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ABRAHAM LINCOLN LAWYER

BY

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ABRAHAM LINCOLN, LAWYER

It is not so many years since a simple-minded country lawyer from the prairies of Illinois, standing before the Capitol, pledged himself, for a second time, to "preserve, protect, and defend the Constitution of the United States." He had walked through the valley of the shadow of death, and the people to whom he spoke had walked with him. A sudden sunshine fell upon his care-worn face as he closed his appeal: "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 care for him who shall have borne the battle, and for his widow, and his orphan—to do all which may achieve and cherish a just and lasting peace among ourselves, and with all nations." Four years earlier, standing before a multitude who neither understood nor trusted him, he had said to his "dissatisfied fellow countrymen:" "We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory, stretching from every battle field 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."

Ever since, men have asked the questions: Who taught him? Where did he gain the power to say so simply the words that have staid in the memories and hearts of men through all these years?

There was nothing extraordinary about it. This simple-minded country lawyer had sprung from good Southern stock. The Lincolns had been pioneers in New England, Pennsylvania, Virginia, and Kentucky, and they included in their connection men of mark and men of character. Abraham Lincoln had the training of a devoted stepmother, the encouragement of loyal friends, and the inspiration of a brilliant rival who was likewise his friend. Poverty had beset him and had spurred him to success. How this discipline made a lawyer of him, and how his training at the law made him what he was, it is the purpose of this paper to show.

His Indiana boyhood gave him the same opportunities that came to other Hoosier boys. When, in his eagerness to know what the outside world was doing, he ran to the roadside to hail the passing emigrant and ask questions, his father thought him lazy and drove him back to his work. And when, late at night, he lingered by the fireplace to ask other questions of the wayfarer who had come out of the busy East, his father failed to understand, and banished him, reluctant, to his bed, where he left the world of conscious learning for the world of dreams in which he chiefly lived.

"I remember," this boy has said, "how when a mere child, I used to get irritated when anybody talked to me in a way I could not understand. I do not think I ever got angry at anything else in my life; but that always disturbed my temper. I can remember going to my little room, after hearing the neighbors talk of an evening with my father, and spending no small part of the night walking up and down trying to make out the exact meaning of their, to me, dark sayings. I could not sleep, although I tried to, when I got on such a hunt for an idea, until I had caught it; and when I thought I had got it I was not satisfied until I had repeated it over and over

again; until I had put it in language plain enough, so I thought, for any boy I knew to comprehend. This was a kind of passion with me, and it has stuck by me, for I am never easy now when I am handling a thought, till I have bounded it north, and bounded it south, and bounded it east, and bounded it west."

At four years old, at ten, at fourteen, and at seventeen, each time for perhaps a month, the boy whose ambition was to learn to express a thought so plainly "that any boy he knew could comprehend" was permitted to go to school. His teachers were not educational specialists, *but they were men of affairs who stimulated public spirit and ambition in the boy. The influence of these men of affairs, as well as of the groups of the illiterate, who, at the country store of Gentryville, admiringly drew the boy out, is not to be ignored by one who would trace Lincoln's talents to their sources.

It is said that Lincoln as a boy used to walk fifteen miles to Boonville to attend court. On one of these occasions he was so impressed with the brilliant conduct of his case by a lawyer named Brackenridge that he introduced himself (but the ungainly youth made no progress in the acquaintance) and got snubbed. Forty years later at the White House, President Lincoln reminded Mr. Brackenridge of the trial which had left such a deep impression on his mind. It was in these country courts in Indiana and Illinois that there gathered from miles around men into whose colorless lives the incidents

*They were Zachariah Riney, who is buried within the Trappist monastery of Gethsemane, and Crawford, a lifelong resident of Spencer county, Indiana, and a justice of the peace, and Dorsey, coroner and county treasurer, library and bridge trustee, who led in every movement for the public good, and the boy's friend, John Pitcher, legislator and judge, who lent him the Indiana statutes and planted in his breast that interest in the law for which he came to hunger and thirst as for righteousness itself.

of a trial at law brought much that was of absorbing interest. "The court rooms were always crowded," writes Mr. Arnold,* Lincoln's colleague and biographer. "To go to court and listen to the witnesses and lawyers was among the chief amusements of the frontier settlement. At court were rehearsed and enacted the tragedy and comedy of real life. The court room answered for the theater, concert hall, and opera, of the older settlements. The judges and lawyers were the stars, and wit and humor, pathos and eloquence, always had appreciative audiences."

In 1830 came the migration to Illinois. The boy, now twenty-one, took the lead, driving the oxen, and peddling from house to house the little stock of notions he had laid in for this matchless commercial opportunity. He was spokesman as well as leader, and plied every wayfarer with questions about the doings of men in the political and social life of the sociable Wset.

In Indiana Abraham Lincoln, being under twenty-one, had been his father's serf. In the Land of Full Grown Men—for that was the meaning of the Indian name Illinois.—he was now emancipated by law. For a few years more he was still to do the bidding of other men as laborer and clerk. As his thirst for knowledge, his social instinct, and his ambition, brought him more and more into the fellowship of men, he was not slow to abandon the "hired man's" job and begin to climb.

The story of the Black Hawk war of 1832, young Lincoln winning his captaincy by his physical prowess, as Saul and David won their kingdom, is the story of Lincoln's awakening to the possibilities of a political career. On this summertime

*Isaac N. Arnold, "Reminiscences of the Illinois Bar, Forty Years Ago," in Fergus Historical Series.

frolic he won renown as an athlete and a teller of stories. He was not averse to earning a dollar in a foot race or a wrestling match, but what was more to the point, he gained among those two or three thousand pioneer soldiers the good will of many who in later years were to be his supporters in politics, his clients, and his colleagues at the law. Here too he won the friendship of his major, John T. Stuart, who, two years later served with him in the Illinois legislature. Major Stuart was already a successful practitioner. Stuart encouraged Lincoln to study law, and after the election lent him books. These the young man carried with him as he walked back and forth between Springfield and New Salem. Both before the session and later, when, the burdens of state being laid aside, the princely income of three dollars a day became no longer available, he plunged into his studies. He was admitted to the bar and removed to Springfield in 1837. The advertisement in the Sangamo Journal, dated April 12, 1837, proclaims that

"J. T. Stuart and A. Lincoln, Attorneys and Counsellors at Law, will practice conjointly in the courts of this judicial circuit. Office No. 4, Hoffman Row, upstairs."

The first circuit extended from Alton to the Wisconsin line. Despite the paucity of population and the difficulties of transportation, it offered a tempting field for professional activity. These very obstacles made opportunities for him. He throve on hardships and exposure, and, made his iron constitution and his gigantic physical strength serve his clients' necessities as no other lawyer of that day could.

Before his removal to Springfield, Lincoln had served two terms in the legislature; and had been postmaster under a democratic president. The meager income from this source was increased substantially by a three dollar per diem earned by him as deputy under a democratic county surveyor, John

Calhoun, who afterwards made a name for himself in the flaming pre-war politics of Kansas. The surveys of Petersburg and Albany, Illinois, are among those on file in the records of Menard and Logan counties, with the certificate of A. Lincoln as deputy under John Calhoun and another county surveyor, T. M. Neale. These two positions enabled him to continue his studies and to undertake a mercantile venture whose early collapse burdened him for years with what he was wont to call "the national debt."

A customer at this store of Berry and Lincoln at New Salem might have sought in vain for Berry, the drunkard. Lincoln he might have found lying on his back in the grass—feet propped high against the shady side of a tree, and lank body slowly squirming about to keep out of the sun,—his mind so absorbed in Blackstone that he seemed wholly indifferent to business. It was while he was managing partner of Berry and Lincoln's department store that he started his law library. As he tells it: "A man who was migrating to the west drove up with a wagon which contained his household plunder. He asked if I would buy an old barrel, . . . which he said contained nothing of special value. I paid a half dollar for it, put it away, and forgot all about it. Some time after, I came upon the barrel and emptying it I found at the bottom a complete edition of Blackstone's Commentaries. I began to read those famous works and I had plenty of time, for during the long summer days when the farmers were busy with their crops, my customers were few and far between. The more I read, the more intensely interested I became. Never in my life was my mind so absorbed."

From this unpromising beginning to the far-off day in 1864, when he received the degree of Doctor of Laws, from Princeton University, the evolution of the lawyer is the story

of patient growth in that fine sense for the feeling of others and a recognition of their point of view which marks the gentleman,—a spiritual growth, and a growth in wisdom and in power.

