ABRAHAM LINCOLN AT THE BAR OF ILLINOIS

An address delivered before the Chicago Bar Association, Thursday Evening, February 11, 1909, by John T. Richards, Esq., of the Chicago Bar

ABRAHAM LINCOLN AT THE BAR OF ILLINOIS.

An Address delivered before the Chicago Bar Association, Thursday evening, February 11th, 1909, by John T. Richards, Esq., of the Chicago Bar.

Mr. President and Members of the Association:

Of the early life of Abraham Lincoln, I shall not speak. His life in Kentucky and Indiana—his emigration to Illinois, at the age of nineteen years—his settlement at New Salem, his mercantile ventures there, his first candidacy for the legislature, in which, as he said in later years, he met the only defeat he ever suffered at the hands of the people, are matters of history, with which all are familiar. He had passed through all these experiences before the end of the year 1834. He was then but 24 years of age, and had, within five years after his arrival, in Illinois, been successively, a farm-hand, laborer, clerk and store-keeper. In 1834, he was elected a member of the legislature and re-elected for the three succeeding terms—his last election being in the year 1840. During the time of his service in the legislature, he pursued the study of law and was admitted to the bar of Illinois, March 1st, 1837, being at that time 28 years of age.

At the time of Mr. Lincoln's admission to the bar, the rules of the Supreme Court did not require the applicant to submit to an examination as to his qualifications. The only requirements of the statute, then in force, and which went into effect March 1st, 1833, were that, before he could be permitted to

practice as an attorney or counselor at law, he must have obtained a license for that purpose from some two of the Justices of the Supreme Court, and that he should not be entitled to receive such license until he had obtained a certificate from the Court of some County, of his good moral character.

Having obtained a license from two of the Judges of the Supreme Court, he was required to take an oath to support the Constitution of the United States, and this State, and the person who administered the oath, was required to certify the same on the license, and on presentation of the license in this form, to the Clerk of the Supreme Court, the latter was required to enroll the name of the applicant as an attorney or counselor.

The required oath of office seems to indicate that the legislature contemplated two classes in the profession: (1) attorneys, (2) counselors, for the oath reads:—"I will in all things faithfully execute the duties of an attorney-at-law or counselor-at-law (as the case may be)," etc.

The first rule of Court relating to admission to the bar, was adopted March 1st, 1841, and required all applicants for a license to practice law, to present themselves in person for examination in open court, except in cases where the applicant had been regularly admitted to the bar in some Court of Record within the United States. The Court was at that time composed of nine Judges who were required to perform Circuit duties also. The State was divided into nine Judicial Circuits, one of the Judges presiding over each of the Circuit Courts, and all met together as a Supreme Court, and each was afforded

an opportunity to review orders and decrees of the other members of the Court.

The proceedings in all the Courts were much less dignified and formal than they are in this generation. The Judges and the lawyers met on the Circuit as friends, upon a common level, and as there were no places of amusement, where the long evenings could be spent, they gathered about a common fireside at the country tavern and regaled each other with anecdotes and songs. The Judge who heard their cases threw aside judicial dignity, when evening came, and joined with his professional brethren in the merry making. Life upon the Circuit in those days, as in every new community, had its sunshine and its shadows, but every hardship had its compensation in the good-fellowship, which always prevailed among those sturdy pioneers.

The experiences of Lincoln upon the Circuit were not unlike those of other lawyers of that day. There was little that required great skill or much learning in the law. The interests involved were for the most part, measured by a monetary standard, trivial but they involved the same questions of right and justice, which invite our professional attention in these latter days.

In the *nisi prius* Courts, Abraham Lincoln was called upon to try cases of every class, both civil and criminal, and he entered upon the trial of cases involving but a few dollars, with as much zeal as those involving thousands; but no criminal case in which Lincoln appeared as an attorney is to be found in the reports of the decisions of the Supreme Court of Illinois,—whether this fact is due to his great ability

as an advocate before a jury or to some other cause, I am unable to state, but, as his contemporaries inform us that he tried very many criminal cases, none of which appear in the State Reports, it seems safe to assume that his clients in such cases were acquitted by the jury.

