ISBA Proceedings, 1881

Reminiscences of the Illinois Bar, forty years ago: Lincoln and Douglas as Orators and Lawyers

Read before the Illinois State Bar Association, at Springfield, January 7th, 1881, by Hon. Isaac N. Arnold.

Mr. President, and Gentlemen:

When Sir Walter Scott published "Waverly, or 'tis Sixty Years Ago," he gave a more accurate and vivid picture of the social life of the period described than is to be found in any history. I wish I had some of Sir Walter's genius, so that I could reproduce to-day the Bar of Illinois, as it existed forty or fifty years ago. I wish, with some of his graphic power, I could call up a picture of the United States Circuit Court, and the Supreme Court of Illinois, and the lawyers then practicing before them, as they were in 1839, and on during the following years. If we could, in fancy, enter the United States Circuit Court Room in this city, in June, 1839, we would be impressed with the majestic figure, imposing presence and dignified bearing of the presiding judge, John McLean, a Justice of the Supreme Court of the United States. His person and face were often compared to Washington's—whom he is said to have strikingly resembled.

Nathaniel Pope, the District Judge, was shorter and stouter in person, more blunt and sturdy in manner, and not so familiar with the law-books, the cases, and literature of the law, but of a most clear, vigorous and logical mind. If we enter their court, then held, if I am not mistaken, in one of the churches in this city, we should find Ferris Foreman, then United States District Attorney, prosecuting the case of "The United States vs. Gratiot," then a historic name in Missouri and the Northwest, in a case arising under a lease, by the Government, in portion of the lead mines in Galena. We should hear the late Judge Breese making a very learned argument for the defense. If we lingered until the next case was called, we should hear the sharp, clear, ringing voice of Stephen T. Logan opening his case. If we remained until the trial ended, we should concur in the remark that this small, red-haired man, inferior in person, but with an eye whose keenness indicated his sharp and incisive intellect; this little man, take him all in all, was then the best *nisi-prius*[*] lawyer in the State, and it would be difficult to find his superior anywhere.

Among the leading practitioners in this court, held in Springfield for the first time in June, 1839, were Logan, Lincoln, Baker, Trumbull, Butterfield & Collins, Spring & Goodrich, Cowles & Krum, Davis, Harden, Browning and Archy Williams. At the June term, 1840, I am proud to find my own humble name on the record among these great lawyers and advocates. The June term, 1840, was held amidst the turmoil and excitement of the 'Hard Cider' and "Log Cabin' campaign, that resulted in the election of General Harrison. In all the Presidential elections which have occurred within my recollection, I have never known any to compare to that. Log cabins for political meetings, with the traditional gourd for cider drinking, hanging on one side of the door, and the coon skins nailed to the logs on the other, sprang up like magic, not only on the frontier, but in all the cities and towns and in every village and hamlet.

[*] Court of original jurisdiction, or trial court level.

A great Whig convention was held in the city during court, and the people came in throngs from every part of the State. Chicago sent a large delegation, at the head of which were John H. Kinzie, Gurdon S. Hubbard, Geo. W. Dole, and others, and as the representatives of the commercial capital of the State, they brought with them a full-rigged ship on wheels. It was the first full-rigged ship that many of the natives of the interior of Illinois had ever seen, and it was, of course, a great curiosity. The delegation was supplied with tents and provisions, with plenty of good cider, and camped out at night upon the prairies. Their camp-fires illuminated the groves, and they made the air vocal with their campaign songs, all the way from Lake Michigan to the Illinois and Sangamon. The excitement of patriotism, of music, and cider, and eloquent speeches, and stirring ballads, spread over the whole country. A good singer of campaign songs was as much in demand as a good stump-speaker.

VanBuren, the Democratic candidate, was literally sung out of power. "Van, Van" was the worst "used up man" that ever ran for the Presidency. I voted for VanBuren, but being at court I attended the great mass meeting at Springfield, and heard, for the first time, stump-speeches from Lincoln, Harden, Baker and others, but the palm of eloquence was conceded to a young Chicago lawyer, S. Lisle Smith. There was a charm, a fascination in his speaking, a beauty of language and expression, a poetry of sentiment and imagery, which, in its way, surpassed everything I have ever heard. His voice was music, and his action studies and graceful. I have heard Webster, and Choate, and Crittenden, and Bates of Missouri; they were all greatly his superiors in power and vigor, and in their various departments of excellence, but for an after-dinner speech, a short eulogy, or a commemorative address, or upon any occasion when the speech was a part of the pageant, I never heard the equal of Lisle Smith. His verbal memory was marvelous. I went with him to church one Sunday to hear the Rev. Dr. Blatchford. On returning to his house to dine, he stepped into an adjoining room, and directly I heard what seemed the voice of Dr. Blatchford, going over the morning services—the prayer, the reading of a chapter in the Bible, the hymn, the text, and a part of the sermon—not varying, so far as I could detect, a single word from what I had heard in church. Smith had heard all this once only, and repeated it verbatim. But surely he must have been more attentive than hearers usually are in these days.

