely be one human being left alive.

Military glory — that attractive rainbow that rises in showers of blood — that serpent's eye that charms to destroy.

His mind, taxed beyond its power, is running hither and thither like some tortured creature on a burning surface, finding no position on which it can settle down and be at ease.

The true rule in determining to embrace or reject anything, is not whether it have any evil in it, but whether it have more of evil than of good.

Stand with anybody that stands right. Stand with him while he is right, and part with him when he goes wrong.

Any policy to be permanent must have public opinion at the bottom — something in accordance with the philosophy of the human mind as it is.

The love of property and a consciousness of right or wrong have conflicting places in our organization, which often make a man's course seem crooked, his conduct a riddle.

Let us have faith that right makes might; and in that faith let us to the end dare to do our duty as we understand it.

Even though much provoked, let us do nothing through passion and ill-temper.

Human action can be modified to some extent, but human nature cannot be changed.

What is conservatism? Is it not adherence to the old and tried against the new and untried?

If we would supplant the opinions of our fathers in any case, we should do so upon evidence so conclusive, and argument so clear, that even their great authority, fairly considered and weighed, cannot stand.

No one who has sworn to support the Constitution can conscientiously vote for what he understands to be an unconstitutional measure, however expedient he may think it; but one may and ought to vote against a measure which he deems constitutional, if at the same time he deems it inexpedient.

To be fruitful in invention it is indispensable to have a habit of observation and reflection.

I don't believe in a law to prevent a man from getting rich; it would do more harm than good.

No organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration.

A majority held in restraint by constitutional checks and limitations and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or to despotism.

Can aliens make treaties easier than friends can make laws?

Why should there not be a patient confidence in the ultimate justice of the people?

May our children and our children's children for a thousand generations continue to enjoy the benefits conferred upon us by a united country.

Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself, thus by example assuring that his own shall be safe from violence when built.

The shepherd drives the wolf from the sheep's throat, for which the sheep thanks the shepherd as his liberator, while the wolf denounces him for the same act as the destroyer of liberty.

I have not willingly planted a thorn in any man's bosom.

Important principles may and must be inflexible.

The democracy of to-day holds the liberty of one man to be absolutely nothing, when in conflict with another man's right of property. Republicans on the contrary are for both the man and the dollar, but in case of conflict the man before the dollar.

Keep the jewel of liberty within the family of freedom.

The way for a young man to rise is to improve himself every way he can, never suspecting that anybody wishes to hinder him.

Suspicion and jealousy never did help any man in any situation.

You can fool all of the people some of the time and some of the people all of the time, but you cannot fool all the people all the time.— *Speech at Clinton, Illinois*, September 8, 1858.

Great distance in either time or space has wonderful power to lull and render quiescent the human mind.

All the armies of Europe, Asia, and Africa, combined with all the treasures of the earth (our own excepted) in their military chest, with a Bonaparte for a commander, could not by force take a drink from the Ohio or make a track on the Blue Ridge in a trial of a thousand years.

If destruction be our lot we must ourselves be its author and finisher. As a nation of freemen we must live through all time or die by suicide.

When the conduct of men is designed to be influenced, persuasion, kind, unassuming persuasion should ever be adopted.

In all that the people can individually do as well for themselves the government should not interfere.

The work of the Plymouth emigrants was the glory of their age. While we reverence their memory, let us not forget how vastly greater is our opportunity.

Persisting in a charge which one does not know to be true, is simply malicious slander.

No policy that does not rest upon philosophical public opinion can be permanently maintained.

Truth is your truest friend, no matter what the circumstances are.

Our government rests on public opinion. Whoever can change public opinion can change the government practically just so much.

The plainest print cannot be read through a gold eagle.

We shall not fail — if we stand firm we shall not fail. Wise counsels may accelerate or mistakes delay it, but sooner or later the victory is sure to come.

Return to the fountain whose waters spring close by the blood of the Revolution.

What constitutes the bulwark of our liberty and independence? It is not our frowning battlements, our bristling sea-coasts, our army and our navy. These are not our reliance against tyranny. All of these may be turned against us without making us weaker for the struggle. Our reliance is in the love of liberty which God has planted in us.

Our defense is in the spirit which prized liberty as the heritage of all men in all lands everywhere. Destroy this spirit and you have planted the seeds of despotism at your own doors.

Accustomed to trample on the rights of others, you have lost the genius of your own independence and become the fit subjects of the first cunning tyrant who rises among you.

As the patriots of Seventy-six died to support the Declaration of Independence, so to the support of the Constitution and laws let every American pledge his life, his property and his sacred honor.

Towering genius disdains a beaten path. It seeks regions hitherto unexplored.

Reason — cold, calculating, unimpassioned reason — must furnish all the materials for our future support and defense.

There are few things wholly evil or wholly good.

I shall do nothing in malice. What I deal with is too vast for malicious dealing.

Let us diligently apply the means, never doubting that a just God, in his own good time, will give us the rightful result.

No party can be, justly, held responsible for what individual members of it may say or do.

The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone, all over this broad land, will yet swell the Chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

THE END

FACSIMILE OF AFFIDAVIT, IN LINCOLN'S HANDWRITING, FILED IN THE CASE OF THE UNITED STATES *vs.* REINBACH IN THE UNITED STATES DISTRICT COURT AT SPRINGFIELD

In the District Court of the United States in and for the Southern District of Illinois — January Term 1858 —

United States of America }
Southern District of Illinois }

Louis Reinback, the defendant in a certain Indictment pending in the District court aforesaid for a supposed violation of the Post-Office laws, being first duly sworn, states on oath that he can not safely go to trial at the present term because of the absence of Washington Sorrell, Peter Roberts, Jacob Dickerson, ~~in the U. S. vs. P. A. Rosenbaum~~; that he expects to prove by said Sorrell that he was present in the store of the defendant & brother, (also near to the Post-Office) in Jacksonville, Morgan county Illinois, when the mail arrived on Tuesday, about the 4th day of August 1857; that he saw said mail opened; that the mail bag, or boot, was unlocked, and contents poured out upon the floor, and overhauled and sorted, all by Henry Reinback, affiant not participating, or being sufficiently near to participate in that part of the operation; that affiant stood by all the while, receiving packages of letters from Henry, unpacking them in presence of writers, & calling off the names of all letters unpacked; that a name was called off for every letter unpacked, and none for E. S. Henrichsen, or for any Henrichsen; that writers remained till the mail was closed again and gave affiant unpacked every letter handed him, and every one thus taken from the mail, unless some one or more

was kept back by said Henry; that on the handing of said letter by affiant there was no apparent effort at concealment, or any sign of deception; that witness, at the time, saw affiant open one letter, which he claimed to be addressed to himself, but distinctly saw that there was no money in it, when opened. Affiant expects to to prove, to some extent, the same facts by Dr. ~~Rosenbaum~~ Rosenbaum, but as he expects some conflict upon the point, he deems it unsafe to go to trial without the evidence. Affiant has had a Subpoena issued for said Sorrell, which has not been served, owing to his having left the neighborhood suddenly and so recently, that affiant does not know, and has had no sufficient time to ascertain where he is. He hopes and expects to procure his attendance at the next term of the court.

Affiant, his defense in this case, relies in part upon showing that one E. S. Henrichsen has, probably conspired with others to entrap him herein by the fabrication of a false case against him; and in this connection he expects to prove by Peter Roberts that he heard said Heinrichsen, before the ostensible origin of the matter upon which this indictment is founded, threaten that he would have affiant in the Penitentiary before Christmas. Affiant expects to prove similar threats by other witness, but he deems it unsafe to go to trial without all his evidence on the point. Said witness resides in Brazos county, has been subpoenaed & is not in attendance & he expects to procure his attendance at the next term.

Affiant expects to prove by one Jacob Dickinson, more fully than he can by any one else, that the manner of the keeping of the Post. office at Franklin, over said U. S. Commissioner connected with it, are very favorable to the ~~practising~~ carrying out of such conspiracy against affiant, & attempted that said Dickinson resides in Morgan County has been subpoenaed, & is now in attendance, & affiant expects to procure his attendance by the next term. That this application is not made for delay, but that justice may be done.

Louis Reinbach

Sworn & subscribed before
me this 2d day of January
A.D. 1868.

Geo. W. Lowry
Clk

The United States of America

to Jaffa

Louis Reinbach

APPENDIX

APPENDIX

A

LINCOLN'S CASES IN THE ILLINOIS SUPREME COURT

ABRAHAM LINCOLN appeared as counsel in the following cases in the Supreme Court of Illinois, which was the only appellate tribunal and the court of last resort in that State during the period of Mr. Lincoln's professional activities: —

1. Scammon, plaintiff in error, *vs.* Cline, 3 Ill. 456. In this case Mr. Lincoln and another represented the defendant in error and claimed that the appeal from the justice of the peace to the Circuit Court should have been taken to the Circuit Court of Jo Daviess County instead of Boone County, as held by the Circuit Court of the latter county. The decision of the Circuit Court of Boone County was reversed.

2. Cannon, plaintiff in error, *vs.* Kinney, 4 Ill. 9. This was an action of trespass for the taking of personal property out of the hands of a person who had obtained possession of the same by the fraud of another. Mr. Lincoln appeared alone for the plaintiff in error and secured a reversal of the decision of the Circuit Court. Stephen T. Logan appeared for the defendant in error in this case.

Cited by the courts of Missouri and South Dakota.

3. Maus, appellant, *vs.* Worthing, appellee, 4 Ill. 26. Mr. Lincoln appeared alone as the attorney for the appellee in this case and moved the court to dismiss the appeal on the ground that the appeal bond filed in the case was signed by

an agent of the surety whose authority, though in writing, was not under seal, and this point made by Mr. Lincoln was sustained by the Supreme Court.

Cited by the courts of Arkansas and Colorado.