Two letters, written years later, throw some light on his method of preparing for the law: To a young friend he wrote in 1855:

"If you are resolutely determined to make a lawyer of yourself the thing is more than half done already. It is a small matter whether you read *with* anyboy or not. I did not read with any one. Get the books and read and study them till you understand them in their every feature, and that is the main thing. It is of no consequence to be in a large town while you are reading. I read at New Salem, which never had three hundred people in it. The *books* and your *capacity* for understanding them are just the same in all places. . . . Always bear in mind that your own resolution to succeed is more important than any other one thing."

To another he wrote in 1860:

"Yours asking the 'best method of obtaining a thorough knowledge of the law' is received. 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., in succession. Work, work, work, is the main thing."

Earlier in his career than the Blackstone incident is the acquisition, by some process now forgotten of the Indiana Revised Statutes of 1824. This was probably Lincoln's first law book. Its value to the young lawyer must have been political rather than professional. It contained the Declaration of Independence, the Ordinance of 1787 creating the North-

west Territory, the Constitution of the United States, and the Constitution of Indiana. In the Ordinance of 1787, and in the Indiana constitution, he first found formal, authoritative expression of the people's disapproval of slavery. The constitutional provision was as follows:

"As the holding of any part of the human creation is slavery . . . can only originate in usurpation and tyranny, no alteration of this constitution shall ever take place so as to introduce slavery . . . in this state."

This book doubtless came into his hands in Indiana, whither his father had migrated from Kentucky to escape the competition of slave labor, and there is little doubt that its provisions against slavery, as well as those for reclaiming fugitive slaves, helped to determine his attitude on a question which absorbed so large a part of his life. It is said to have been given him by John Pitcher of Rockport.

At New Salem Lincoln boarded with a justice of the peace who bore the odd name of Bowling Green, and studied Kirkham's Grammar under Menter Graham, the impecunious village schoolmaster, and read and committed to memory the poems of Burns and the plays of Shakespeare which he borrowed from Graham. New Salem is no longer even a deserted village. The store where Lincoln kept post office and created "the national debt" is demolished and, board by board, is being made over into souvenirs. The village is no longer even a memory to the octogenarians of Menard county.

In the files of the Circuit Court at Petersburg, a mile from New Salem, is still to be seen a declaration in Lincoln's handwriting, in the case of Nancy Green versus Menter Graham which shows how the young lawyer had to shut his eyes to Menter Graham's claims upon his friendship in order to serve Nancy Green's necessities. A fac simile, or "sick family" as Lincoln called it, accompanies this paper.

Before justices of the peace, in the circuit courts of forty-five different counties in Illinois, and occasionally in Indiana, in the federal courts of Illinois, Ohio and probably Missouri, in the state and federal supreme courts, the practice that Abraham Linclon built up in twenty years was remarkable. In the court reports and in the nisi prius dockets is to be found every conceivable variety of cases.*

It would be a mistake to imagine that there were not plenty of lawyers to conduct the litigation, or that there was any monopolizing of the practice by a few men. Thus, in Eighth Illinois, containing cases decided in 1845 and 1846, Lincoln had seventeen cases, but eighty-three other lawyers in the same volume had from one to sixteen cases each. When Tenth Illinois was published in 1849, a thousand lawyers were enrolled in the Supreme Court of the State. "The days of men's innocency" had already passed.

The office docket, containing a partial account of the transactions of the three firms of Stuart and Lincoln, Logan and Lincoln, and Lincoln and Herndon, between 1838 and 1860, is still to be seen at Springfield. It contains some four hundred entries of service rendered, omitting many cases in

*Some of the subjects of these cases may be of interest; Jurisdiction of justice of the peace, the validity of a slave as the consideration for a promissory note, enforcement of gambling debts, seduction, fraud, sale of real estate of decedent, guardianships, mortgage and mechanic's lien foreclosure, divorce, specific performance, suretyship, county seat wars, ejectment, wills, the defense and sometimes the prosecution of crimes, damages for personal injuries, for prairie fires, rescission, slander, fees and salaries, mandate, quo warranto, injunction, replevin, patents, taxation, insurance, carriers, partition, liquor questions, political questions, statute of frauds, railway stock subscriptions, eminent domain, trusts and trustees, questions of constitutional law, and procedure at law and in chancery. In the circuit courts, where Lincoln was often employed at the time the case was called for trial no case seemed too small to command his service. The trials in that day indicated a litigious disposition in the community which has happily disappeared with the advance of civilization.

which we know Lincoln to have been employed. The extent of these employments it is impossible now to learn, for the federal court records of Judges Pope and Treat and Justice McLean were destroyed in the Chicago fire and the court dockets in many counties fail to indicate the names of counsel, while in all the records are incomplete.

Mr. Frederick Trevor Hill, in his admirable work, "Lincoln the Lawyer," publishes a list of 172 cases in the Illinois Supreme Court, in which Lincoln's name appears as attorney of record. To this list three others should be added:

Cunningham vs. Fithian, in 6th Ill., 269. (His name was omitted by the official reporter. See 7 Ill., 650) and State of Illinois vs. Illinois Central, etc., Co., 27 Ill., 64, and Walker vs. Herrick, 18 Ill., 570, a suit brought and won for the Illinois Central Railroad Co., under his direction.

In relation to the foregoing, the Illinois Central Railroad Company, in a brochure, privately published, mentions Walker vs. Herrick, 18 Ill., 570, a suit involving the validity of certain land grants which was brought upon Lincoln's advice and won upon the theory advanced by him in his written opinion given to the railroad company in 1856.

The reports of the Supreme Court of the United States contain several Illinois cases in which the names of counsel are not given. Three of Lincoln's cases are there reported, however.

United States vs. Chicago, *7 How. (U. S.) 185; Lincoln for appellee.

Lewis, for the use of Nicholas Longworth vs. Lewis, 7 How. (U. S.) 775; Lincoln for appellee.

Forsyth vs. Reynolds, 15 How. (U. S.) 358; Lincoln for defendant.

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*That Lincoln appeared in this case although his name is omitted from the official report is stated on the authority of the Clerk of the Supreme Court of the United States.

In the reports of the federal courts, incomplete as they were, thirteen of his cases appear.**

From these reported cases it would seem that Lincoln was open to the charge of being a corporation lawyer, which in these later days of class-conscious democracy is an obstacle to political advancement. At a time when corporations carried on but a small part of the business or the litigation, his regular clientage included all classes of municipal corporations, besides mercantile and manufacturing companies, banks, insurance companies and railroads—the last named including the Illinois Central, the Atlantic, the Alton and Sangamon, and the Tonica and Petersburg roads.

His request for a renewal of his pass as attorney for the Alton is in his characteristic humor:

**These are:

Lincoln vs. Tower, 2 McLean, 473; Lincoln for plaintiff.

January vs. Duncan, 3 McLean, 19; Logan & Lincoln for plaintiff.

Sturtevant vs. City of Alton, 3 McLean, 393; Logan & Lincoln for defendant.

Lewis vs. Administrators of Broadwell, 3 McLean, 568; Logan & Lincoln for defendant.

Voce vs. Lawrence, 4 McLean, 203; Lincoln for plaintiff.

Lafayette Bank vs. State Bank of Illinois, 4 McLean, 208; Lincoln for plaintiff.

Moore vs. Brown, 4 McLean, 211; Lincoln for defendant.

Kemper vs. Adams, 5 McLean, 507; Logan for plaintiff. Lincoln for defendant.

United States vs. Prentice, 6 McLean, 65; Logan & Lincoln for defendant.

Columbus Insurance Co. vs. Peoria Bridge Ass'n, 6 McLean, 70; Lincoln for plaintiff. Logan for defendant.

United States vs. Railroad & Bridge Co., 6 McLean, 516; Lincoln for defendant.

McCormick vs. Manny, 6 McLean, 539; Lincoln for defendant.

"Feb. 13/56

R. P. Morgan, Esq.

Dear Sir,

Says Tom to John "Here's your old rotten wheelbarrow." I've broke it usin' on it. 'I wish you would mend it case I shall want to borrow it this arter-noon.'

Acting on this as a precedent, I say, 'Here's your old 'chalked hat.* I wish you would take it and send me a new one; case I shall want to use it the first of March."

Yours truly,

A. LINCOLN.

Of the one hundred and seventy-five cases in the Illinois reports he won ninety-two and lost eighty-three; of the ten cases in McLean's reports (U. S. Cir. Ct.) whose final decision is given he won seven; and of the three cases in the U. S. Supreme Court he won two.