THE CASE OF JO. SMITH, THE MORMON PROPHET.

In December, 1842, Governor Ford, on the application of the Executive of Missouri, issued a warrant for the arrest of Joseph Smith, the Apostle of Mormonism, then residing in Nauvoo, in this State, as a fugitive from justice. He was charged with having instigated the attempt, by some Mormons, to assassinate Governor Bogg, of Missouri. Mr. Butterfield, in behalf of Smith, sued out, from Judge Pope, a writ of *habeas corpus*, and Smith was brought before the United States District Court. On the hearing, it clearly appeared that he had not been in Missouri, nor out of Illinois, within the time in which the crime had been committed, and if he had any connection with the offense, the acts were done in Illinois. Was he, then, a fugitive from justice? It was pretty clear that, if allowed to be taken into Missouri, means would have been found to condemn and execute him. The Attorney-General of Illinois, Mr. Lamborn, appeared to sustain the warrant. Mr. Butterfield, aided by B.S. Edwards, appeared for Smith, and moved for his discharge. The Prophet (so called) was attended by his twelve Apostles and a large number of his followers, and the case attracted great interest. The court room was thronged with prominent members of the bar, and public men. Judge Pope was a gallant gentleman of the old

school, and loved nothing better than to be in the midst of youth and beauty. Seats were crowded on the Judge's platform, on both sides and behind the Judge, and an array of brilliant and beautiful ladies almost encircled the Court. Mr. Butterfield, dressed *a la Webster*, in blue dress-coat and metal buttons, with buff vest, rose with dignity and amidst the most profound silence. Pausing, and running his eyes admiringly from the central figure of Judge Pope, along the rows of lovely women on each side of him, he said:

"May it please the Court:

"I appear before you to-day under circumstances most novel and peculiar. I am to address the 'Pope' (bowing to the Judge) surrounded by angels (bowing still lower to the ladies), in the presence of the holy Apostles, in behalf of the Prophet of the Lord."

Among the most lovely and attractive of these "angels," were the daughters of Judge Pope, a daughter of Mr. Butterfield, Mrs. Lincoln, Miss Dunlap, afterwards Mrs. Gen. Jno. A. McClernand, and others, some of whom still live, and the tradition of their youthful beauty is verified by their lovely daughters and grand-children.

But the chief actors in that drama, on the issue of which hung, not only the life of Smith, the Prophet, but of his followers, and perhaps the peace of two states, the *dramatis personae* have all, or nearly all passed away. The genial and learned Judge, the prisoner and his able counselor, so full of wit and humor, the eloquent Attorney-General, the Governors of both states, the Marshal and Clerk, and nearly all of the distinguished lawyers and public men—Lincoln, Logan, Judge Breese, Baker and others—who laughed and joked so merrily over the happy allusions of Mr. Butterfield, have passed away; and we old lawyers may well repeat the sad words:

"When I remember all
The friends so linked together
I've seen around me fall
Like leaves in wintry weather,
I feel like one, who treads alone
Some banquet hall deserted,
Whose lights are fled,
Whose garlands dead
And all but he departed."

To a contemporary of those early members of the Bar, the roll of attorneys admitted in those days brings up sad and pleasant memories. On that roll, in 1836, you find the name of Thomas Drummond, now a venerable Judge of the Northern District of our State; David Davis, late Judge, now Senator; Archy Williams, and Anthony Thornton. In 1837 I find the names of Abraham Lincoln, William A. Richardson, Lyman Trumbull, Mahlon D. Ogden, Joseph Gillespie, and in 1983, Justin Butterfield, James A. McDougall, Hugh T. Dickey, Schuyler Strong, John J. Harden, Judge E. Peck, J. Young Scammon, and others, and from that time on the names became more numerous.