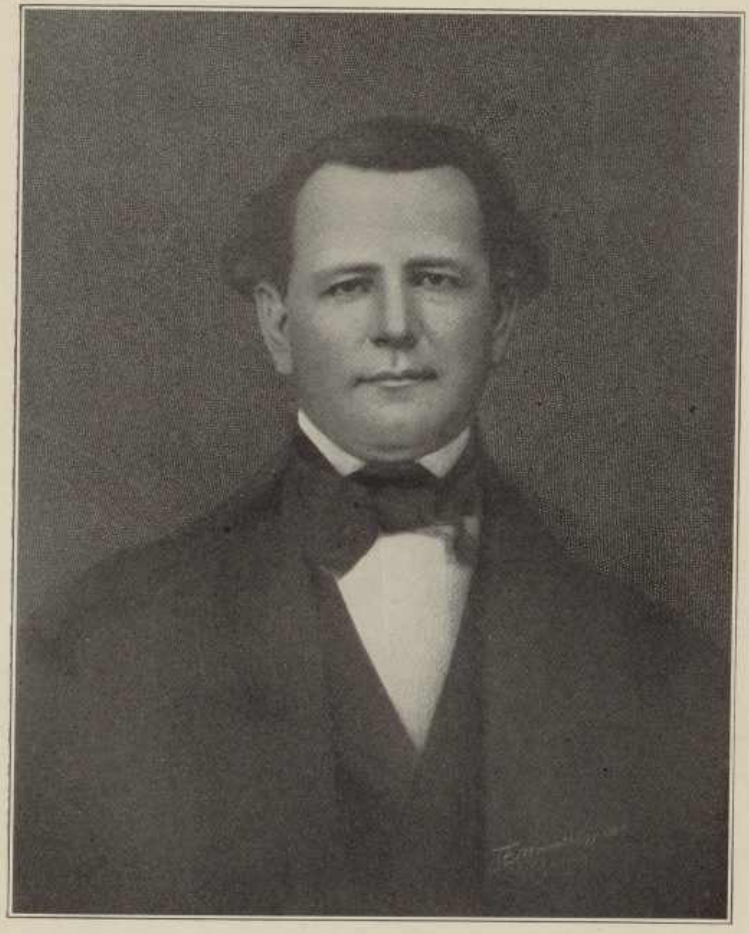
4. Bailey, appellant, *vs.* Cromwell, appellee, 4 Ill. 71. Mr. Lincoln appeared alone for the appellant and the judgment of the Circuit Court was reversed. The court held, in accordance with the contention of Mr. Lincoln, that it was a presumption of law in the State of Illinois that every person is free without regard to color, that where the consideration of a promissory note was shown to have been the sale of a negro girl, and that at the time of the sale it was agreed between the parties that, before payment of the note should be demanded, the payee should produce the necessary papers and indenture to prove that the girl was a slave or bound to service under the laws of the State of Illinois, and such papers were not produced though demanded, that there was no consideration for the note and that it was void, as the sale of a free person was illegal. Stephen T. Logan appeared for the appellees in this case. The judgment of the Circuit Court was reversed.

Cited in both state and federal courts.

5. Ballentine *et al.*, appellants, *vs.* Beall, appellee, 4 Ill. 203. This was a creditor's bill in which Mr. Lincoln appeared alone for the appellee. He was successful in the trial court, whose decision was affirmed in the Supreme Court.

Cited by the Supreme Court of Iowa.

6. Elkin *et al.*, appellants, *vs.* The People, appellee, 4 Ill. 207. This was a suit on a sheriff's bond in which Mr. Lincoln appeared as an associate with Strong on behalf of the appellants. The judgment of the trial court was affirmed. Stephen T. Logan appeared for appellees.



JESSE B. THOMAS

7. Benedict, appellant, *vs.* Dillehunt, appellee, 4 Ill. 287. Lyman Trumbull and J. Lamborn appeared for the appellant and Mr. Lincoln was associated with Emerson on behalf of the appellee. The case involved a question of procedure and the judgment of the Circuit Court was affirmed.

Cited by the Supreme Court of Texas.

8. Abrams *et al.*, plaintiffs in error, *vs.* Camp, 4 Ill. 290. Mr. Lincoln was associated with Stephen T. Logan on behalf of plaintiffs in error and secured a reversal of the decision of the trial court. The suit was a bill in chancery to enjoin the collection of a judgment.

Cited by the Supreme Court of Arkansas.

9. Hancock *et al.*, appellants, *vs.* Hodgson, 4 Ill. 329. This was an action of assumpsit and involved several intricate questions of law. Mr. Lincoln, Jesse B. Thomas, and Stephen T. Logan appeared on behalf of the appellants and Edward D. Baker and A. T. Bledsoe were the counsel for the appellee. The decision of the trial court was affirmed.

10. Grable, appellant, *vs.* Margrave, 4 Ill. 372. This was an action of trespass. Mr. Lincoln appeared alone in the trial court on behalf of the plaintiff and for the appellee in the Supreme Court. The judgment of the trial court was affirmed. Opposed to Mr. Lincoln in this case was James Shields (afterwards a Union general in the Civil War) and with him was associated J. C. Conkling.

Cited by the Supreme Courts of Iowa, Missouri, Indiana, West Virginia, Michigan, and the Federal Courts.

11. Averill *vs.* Field, 4 Ill. 390. This was an action of assumpsit in which Mr. Lincoln was associated with Stephen T. Logan on behalf of the appellants, while Edward D. Baker

and A. T. Bledsoe appeared on behalf of the appellee. The opinion affirming the decision was rendered by Justice Stephen A. Douglas.

12. Wilson, Admr., plaintiff in error, *vs.* Alexander, 4 Ill. 392. Mr. Lincoln appeared alone for the plaintiff in error and Jesse B. Thomas for the defendant in error. This suit was in assumpsit and involved a forged note. The contention of Mr. Lincoln was approved and the judgment of the trial court reversed.

Cited by the Supreme Court of Ohio.

13. Schlencker *et al.*, appellants, *vs.* Risley, 4 Ill. 483. This was an action of trespass for false imprisonment. O. B. Ficklin appeared for the appellants and Mr. Lincoln appeared alone for the appellees. The judgment of the trial court was affirmed.

Cited by the Supreme Courts of Iowa, Alabama, Michigan, Connecticut, Mississippi, California, and in the courts of New York.

14. Mason, appellant, *vs.* Park, 4 Ill. 532. This was an action of debt for the recovery of a penalty. O. B. Ficklin and Levi Davis appeared on behalf of the appellant, while Mr. Lincoln and Aaron Shaw appeared for the appellee. The judgment of the trial court was reversed.

Cited by the Supreme Court of Florida.

15. Greathouse *et al.*, appellants, *vs.* Smith, 4 Ill. 541. Mr. Lincoln appeared alone for the appellee and the judgment of the trial court was affirmed.

Cited by the Supreme Courts of Iowa, Nevada, Nebraska, Pennsylvania, and Washington.

16. Watkins *vs.* White, 4 Ill. 549. Mr. Lincoln appeared alone for the appellant and Edward D. Baker and A. T. Bledsoe for the appellee. This was an action of replevin. The judgment of the trial court was reversed.

17. Payne *et al.*, plaintiffs in error, *vs.* Frazier *et al.*, defendants in error, 5 Ill. 55. O. B. Ficklin appeared for the plaintiffs in error and Mr. Lincoln for the defendants in error. This was a bill in chancery and the decree of the trial court was reversed. The case involved a question of procedure.

18. Fitch *et al.*, plaintiffs in error, *vs.* Pinckard, 5 Ill. 69. This was an action of ejectment. Extensive separate briefs were filed by J. W. Chickering, John J. Hardin, Lincoln, Cowles, and E. A. Smith for the defendants in error, as well as separate briefs of three different attorneys appearing on behalf of the plaintiffs in error. The judgment of the trial court was affirmed. Justices Treat and Douglas dissented from the majority opinion.

Cited by the Supreme Court of Iowa.

19. Edwards *et al.*, plaintiffs in error, *vs.* Helm, 5 Ill. 142. This was a suit to foreclose a mortgage. Mr. Lincoln appeared with two others as counsel for the plaintiffs in error and the decree of the trial court was reversed.

Cited by the Supreme Court of Michigan.

20. Grubb, plaintiff in error, *vs.* Crane, 5 Ill. 153. This was a bill of review. James Shields and J. C. Conkling appeared for the plaintiff in error, while Lincoln and Stephen T. Logan appeared for the defendant in error. The decree of the trial court was affirmed.

Cited by the Federal Courts, and the Supreme Court of Iowa.

21. Pentecost *et al.*, appellants, *vs.* Magahee, 5 Ill. 326. Edward D. Baker and A. T. Bledsoe appeared for the appellants, while Mr. Lincoln appeared for the appellee. The appeal had been taken from an interlocutory order of the Circuit Court. Mr. Lincoln contended that no appeal would lie from an injunctional order when such order did not dispose of all the issues in the case, and the motion made by Mr. Lincoln to dismiss the appeal on that ground was allowed and the appeal dismissed.

22. Robinson, appellant, *vs.* Chesseldine, 5 Ill. 332. This was a bill for an injunction filed in the Circuit Court. The defendant demurred to the bill on the ground that the courts of chancery were without jurisdiction to grant the relief prayed for. The demurrer was sustained, the temporary injunction dissolved, and the bill dismissed. J. J. Hardin (afterwards a general in the Mexican War) and other counsel appeared on behalf of the appellant, while Mr. Lincoln and Stephen T. Logan appeared for the appellees. The decree of the Circuit Court was affirmed.

Cited by the Supreme Court of California.

23. Lazell, plaintiff in error, *vs.* Francis, 5 Ill. 421. This was a suit on a promissory note. Mr. Lincoln was associated with Stephen T. Logan for the defendant in error and the judgment of the Circuit Court was affirmed. This case involved several important questions in commercial law.

24. Spear, plaintiff in error, *vs.* Campbell *et al.*, 5 Ill. 424. This was a bill in chancery to set aside an alleged fraudulent conveyance. Mr. Lincoln and Stephen T. Logan represented the defendants in error. The decree of the Circuit Court was reversed because of the failure of the complainant to make certain persons defendants in the suit.

25. Bruce, plaintiff in error, *vs.* Truett, 5 Ill. 454. E. B. Washburne and M. Brayman appeared for the plaintiff in error, Mr. Lincoln and Stephen T. Logan for the defendant in error. The case involved a question of practice and the decision of the Circuit Court was affirmed.

26. England, plaintiff in error, *vs.* Clark, 5 Ill. 486. Mr. Lincoln and Urquhart appeared for the plaintiff in error and Edward D. Baker and others for the defendant in error. This was an action of assumpsit and the judgment of the Circuit Court was affirmed.

27. Johnson, plaintiff in error, *vs.* Weedman, 5 Ill. 495. This was an action of trover. Mr. Lincoln appeared for the defendant in error. The judgment of the Circuit Court was affirmed.