In the legislature of 1834 Lincoln served with John T. Stuart, Stephen T. Logan and Stephen A. Douglas. The legislature of 1836 brought together a remarkable group of great men, Lincoln and Douglas, Stuart and Logan, Edward D. Baker, afterwards Senator from Oregon, Orville H. Browning, afterwards Senator and secretary of the Interior, James A. Shields, afterwards general in the Civil war and Senator from three different states, John A. McClernand, afterwards congressman and general in the Civil war, Dan Stone, afterwards circuit judge but remembered only for the protest against slavery which he and Lincoln registered on the legislative journals of that session, William A. Richardson, later U. S. Senator, John A. Logan, general and senator, and John J. Hardin,—all of them brilliant men and soon to become

*The vernacular for pass.

leaders of the bar of the young state. The chief value of this legislative experience to the young lawyer was in the opportunity it gave him to enlarge his acquaintance among his own profession. The laws passed from 1835 to 1839 did not call for the wisdom of Solon. Beside the internal improvement acts, about the only creative legislation then enacted is a series of statutes declaring Spoon River, Crooked River, The Snicarty, Skillet Fork, and others of their kind, to be navigable streams. And these enactments suggest Lincoln's familiar conumdrum: "Calling a dog's tail a leg, how many legs has he?"

Lincoln came to Springfield penniless but by no means friendless. As one of the "Long Nine" from Sangamon County he had been the chief factor in their successful effort to remove the capital from Vandalia to Springfield, a service for which the people of Springfield did not lack appreciation. The invitation to a partnership with Major John T. Stuart was a compliment, and the new association gave him a position at the bar and in the community which would not otherwise have been his so soon. Although Stuart's long absences while campaigning and at Congress diminished the income of the firm, they threw responsibilities upon young Lincoln and gave him confidence in himself.

Lincoln was enrolled as a member of the bar of the Illinois Supreme Court on March 1, 1837. He was admitted to practice in the Supreme Court of the United States at the November term, 1848. He was never without a partner.

The partnership with Major Stuart commenced April 12, 1837,* and continued for four years.

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*Stuart gives it April 27, 1837, but the advertisement in the Sangamon Journal is dated April 12, and is no doubt authoritative.

Stuart was two years older, a man of commanding presence, of dignified and courtly manners, quick to make friends and able to hold them loyally to himself. He was a graduate of a Kentucky college and an old-fashioned, polished gentleman, a successful lawyer, and always a politician. This intimate association of four years, with a common interest in the law and in politics, was worth much to the junior partner.

The old office docket for this period contains many entries of interest, showing the character of the early practice and the fees charged. An entry in 1838 reads: "Lincoln rec'd of Z. Peter $2.81¼ cents which is taken in full of all *ballances* due up to this date." Another: "Johnson v. Gay. Forcible Detainer. Before Justice Clement. Paid Lincoln by board $6."

A third shows a charge of $7.50 for a proceeding to sell a decedent's real estate to pay debts, and a payment of the account in three installments.

The firm of Logan and Lincoln lasted from April 14, 1841, until September 20, 1843. Judge Logan had been circuit judge from 1835 to 1837 and had resigned his place at a salary of $750 a year to take up what for some years was probably the largest general practice at the Illinois bar. He was nine years older than Lincoln. Elihu B. Washburne describes Logan as "A small thin man, with a little, wrinkled, wizened face, set off by an immense head of hair which might be called frowsy. He was dressed in linsey woolsey and wore very heavy shoes. His shirt was of unbleached cotton and unstarched and he never incumbered himself with a cravat. His voice was shrill, sharp, and unpleasant, and he had not a single grace of oratory; but when he spoke he always had interested and attentive listeners. Underneath this curious and grotesque exterior there was a gigantic intellect."

Just why the partnership was so brief has not been told. Perhaps Lincoln did not accommodate himself enough to Judge Logan's ideas and was too easy going and unmethodical, and too independent of any sort of restraint; perhaps the ambition of both men to go to Congress made it hard for them to work in harmony. At all events the firm prospered and Logan was its controlling spirit. Lincoln was an unsuccessful candidate for the congressional nomination during this period, although later he was elected for one term. Logan became his successor on the Whig ticket, but was defeated. The only pleadings of the firm to be found in the files of Sangamon county are in Judge Logan's handwritnig. Unless Lincoln's autographs of this period have been stolen, this would indicate that Logan kept the reins of authority in his own hands. Practically all of the pleadings of Stuart and Lincoln and of Lincoln and Herndon—many of which I have seen—are in Lincoln's hand, and as clear as if written yesterday. They cover so many sheets, in the old Sangamon County files, and in some other counties where the thief has not yet been, that one wonders how Lincoln had time for anything else. All are written with laborious care. The apt word is used; there are singularly few corrections; and the sand then used as a blotter still clings to the sheets. The spelling is reasonably correct—much more so, at any rate, than that of George Washington in his autograph manuscripts.

It is easy to see, without reflecting on either partner, how these two positive characters, so unlike in many vital respects, found it hard to work together. And it is pleasant to remember that in later years, when Lincoln's giant struggle with Douglas had made him a world figure, Logan was his devoted friend, contributing of his fortune, as well as of his store of wisdom and influence, to the advancement of his former part-

ner and close friend, and, on that bitter day in April, 1865, offering the final tribute of the bar to the memory of the man they loved.

Lincoln's choice of Herndon for a partner seems a strange one after his close association with a man of Logan's character and ability, and particularly in view of Herndon's subsequent indifference to Lincoln's high repute. Herndon's father was Archie G. Herndon, one of "the Long Nine," and a politician of prominence at Springfield. And "Billy" Herndon, as he was called, was the cousin of "Row" Herndon of the Clarys Grove "gang" at New Salem, to whose support Lincoln owed his captaincy and his first legislative successes. The young lawyer had graduated at Jacksonville and had clerked in Joshua F. Speed's store where he was known as a scholarly youth with some native ability and mere assurance. The recommendation of Speed, Lincoln's only intimate friend, and a sense of loyalty toward the friends of his earlier days had their influence. No doubt, too, being self-taught and timid about his own attainments, Lincoln attached undue importance to the young man's college training. Herndon helped in the trial of their earlier cases—much as a law clerk would—and drove to Petersburg and nearby county seats in the circuit, sometimes with Lincoln and sometimes alone. But, although sharing equally in the earnings of the firm, he was not looked upon as an equal participant in its responsibilities, and,—so we are told by a client of the firm—was not consulted about important matters when Lincoln was absent. But for the Herndon biography, the intimacy of the association would, perhaps, be forgotten.

In Springfield, the Supreme Court in the forties sat twice a year, where the law required it to "continue until the business before it shall be disposed of." The library was in the court

room. Here the lawyers from all over the state, gathered to look up their authorities, prepare their arguments, and, in the evenings, to hold reunions. At these gatherings Lincoln was the center of an interested group. His stories amused them, and his talk, especially when stimulated by the congenial companionship and esprit de corps of the bar of that day, always commanded attention.

Lincoln's first case in the Illinois reports, decided in 1840, was Scammon v. Cline, 3 Ill., 456. It had been tried before Judge Dan Stone in Boone County and won below by Lincoln's client, but was reversed by the Supreme Court. It was a J. P. appeal, and in the circuit court it was dismissed on technical grounds set up by Lincoln. One of the Supreme judges who reversed the case was Stephen A. Douglas, then only twenty-seven years old, and the Judge Stone who decided it below, was the man who had joined with Lincoln in protest in the legislature of 1837 against the extension of slavery.

His last case in that court was State vs. Illinois Central R. R. Co., 27 Ill., 63, involving the principle that railway property must be taxed at its present, and not at its prospective value, and that the inquiry should be, what it is worth for the purposes for which it was designed and not for any other purposes to which it might be applied.

Between these two cases are several in which new and important principles were established by Abraham Lincoln.*

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*Among these are:

Bryan vs. Wash, 7 Ill., 557, which has been cited and followed eighty-five times.

Griggs vs. Gear, 8 Ill., 2, cited 51 times.

Perry vs. McHenry, 13 Ill., 227, cited 47 times.

Ross vs. Irving, 14 Ill., 171, cited 33 times.

Illinois Central R. R. Co. vs. Morrison, 19 Ill., 136, cited 24 times.

A list of these will be found in the appendix.

It is said that Lincoln was not learned in the law. True it is that in those days the publication of court decisions was no such splendid riot of woodpulp and electrotype as it is today. But the text books of Greenleaf and Story and Parsons were both law and literature, and the libraries accessible to attorneys were not made up then of machine made books compiled and edited vicariously as they are today.