In those early days it was my habit, and that, also, of those practicing in the United States Court, to come to Springfield twice each year, to attend the semi-annual terms of court held in June and December. We made our trips in Frank & Walker's coaches, and I have known the December trip to take five days and nights, dragging drearily through the mud and sleet, and there was an amount of discomfort, vexation and annoyance about it sufficient to exhaust the patience of the most amiable. I think I have noticed that some of my impulsive brethren of the Chicago bar have become less profane since the rail-cars have been substituted for stage-coaches. But the June journey was as agreeable as the December trip was repulsive. A four-in-hand with splendid horses, the best of Troy coaches, good company, the exhilaration of great speed over an elastic road, much of it a turf of grass, often crushing under our wheels

the most beautiful wild flowers, every grove fragrant with blossoms, framed in the richest green, our roads not fenced in by narrow lanes, but with freedom to choose our route; here and there a picturesque log-cabin, covered with vines; the boys and girls on their way to the log-schools, and the lusty farmer digging his fortune out of the rich earth. Everything fresh and new, full of young lite and enthusiasm, these June trips to Springfield would, I think, compare favorably even with those we make to-day in a luxurious Pullman car. But there were exceptions to those enjoyments; sometimes a torrent of rain would in a few hours so swell the streams that the log bridges and banks would be entirely submerged, and a stream which a few hours before was nearly dry, became a foaming torrent. Fording, at such times, was never agreeable, and sometimes a little dangerous.

FORDING SALT CREEK.

I recall a ludicrous incident on our way to Springfield, I think, in June, 1842. We had a coach, crowded with passengers, most of us lawyers, on our way to the United States Court. In passing from Peoria to Springfield, we attempted to ford one of these streams which had been lately raised so that its banks were nearly a quarter of a mile apart. When we had driven half across the horses left the track, got into a bad slough, and were stalled. All efforts to extricate the coach failed, and, at length, the driver gave up the attempt in despair; said he must take off the horses and go to the next station for help; those who chose might mount a horse and ride ashore; or, if they preferred, might wade ashore or stay in the coach until he returned, or wait until another coach, which was behind, should come up; we might wait for it, provided we were not carried down the stream by the current. Some decided to try their fortunes on a stage horse; others stripped off trousers, boots and stockings, and taking their coat-tails under their arms, started to wade ashore. Old Dr. Maxwell was one of our party, a very stout gentleman, with short legs, and weighing near three hundred pounds. The doctor sat by the window of the coach, grimly watching the various groups, and turning his eyes now to the equestrians, and now to those buffeting the current on foot, and envying some of the long-legged gentlemen who were struggling towards the shore. Seeing the doctor unusually grave, a friend called to him:

"What is the matter, doctor? Why don't you come on?"

"I don't like the aspect," said he. "The diagnosis is threatening. My legs are too short to wade, and there is not a horse in the team that can carry my weight through this current. Sink or swim; survive or perish; I shall stick by the ship."

"Well," replied an irreverent and saucy young lawyer, "if you are washed away and cast ashore by the current, I should like to have the opinion of Judge Dickey (not the present Chief Justice) whether you would not be *flotsam* and *jetsam*, and belong, medicine and all, to the sovereign people of Illinois?"

Fortunately, our driver soon returned and rescued our genial doctor.

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, with a sad pleasure, the dinners and evening parties given by Mrs. Lincoln. In her modest and simple home, everything orderly and refined, there was always, in the part of both the 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 turkeys, prairie chickens, quail and other game, which was then abundant. Yet it was her genial manner and ever-kind welcome,

and Mr. Lincoln's wit and humor, anecdote and unrivalled conversation, which formed the chief attraction. We read much of "merrie England," but I doubt if there was ever anything more "merrie" than Springfield in those days. As, to-day, I walk your streets, and visit the capital, and your court rooms, as I enter the old home of Lincoln, for the first time sine 1860, memories of the past come thronging back; I see his tall form, his merry laugh breaks upon my ear; I seem to hear the voices of Douglas, of Baker, of Harden, and of Logan!

> "How are we startled in the wind's low tones
> By voices that are gone."

Nor, in recalling the past, must I forget the hospitable home of Judge Treat, who, to-day, as then, in his ample library, may well say:

> "That place that does contain,
> My books, the best companions, is to me
> A glorious court, where hourly I converse
> With the old sages and philosophers."

TRIAL OF OWEN LOVEJOY FOR HARBORING RUNAWAY SLAVES.

I have spoken of Mr. Butterfield; the firm name of Butterfield & Collins, partners, was in those early days always associated. Mr. Collins was a good lawyer, a man of perseverance, pluck and resolution, and as combative as an English bull-dog. He was an early, and most violent and extreme Abolitionist; a contemporary with Dr. Charles V. Dyer, the Lovejoys, Ichabod Codding, Eastman, Freer, Farnsworth, and other pioneer Abolitionists in Northern Illinois. I wish I could reproduce a full report of the case of *The People vs. Owen Lovejoy*.