28. Hall, appellant, *vs.* Perkins, 5 Ill. 548. This involved a question of procedure and of commercial law. Edward D. Baker and another represented the appellant and Lincoln and others appeared for the appellee. The judgment of the Circuit Court was reversed.

29. Lockridge, plaintiff in error, *vs.* Foster, 5 Ill. 569. This was a chancery proceeding. Mr. Lincoln and Stephen T. Logan appeared on behalf of the defendant in error and the decree of the Circuit Court was affirmed.

Cited by the Supreme Courts of Iowa, Missouri, Michigan, and the Federal Courts.

30. Dorman *et ux.*, plaintiffs in error, *vs.* Lane, 6 Ill. 143. This was a proceeding instituted, by the defendant in error as administrator, in the Circuit Court for the sale of certain real estate to satisfy debts against the estate of the decedent. Mr. Lincoln appeared for the plaintiffs in error and Lyman

Trumbull for the defendant in error. The judgment of the Circuit Court was reversed.

31. Davis, plaintiff in error, *vs.* Harkness *et al.*, 6 Ill. 173. This was a suit in chancery for an accounting. Colton and Edward D. Baker appeared for the plaintiff in error and Mr. Lincoln and Stephen T. Logan for the defendants in error. The decree of the Circuit Court was affirmed.

Cited by the Supreme Courts of Iowa, Tennessee, Pennsylvania, and Virginia.

32. Martin, appellant, *vs.* Dryden *et al.*, 6 Ill. 187. This was a bill for an injunction involving the title to land. O. H. Browning and Bushnell appeared on behalf of the appellant and Mr. Lincoln and J. M. Krum appeared for the appellees. The decree of the Circuit Court was reversed.

Cited by the Federal Courts and in the Supreme Courts of Arkansas, Iowa, and Kansas, and the New York Court of Appeals.

33. Warner *et al.*, appellants, *vs.* Helm, 6 Ill. 220. This was a bill to foreclose a mortgage on real estate. Mr. Lincoln and Strong appeared for appellants. Opposed to them were J. T. Stuart and others. The decree of the Circuit Court was reversed.

34. McDonald, appellant, *vs.* Fithian *et al.*, 6 Ill. 269. Mr. Lincoln, Stephen T. Logan, and Edward D. Baker appeared for the appellees. The decree denying an injunction and dismissing the suit was affirmed. The names of the counsel in the case do not appear in the published volume with the opinion, but in the case of Cunningham *vs.* Fithian, 7 Ill. 650, it is stated that the above-named counsel appeared on behalf of the appellees in this case, but that their names were omitted by the reporter through inadvertence.

35. Favor *et al. vs.* Marlett, 6 Ill. 385. This involved questions as to the competency of witnesses. Mr. Lincoln and T. Lyle Dickey (afterwards a colonel in the Civil War and subsequently a judge of the Supreme Court of Illinois) appeared for the appellants and the judgment of the Circuit Court was reversed.

36. Parker *vs.* Smith, 6 Ill. 411. This was a suit for trespass. Mr. Lincoln and T. Lyle Dickey appeared for the appellant. B. C. Cook appeared for the appellee. The judgment of the Circuit Court was reversed. This case involved questions of procedure and liability of an officer in the execution of process.

Cited by the Supreme Courts of Maine and Iowa.

37. Stickney *et al. vs.* Cassell, 6 Ill. 418. This case involved questions of procedure. Mr. Lincoln appeared alone for the appellee and the judgment of the Circuit Court was reversed.

38. Kimball *et al., vs.* Cook, 6 Ill. 423. This was a suit to establish a mechanic's lien against real estate. Lincoln, Dickey, and Peters appeared for the defendant in error. The decree of the Circuit Court was reversed.

39. Wren *vs.* Moss, 6 Ill. 560. This was a motion for a writ of error. The motion involved the right of the divorcee to sue out a writ of error against the heirs and executor of the estate of a deceased husband. Mr. Lincoln and another appeared in support of the motion which was allowed.

Cited by the Supreme Court of Massachusetts.

40. Morgan *vs.* Griffin, 6 Ill. 565, involved questions of procedure. Mr. Lincoln and another appeared for the defendant in error and J. A. McDougall (afterwards United States

Senator from California) and another appeared on behalf of the plaintiff in error. The judgment of the Circuit Court was affirmed on the main point for which Mr. Lincoln contended, but judgment was rendered against the defendant in error for the costs in the Supreme Court and each party was ordered to pay his respective costs in the Circuit Court.

41. Cook, plaintiff in error, *vs.* Hall, 6 Ill. 575. This was an action of ejectment and involved several intricate questions of law. Mr. Lincoln with C. H. Constable appeared for the plaintiff in error. Edward D. Baker appeared for the defendant in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of Iowa, Kansas, and Nebraska.

42. Field *et al.*, plaintiffs in error, *vs.* Rawlings, 6 Ill. 581. This was an action of debt on a surety bond. Mr. Lincoln appeared with another for the plaintiffs in error and Lyman Trumbull for the defendant in error. The questions involved were important. The judgment of the Circuit Court was reversed.

Cited by the Supreme Courts of Ohio, Kansas, and the Federal Courts.

43. Broadwell *et al.*, plaintiffs in error, *vs.* Broadwell, 6 Ill. 599. This was a bill in chancery to enforce the specific performance of a bond for a deed of certain land. Mr. Lincoln and Edward D. Baker appeared for the defendant in error. The decree of the Circuit Court was reversed.

Cited by the courts of New York and Texas.

44. Rogers, plaintiff in error, *vs.* Dickey, 6 Ill. 637, involved several questions relating to liens of judgments and

executions. J. Y. Scammon appeared for the plaintiff in error and Mr. Lincoln with Stephen T. Logan for the defendant in error. The judgment of the Circuit Court was reversed.

45. Kelly, plaintiff in error, *vs.* Garrett, 6 Ill. 649, involved several important questions of commercial law. Mr. Lincoln and others appeared for the plaintiff in error and Stephen T. Logan for the defendant in error. The judgment of the Circuit Court was reversed.

Cited by the United States Supreme Court.

46. McCall *et al. vs.* Lesher *et al.*, 7 Ill. 46. In this case Mr. Lincoln appeared on behalf of the appellee and made a motion in the Supreme Court after he had entered a joinder in error, in which he asked that the appeal to that court be dismissed because, 1st: The appeal had been prayed for in the Circuit Court by all of the plaintiffs in the latter court, but only a part of them had signed the appeal bond. 2d: Because the decree set forth in the appeal bond filed in the case varied from that which the record showed had been entered by the Circuit Court. The motion to dismiss was opposed by Stephen T. Logan on behalf of the appellants. The questions involved were purely technical, and the sole purpose of the motion was to prevent a hearing of the case in the Supreme Court on its merits, and the latter court denied the motion, holding that it was made too late, and refused to dismiss the appeal. This is another instance where Lincoln sought to win his case on a technicality.

Cited by the Supreme Court of California.

47. McCall *et al. vs.* Lesher *et al.*, 7 Ill. 47. This is the same case as that in which the opinion last mentioned was rendered and the same counsel appeared for the respective

parties. In this opinion the case was decided against Mr. Lincoln. It was a suit in chancery and the decree of the Circuit Court was reversed because Mr. Lincoln had failed to make necessary parties defendants so that the merits of the controversy were not settled by the decision.

48. Wren, plaintiff in error, *vs.* Moss *et al.*, 7 Ill. 72. This is another decision rendered in the same case as that in which the decision of a preliminary motion is reported in 6 Ill. 560, and which appears as No. 39 of this list of cases. The point here decided is one of procedure also, being a motion by Mr. Lincoln and his associate to require the defendants in error to join in error, that is, to admit or deny that error has been committed by the trial court. The motion of Mr. Lincoln was granted.

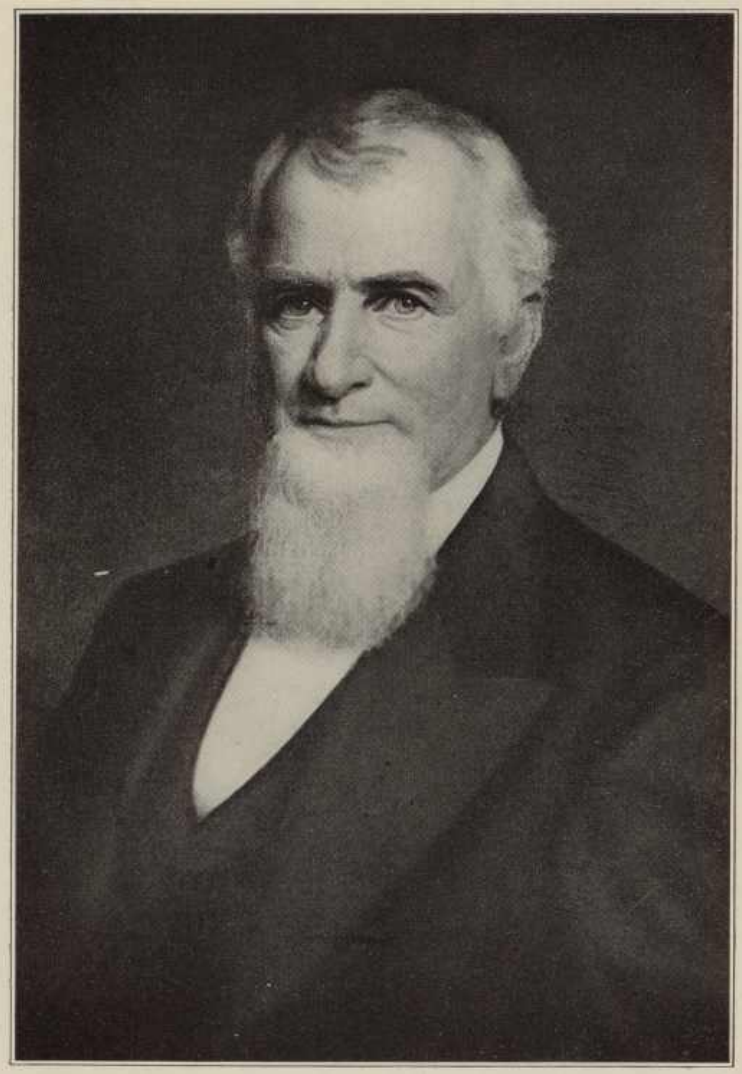
Cited by the Supreme Courts of New Hampshire, Maryland, and Colorado.