With the library of the Supreme Court just across the street, there was no need for many books in the dismal room where Lincoln and Herndon held forth. Though absent from his Springfield office much of the time, Lincoln had access to all the books that are the recognized classics of English and American law. These he must have known familiarly for he cited them continually in his briefs.

The list includes the Indiana Revised Statutes of 1824, Chitty's Pleading, Kent's and Stephen's Commentaries, Greenlief on Evidence, Parsons on Contracts, Redfield on Railways, Angell & Ames on Corporations, Angell on Limitations and Story's Equity.

The Springfield law office has been described many times. In the reminiscences of the late J. B. Bennett of Cincinnati, published in Rough Notes, volume 41, at page 78, appears this description of the man in his office:

"At the top of the stairway you directly entered a long room, destitute of every honest claim to be titled an office. It was a low, black, schooner sort of an affair—dusty, dingy, and destitute of ornament, unless the lawyer's old rusty stove, like the one horse shay, ready to collapse, might be so construed. The front part of the room, while absolutely barren, was nevertheless impressibly full of emptiness. At the back part was a large pine table. On this table were a few law

books, scattered in appropriate disorder. Towards the end of the table, uncommonly tall, stood a giant man intently reading a law book, impressing the spectator with the idea that the man was either too tall for the room or that the ceiling was too low for the man. The book he was reading was slightly inclined so as to catch the faint rays of light on the pages from a rear window. The shade and background of the whole with the somber hue of the reader, made a very dark picture, and the man stood like a silhouette, excepting a momentary flash of the eye which he gave to the intruder and then continued his reading. That glance of the eye was the only recognition or sign of life."

Mr. Arnold* describes the man thus:

"Lincoln was six feet, four inches in height and would be instantly recognized as belonging to that type of tall, large-boned men, produced in the northern part of the Mississippi Valley, and exhibiting its peculiar characteristics in the most marked degree in Tennessee, Kentucky and Illinois. In any court room in the United States he would instantly have been picked out as a *western* man. His nature, figure, dress, manner, voice and accent, indicated that he was of the northwest. In manner he was always cordial and frank, and although not without dignity, he made every person feel quite at his ease. I think the first impression a stranger would get of him, whether in conversation or by hearing him speak, was, that this is a kind, frank, sincere, genuine man; of transparent truthfulness and integrity; and before Lincoln had uttered many words, he would be impressed with his clear good sense, his remarkable simple, homely wit and humor."

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*Isaac N. Arnold, "Reminiscences of the Illinois Bar, Forty Years Ago," in Fergus' Historical Series, p. 145.

Mr. S. Wesley Martin, afterward of California, has described Lincoln's manner and looks:

"He was a convincing speaker. He used no gestures, except that occasionally he would extend his long right arm and point with his index finger at the people in a way that seemed to say, 'Don't you see?'

"I shall never forget how Lincoln was dressed. His coat was of black glossy alpaca. It seemed to be several inches too short for him, and he buttoned the lowest button so that the upper part of the coat spread outward as if to make room for something to be tucked in at the sides. The hat was a tall stove pipe and had evidently seen better days. It looked as if a calf might have gone over it with its wet tongue."

When he appeared on the platform or in the parlor he showed his respect for his audience or his associates by dressing properly and in a way that would have been wholly incompatible with the dust or mire of the prairie roads.

Lincoln's reputation as a lawyer was made between 1840 and 1854. From traveling the Eighth Circuit and the counties adjoining he extended his practice into every part of the state, until, with the added fame which his debates with Douglas in 1858 brought him, there were many points in Illinois where in every important case it was considered necessary to engage the services of Mr. Lincoln. One cannot overestimate the value of this hard life on the circuit both as discipline developing the man's powers and as an avenue toward that extraordinary personal acquaintance which meant so much to him in his political struggles later on.

The supreme court was in session only a few days in the year, and the circuit court at Springfield sat for only a few weeks. The rest of the year he "rode the circuit" by stage and on horseback until he could afford a buggy, visiting each

of the fourteen towns regularly and extending his journey to almost as many adjoining towns.

The life on the road, hard as it was, with judge, lawyers, witnesses, hangers-on, and even prisoners, traveling together and eating and sleeping together, the food unspeakable, and rest unknown, must, nevertheless, have had its compensating joys. That was no ordinary company. It was not unlike the pilgrimage to Canterbury. There was David Davis, the companionable judge, who know the law, and who loved a laugh. And there were Logan the scholarly, and Stuart, the shrewd and kindly, Swett, the clever, and Browning, the handsome, and Lamon, the amusing, and Weldon, and Gridley, and Parks and Harmon, and Ficklin, and Linder, and Whitney, and Oliver L. Davis, and the best beloved Abraham Lincoln. Some of them traveled to only two or three counties, but David Davis and Lincoln went the whole circuit, Davis because he had to, and Lincoln because be loved it.

"I well recollect," says Mr. Whitney, in his Life of Lincoln, "a term of court at Urbana, where a prisoner on trial for perjury used to spend his evenings with us in the judge's room, and a term at Danville where a prisoner on trial for larceny not only spent his evenings in our room, but had his meals with us and took walks in our immediate company."

The courts in the fourteen counties commenced in September, and continued until midsummer, sitting in each town from two days to a week.

Leonard Swett says: "I rode the Eighth Judicial Circuit with Lincoln for eleven years, and in the allotment between him and the large Judge Davis in the scanty provision of these times, as a rule I slept with him. Beds were always too short, coffee in the morning burned or otherwise bad, food often indifferent, roads simply trails, streams without bridges

and often swollen, and had to be swam, sloughs often muddy and almost impassable, and we had to help the horses when the wagon mired down, with fence rails for pries."

Naturally the business of a court that sat for only a few days and then adjourned for six months had to be crowded through in such a way as to afford scant opportunity for preparation. Thus the rule of the Macon Circuit Court (1840) reads: "All issues are required to be made up on call of the cause for trial."

Judge Davis had little patience with technicalities. "'It appears to me,' Swett once commenced, in an argument on demurrer. 'I don't care how it appears to you,' was the judge's tart response. 'Hand up your authorities if you have any.'"

The lawyers were wont to follow the court from county to county, often without employment except what they picked up on arrival. Sometimes the harvest of cases would not pay the cost of the journey, and, again, after a lawyer's reputation as a case winner had become established, the business would be all that could be desired.

The trip to Tazewell county, seventy miles, as shown by the docket, cost $21.25. To extend it to Decatur and Danville and Paris made the expense one which a less successful lawyer could not have afforded. The business that came to Lincoln on such a trip must sometimes have been disheartening. His first case at Decatur is People v. Adkin, in which the defendant, charged with larceny, having pleaded his inability to employ counsel, Judge Treat appointed Lincoln to defend. The trial, with Lincoln's kinsman, Hanks, on the jury, resulted in an acquittal. The only case at one term at Danville was Murphenheim vs. Scott, (1850), where the jury disagreed and the parties re-submitted the case and by agree-

ment suffered a verdict to be entered for seven dollars and a half, each party to pay half the costs—a commendable compromise, no doubt, and yet a meager feast to set before a lawyer who had traveled over a hundred miles on horseback. At the Fall term, 1852, at Danville, Lincoln's entire calendar consisted of three little cases. At Paris, the next week, his appearance is noted in nineteen different suits, which, for a term of five days, held one hundred and fifty miles from home, is no mean showing.

One feature of Judge Davis itinerant court was his "night sessions." The lawyers, attracted to the town by the advent of the court, would find time hanging heavy on their hands and, at the afternoon adjournment, would be notified to return after supper. This would bring together the best of the story-tellers and the most entertaining of the talkers. Sometimes, to keep up the form of court proceedings and thus justify the called-session a mock trial would be had which would give the lawyers an opportunity for the once popular practical joke. It was at one of these sessions, known as the the "orgmathorical court," that Judge Oliver Davis tried Abraham Lincoln, on the criminal side of the court, for impoverishing the bar by charging unreasonably low fees and by defending poor clients without pay. Lincoln was released with a severe reprimand and a suspended sentence.

"At these meetings," says "Uncle" Felix Ryan, of Lincoln, Illinois, "The lawyers would come to the court room and have fun together until the night was nearly gone. Many of the stories would be told by Mr. Lincoln. Judge Davis would sit there and pretend to read his docket until Lincoln would get him interested. I recall how Judge Davis' fat sides would shake with laughter as he said: 'Well, well, Mr. Lincoln, what next?'"