At the May term, 1842, of the Bureau County Circuit Court, Richard M. Young, presiding, Norman H. Purple, prosecuting attorney *pro tem.*, the grant jury returned a "true bill" against Owen Lovejoy, (then lately a preacher of the Gospel,) for that "a certain negro girl named Agnes, then and there being a fugitive slave, he, the said Lovejoy, knowing her to be such, did harbor, feed, secrete, and clothe," contrary to the statute, etc.,--and the grant jurors did further present "that the said Lovejoy, a certain fugitive slave called *Nance*, did harbor, feed, and aid," contrary to the statute, etc. At the October term, 1842, the Hon. John Dean Caton, a Justice of the Supreme Court, presiding, the case came up for trial, in a plea of *not guilty*. Judge Purple, and B.F. Fridley, the State's attorney, for the people, and James H. Collins, and Lovejoy in person, for the defense. The trial lasted nearly a week, and Lovejoy and Collins fought the case with a vigor and boldness almost without parallel. The prosecution was urged by the enemies of Lovejoy with and energy and vindictiveness with which Purple and Fridley could have had little sympathy. When the case was called for trial a strong pro-slavery man, one of those by whom the indictment had been procured, said to the State's attorney:

"Fridley, we want you to be sure and convict this preacher, and send him to prison."

"Prison! Lovejoy to prison!" replied Fridley, "Your prosecution will be a damned sight more likely to send him to Congress."

Fridley was right—Lovejoy was very soon after elected to the State Legislature, and then to Congress, where, as you all know, he was soon heard from by the whole country. The prosecution was ably conducted, and Messrs. Collins and Lovejoy not only availed themselves of every technical ground of defense, but denounced, vehemently, the laws under which the indictment was drawn, as unconstitutional and void; justifying every act charged as criminal. A full report of the trial would have considerable historic interest. The counsel engaged were equal to the important legal and constitutional questions discussed.

Judge Purple, for logical ability and wide culture, for a clear, concise style, condensing the strong points of his case into the fewest words, had rarely an equal. Fridley, for quaint humor, for drollery and apt illustration, expressed in familiar, plain, colloquial, sometimes vulgar language, but with a clear, strong common sense, was a very effective prosecutor. Collins was indefatigable, dogmatic, never giving up, and if the court decided one point against him, he was ready with another, and if that was overruled, still others.

Lovejoy always suggested to me a Roundhead of the days of Cromwell. He was thoroughly in earnest, almost if not quite fanatical in his politics. His courage was unflinching, and he would have died for his principles. He had a blunt, masculine eloquence rarely equaled, and on the slavery question, as a stump-speaker, it would be difficult to name his superior. Collins and Lovejoy, after a week's conflict, won their cause. Lovejoy himself made a masterly argument, and Mr. Collins' closing speech extended through two days. They extorted a verdict from a hostile jury. It is very doubtful, however, if they could have succeeded with all their efforts, but for the accidental disclosure by the alleged owner, on his cross-examination, of a fact unknown to the defense. He said he was taking the slave girl *Nance* from Kentucky to Missouri through Illinois. He was ignorant that by voluntarily bringing his supposed chattel from a slave to a free State, she became free. Messrs. Collins and Lovejoy saw the importance of this fact—indeed, the turning point in the case. Lovejoy quoted with great effect the lines of Cowper, now so familiar:

"Slaves cannot breathe in England, if their lungs
Receive our air, that moment they are free—
They touch our country and their shackles fall!"

"And," said he, "if this is the glory of England, is it not equally true of Illinois, her soil consecrated to freedom by the ordinance of 1787, and her own constitution?"

Mr. Collins, in his summing up, read the great and eloquent opinion of Lord Mansfield in the Somerset case, an opinion which Cowper so beautifully paraphrased in his poem.

Judge Caton's charge, which will be found in the *Western Citizen* of October 26th, 1843, was very fair. He laid down the law distinctly, that "if a man voluntarily bring his slave into a free State, the slave becomes free."