49. Risinger *et al.*, plaintiffs in error, *vs.* Cheney, 7 Ill. 84. Mr. Lincoln appeared alone for the plaintiffs in error and John T. Stuart and B. S. Edwards represented the defendants in error. The case involved interesting questions of law and the decision of Judge Treat in the Circuit Court was reversed. The opinion of the Supreme Court in this case occupies six pages of the report.

Cited by the Supreme Court of New Hampshire.

50. Eldridge *vs.* Rowe, 7 Ill. 91. This was a suit to recover for services rendered by the appellee under an entire contract which he had failed to perform. Mr. Lincoln represented the appellee. The decision of the Circuit Court was reversed, but from this decision Justice Koerner dissented.

Cited by the Supreme Courts of Colorado and Montana.



BENJAMIN S. EDWARDS

51. Frisby *et al.*, plaintiffs in error, *vs.* Ballance *et al.*, 7 Ill. 141. This was an ejectment suit involving the title to a tract of land in Peoria County. Mr. Lincoln and three others appeared for the plaintiffs in error and Justin Butterfield, one of the most famous lawyers in Illinois, appeared for the defendants in error. The judgment of the Circuit Court was reversed. The deed involved in this case was again before the Supreme Court in the case of Frink *vs.* Darst, 14 Ill. 304, and the decision in the case of Frisby *vs.* Ballance was there expressly overruled.

52. Hall, plaintiff in error, *vs.* Irwin *et al.*, 7 Ill. 176, was an action of ejectment involving among other questions the want of power in an administrator with the will annexed to convey real estate so as to vest title under the will. Mr. Lincoln and another appeared for the defendants in error and argued against the existence of such power and the holding of the Circuit Court which sustained this view was approved and its judgment affirmed in an opinion of nine pages.

Cited by the Supreme Court of Iowa.

53. The City of Springfield, plaintiff in error, *vs.* Hickox *et. al.*, 7 Ill. 241. Mr. Lincoln and another appeared for the City of Springfield, plaintiff in error, and James A. McDougall for the defendants in error. This case involved the right of the holder of an order issued by a municipality to introduce the same as a set-off or counterclaim in a suit brought by such municipality to recover a penalty accruing under an ordinance. The decision of the Circuit Court in favor of such right was affirmed.

54. Ross *et al.*, plaintiffs in error, *vs.* Nesbit, 7 Ill. 252. This was an action of trespass and involved several questions as to the sufficiency of certain defenses as a matter of law.

Mr. Lincoln appeared for the defendant in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Court of Missouri.

55. Simpson *vs.* Ranlett, 7 Ill. 312. This involved a question of the sufficiency of the endorsement of a promissory note to enable the endorsee to bring suit in his own name. Mr. Lincoln appeared for the appellant. The judgment of the Circuit Court was affirmed.

56. Murphy, plaintiff in error, *vs.* Summerville, 7 Ill. 360. This was an action of debt on a bail bond. Mr. Lincoln appeared for the plaintiff in error and Stephen T. Logan for the defendant in error. Several important questions of law were involved and the judgment of the Circuit Court was reversed.

57. Trailor, plaintiff in error, *vs.* Hill, 7 Ill. 364. This was a bill in chancery to enforce the specific performance of a bond for a deed conveying certain real estate. Mr. Lincoln and Stephen T. Logan were associated on behalf of the defendant in error. The decree of the Circuit Court dismissing the bill was affirmed.

58. Chase *vs.* Debolt, 7 Ill. 371. This case involved the question of the liability of an agent for an obligation contracted by him on behalf of an undisclosed principal. Mr. Lincoln and another appeared for the appellee. The judgment of the Circuit Court was reversed.

59. Smith *et al. vs.* Byrd, 7 Ill. 412. Mr. Lincoln appeared for the appellee, and the judgment of the Circuit Court was reversed on account of an error in procedure.

Cited by the Supreme Court of Georgia.

60. Moore, plaintiff in error, *vs.* Hamilton, 7 Ill. 429. This involved a statutory proceeding. Mr. Lincoln represented the plaintiff in error and M. Brayman (afterwards one of the counsel for the Illinois Central Railroad Company) appeared for the defendant in error. The judgment of the Circuit Court was reversed.

61. McNamara *vs.* King, 7 Ill. 432. This was a suit to recover for personal injuries. Mr. Lincoln and Jesse B. Thomas represented the appellant and Isaac G. Wilson, afterwards a judge of the Appellate Court, which was established in 1877, appeared on behalf of the appellee. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of California, Maryland, Iowa, Michigan, and West Virginia.

62. Ellis *vs.* Lock, 7 Ill. 459. This was a suit to foreclose a mortgage by *scire facias*. Mr. Lincoln was associated with Jesse B. Thomas on behalf of the appellant and Stephen T. Logan appeared for the appellee. The judgment of the Circuit Court was affirmed.

63. Bryan *et al.*, plaintiffs in error, *vs.* Wash *et ux.*, 7 Ill. 557. This was a bill in chancery to set aside a conveyance of real estate on the ground of fraud. Mr. Lincoln and Stephen T. Logan represented the defendants in error and the decree of the Circuit Court dismissing the bill for want of equity was affirmed.

Cited by the Supreme Courts of Indiana, Michigan, Minnesota, and the Federal Courts.

64. Wright, plaintiff in error, *vs.* Bennett *et al.*, 7 Ill. 587. This was an action of debt on a bond. Mr. Lincoln represented the defendants in error. The decision of the Circuit Court was affirmed.

65. Kincaid *vs.* Turner, 7 Ill. 618. This was a suit for damages to property belonging to Turner resulting from a prairie fire started by Kincaid and which it was claimed he had negligently permitted to spread to Turner's premises. Mr. Lincoln and another represented the appellee. The judgment of the Circuit Court was affirmed.

66. Cunningham *vs.* Fithian, 7 Ill. 650. This was a bill in chancery for an injunction and other relief. Mr. Lincoln, Stephen T. Logan, and Edward D. Baker represented the appellees. The decree of the Circuit Court denying the relief sought was affirmed.

Cited by the Supreme Courts of Arkansas and Florida.

67. Wilson *et al.*, plaintiffs in error, *vs.* Van Winkle, 7 Ill. 684. This was an appeal from the allowance of a claim against the estate of one Wilson, deceased. James McDougall represented the plaintiffs in error and Mr. Lincoln, J. J. Hardin, and D. A. Smith appeared for the defendant in error. The judgment of the Circuit Court was affirmed.

68. Patterson *et ux.*, plaintiffs in error, *vs.* Edwards *et al.*, 7 Ill. 720. This was an action for slander. Mr. Lincoln and another represented the defendants in error. The judgment of the Circuit Court was reversed.

Cited by the Supreme Courts of Oregon, Mississippi, and Michigan.

69. Griggs *et al. vs.* Gear, 8 Ill. 2. This was an appeal from a decree of the Circuit Court dismissing a bill filed to review and reverse a former decree. The questions involved arose on a demurrer to the bill which was sustained by the Circuit court, whose decision was reversed by the Supreme Court. J. J. Hardin, D. A. Smith, and Justin Butterfield argued the

case on behalf of the appellees and the reporter notes that "A. Lincoln for appellants replied at length to the arguments of the counsel for the appellee." J. W. Chickering filed a brief on behalf of the appellants which covers one page of the report and the list of citations of authorities presented by counsel for the appellees covers more than five pages of the report, but Mr. Lincoln does not appear to have cited a single authority, which confirms the statement frequently made that he cited few authorities in the argument of his cases, but contented himself with the analysis of those presented by his opponent and the presentation of the underlying principles and the reasons for the rules for which he contended.

Cited by the Supreme Court of Idaho and the Federal Courts.

70. Edgar County, plaintiff in error, *vs.* Mayo, 8 Ill. 82. This appears to have been brought to test the right of the clerk of the Circuit Court to certain fees. Mr. Lincoln appeared for the defendant in error. The judgment of the Circuit Court was reversed.

Cited by the Supreme Court of Colorado.

71. Roney *vs.* Monaghan, 8 Ill. 85. This involved the question of the sufficiency of the evidence to sustain a judgment for damages. Mr. Lincoln and others represented the appellee. Buckner S. Morris and another appeared for the appellants. The judgment of the Circuit Court was affirmed.

72. The People *ex rel. vs.* Browne, 8 Ill. 87. This was a motion for a writ of *mandamus* to compel Browne, who was a Circuit Judge, to sign and seal a bill of exceptions taken during the trial of the case before him. E. B. Washburne (afterwards United States Minister to France) and Campbell

appeared for the motion and Mr. Lincoln appeared on behalf of Judge Browne. The motion was denied.

73. Munsell, plaintiff in error, *vs.* Temple, 8 Ill. 93. This case involved two questions relating to saloon licenses: 1st, whether such a license is transferable; 2d, whether the officer issuing the license has power to do so prior to the payment to him of the full license fee in cash or whether he may accept the note of the licensee. Mr. Lincoln appeared for the plaintiff in error and contended against both these propositions. He was sustained by the Supreme Court and the decision of the Circuit Court was reversed. Jesse B. Thomas represented the defendant in error.

74. Fell *et al. vs.* Price *et al.*, 8 Ill. 186. This was a suit in chancery for an injunction. Mr. Lincoln appeared for appellants and U. F. Linder for appellees. The decree of the Circuit Court was reversed.

Cited by the Supreme Court of California.

75. Wright, plaintiff in error, *vs.* Taylor, 8 Ill. 193. This case involved some interesting questions growing out of the unstable currency in circulation at that time. It was a bill in chancery to foreclose a mortgage. Mr. Lincoln represented the defendant in error. The Supreme Court modified the decree of the Circuit Court somewhat and as modified the same was affirmed.

76. Welch *et al.*, plaintiffs in error, *vs.* Sykes, 8 Ill. 197. This was an action of debt on a foreign judgment. Mr. Lincoln represented the plaintiffs in error and Charles H. Constable the defendant in error. The judgment of the Circuit Court was reversed.

Cited by the Supreme Courts of Kansas, Washington, Florida, Iowa, Colorado, Indiana, California, and the Federal Courts.