Squire J. T. Rudolph, of Lincoln, remembers when Judge Davis would call them all together as if to try cases, and the people of the town (Mt. Pulaski) would crowd in to enjoy an evening's entertainment as provided by the lawyers. Ward H. Lamon, (some times Lincoln's associate in the practice at Danville) was a good singer and would mount the big walnut table and sing and dance to the delight of every one.

When the night sessions were not held, the bar would gather at the tavern, and, doubtless, to forget the misery of crowded beds and unspeakable meals, would keep the talk going all night long.

One of these taverns advertised, "Entertainment for Man and Beast," and like many of the rest discriminated in favor of the beast. Here decent and vulgar men mingled in admired confusion. Money was won and lost at cards, and stories hopelessly coarse had no less currency than those did whose wit and humor have made them immortal. To the promiscuous character of these gatherings is due no doubt the fact that over a half century later many stories are attributed to the civilized men of the company which never reached their ears.

It was during this period that an incident occurred of which Judge Blodgett, for many years United States Judge, is said to have told. It had rained for days, and when the company of circuit riders came to a swollen stream, apparently miles wide, Lincoln was the only one who knew the country well enough to act as guide. He saw his opportunity and agreed to conduct the party across if they would do exactly as he bade them. It was the boys' game of "follow my leader." The pledge was given and every lawyer had to strip, tie his clothes in a bundle, mount his horse, and follow on. This grotesque, naked company, including the cherubic figure of David Davis, and the giant form of Abraham Lincoln, wound

its way up and down the stream on horseback, until, much as Moses led the hosts of Israel through the Red Sea without wetting a garment, Lincoln conducted them to dry ground on the farther side of what they supposed was a flood, but which at no time rose higher than a horse's knees. One can imagine Lincoln's laugh at the threats of revenge which his associates uttered when they found what an absurd picture they had presented.

In many of these towns a few old men still live who tell with undiminished enthusiasm their recollections of that far off time. Some of the communities are not unlike what they were seventy years ago. Petersburg, is still the home of the Rutledges, Greens, Clarys, and Armstrongs. And all over the circuit it was still possible in recent years to learn from men who knew Mr. Lincoln of incidents in his practice as yet unpublished.

"He was a very smart trial lawyer," Judge Lyman Lacey, of Havana, relates. "As he went along in easy fashion he admitted evidence offered by his opponents and conceded their points until it looked as if he had given his whole case away. 'I don't contest this point,' Lincoln would say. 'O! I'll freely admit that'. But all the time there would be one or more strong lines of defense left, and, after waving aside all that he had yielded, he would conclude: 'But here, gentlemen, is the real point in this case, and on it we rest our defense.'"

Judge Samuel C. Parke has noted this characteristic. He says: "In a closely contested case, in which he was assisting me, in his closing speech, he was extremely liberal in his admissions in favor of the defendant. We got a verdict for about two-thirds of our claim. I said to him: 'Lincoln, you admitted too much.' 'No', he answered, 'That's what gained the case.'"

It is not easy to take a series of pleadings and the skeleton of an argument as we find them sixty years after and get from them any picture of the comedy or tragedy which was enacted when such a case was tried. Much must be left to the imagination. But to the imagination these old records sometimes suggest what may have happened. There is a case on the docket of Edgar County for 1850 entitled Albin v. Bodine, for slander. The record entries are: "Lincoln and Linder for defendant. Trial by jury. Verdict for defendant." But in the files is a faded sheet of legal cap in Lincoln's hand, entitled "Brief" which sets out the synopsis of points for the argument to the jury. And every point seems to be for the other side. This brief is a rare document, for its author had a tenacious memory and seldom used notes. Let us read some of these points:

"1st. Albin stole Blady's horse out of my pasture last night. He is a horse thief and that is what he came here for.

"6th. 'You know you stole that horse and it is not the first horse you have stolen; and I believe you follow the business.'

"9th. 'He is a damned little horse thief and his business is horse stealing, and he came here for that business and that is not the first horse he has stolen. He is a horse thief and I will send him to the penitentiary.'

"*James Murphy.* Dr. Albin stole the Priest's horse out of my pasture.

"*Crimen falsi.*"

One theory of the defense is that the defendant said all that he is charged with saying—"damned horse thief" and all—and that his counsel in one of his scathing philippics held the plaintiff up to deserved contempt, or by a series of brilliant sallies of wit laughed the planitiff out of court. The other

is suggested by the two Latin words *Crimen falsi* at the end and hints at an argument charging perjury. And yet all that the record shows is the use of language of the most slanderous sort and a verdict for the defense.

"I have sat on the jury in his cases" Mr. Ryan, of Lincoln, Illinois, said to me: "He knew nearly every juror, and when he made his speech he talked to the jurors, one at a time, like an old friend who wanted to reason it out with them and make it as easy as possible for them to find the truth."

"He never talked long," said Mr. John Strong of Atlanta, Illinois, "In stating a disputed proposition he would say, not, 'This is the way it is,' but 'This is the way it seems to me,' thus allowing for an honest difference of opinion."

Judge S. A. Foley, of Lincoln, Illinois, in an intimate account of Lincoln, displayed a clear memory of his court-room manner. "When Lincoln examined a witness or addressed a jury, he had a peculiarly winning way of doing it. In an opening statement he seemed to take everybody into his confidence as though he proposed to keep nothing from them. In cross-examination he would first secure the witness' good will and then lead him gently along until he elicited from him the truth for which he was seeking. When he came to the argument he had something to say to each juror, and he led each one to believe that, as attorney, his only duty was *to help the jury* find the truth. Sometimes he made his point so plain with a story that there was no escaping his conclusion."

Because he reasoned his cases out it is not to be supposed that he lacked the graces of oratory. With the little audience in the jury box he began by feeling his way, studying the man addressed, and talking rather than speaking, until he felt sure that he was in complete accord with the men to whose judgment he was making his appeal. He was first of all a

reasoner. But he was, too, a man of wide sympathy and deep feeling and, once aroused, he was brilliant in ridicule, savage in assault, overwhelming in his emotional attack. It was the oratory of the forum, not the oratory of the platform or the stage.

Judge S. C. Parks, had a large practice while Lincoln was riding the circuit. In a lecture before the University of Michigan he said:

"He was a great advocate and more successful at the bar than many men who knew more law than himself. - - - For this there were two reasons. One was that he was naturally fair minded, and, as a rule, would not advocate any cause which he did not believe to be just. Owing to this characteristic he would not knowingly take a case that was wrong, and if he ignorantly got into such a case he would generally refuse to prosecute or defend it after he had ascertained his mistake. He was intellectualy honest. He would not advocate a cause in which he did not believe. He was the easiest lawyer to beat when he thought he was wrong that I ever knew. Soon after beginning to practice, I was employed to defend a man charged with larceny and Mr. Lincoln was employed to assist me. I really believed at the beginning of the trial that the man was not guilty. But the evidence was unfavorable, and at its close Mr. Lincoln called me into the consultation room and said: "If you can say anything that will do our man any good, say it. I can't. If I say anything the jury will see that I think he is guilty and will convict him." And so I proposed to the prosecutor to submit the case without argument. This was done. The jury disagreed, and before the case could be tried again the man died.

"In the same county Lincoln brought suit on an account and proved it without any trouble. Defendant's attorney then

produced a receipt in full from the plaintiff which clearly covered the account. Lincoln took the receipt, examined it till he was satisfied, and handed it back to the opposing attorney who proceeded to prove it; whereupon the presiding Judge (Treat) inquired: "What do you say to that, Mr. Lincoln?" But Lincoln had quietly left the court house and gone to his hotel. The court sent for him, but he declined to return, saying to the sheriff: 'Tell Judge Treat that my hands are dirty and I want to wash them.' Owing to this habit of not advocating a bad case he had the advantage of feeling that he ought to gain the cases that he did advocate. He also had the advantage of having the confidence of the court and jury at the outset and the fairness and skill to keep it to the close."

The leader of this itinerant bar, without whose presence no gathering of men was complete, was not always to be found. He had a way of going off after the companionship of children. One of these old-time little boys described to me the serious way in which Mr. Lincoln would call for their opinion on political questions, and interrogate them regarding their personal hopes and ambitions, and advise with them as if he considered them to be men of mature judgment. He was particularly given to trying to find what impression the young fellows had of his arguments and those of Douglas, seemingly bearing in mind the ideal of his own youth that he must make his meaning so plain that any boy he knew could comprehend. Another of these boys has told of the delicious way in which he talked foolishness to them as he joined in their games of marbles or hand ball.