Some of Lincoln's biographers have sought to make it appear that Mr. Lincoln refused to take advantage of a so-called technicality, in order to win his case. This view 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 members of the profession, and while it may be truthfully said that he took no mean advantage of his professional brethren, he did not hesitate to press upon the attention of the Court, any legitimate advantage which the record of the case might furnish.

The first case in connection with which his name appears in the Supreme Court, furnishes evidence of this; being the case of J. Y. Scammon (afterwards Supreme Court Reporter), plaintiff in error vs. Cornelius Cline. Scammon had brought the suit before a Justice of the Peace in Boone County, and the Justice having rendered judgment in favor of the defendant, Scammon appealed to the Circuit Court of Boone County. At the time the appeal from the Justice was perfected, Boone County was still a part of Jo Daviess County, for judicial purposes, and no Court having been appointed to be held in Boone County, it was contended by the defendant's counsel that the appeal should have been taken to Jo Daviess

County, and defendant's motion to dismiss the appeal presented to the Circuit Court of Boone County at its first term, was sustained, and the case was taken to the Supreme Court on error, Mr. Lincoln appearing for defendant in error, and resulted in a reversal of the decision of the Circuit Court.

Another case which was decided upon a technical point raised by Mr. Lincoln, was the case of Maus vs. Whitney, which was an appeal from the Circuit Court of Tazewell County. Mr. Lincoln represented the appellee and moved the Court to dismiss the appeal on the technical ground that the bond was signed on behalf of the surety by his agent whose authority, while in writing, was not under seal, and the motion was sustained; but from this decision Justice Breese dissented in a short but 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, and 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; he however, expressed the opinion that if the alleged reason is absurd, it should not bind the Court.

It is possible that Mr. Lincoln may have appeared

as counsel in some case prior to his appearance in the case of Scammon vs. Cline, already referred to, as the reporter in the preface to the first volume of Scammon's reports, says:—that the practice of the Court, which required an abstract to be filed by counsel for appellant or plaintiff in error, while none was required of appellee or defendant in error had the effect to cause a brief to be filed by the former, while the counsel for the latter usually contented themselves with making their points and citing their authorities on the hearing. The reporter complains also of the neglect of counsel in many cases to sign their names to their abstracts and declares that on account of the manner in which the docket was kept it was difficult to ascertain with precision who appeared as counsel.

The case of Scammon vs. Cline was decided at the December Term, 1840. Mr. Lincoln had been a member of the bar at that time about three years, and was then 31 years of age.

The case of Bailey vs. Cromwell, reported in the 3rd of Scammon, in which Lincoln appeared for the appellant, is of peculiar interest to us. It was decided at the July Term, 1841. The case was an action of assumpsit on a promissory note and was tried in the Circuit Court of Tazewell County, where Lincoln represented the defendant. Lincoln had pleaded the general issue, and filed among other special pleas, a plea of total failure of consideration, in which he set out that the note was given for the purchase of a negro girl, sold by Cromwell to Bailey, and who was represented to Bailey at the time of the purchase, to be a slave and servant, when in fact she

was free; that Cromwell agreed to furnish Bailey with proof that the girl was a slave, which he had failed to do, and that, therefore, the consideration had wholly failed. A finding and judgment was rendered in the Circuit Court, for $431.97 on the note, which was reversed by the Supreme Court, where it was held that the defendant, having shown that the girl was the consideration for the note, and the presumption of law being that she was free, and the sale of a free person being illegal, in the absence of proof to rebut the presumption that she was free, there was no valid consideration for the note.

All the sessions of the Supreme Court, beginning with the July Term, 1839, to and including the December Term, 1847, were held at Springfield.