CHARLES H. CONSTABLE

77. Hawks, plaintiff in error, *vs.* Lands, 8 Ill. 227. This was an action of assumpsit. Mr. Lincoln represented the plaintiff in error and had filed in the Circuit Court a plea of set-off based on a breach of a covenant of warranty in a deed entirely disconnected from the contract on which the plaintiff had based his suit. A demurrer to this plea was sustained by the Circuit Court and Hawkes appealed to the Supreme Court, where the judgment of the Circuit Court was affirmed on the ground that an unliquidated claim for damages could not, under the Illinois statutes, be set off against a claim founded on an entirely separate contract. Jesse B. Thomas was opposed to Mr. Lincoln in this case. The question decided was new in Illinois at that time.

Cited by the Supreme Court of the United States.

78. Garrett *vs.* Stevenson, 8 Ill. 261. This was a complicated case arising under the mechanic's lien law. The opinion occupies more than twenty pages of the report. Mr. Lincoln and another represented the appellant. The decree of the Circuit Court was affirmed in part, but the main contention of the appellant was approved, thereby reducing the amount of the claim for lien by nearly one half.

Cited by the Supreme Courts of Colorado, Ohio, and Nevada.

79. Henderson *vs.* Welch, 8 Ill. 340. This was an action at law to recover costs paid by the nominal plaintiff in a former suit, in which judgment had been rendered against him for such costs, which he had paid to satisfy such judgment, and he had in this case sued to recover the amount of such payment with interest thereon, and judgment having been rendered in his favor in the Circuit Court, the judgment was affirmed in the Supreme Court. The question involved was interesting. Mr. Lincoln and Isaac G. Wilson represented

the appellants and Isaac N. Arnold and two other lawyers appeared for the appellee. The judgment of the Circuit Court was affirmed.

80. Cowls *vs.* Cowls, 8 Ill. 435. This was a bill in chancery by the mother of certain children to compel their father, from whom she had been divorced, in a former proceeding, to surrender to her the custody of the children and to supply her with sufficient means for their support. The Circuit Court granted the prayer of the bill and the defendant appealed. The decree was affirmed. Mr. Lincoln represented the appellant.

Cited by the Supreme Courts of New Hampshire, Iowa, Missouri, Wisconsin, and the courts of New York.

81. Wilcoxon *vs.* Roby, 8 Ill. 475. This was a suit on a penal bond. Mr. Lincoln and two others represented the appellant. Jesse B. Thomas appeared for the appellee. This case was reversed on account of error in the record. The merits of the controversy were not passed upon.

82. Trumbull *vs.* Campbell, 8 Ill. 502. Lyman Trumbull (afterwards a Judge of the Supreme Court and thereafter United States Senator from Illinois) was the appellant in this case and was represented by Mr. Lincoln. Stephen T. Logan and another appeared for the appellee. The judgment of the Circuit Court was reversed.

83. Cooper, plaintiff in error, *vs.* Crosby *et al.*, 8 Ill. 506. This was a writ of error prosecuted for the purpose of obtaining a reversal of an order of the Circuit Court denying a motion to set aside a master's sale in a foreclosure proceeding in chancery. Mr. Lincoln represented the plaintiff in error and Stephen T. Logan appeared for the defendants in error. The decision of the Circuit Court was affirmed.

Cited by the Supreme Court of Nebraska.

84. Shaeffer *et al.*, plaintiffs in error, *vs.* Weed, 8 Ill. 511. This was a suit to enforce a mechanic's lien. Mr. Lincoln represented the plaintiffs in error. The decision of the Circuit Court denying the relief sought was reversed.

Cited by the Supreme Courts of Florida, Nebraska, Indiana, and West Virginia.

85. Anderson *vs.* Ryan, 8 Ill. 583. This was an action of trespass for an assault. Mr. Lincoln appeared for the appellant and U. F. Linder and another for the appellee. The judgment of the Circuit Court was affirmed.

86. Wright, plaintiff in error, *vs.* McNeeley, 11 Ill. 241. This was a bill in chancery to redeem certain land which had been sold under a judgment and to enjoin the collection of the judgment. Lincoln & Herndon appeared for plaintiff in error with Stephen T. Logan. Richard Yates and others represented defendants in error. The decree of the Circuit Court, dismissing the bill for want of equity, was reversed, and while the prayer for redemption was refused, the Supreme Court entered an order satisfying the judgment.

87. Webster *et al.*, plaintiffs in error, *vs.* French *et al.*, 11 Ill. 254. This was a bill in chancery to compel the Governor of Illinois to convey certain land belonging to the State which the legislature had ordered him to advertise for sale. It was a controversy between bidders at the sale. The Circuit Court denied the relief sought, but its decree was reversed. Lincoln & Herndon and Stephen T. Logan appeared for the plaintiffs in error, Brayman and Stuart & Edwards and Browning & Bushnell for the defendants in error. The amount involved in value was about $22,000 and the opinion of the court occupied more than fifteen pages in a discussion of the questions involved.

Cited by the United States Supreme Court and by the

Supreme Courts of Missouri, Kentucky, Ohio, Washington, and Nevada.

88. Adams *et al. vs.* The County of Logan, 11 Ill. 336. This was a suit for damages for the breach of a contract to locate the county seat on land of the appellants which had been conveyed by them to the county, with the cost of the construction of a frame court-house thereon, the county seat having been subsequently removed to another place. Stephen T. Logan and Stuart & Edwards represented the plaintiffs in error and Lincoln & Herndon and another appeared for the defendant in error, the County of Logan. The judgment of the Circuit Court denying the right to recover against the county was affirmed.

Cited by the Supreme Courts of Kansas, Indiana, Nevada, Ohio, Pennsylvania, and Wisconsin.

89. Pearl *et al. vs.* Wellman *et al.*, 11 Ill. 352. This was a suit against a surety on a penal bond. Lincoln & Herndon represented the appellants and Stuart & Edwards appeared for the appellees. The defense set up by the appellants was purely technical. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Court of Michigan.

90. Lewis *vs.* Moffett, 11 Ill. 392. This case involved the right of a partner to sue for and recover from his co-partner for services rendered by him in the partnership business when he had furnished capital for the business upon the express condition that he should not be required to render any services, and the services sued for were rendered at the special request of his partner. Lincoln & Herndon appeared for the appellee with J. C. Conkling. Stephen T. Logan and Stuart & Edwards represented the appellants. The decree

of the Circuit Court was reversed in part only and affirmed as to the balance.

Cited by the Supreme Courts of Massachusetts, Wisconsin, Vermont, North Dakota, and Pennsylvania.

91. Austin, plaintiff in error, *vs.* The People for use of Burr *et al.*, 11 Ill. 452. This was a suit on a guardian's bond. Stephen T. Logan and another represented the plaintiffs in error and Lincoln & Herndon appeared for the defendants in error. The judgment of the Circuit Court was reversed on account of an error in the verdict of the jury.

92. Williams *et al.*, plaintiffs in error, *vs.* Blankenship *et al.*, 12 Ill. 122. This involved a question of the jurisdiction of justices of the peace in certain cases. The Circuit Court, presided over by Judge David Davis, having rendered judgment against the plaintiffs in error despite the contention that the justice of the peace whose decision the Circuit Court was required to review was without jurisdiction, the Supreme Court held in accordance with the contention of the plaintiffs in error, and reversed the case. Lincoln & Herndon represented the plaintiffs in error and Stephen T. Logan appeared for the defendants in error.

93. Smith *et al. vs.* Dunlap, 12 Ill. 184. This suit was instituted in the Circuit Court against Dunlap to recover on his note for $131,480.52, payable to the Bank of Illinois and provided to be paid in State of Illinois indebtedness. As payment had not been made in such indebtedness, the court was called upon to decide as to the amount for which judgment should be rendered — whether for the face of the note and interest or for the value of the securities named at the time of the maturity of the note. The Circuit Court held that Dunlap was liable only for an amount equal to the actual

value of the securities on the date of the maturity of the note with interest, and the judgment of the Circuit Court for $38,361.93 was affirmed. Lincoln & Herndon and Browning & Bushnell represented Smith *et al.*, assignees of the bank. Stephen T. Logan and Williams & Lawrence represented the creditors of the Bank of Illinois. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of Maine, Minnesota, Indiana, New Hampshire, Georgia, Texas, and the Federal Courts.

94. McHenry, plaintiff in error, *vs.* Watkins, 12 Ill. 233. The Circuit Court denied a motion made by the plaintiff in error to quash an execution issued on a judgment which had been paid in full. The Supreme Court held this to be error and reversed the case with directions to the Circuit Court to quash the writ. Lincoln & Herndon represented the plaintiff in error.

Cited by the Supreme Court of Florida.

95. Whitecraft *et al.*, plaintiffs in error, *vs.* Vanderver *et al.*, 12 Ill. 235. This was an action of debt to recover a statutory penalty for cutting down trees. The judgment of the Circuit Court was reversed. Lincoln & Herndon represented the defendants in error.

Cited by the Supreme Courts of California, Mississippi, Washington, and the Federal Courts.

96. Enos *et al.* plaintiffs in error, *vs.* Capps, 12 Ill. 255. The writ of error was sued out in this case by certain minors by their next friend to reverse a decree of the Circuit Court entered against themselves and others, by which their guardian *ad litem* was directed to convey to Capps their interest in certain land of which Capps claimed to be the equitable owner. Lincoln & Herndon represented the plaintiffs in error

and Stephen T. Logan represented Capps. The decree of the Circuit Court was reversed as to the plaintiffs in error.

Cited by the Supreme Courts of Ohio, Missouri, and Colorado.

97. Ward *vs.* Owens *et al.*, 12 Ill. 283. This case involved a question of chancery procedure. Lincoln & Herndon represented the appellees. The decree of the Circuit Court was reversed.

98. Linton, plaintiff in error, *vs.* Anglin, 12 Ill. 284. This case involved a question of jurisdiction of the person of the defendant in the Circuit Court. Stephen T. Logan represented the plaintiff in error and Lincoln & Herndon appeared for the defendant in error. The judgment of the Circuit Court was reversed.

99. Penny, plaintiff in error, *vs.* Graves, 12 Ill. 287. This case involved a question of the admissibility of oral testimony to vary a written contract. Stuart & Edwards represented the plaintiff in error and Lincoln & Herndon appeared for the defendant in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Court of Missouri.