Mr. George S. Cole, of Danville, used to describe his first game of billiards: "Mr. Lincoln called me in to see the first billiard table, set up in the town and said: 'Come on, Bub, let's play a game.' My awkwardness with the cue seemed to please him hugely."

"Nothing tickled him so much," said Uncle Felix Ryan, "as to get a prank on the boys. Once they stretched a rope across the walk, just high enough to catch his plug hat. He pretended to be very angry and ran all over the place until he had caught the boys, making them think he was going to punish them, and then took them into the store and stood treat."

Sometimes the semi-annual session of court was the occasion of social activity of a more formal character. A reception or ball would draw the gentlemen of the bar away from court room and tavern and into real society. Gentlewomen living sixty years after and still young in spirit, have recalled those occasions. They tell how Mr. Lincoln, seemingly careless of his appearance in the street and in court, was yet in society "a gentleman of the old school," who arose at once when a lady entered the room, and whose courtly manners would put to shame the easy-going indifference to etiquette which marks the twentieth century gentleman. One of them who must have been a belle in "the Fifties," told me how many a pretty girl would lead her escort from the dance to the card room because she wanted to listen to Mr. Lincoln's talk.

Says Mr. Arnold:* "I must not omit to mention the old-fashioned, generous hospitality of Springfield, hospitality proverbial to this day throughout the state. Among others, I recall the dinners and evening parties given by Mrs. Lincoln. In her modest and simple home, there was always on the part of both host and hostess a cordial and hearty Western welcome which put every guest perfectly at ease. Mrs. Lincoln's table was famed for the excellence of many rare Kentucky dishes, and in season it was loaded with venison, wild turkey, prairie chicken, quail, and other game which was then abundant. Yet

*Isaac N. Arnold, Reminiscences of the Illinois Bar Forty Years Ago; in Fergus Historical Series.

it was her genial manners and ever kind welcome, and Mr. Lincoln's wit and humor, anecdote and unrivaled conversation, which formed the chief attraction."

The court room was not the only place where the lawyers made themselves useful. At Decatur, when the first piano was brought by wagon across the prairie, the adjournment of court, so Mrs. Jane Johns relates, furnished an anxious young lady with the skilled labor required to unload the big, delicate instrument. It was Mr. Lincoln who superintended the removal and his strong arms that lifted one end of the piano while a half dozen other brawny circuit riders handled the other end.

It was at this period that Lincoln wrote to his friend Speed: "I am so poor and make so little headway in the world that I drop back in a month of idleness as much as I gain in a year's sowing."

That was no day for specialists. The collection lawyer of seventy years ago won insubstantial rewards, although he did not hesitate to advertise for business. Even David Davis, soon to enter upon a long and brilliant judicial career, advertised in 1837 in the Sangamon Journal: "Notes and accounts entrusted to him for collection will meet with a most prompt attention." And Lincoln, in collecting six hundred dollars from Stephen A. Douglas under circumstances embarrassing to both, set the "minimum fee" precedent by charging three dollars and a half for the service.

A New York firm applied to Abraham Lincoln for a report on the financial condition of a neighbor. Mr. Lincoln replied as follows: "Yours of the 10th inst. received. I am well acquainted with Mr. ———— and know his circumstances. First of all he has a wife and baby; together, they ought to be worth $50,000 to any man. Secondly, he has an office in

which there is a table worth $1.50 and three chairs worth, say $1. Last of all there is in one corner a large rat-hole, which will bear looking into.

Respectfully yours,

A. LINCOLN.'"

There are in circulation many authentic stories that were used by Lincoln to enforce an argument at law. But they have all been published long ago, along with many that are not authentic. Two of these are no doubt familiar, but they will serve to show Lincoln's method. They are reported by Miss Tarbell in her Life of Lincoln and by Mr. Hill in his "Lincoln the Lawyer."

One of these is attributed to the late Judge Beckwith of Danville. Lincoln was trying to make plain to the jury the legal effect of self-defense. "My client," he explained, "was in the fix of a man who was carrying a pitchfork along the country road when he was suddenly attacked by a vicious dog. In the trouble that followed the prongs of the pitchfork killed the dog. 'What made you kill my dog?' the farmer cried in rage. 'What made him try to bite me?' 'But why didn't you go at him with the other end of the pitchfork?' 'Why didn't he come at me with the other end of the dog?' The jury saw what self-defense meant.

Mr. T. W. S. Kidd, for many years court crier at Springfield, says he once heard a lawyer arguing to the jury the controlling authority of precedent. When Lincoln's turn came to answer he took up the argument from precedent in this way: "Old Squire Bagley from Menard came into my office once and said: 'Lincoln, I want your advice as a lawyer. Has a man that's been elected a justice of the peace a right to issue a marriage license?' I told him No, and he threw himself back indignantly in his chair and said, 'Lincoln, I thought you

was a lawyer. Bob Thomas and I had a bet on this thing, and we agreed to leave it to you, but if this is your opinion I don't want it, for I know a thunderin' sight better. I've been a Squire now eight years and I have done it all the time.' "

He once characterized an ultra-technical judge by saying "He would hang a man for blowing his nose in the street, but he would quash the indictment if it failed to state which hand he did it with."

Justice Brewer, of the United States Supreme Court, has given us this story of Lincoln's sincerity:

Lincoln was defending a murder case. The act was so brutal, and the circumstantial evidence so complete that even Lincoln himself, after a most careful investigation, conceded that everything seemed to point to his client's guilt. He had thought a great deal on the case, he told the men in the jury box, and while it seemed probable that his client was guilty, yet he was not sure. With those honest eyes of his he looked the jury in the face and said, "I am not sure. Are you?" It was an application of the rule of reasonable doubt which secured an acquittal.

A Kansas lawyer wrote some years ago: "My name originally was Patrick William Hackney, and I went by the name of Patrick or "Pat" until we moved back to Illinois, where they changed it to William Patrick Hackney. My father, in 1850, and I met Mr. Lincoln on the street as he was returning from the Court House at the dinner hour—the first time they had met since father went to Iowa. They greeted each other very cordially indeed; father called him "Abe," and he called father "Jake," father's name being Jacob. Father introduced me to him as his son "Pat." He was very tall and very slim I remember that I thought he was the homeliest man that I had ever seen. In the course of the conversation, after inquir-

ing about each other, he said to father, "I presume you know, Jake, I am a lawyer now." Father said, "Yes, I have heard of it." He says: "I am going to make a speech after dinner to a jury, and I wish you would come up and bring Pat with you." Father told him he would.

"Father and I went to the Court House—it was the first time that I had ever been in a Court House—and took our seats. Mr. Lincoln was there when we arrived, but the Court had not yet opened. Judge Davis, of Illinois, was the Judge. I do not remember the name of the prosecutor. He was a small man in stature, and as I remember, rather heavier than slim, with long, wavy, black hair, and it seemed to me, with a wonderful vocabulary.

"The case was one in which two carpenters in a shop got into a dispute; one a little fellow, and the other a large man. It ended in a fight, in which the big fellow whipped the little one, he hollowed 'nough,' and the big fellow got off, as was the custom of that day, from the little one, and returned to his bench to work with his back to where the little man was working before the fight commenced, and where he was at the end of the fight. He got up, ran to his bench, grabbed a big file with no handle—files at that time ran out to a sharp point; I have seen many of them with simply a corn cob for a handle;—he grabbed this file without any handle on it, ran up behind the big fellow, and stabbed him in the back with it, and as I recollect now, came very near killing him. The little fellow was being prosecuted for that, and Lincoln was defending him.

"When Lincoln got up to speak he was wonderfully tall, I thought, and spare, and as I said, very homely, but it wasn't but a little bit until he had the Judge, who was a very large men, shaking with laughter, as were the jury and the specta-

tors, and he convinced me that the little fellow ought not to be convicted, but what he said to convince me, I don't remember.

"I afterwards went to Lincoln, Ill., the County seat having been changed from Mt. Pulaski there, to hear Mr. Lincoln and Douglass speak, in 1858. Our family library consisted of the Bible, and the New York Tribune, which was a newspaper more than any of our neighbors had, and while I was a boy, I understood at that time the controversy over which the discussion arose as well as anybody, and a great deal more than nine tenths of those whom I knew or associated with, and I went down there to hear them. The arrangement was that Lincoln should speak in the forenoon, on a platform fixed in the Court House yard—he spoke from ten to twelve o'clock. I remember it as one of the marvelous speeches that I have ever listened to in my life. While I have thought that Lincoln was the homeliest man that I ever saw in repose, I believed then and I believe now, that he was the handsomest man I ever listened to make a speech, when he warmed up to his subject. I have never read a description of Lincoln of any kind that came within a thousand miles of describing him in action. He was simply grandeur itself.