The organization of the Court was changed by the adoption of the Constitution of 1848, the State being divided into three divisions in each of which, a term of Court was required to be held annually, and the Court thereafter consisted of three Judges elected by the people, one from each Division, who were not required to perform Circuit duty. The first Supreme Court Judges elected under the Constitution of 1848, were Samuel H. Treat, John D. Caton and Lyman Trumbull, and the first cases decided by the Court, as thus constituted, appear in the 5th of Gilman's reports. The 9th and 10th volumes of the reports, contain no cases in which the name of Lincoln appears as counsel. This is no doubt due to the fact that during the two years 1847 and 1848, he was a member of the National House of Representatives for his name appears as Counsel in 17 cases in Volume 8 of the Reports, and 6 cases in Volume 11 of

the Reports and in 13 cases in the 12th Volume. Again Volume 20 of the Reports contains no case in which Mr. Lincoln appears as counsel. This Volume contains opinions in cases submitted in 1858, which was the year of the great debate with Douglas. This would seem to indicate that whatever Mr. Lincoln undertook, received his undivided attention.

It is said by some of Mr. Lincoln's associates at the bar, that he was not well grounded in the principles of the law, and that he was not a well read lawyer, but all admit that he possessed a logical mind. It is doubtless true that he was not what is called a "case lawyer." He did not rely wholly upon precedent. To him the law was indeed the perfection of reason and he cited few authorities in support of his views, but depended upon the presentation of the reasons for the rule for which he contended. His strong Common Sense enabled him to see what the law ought to be and with all the force of his great mind, he endeavored with invincible logic to win the Court to his view of the law and had it not been for the fact that in many cases the Court found itself hampered by precedents, the record of his successes would have been greater still. The only branch of the law which seems to have escaped the activities of Mr. Lincoln, in the Supreme Court, is the Criminal Law. There is no record of any case involving a felony in which Mr. Lincoln appeared as counsel in that court, but in every other branch of the law he was active, and there seems to have been no form of procedure, with which he was not familiar; in applications for Writs of Mandamus and *quo warranto,* he frequently appeared; in chancery

proceedings, as well as the ordinary cases at common law, and cases involving the election laws and revenue laws of the State, he was equally at home.

In his career at the bar, he crossed swords in the arena of his profession with the greatest lawyers of his time, among whom may be mentioned Jesse B. Thomas, O. H. Browning, Leonard Swett, Stephen T. Logan, Edward D. Baker, Elihu B. Washburne, Stephen A. Douglas, J. T. Stuart, Burton C. Cook, James A. McDougall, afterwards a U. S. Senator from California, Lyman Trumbull, B. S. Edwards, Isaac G. Wilson, U. F. Linder, Thomas Campbell, Isaac N. Arnold, and many others whose names are impressed upon the jurisprudence of the State, and with all of whom he held the most cordial relations.

It must not be forgotten that for the greater part of the time between the years 1837 and 1861, the State of Illinois was chiefly an agricultural country, there were then no great commercial or manufacturing interests to call into play the talents of the skillful lawyer, and the value of the property or rights involved, by comparison with the matters requiring the attention of the Courts at the present time, sink into insignificance, and yet Mr. Lincoln and other men who traveled the Circuit in those days, laid for us the foundation of the system of jurisprudence, which is the common law of Illinois to-day.

While it must be admitted that he did not pursue his law studies under the guidance of an instructor, it is nevertheless true, that Mr. Lincoln was self taught, and his comprehensive mind grasped the principles of the law as fully as if he had sat at the feet of the most learned of the profession. He read

thoroughly the standard works of his time, upon every branch of jurisprudence, and while in attendance upon the courts, he listened to the arguments of others learned in the law, and the crumbs of legal knowledge gleaned in this manner, found lodgment in his fertile mind, to be used by him when occasion required.

Lincoln appeared alone in the Supreme Court in 63 cases, of these, the decision was in his favor in 38 cases, and he was defeated in 25.

He appeared as an associate counsel in the Supreme Court in 110 other cases, in which the parties represented by him were successful in 67, and were defeated in 43 cases. What lawyer of this generation can show a greater record of successes?