100. Compher *et al. vs.* The People, 12 Ill. 290. This was a suit brought against the collector of Peoria County and the sureties on his bond. The legislature, after the giving of the bond in question, amended the law in relation to the collection of taxes, and it was contended that the effect of the amendment was to discharge the sureties from liability on the bond. Lincoln & Herndon among others represented the appellee. The judgment against the sureties rendered in the Circuit Court was affirmed.

Cited by the courts of New York and Tennessee.

101. Major, plaintiff in error, *vs.* Hawkes *et al.*, 12 Ill. 298. This case involved the right of an insolvent partner to collect the assets of the co-partnership after dissolution of the firm. Lincoln & Herndon represented the defendants in error. The judgment of the Circuit Court was reversed.

Cited by the Supreme Court of Wisconsin.

102. Webster *et al.*, plaintiffs in error, *vs.* French *et al.*, 12 Ill. 302. This case involved the question of the right of the Governor of the State of Illinois to reject sealed bids received after the time fixed in the call for presenting the same. Lincoln & Herndon and Stephen T. Logan with another represented the plaintiffs in error. The decree of the Circuit Court was affirmed.

Cited by the Supreme Courts of Alabama, Kansas, Missouri, Wyoming, Kentucky, Indiana, and the Federal Courts; also by the courts of New York.

103. The People *ex rel. vs.* Marshall, 12 Ill. 391. This was an original application for a writ of *mandamus*. Mr. Lincoln and R. Wingate appeared for the relator. The writ was awarded. The legislature having attempted to merge two counties into one, this proceeding was instituted to compel the respondent, who was a Circuit Judge, to hold a term of court in the county which the legislature had attempted to abolish. The Supreme Court held the act of the legislature unconstitutional and void.

Cited by the Supreme Courts of Idaho, Colorado, and Tennessee.

104. Dunlap *vs.* Smith *et al.*, 12 Ill. 399. This is the same case reported in 12 Ill. 184 and before referred to (No. 93). On the former hearing the method of determining the amount of the liability of Dunlap was fixed at the amount for which

judgment had been entered in the Circuit Court. On this appeal Stephen A. Douglas, Stephen T. Logan, and John A. McClernand appeared for Dunlap and Mr. Lincoln appeared alone for the appellees. After the decision of the former case, Dunlap tendered notes and certificates of the Bank of Illinois in partial satisfaction of the judgment and entered a motion before Judge David Davis in the Circuit Court for an order requiring the assignees of the bank (then in liquidation) to accept the same at their face value on account of the judgment. This motion was denied by Judge Davis, and Dunlap appealed to the Supreme Court, where the decision of Judge Davis was reversed.

Cited by the Supreme Court of Georgia.

105. Dorman *et ux. vs.* Tost, 13 Ill. 127. This was an appeal from a decree of the Circuit Court authorizing an administrator to sell real estate of a decedent. Mr. Lincoln represented the appellants. The decree of the Circuit Court was reversed.

106. Perry *vs.* McHenry, 13 Ill. 227. This was a bill in chancery filed in the Circuit Court to declare a resulting trust. The bill was dismissed for want of equity. Stephen T. Logan and Stuart & Edwards represented the appellant. Lincoln & Herndon appeared for the appellees. The decree of the Circuit Court was affirmed.

107. McArtee, plaintiff in error, *vs.* Engart, 13 Ill. 242. This was a bill in chancery to set aside a conveyance made by the defendant in error to the plaintiff in error on the ground of fraud. Mr. Lincoln and two others represented the defendant in error. The decree of the Circuit Court setting aside the conveyance was affirmed. Stephen T. Logan and Stuart & Edwards appeared for the plaintiff in error.

Cited by the Federal Courts.

108. Manly *et al.*, plaintiffs in error, *vs.* Gibson, 13 Ill. 308. This was an action of ejectment involving the title to certain lots in the town of Petersburg. Lincoln & Herndon represented the plaintiffs in error. The judgment of the Circuit Court was reversed, because of the refusal of that court to admit certain evidence offered at the trial.

Cited by the Supreme Court of Minnesota.

109. Harris *vs.* Shaw, 13 Ill. 456. This was an action of ejectment involving the title to real estate in Tazewell County. Mr. Lincoln was associated with Stephen T. Logan and Stuart & Edwards on behalf of the appellant. The judgment of the Circuit Court was affirmed.

Cited by the United States Supreme Court and the Supreme Courts of Alabama, Indiana, Nevada, Pennsylvania, Wisconsin, and Wyoming.

110. Banet *vs.* The Alton and Sangamon Railroad Company, 13 Ill. 504. This suit was brought in the Circuit Court to recover the amount of unpaid calls of subscription to the capital stock of the railroad company. Mr. Lincoln appeared alone for the appellee. Stephen T. Logan and another appeared for the appellant. Liability was sought to be evaded because the route of the railroad was changed so that, instead of running through New Berlin, where Banet owned certain real estate, the value of which would be greatly increased by the building of the road through that place, — the new route was some twelve miles distant from that place, — and the principal question presented was, did the change in the route operate to relieve Banet from his liability on his subscription? The court held that the loss of a mere incidental benefit which formed no part of the consideration of the contract of subscription was no defense to the action, and the judgment of the Circuit Court was affirmed.

Cited by the United States Supreme Court and by the

Supreme Courts of Arkansas, Indiana, Iowa, Massachusetts, Ohio, Minnesota, Missouri, Nebraska, and New Jersey.

111. Klein *vs.* The Alton and Sangamon Railroad Company, 13 Ill. 514. This case involved questions somewhat similar to those involved in the preceding case, and in addition the subscriber claimed the right to be relieved from further payment by forfeiting the payments already made. Mr. Lincoln appeared alone for the appellee. Stephen T. Logan appeared with another for the appellant. The judgment of the Circuit Court was affirmed.

Cited in the Federal Courts.

112. Casey *vs.* Casey, 14 Ill. 112. This was a bill in chancery to set aside a transfer of an inheritance on the ground of fraud. The Circuit Court having entered a decree in accordance with the prayer of the bill, the appellant sought to have the decree reversed. Mr. Lincoln, W. B. Scates, and Stephen T. Logan appeared for the appellant. The decree of the Circuit Court was affirmed.

Cited by the Supreme Courts of California, Texas, and North Dakota.

113, 114. Ross *vs.* Irving, Pryor *vs.* Irving, 14 Ill. 171. These two cases were argued jointly, and as both involved the same questions, but one opinion was filed. Both were actions of ejectment. Mr. Lincoln and two others represented the appellants. The judgment of the Circuit Court was reversed in both cases.

Cited by the Supreme Courts of Iowa, Minnesota, New Hampshire, Nebraska, Michigan, Montana, Wisconsin, and the Federal Courts.

115. The Alton and Sangamon Railroad Company *vs.*

Carpenter, 14 Ill. 190. This was an action for the condemnation of land for a railroad right of way. Lincoln & Herndon represented the appellant and Stephen T. Logan appeared for the appellee. The judgment of the Circuit Court was reversed.

Cited by the Supreme Courts of Missouri, California, and Minnesota.

116. The Alton & Sangamon Railroad Company *vs.* Baugh, 14 Ill. 211. This, like the preceding case, was a condemnation proceeding. Lincoln & Herndon represented the appellant. Stephen T. Logan appeared for the appellee. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Court of Oklahoma.

117. Stewartson *vs.* Stewartson, 15 Ill. 145. This was an appeal from a decree of divorce by which the wife (appellant) was directed to convey to the husband certain real estate which she had purchased with his money, the title to which she had taken in her own name, alimony of thirty dollars a year having been allowed her and the husband having been also required to release to her any interest which he had in another tract of land which she owned. Mr. Lincoln and another appeared for the appellant and contested that part of the decree which directed the conveyance by the wife. The decree of the Circuit Court was affirmed.

Cited by the Supreme Court of Wisconsin.

118. Byrne, plaintiff in error, *vs.* Stout, 15 Ill. 180. This was an action in trover for the alleged conversion of a hog. Lincoln, representing the defendent in error, had recovered a judgment in the Circuit Court for $3 and costs against the plaintiff in error (the defendant in the trial court). The judgment of the Circuit Court was reversed.

119. Pate *vs.* The People, 15 Ill. 221. This was an action of debt on a recognizance. Mr. Lincoln represented the appellant. The judgment of the Circuit Court was affirmed.

120. Sullivan, plaintiff in error, *vs.* The People, 15 Ill. 233. This case involved the construction of a statute governing the sale of intoxicating liquors. Mr. Lincoln represented the plaintiff in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of California and Nebraska.

121. Humphreys *vs.* Spear *et al.*, 15 Ill. 275. This case involved a question as to the admissibility of certain evidence. Lincoln & Herndon represented the appellant. The judgment of the Circuit Court was affirmed.

122. The People *vs.* Blackford *et al.*, 16 Ill. 166. This case involved the construction of a statute. Mr. Lincoln represented the appellees. The judgment of the Circuit Court was affirmed in part and reversed in part.

123. Edmunds, plaintiff in error, *vs.* Myers *et al.*, 16 Ill. 207. This was a bill in chancery to rescind a contract on the ground of fraud. Mr. Lincoln represented the defendants in error. The decree of the Circuit Court was reversed.

124. Edmunds, plaintiff in error, *vs.* Hildreth *et al.*, 16 Ill. 214. This case was similar to the preceding one. Mr. Lincoln represented the defendants in error and the decree of the Circuit Court was reversed.

125. Gilman *et al. vs.* Hamilton *et al.*, 16 Ill. 225. This was a bill in chancery involving the administration of a chari-

table trust. Mr. Lincoln and another represented the appellants. The decree of the Circuit Court was affirmed.

Cited by the Supreme Courts of Massachusetts, California, Nevada, Texas, West Virginia, and the Federal Courts.

126. The Chicago, Burlington & Quincy Railroad Company *vs.* Isaac G. Wilson, 17 Ill. 123. This was a petition for a writ of *mandamus* to compel the respondent, who was a Circuit Judge, to appoint a commissioner to fix the compensation to be paid by the railroad company for certain lands which the railroad company desired to use for shops, turnouts, depots, etc., Judge Wilson, having refused to make the appointment. James F. Joy appeared for the railroad company and Mr. Lincoln and Grant Goodrich opposed the application. The writ of *mandamus* was awarded.