"There was a circus in town that day from one till three, and it was arranged for Douglass to speak in the tent after the show was over, and for the purpose of securing a seat more than to see the show, because I was more interested in these two speeches than I was to see the show, even if I was a boy, and I had seen shows before. They ran a menagerie wagon out into the ring where the circus had been held, put a ladder up to it, took a small table up there, two chairs and two pitchers and a glass, and it was said that there was a quart of whiskey in one pitcher and a quart of water in the other. Whether true or not, I don't know, but it was accepted as a

fact at that time and I never heard anybody question it. It was the first time I had even seen Douglass. He and the chairman to be climbed that ladder on top of that wagon; the tent filled up until there was standing room for no more, and for three hours Donglass made one of his great speeches, and it was a great speech. He understood the art of appealing to the prejudices of his audience, and could do it successfully in a way that I have never heard any other man do, but boy as I was, knowing what I did on the questions involved, his subterfuges and want of candor were so marked that I could not help but notice it. The difference between the two men was so great that anyone with a discriminating mind would be able to detect the difference. Lincoln was open, honest, did not play to the galleries, but he drove the truth home with such power and force that there was no way of escaping it. I think that Douglass as an orator, so far as rhetorical flourish is concerned, adroitness and capacity to change quickly his position or defend an untenable one, never had his superior in my judgment, but he never was a match for Lincoln one moment."

The value which Lincoln put upon simplicity is summed up in the remark he made to Herndon: "If I can clear this case of its technicalities and get it properly swung to the jury, I'll win it." From this it is by no means to be inferred that he did not respect the requirements of the practice, or make use of the technical points in a case where occasion required it. He was a practical, well-trained lawyer, who accepted all proper employments and gave to his clients the benefit of his extraordinary mental and legal equipment. In his early struggles in justice's courts his discomfited opponents used to hint at pettifogging, and in his supreme court arguments he was willing to win on questions of practice and what careless lawyers call technicalities. Lawyers know that a neglect to take such

advantage as the rules of the practice permit is a breach of the duty one owes to a client. And they know, too, that one who "plays the game" according to its rules may yet play fairly and honestly.

The traditions of Lincoln's humor in the trial of his cases are well established. In his early practice particularly he used his gifts as a raconteur and a mimic most effectively in demonstrating his points. The evidence of this is in the reminiscences of his colleagues and in oral tradition. Old men of middle Illinois still repeat his stories. But the actual court record of his humor is very slight. I only know of two illustrations. One is a figure probably employed by him in presenting a point of law to the supreme court in St. Louis, etc., Railway Company against Dalby, 19 Ill., 353, and is buried in the mass of a profound opinion by Judge Caton at page 374. It was a damage case brought by Lincoln against the railway company for assault committed in ejecting plaintiff from a car. The railway company contended that the corporation could not be liable for beating because it had no body to *be* beaten, and the court disposed of the question with this proposition—no doubt advanced by Lincoln: "As well might it be said that a man cannot commit a rape because he cannot be the subject of one." The other is a bill for divorce, the original of which is in the possession of Mr. F. R. Fisher of Terre Haute, Indiana. At that time no one had any good will for the negro. The bill is drawn in a jocular vein, referring to the defendant, who was a habitual drunkard, as "a gentleman of colour," and averring that the couple had lived together for many years, "though not in the highest state of connubial felicity."

Judge Gustave Koerner, who served on the supreme bench in the early period of Lincoln's practice, recalls in his Memoirs, published in 1909, "the often quaint and droll language used by him" in his arguments in that court.

That he had the Bible at his tongue's end, and, knowing its value in any appeal he might make to the sympathy, or imagination, or reason of his audience, made use of it in his public utterances, is well known. That he made the same use of scripture in convincing his juries is a matter of tradition. To get the documentary proof of this has not been so easy. But in the files of the circuit court of Menard county the papers in Page v. Boyd, tried in 1847, afford the proof that his use of the Bible in his closing speech was causing his opponent some uneasiness. It was a damage suit against Lincoln's client for injuries suffered by two mares that had strayed into the defendant's pasture and been used by defendant while in his custody. In the files, hurriedly scrawled on a scrap of paper by plaintiff's counsel, Mr. Robbins, is the following:

"Will the court instruct the jury that the passage from Exodus read by the counsel in this case does not apply in this suit as law?"

This instruction is endorsed "Given." The record shows a verdict for plaintiff.

The passage referred to may have been Exodus XXII-13; XXIII-4.

Any lawyer of Lincoln's ability would have accumulated a comfortable fortune with such a practice. When he left Springfield in 1861 he was fifty-two years old and the recognized leader of the Illinois bar. And yet, though living far from extravagantly, his entire estate was barely ten thousand dollars.

Mr. John W. Bunn, of Springfield, a client and friend, tells an incident which fairly illustrates Lincoln's idea of the value of his own services. George Smith and Company, Chicago bankers, had written to Mr. Bunn to get some one to look after their defense in an attachment suit involving several thou-

sand dollars. Lincoln conducted the trial and, winning it, charged them twenty-five dollars. They wrote back to Mr. Bunn: "We asked you to get the best lawyer in Springfield and it certainly looks as if you had secured one of the cheapest."

For defending a damage suit at Paris involving three thousand dollars, Mr. Andrew J. Hunter says the fee charged Mr. Hunter's father by Usher F. Linder and Abraham Lincoln was fifteen dollars, paid in wild cat currency.

The instances of his volunteer service, as in defending "Duff" Armstrong for murder, for friendship's sake, are not rare. When he had finished a case he seemed indifferent to any desire for adequate compensation. The joy of the contest had been his, and the satisfaction of having done his best. As for the fees, they were of little consequence.

His charge in the defense of McCormick v. Manny, a case involving some of the McCormick reaper patents, valued at half a million dollars, was two thousand dollars, and his fee in the case of McLean County against Illinois Central Railroad Company was five thousand dollars. His average yearly income when he left the practice is said to have been about three thousand dollars.

When he had finished his senatorial race against Stephen A. Douglas and paid his campaign assessment of five hundred dollars, he returned to take up the practice, which had become sadly demoralized. "It is bad to be poor," he wrote, "I shall go to the wall for bread and meat if I neglect my business this year as well as last." To eke out his income he prepared a lecture which he delivered at a few places. But as a Lyceum speaker he was as free from mercenary influences as he was at the law. Mr. Robert D. McDonald, of Danville, has told how the young men of Pontiac engaged him to lecture at the Presbyterian church without agreeing on terms in advance.

"When I came to settle with the speaker out of the receipts from a full house, Mr. Lincoln took the first ten dollar bill I handed him and threw up his hands as he protested 'For Heaven's sake don't give me any more; ten dollars is all it is worth'."

Mr. James S. Ewing, *commenced the practice of law at about the time of Lincoln's election to the presidency and is now in the practice in Bloomington. Probably no one now living is better qualified from personal knowledge and understanding to speak of Lincoln, the lawyer. He said: "When I first knew anything of courts, it was the habit for such lawyers as possessed sufficient experience and ability to attract a clientage to follow the court around the circuit. Mr. Lincoln was of this number and, more than any other, was most constant in his atendance. During fifteen years I heard him try a great many law-suits. Lincoln was a master in all that went to make up what was called a jury lawyer. His wonderful power of clear and logical statement seemed the beginning and end of the case. After his statement of the law and the facts we wondered either how the plaintiff came to bring such a suit, or how the defendant *could* be such a fool as to defend it. By the time the jury was selected, each member of it felt that the great lawyer was his friend, and was replying on him as a juror to see that no injustice was done. Mr. Lincoln's ready, homely, but always pertinent, illustrations, incidents, and anecdotes, could not be resisted.

"Few men ever lived who knew, as he did, the main springs of action, secret motives, the passions, prejudices, and inclinations which inspired the actions of men, and he played on the human heart as a master on an instrument. This power over a jury was, however, the least of his claims to be entitled a

*Address at Bloomington, Feb. 12, 1909.

good lawyer. He was masterful in a legal argument before the court. His knowledge of the general principles of the law was extensive and accurate, and his mind so clear and logical that he seldom made a mistake in their application."