His entire career at the bar covers a period of only 24 years, during three years of which we have seen, he was not engaged actively in the practice, and yet during that time he appeared in the Supreme Court in 173 cases; of these, the cases of Miller vs. Whitaker and Young vs. Miller, were consolidated on the hearing and one opinion covers both cases (23 Ill., 453), the same is true of the cases of Columbus Machine Manufacturing Co. vs. Dorwin, and the same vs. Ulrich (25 Ill., 153); also Rose vs. Irving and Pryor vs. Irving (14 Ill., 171); also two cases of Myers vs. Turner (17 Ill., 179) and also the cases of Moor vs. Vail and Moore vs. Dodd (17 Ill., 185).

A review of Lincoln's cases in the Supreme Court of Illinois added to an examination of his State papers and the debate with Douglas, will convince the most skeptical that Abraham Lincoln was one of the ablest lawyers of his time.

Mr. Lincoln often appeared before the Supreme

Court of Illinois while Judges Caton and Breese were members of the Court, and they had ample opportunity to judge of his standing as a lawyer, for cases were argued orally at that time more frequently than at the present; the estimate of these men as to his standing and ability is therefore of great value.

Judge Caton said of him, "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 the more readily his mode of avoiding it.—He was equally potent before the jury as with the Court." Judge Breese said of him:—"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."

Stephen A. Douglas declared that Lincoln had no equal as an advocate in the trial of a case before a jury. Leonard Swett who knew him as well, if not better, than any other of his associates on the Circuit, 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 Lincoln at his best, was more sincere and impressive, than any of them and that what Lincoln could not accomplish with a jury no other man need try. Judge David Davis, afterwards appointed by President Lincoln, a Justice of the Supreme Court of the United States, and who was the presiding Judge, in the old Eighth Judicial Circuit of Illinois, during the greater part of the time, while Lincoln traveled that Circuit from County to County, trying cases continually, said that, "in all the elements that constitute the great lawyer, he had few equals. He was great both at *nisi prius* and before an Appellate tribunal."

Thomas Drummond, than whom no greater trial Judge ever sat upon the bench, declared Lincoln to be one of the ablest lawyers he had ever known; the testimony of these distinguished men is convincing, and with the record of his professional career in Illinois, to which might be added a creditable though not very extended practice in the Federal Courts, should set at rest forever the statement sometimes made that Lincoln's standing as a lawyer was not of a high order—for 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, and he who by common consent was classed as the equal, if not the superior, of Leonard Swett and the other distinguished lawyers whom I have named, must be given high place among the leaders of the bar of our state.

Had it not been that his great abilities were demanded by the Republic, in the turbulent times fol-

lowing 1857, there is no reason to doubt that the name of Abraham Lincoln, the Lawyer, would have been known from the Atlantic to the Pacific and from the Great Lakes to the Gulf of Mexico.

His whole career shows that failure was a word unknown to his vocabulary, and prior to the repeal of the Missouri compromise he was making most wonderful progress in his professional career; but when his country demanded his services in that trying hour, when he saw that the iron heel of the slave-power of the South was about to be planted upon 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 an advocate of the rights of the people against an aristocracy founded upon human slavery.

What followed is a matter of familiar history. Abraham Lincoln, the lawyer of Illinois, became the Great Restorer of the Union of the States, and the work of the lawyer was overshadowed by the greater labors and accomplishments of Abraham Lincoln, the Emancipator of a race and the Savior of his Country. Had he lived to witness the realization of the vision which he saw and so beautifully expressed in his first inaugural address, when "The mystic chords of memory, stretching from every battle-field and patriot grave to every living heart and hearth-stone, all over this broad land, will yet swell the Chorus of the Union, when touched again, as they surely will be, by the better angels of our nature," Abraham Lincoln would have proven himself to be

the greatest Constitutional Lawyer of the Nineteenth Century, and many of the mistakes and horrors of the Re-construction period, I firmly believe, would have been unknown to our Country's history. He would have proceeded "with malice toward none, but 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 jewels of still greater brilliancy would have been thereby placed upon the brow of the greatest ruler of modern times, if not the greatest ruler of the ages.