Cited by the Supreme Courts of Indiana, Missouri, Alabama, Kansas, Nebraska, Ohio, and the courts of New York.

127. Browning (O. H.), plaintiff in error, *vs.* The City of Springfield, 17 Ill. 143. This was a suit for the recovery of damages for a personal injury resulting from the failure of the city to keep its street in proper repair, the Circuit Court having held that the city was not liable for such injury. Lincoln & Herndon represented the plaintiff in error and Stuart & Edwards and another appeared for the city. The judgment of the Circuit Court was reversed.

128. Turley *et al.*, plaintiffs in error, *vs.* The County of Logan, 17 Ill. 151. This case involved the right to test the validity of an act of the legislature by showing by reference to the journal that such act was not passed by a constitutional vote, and also involved the right of the legislature to change the location of a county seat without the consent of a majority of the voters of the county. J. T. Stuart repre-

sented the plaintiffs in error and Mr. Lincoln appeared for Logan County. The decree of the Circuit Court was affirmed.

Cited by the Supreme Courts of Idaho, Michigan, and North Carolina.

129. Armstrong, plaintiff in error, *vs.* Mock, 17 Ill. 166. This case involved several questions of procedure. Lincoln & Herndon represented the plaintiffs in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Court of Colorado.

130. Booth *et al.*, plaintiffs in error, *vs.* Rives, 17 Ill. 175. This case involved only questions of fact. Stephen T. Logan represented the plaintiffs in error and Mr. Lincoln appeared for the defendant in error. The judgment of the Circuit Court was affirmed.

131, 132. Myers *et al. vs.* Turner, Myers *et al. vs.* Turner, 17 Ill. 179. These two cases involved the same questions and one opinion covers both. The sufficiency of the consideration of promissory notes was the issue. Stuart & Edwards and Lincoln & Herndon represented the appellants. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Court of Massachusetts.

133. Hildreth *vs.* Turner, 17 Ill. 184. This case was like the two preceding cases, except that it involved the further question of the validity of an assignment of a patent. Stuart & Edwards and Lincoln & Herndon represented the appellants. The judgment of the Circuit Court was affirmed.

134, 135. Moore *vs.* Vail, Moore *vs.* Dodd, 17 Ill. 185. These were ejectment cases both involving precisely the same questions and one opinion was filed covering both cases. Mr.

Lincoln was associated with D. A. Smith on behalf of the appellant. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of Alabama, Kansas, Virginia, West Virginia, Iowa, Mississippi, Minnesota, Texas, and the Federal Courts, and the courts of New York.

136. Loomis *et al.*, plaintiffs in error, *vs.* Francis, 17 Ill. 206. This case holds that it was error for the Circuit Court to enter a judgment against a defendant *nunc pro tunc* under the facts stated. Lincoln & Herndon represented the plaintiffs in error. The judgment of the Circuit Court was reversed.

137. The Illinois Central Railroad Company *vs.* The County of McLean, 17 Ill. 291. Mr. Lincoln was associated with M. Brayman and James F. Joy, counsel for the railroad company, on behalf of the appellant. Stephen T. Logan and Stuart & Edwards represented the appellee. (This is the case out of which grew the suit of Lincoln against the Illinois Central Railroad Company for compensation for services rendered and in which Lincoln recovered a judgment for $4750 in the Circuit Court of McLean County.) This case involved the right of the legislature to exempt the property of the railroad company from taxation or to commute the general rate of taxes for a fixed sum. The Supreme Court held constitutional a provision of the charter granted to the railroad company by the legislature which required the payment of a certain proportion of its earnings in lieu of taxes. The judgment of the Circuit Court was reversed.

Cited by the Supreme Courts of Arkansas, Louisiana, Florida, Montana, Indiana, North Dakota, Kansas, and the United States Supreme Court.

138. Johnson *vs.* Richardson *et al.*, 17 Ill. 302. This was a suit against an innkeeper to recover for money stolen from

the pocket of a guest by some person who entered his room during the night. Mr. Lincoln represented the appellant. Stephen T. Logan appeared on behalf of the appellees. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of Missouri, Texas, and Nebraska.

139. Phelps *vs.* McGee, 18 Ill. 155. This was a suit for damages for the breach of a contract to deliver corn. Mr. Lincoln and another represented the appellant. Stephen T. Logan appeared for the appellee. The judgment of the Circuit Court was reversed.

Cited by the Supreme Courts of Kansas, Nebraska, and West Virginia.

140. The County of Christian *vs.*Overholt *et al.*, 18 Ill. 223. This case involved a contract for the construction of a courthouse. Mr. Lincoln and Stephen T. Logan represented the plaintiff in error. Stuart & Edwards appeared for the appellees. The judgment of the Circuit Court was reversed.

141. McConnel *vs.* The Delaware Mutual Safety Insurance Company *et al.*, 18 Ill. 228. This case is very interesting reading. It involved the destruction of certain merchandise by fire, the payment of insurance by an insurance company under policies which it had issued to the owner covering the same, the discovery that the insured had set fire to his own property, a demand that the new stock of goods purchased with the insurance money be turned over to the insurance company and a compliance with that demand, a judgment recovered by another creditor against the insured, a bill in equity against him and the insurance company to subject the property in its possession to the payment of the judgment, and a decree finding that the insured was guilty of arson and sustaining the claim of the insurance company. Mr. Lincoln

and H. E. Dummer represented the appellees. The decree of the Circuit Court was affirmed.

142. The People, plaintiffs in error, *vs.* Watkins *et al.*, 19 Ill. 117. This was a writ of error prosecuted from a judgment in favor of the sureties on a recognizance. Lincoln & Herndon represented the defendants in error. The judgment of the Circuit Court was reversed.

Cited by the Supreme Court of Colorado.

143. Partlow, plaintiff in error, *vs.* Williams, 19 Ill. 132. This suit was founded on a note for $6500 payable "in sight exchange on New York." The controversy was as to the amount for which a judgment should be rendered in dollars and cents. Lincoln & Herndon represented the plaintiff in error. The judgment of the Circuit Court was reversed.

144. Illinois Central Railroad Company *vs.* Morrison and Crabtree, 19 Ill. 136. This case involved the right of a railroad company to restrict its liability by contract with the shipper. Mr. Lincoln with two others represented the appellant. The judgment of the Circuit Court was reversed.

Cited by the Supreme Court of the United States and the Supreme Courts of Iowa and Nebraska.

145. Illinois Central Railroad Company *vs.* Hays, 19 Ill. 166. This suit was brought for a breach of contract for the shipment of property. Mr. Lincoln and another appeared for the appellant. The judgment of the Circuit Court was affirmed.

146. The People, plaintiffs in error, *vs.* Witt *et al.*, 19 Ill. 169. This was an action of debt on a recognizance. Lincoln & Herndon represented the defendants in error. The judgment of the Circuit Court was reversed.

147. Sprague, plaintiff in error, *vs.* Illinois River Railroad Co. *et al.*, 19 Ill. 174. The plaintiff in error filed his bill in chancery praying for an injunction to prevent the issuing of county bonds in aid of the railroad. The decree of the Circuit Court denying the injunction was affirmed. Lincoln & Herndon and another represented plaintiff in error. Stephen T. Logan and another appeared for the defendant in error.

Cited by the Supreme Courts of Iowa, Ohio, and West Virginia.

148. McDaniel *et al. vs.* Correll *et al.*, 19 Ill. 226. This was a bill in chancery to set aside a will. The decree of the Circuit Court was reversed because that court had not acquired jurisdiction of the persons of some necessary parties. Lincoln & Herndon and another represented the appellants. Stephen T. Logan and Stuart & Edwards represented the appellees.

Cited by the Supreme Courts of Virginia, West Virginia, Maryland, North Dakota, Colorado, and California.

149. The People *ex rel. vs.* Bissell, Governor, 19 Ill. 229. This was an application for a writ of *mandamus* to compel the governor to issue certain bonds to the relator under an act of the legislature providing for the refunding of the public debt of Illinois. Stuart & Edwards and Lincoln & Herndon appeared for the relator and Stephen T. Logan represented the governor. The application was denied. The court held that it had no jurisdiction to compel the executive to perform a public duty.

Cited by the Supreme Courts of Indiana, Michigan, Colorado, Louisiana, Mississippi, Tennessee, Missouri, South Dakota, West Virginia, and the New York courts.

150. The People *ex rel. vs.* Hatch, Secretary of State, 19 Ill. 283. This was an application for a writ of *mandamus* to

test the validity of an act of the legislature which the governor had inadvertently endorsed "approved," but from which he had erased his name before the bill left his possession and which he had thereafter returned to the legislature with his veto. William C. Goudy, John A. McClernand and another represented the relator. Mr. Lincoln and another appeared for the respondent. The application was denied.

Cited by the Supreme Courts of Maine, Virginia, and Arkansas.

151. Wade *et al. vs.* King *et al.*, 19 Ill. 301. This was a bill in chancery and involved several questions as to the admissibility of evidence. Mr. Lincoln appeared with Stephen T. Logan and another for appellees. The decree of the Circuit Court was reversed.

Cited by the Supreme Court of California.

152. Kester *vs.* Stark, 19 Ill. 328. This was a suit in chancery for the partition of certain real estate. Lincoln & Herndon and another appeared for the appellant. The decision of the Circuit Court was reversed.

Cited by the Supreme Courts of Wisconsin and Oregon.

153. The St. Louis, Alton & Chicago Railroad Company *vs.* Dalby, 19 Ill. 353. This was an action of trespass brought against the railroad company by the appellee because the conductor had ejected himself and wife from the train. It was claimed that Dalby had refused to pay the usual fare. The evidence showed that Dalby had offered to buy tickets, but that the station agent had no tickets to the point of destination and that Dalby could therefore procure none; that he offered to pay the conductor the amount which the tickets would have cost and presented a certificate from the station agent stating that Dalby had applied for tickets; that the

conductor refused them passage unless paid the usual excess cash fare which Dalby refused to pay, in consequence of which he and his wife were put off the train. Lincoln & Herndon represented the appellee and Stuart & Edwards represented the appellant. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of Colorado, Indiana, Minnesota, New Hampshire, Georgia, and Mississippi.

154. Laughlin, plaintiff in error, *vs.* Marshall, 19 Ill. 391. This was a suit by attachment and involved the liability of an endorser of certain certificates of deposit. Lincoln & Herndon and U. F. Linder represented the defendant in error. Stuart & Edwards and another represented the plaintiff in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of Arkansas, Massachusetts, and Colorado.