The best of Lincoln's earlier biographers was Isaac N. Arnold, a lawyer of no mean ability, and a member of congress from Illinois during the Civil war and afterwards. This is his estimate:

"Lincoln, was, upon the whole, the strongest jury lawyer in the state. He had the ability to perceive with almost intuitive quickness the decisive point in the case. In the examination and cross-examination of a witness he had no equal. He could compel a witness to tell the truth when he meant to lie, and if a witness lied he rarely escaped exposure under Lincoln's cross-examination. His legal arguments were always clear, vigorous and logical, seeking to convince rather by the application of principle than by the citation of cases. A stranger going into court when he was trying a cause would, after a few moments, find himself on Lincoln's side and wishing him success. He seemed to magnetize everyone. He was so straightforward, so direct, so candid, that every spectator was impressed with the idea that he was seeking only truth and justice. He excelled in the statement of his case. However complicated, he would disentangle it and present the real issue in so simple and clera a way that all could understand. Indeed, his statement often rendered argument unnecessary, and frequently the court would stop him and say: 'If that is the case, brother Lincoln, we will hear the other side.' *His illustrations were often quaint and homely, but always apt and clear, and often decisive. He always met his opponent's case

*Isaac N. Arnold, Life of Abraham Lincoln, p. 84.

fairly and squarely, and never intentionally misstated law or evidence."

No one knew Lincoln the lawyer better than David Davis, once judge of the Eighth circuit and then associate justice of the supreme court of the United States. He said:

"I enjoyed for over twenty years the personal friendship of Mr. Lincoln. We were admitted to the bar about the same time and traveled for many years what is known in Illinois as the eighth judicial circuit. In 1848, when I first went on the bench, the circuit embraced fourteen counties, and Mr. Lincoln went with the court to every county. Railroads were not then in use, and our mode of travel was either on horseback or in buggies. Mr. Lincoln was transferred from the bar of the circuit to the office of president of the United States, having been without official position since 1849. In all the elements that constitute a great lawyer, Mr. Lincoln had few equals. He was great both at *nisi prius* and before an appellate tribunal. He seized the strong points of a cause and presented them with clearness and great compactness. His mind was logical and direct, and he did not indulge in extraneous discussion. His power of comparison was large and he rarely failed in a legal discussion to use that mode of reasoning. The framework of his mental and moral being was honesty, and a wrong cause was poorly defended by him. In order to bring into full activity his great powers, it was necessary that he should be convinced of the right and justice of the matter which he advocated. When so convinced, whether the cause was great or small, he was usually successful. He hated wrong and oppression everywhere, and many a man whose fraudulent conduct was undergoing review in a court of justice has writhed under his terrible indignation and rebuke."

The wisdom of Daniel Webster was crystallized into a

single sentence of the Gettysburg address. The poetry and philosophy of a thousand years of Hebrew prophecy was restated in a paragraph of the Second Inaugural. The history of the Constitution, in the making and after, so far as it relates to the slavery question, is put in an hour's argument in the Cooper Union oration. The faith of a student and protagonist of the constitution, that real human rights, even the rights under the odious slave trade are unassailable is uttered in the First Inaugural. Greatest of all these is the Cooper Union speech, where Lincoln demonstrated that the members of the Convention which framed the Constitution favored the ultimate extinction of slavery. The demonstration disclosed an intimate knowledge of American history that none but a specialist could have acquired in a life-long pursuit of the study. The letters, speeches, votes and official acts of 23 of the 39 members of the Constitutional Convention, commencing with the Congress of 1784 and concluding in 1820, had been brought out of obscure sources, no one knows where, and analyzed and digested by this intensive student, master of constitutional law at his prairie home until he was able to make his demonstration, seventy years after, that the fathers of the constitution at the birth of the republic had adopted the views as to the constitutional extinction of the slave power which Lincoln and his colleagues were advocating in 1860. The analysis covers in detail the votes of the individual members of the convention of 1787 as given upon the Act excluding slavery from the Northwest Territory in 1784, the Ordinance of 1787, the Act of 1789 putting the ordinance into effect, passed by Congress and signed by Washington, the Act organizing Mississippi as a Territory in 1798 and Louisiana Territory in 1804, and finally the Missouri compromise of 1820.

The same scholarship shown in his application of constitu-

tional history to the slavery question he displays as a student at law in his analysis of the Dred Scott decision in the Cooper Institute address and elsewhere. It is criticism at its best and it is always profound—I need only quote a sentence where he contrasts the position taken by the makers of the Constitution with that assumed by the Supreme Justices in the Dred Scott decision to show how clearly Lincoln, the constitutional lawyer, made his point:

"And then it is to be remembered that 'our fathers who framed the government under which we live'—the men who made the Constitution—decided this same constitutional question in our favor long ago; decided it without division among themselves when making the decision; without division among themselves about the meaning of it after it was made, and so far as any evidence is left, without basing it upon any mistaken statement of facts."

It is more than fidelity to the Constitution, as a fetish to worship with one's eyes closed, that Lincoln displayed in his handling of the crucial problem of slavery under the Constitution; it is rather the fidelity of an apostle to his Master, who knows what he believes through a heart-searching intimacy.

We have seen presidents who had not the scholarship and critical sense to search the Constitution for the power they sought to wield. We have known presidents who had not the patience to work out a difficult problem in statecraft under the wise restraint of constitutional limitations; we have heard of Presidents who were jealous of those limitations and brushed aside the whole moral issue of obeying a constitutional oath as if to say with Mr. Dooley, "What's the Constitution betune friends?" Lincoln, the man of critical scholarship, of endless patience in constitutional research, would not commit the shallow folly of criticising the Supreme Court or ignoring

the requirements of our Constitution as more than one of our Presidents have done.

As Lincoln wrote to Colonel Albert G. Hodges of Kentucky, in 1864:

"I am naturally anti-slavery. If slavery is not wrong, nothing is wrong. I can not remember when I did not so think and feel, and yet I have never understood that the presidency conferred upon me an unrestricted right to act officially upon this judgment and feeling. It was in the oath that I took, that I would, to the best of my ability, preserve, protect, and defend the Constitution of the United States. I could not take the office without taking the oath. Nor was it my view that I might take an oath to get power, and break the oath in using the power."

One who doubts Lincoln's erudition needs only read the state papers of the War President on constitutional questions. The language employed by Chief Justice Chase in Texas v. White, 7 Wall. 700, in defining the constitutional relation of a seceding state with the Union follows closely the theory of the president as advanced in his state papers and letters and differs radically from the dominant opinion that prevailed in the radical majority of the post-war congress. They were a part of an indissoluble union of indestructible states; their citizens were citizens of the United States; secession was a fallacy, for the seceders were in the Union all the time.*

In the Douglas debates, in his first inaugural address, and in the emergencies of the Civil war of which the Mason and Slidell incident is a type when he had to overrule his advisers and render his own final judgment, and in every significant utterance as president, are to be found the proof

*(See Lincoln's last public address delivered on April 11, 1865).

of the trained lawyer. With politics and history this paper has nothing to do. It is the country lawyer whose career we have been studying. To the questions, Who taught the author of the Gettysburg oration and the Second Inaugural? and Whence came that simplicity of style? we have sought our answer in the story of his career at the law, of how he began, as a boy, with the determination to make his thought plain, of the influence of his public-spirited teachers, the opportunities he had in the Black Hawk war and in the legislature to know the men who were to control public opinion in the new state, the value of a giant strength which enabled him to endure the hardships of the life on the circuit and thrive upon them, and how, in all these experiences, two ambitions controlled him—to master the study of human nature, and to express his thought "in language plain enough for any boy to comprehend."

Men of America have erected a shrine for Abraham Lincoln. Some love to recall him as he appealed to his "dissatisfied fellow-countrymen" in 1861; others, as he dedicated the national cemetery at Gettysburg. To others he is to be remembered as the great emancipator. The boys who wore the blue, and who now wear the grey of God's providing, think of him as the "Father Abraham" of the armies of the Union. To others there comes the picture of a man of sorrows whose life at Washington was one long heartbreak and whose only cheer came when he could pardon a soldier boy. He is no less a man whom we see—in fancy or in memory—the simple-minded country lawyer, who loved the children, and who understood human nature as he studied it in the uncouth countrymen of a prairie frontier. As he stood outside the court house, long after court had adjourned, explaining things to the neighbors and friends who gathered to hear his talk, we can see his

giant figure with its earnest, kindly face, traced in the twilight of an autumn evening against the rude brick wall,—the figure of Lincoln, the country lawyer, trusted and loved by all who knew him.

APPENDIX

Lincoln's cases in the Illinois Supreme Court as published in Frederick Trevor Hill's Lincoln the Lawyer, published by The Century Company, 1906.

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