155. The People *ex rel. vs.* Ridgley *et al.*, 21 Ill. 65. This was an information in the nature of a *quo warranto* filed in the Circuit Court of Sangamon County to test the right of the respondents to continue to act as trustees in winding up the affairs of the State Bank of Illinois. J. B. White, State's Attorney, and Mr. Lincoln represented the People; Stephen T. Logan, Milton Hay, and John A. McClernand appeared for the respondents. The court held the appointment of the relator by the Governor was void for want of power to remove the respondents and appoint their successors, as the State had, at the time the Governor took such action, no interest in the trust which they were to administer. The application having been denied by the Circuit Court, the judgment of that court was affirmed.

Cited by the Supreme Courts of Colorado, Arkansas, Florida, New Hampshire, Nebraska, Montana, and the Federal Courts.

156. Tonica & Petersburg Railroad Company, plaintiff in error, *vs.* Stein, 21 Ill. 96. This suit was brought to recover the amount of a stock subscription. Lincoln & Herndon represented the plaintiff in error; Stuart & Edwards appeared with another for the defendant in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of Indiana and Ohio.

157. Trustees of Schools, plaintiffs in error, *vs.* Allen *et al.*, 21 Ill. 120. This was a bill in chancery to set aside a sale of school lands. Stuart & Edwards and Owen T. Reeves represented the plaintiffs in error; Mr. Lincoln represented the defendants in error. The decree of the Circuit Court was affirmed.

158. Crabtree, plaintiff in error, *vs.* Kile, 21 Ill. 180. This was a suit on a promissory note for the purchase price of a large amount of cattle. The defense set up was a breach of warranty of the condition of the cattle. Lincoln & Herndon represented the defendants in error. The judgment for the plaintiff in the Circuit Court was reversed.

Cited by the Supreme Court of Florida.

159. The Town of Petersburg, plaintiff in error, *vs.* Metzker, 21 Ill. 205. This case involved the construction of the charter of the plaintiff in error. Lincoln & Herndon represented the plaintiff in error. The judgment of the Circuit Court was affirmed.

160. Young *vs.* Ward, 21 Ill. 223. This suit was brought on a note payable to the appellee or her husband, and the wife having sued and recovered judgment on the note, it was sought to reverse that judgment because the husband was not joined as plaintiff and for other reasons. The Supreme Court held that, while the suit should have been brought in

the name of the husband on account of the disability of a married woman under the law, the objection came too late, and the judgment of the Circuit Court was affirmed. Lincoln & Herndon and another appeared for the appellees.

Cited by the Supreme Courts of Colorado, Wisconsin, and Michigan.

161. Isaac Smith, plaintiff in error, *vs.* John H. Smith, 21 Ill. 244. In November, 1856, two days after the presidential election, the plaintiff in error made a bet of one hundred and ten dollars with one Moffett against a buggy owned by the latter that the vote of Fillmore as a candidate for President of the United States was not behind the other candidates in the State of New York. After the wager was made and the money placed in the hands of the stakeholder, Moffett told the latter where the buggy was at that time and that he could take it when he pleased. The stakeholder, after learning that the vote of Fillmore in the State of New York was less than that of the other candidates, turned over the money to the plaintiff in error and went with him and showed him the buggy, but the latter did not then remove it. The defendant in error had notice of these facts, but nevertheless purchased the buggy from Moffett and took possession of it. The defendant in error brought this suit to replevy the buggy from the plaintiff in error. Lincoln & Herndon represented the defendant in error, and contended that the wagering contract was void because against public policy and the Circuit Court so held, but the judgment of that court was reversed by the Supreme Court. The latter court held that in the absence of any statute on the subject, the contract was valid and that the plaintiff in error was entitled to the buggy.

Cited by the Supreme Court of Iowa.

162. Terre Haute & Alton Railway Company, plaintiff in

error, *vs.* Earp, 21 Ill. 291. This was an action of assumpsit to recover the amount of a subscription to the capital stock of the plaintiff in error. The Circuit Court held that there was no liability. Lincoln & Herndon represented the defendant in error. The judgment of the Circuit Court was reversed.

Cited by the Supreme Court of West Virginia.

163. Brundage, plaintiff in error, *vs.* Camp, 21 Ill. 330. This was a replevin suit to recover personal property which the plaintiff had delivered to another upon what is known as a conditional sale, and the person to whom delivery was thus made sold and delivered the property to an innocent third person. The Circuit Court held that the title passed to the third party when he purchased for value without notice of the plaintiff's claim and rendered judgment for the defendant. Lincoln & Herndon represented the plaintiff in error. Logan (Stephen T.) & Hay represented the defendant in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Courts of Oklahoma, Colorado, and the United States Supreme Court.

164. Constant *vs.* Matteson *et al.*, 22 Ill. 546. This was a complicated suit in chancery — several different interests. Logan & Hay represented the appellant and Stuart & Edwards and Lincoln & Herndon appeared for the appellees. The decree of the Circuit Court was reversed and a decree settling the conflicting interests of all parties was entered in the Supreme Court.

Cited by the Supreme Courts of Indiana, Michigan, and Minnesota.

165. Leonard, plaintiff in error, *vs.* Administrator of Villars, 23 Ill. 377. This was a bill in chancery to foreclose a

mortgage. Logan & Hay appeared with another for the plaintiff in error. Mr. Lincoln represented the defendant in error. The decree of the Circuit Court was reversed.

Cited by the United States Supreme Court and by the Supreme Courts of Michigan, Nebraska, Wisconsin, and Colorado.

166. Cass *vs.* Perkins, 23 Ill. 382. This was an action of replevin brought by Cass against Perkins, sheriff, to recover certain horses upon which an execution had been levied. Cass held a chattel mortgage on the same property. The Circuit Court held that the plaintiff in error lost his lien under the mortgage by failing to take possession of the mortgaged property in apt time. Lincoln & Herndon appeared for the appellant. The judgment of the Circuit Court was affirmed.

167. Ritchey, plaintiff in error, *vs.* West, 23 Ill. 385. This was a suit brought by the defendant in error against the plaintiff in error, who was a physician, for malpractice. Mr. Lincoln and another represented the plaintiff in error. The judgment of the Circuit Court was affirmed.

Cited by the Supreme Court of Maryland.

168, 169. Miller *vs.* Whittaker, Young *vs.* Miller, 23 Ill. 453. Both these cases involved the same question and but one opinion was filed by the Supreme Court. The cases were bills in chancery to set aside conveyances on the ground of fraud and misrepresentation as to certain patent rights which were the consideration for the conveyance. The Circuit Court dismissed both bills on the hearing. Logan & Hay and Lincoln & Herndon appeared for the appellants. Stuart & Edwards with another represented the appellees. The decrees of the Circuit Court were reversed.

Cited by the Supreme Court of West Virginia.

170. Gill, impleaded, etc., plaintiff in error, *vs.* Hoblit, 23 Ill. 473. This case involved a question of procedure. Swett & Orme represented the plaintiff in error. Lincoln & Herndon appeared for the defendant in error. The judgment of the Circuit Court was reversed.

171. Kinsey, plaintiff in error, *vs.* Nisley, 23 Ill. 505. This case involved a construction of the statutes of Illinois relating to usury. Lincoln & Herndon represented the plaintiff in error. The judgment of the Circuit Court was affirmed.

172. Gregg *et al.*, plaintiffs in error, *vs.* Sanford, 24 Ill. 17. This was a bill in chancery by the defendant in error to enjoin the sale of certain property by the sheriff, on which the defendant in error held a chattel mortgage. The injunction was granted by the Circuit Court. Lincoln & Herndon represented the defendant in error. The decree of the Circuit Court was reversed.

Cited by the Supreme Courts of Iowa, Arkansas, Mississippi, Kansas, West Virginia, Maine, and Missouri.

173, 174. Columbus Machine Manufacturing Company *vs.* Dorwin *et al.*, and Same *vs.* Ulrich, 25 Ill., original edition 169 (2d edition 153). These were suits for mechanics' liens. The same question under the mechanic's lien law of the State was involved in both. Lincoln & Herndon represented the plaintiff in error. The decrees of the Circuit Court were both reversed.

175. State of Illinois *vs.* Illinois Central Railroad Company, 27 Ill. 64. This was an action of debt brought in the Supreme Court by the State to recover certain taxes claimed to be due the State for the year 1857, and, like the McLean County case, involved the construction of the charter of the defendant company and also involved some other questions

under the revenue laws. Mr. Lincoln appeared with J. M. Douglas for the defendant railroad company. The State was represented by J. B. White, State's Attorney of Sangamon County, and Logan & Hay. The Supreme Court entered judgment for the defendant.

Mr. Lincoln was admitted to the bar of the Supreme Court of the United States on the 7th of March, 1849. He appeared in two cases in that court which are as follows: —

176. William Lewis, for use of Nicholas Longworth, *vs.* Thomas Lewis, administrator of Broadwell, 7 Howard, 776. Mr. Lincoln and another appeared for Thomas Lewis. This case was referred to the United States Supreme Court from the United States Circuit Court for the District of Illinois, on account of a division of opinion between the Circuit Judges on the questions involved. The opinion of the majority of the justices of the Supreme Court was opposed to the contention of Mr. Lincoln. That opinion was rendered by Chief Justice Taney. Mr. Justice McLean wrote a long dissenting opinion in which he held in accordance with Mr. Lincoln's contentions. The case involved the construction of the statute of limitations of Illinois in its application to a suit brought by a non-resident plaintiff.

177. The second case which Mr. Lincoln had in the Federal Supreme Court was that of Forsyth *vs.* Reynolds, 15 Howard, 358. Mr. Lincoln appeared with two others on the part of the appellant. This was a chancery case and involved certain land in the city of Peoria. Salmon P. Chase and N. H. Purple appeared on behalf of the appellee, Reynolds. This case was decided at the December term, 1853, and the decree of the United States Circuit Court for the District of Illinois was reversed.

It is not improbable that Mr. Lincoln appeared and argued other cases in the courts of last resort of other States in the Middle West, but no effort has been made to determine this question. It is believed that sufficient has been set forth in these pages to vindicate the high standing of Mr. Lincoln as a lawyer and that the addition of further cases to this already long list would serve no useful purpose.

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