In February, 1859, at the Capitol in Washington, speaking of the acts which led to this trial, there is one of the boldest and most effective bursts of eloquence from Lovejoy to be found in all the literature of anti-slavery discussion. He had been taunted and reproached on the floor of Congress, and stigmatized as one who, in aiding slaves to escape, had violated the laws and constitution of his country. He had been denounced as a "nigger-stealer," threatened by the slave-holders, and they attempted to intimidate and silence him. They little knew the man, and his reply silenced them, and extorted the admiration of friend and foe. He closed one of the most radical and impassioned anti-slavery speeches ever made in Congress, by unflinchingly declaring: [†] "I do assist fugitive slaves. Proclaim it, then, upon the house-tops; write it on every leaf that trembles in the forest; make it blaze from the sun at high noon, and shine forth in the milder radiance of every star that bedecks the firmament of God; let it echo through all the arches of heaven, and reverberate and bellow along all the deep gorges of hell, where slave-catchers will be very likely to hear it. Owen Lovejoy lives at Princeton, Illinois, three-quarters of a mile east of the village; and he aids every fugitive that comes to his door and asks it. Thou invisible demon of slavery, dost thou think to cross my humble threshold, and forbid me to

[†] Congressional Globe, February 21, 1859, p. 199.

give bread to the hungry and shelter to the houseless? *I bid you defiance in the name of God!*"

I heard Lovejoy declare, that after the death of his brother, he went to the graveyard at Alton, and kneeling upon the sod which covered the remains of that brother, he there, before God, swore eternal war and vengeance upon slavery. He kept his vow.

He was a man of powerful physique, intense feeling and great magnetism as a speaker, and he now went forth like Peter the Hermit, with the heart of fire, and a tongue of lightening, preaching his crusade against slavery.

In the log school-houses, in the meeting-house, and places of worship, and in the open air, he preached and lectured against slavery with a vehemence and passionate energy which carried the people with him. The martyrdom of his brother was a sufficient excuse for his violence, and the name of Lovejoy, the martyr, like the name of Rob Roy or Douglas in Scotch history, became a name to "conjure" with; and he scattered broadcast seed, the fruit of which was apparent in the great anti-slavery triumph of 1860. Some idea of his dramatic power may be obtained from a sermon, preached at Princeton in January, 1842, on the death of his brother. After describing his murder by a cruel mob, because he would not surrender the freedom of the press, he declared, solemnly, that for himself, "come life or death, I will devote the residue of my life to the anti-slavery cause." "The slave-holders and their sympathizers," said he, "have murdered my brother, and if another victim is needed, I am ready."

His aged and widowed mother was present in the church. Pausing and turning to her, he said: "Mother, you have given one son, your elder, to liberty, are you willing to give another?" And the heroic mother replied: "Yes, my son—you cannot die in a better cause!" He lived to see slavery die amid flames of war which itself had kindled.

When I heard him speak of his brother's martyrdom, I recalled the words applied by an English poet to the reformer Wyckliffe, illustrating how much Wyckliffe's persecution had aided to spread his principles. Wycklyffe's body, you will remember, was burned and his ashes thrown into the Avon, and the poet-prophet says of the incident:

> "The Avon to the Severn runs,
> The Severn to the sea,
> And Wyckliffe's dust shall spread abroad,
> Wide as the waters be."

The death of Elijah P. Lovejoy, on the banks of the Mississippi, his lonely grave on the bluffs of Alton, were among the influences, and not the least, which have caused that mighty river and all its vast tributaries, on the East and on the West, to flow "unvexed to the sea." No longer "vexed" with slavery, the Mississippi flows on exulting from the land of ice to the land of the sun, and all the way through soil which the blood of Lovejoy helped to make free. A monument to Lovejoy on the summit of Pilot Knob, or some other rocky crag on the banks of that river, should tell and commemorate their story.

GENERAL SHIELDS AND THE SHOT THAT KILLED BREESE.

All the members of the bar will recall with pleasant recollections, a gallant and genial Irishman, James Shields, of Tyrone County, Ireland. He was, however, more distinguished as a politician and soldier than as a lawyer and Judge. In 1848 he was elected to the United States Senate, succeeding and defeating for re-election Senator Breese.

At the battle of Cerro-Gordo, in the war against Mexico, he was shot through the lungs, the ball passing out at his back. His nomination over a man so distinguished as

Judge Breese was a surprise to many, and was the reward for his gallantry and wound. His political enemies said his recovery was marvelous, and that his wound was miraculously cured, so that no scar could be seen where the bullet entered and passed out of his body. All of which was untrue. The morning after the nomination, Mr. Butterfield, who was as violent a Whig as General Shields was a Democrat, met one of the Judges in the Supreme Court room, who expressed his astonishment at the result, but added the Judge, "It was the war and that Mexican bullet that did the business." "Yes," answered Mr. Butterfield, dryly, "and what an extraordinary—what a wonderful shot that was! The ball went clean through Shields without hurting him or even leaving a scar, and killed Breese a thousand miles away!"

"OYER" AND "TERMINER."

It was on one of the Northern circuits, held by Judge Jesse B. Thomas, that Mr. Butterfield, irritated by the delay of the Judge in deciding a case, which he had argued some time before, came in one morning and said with great gravity, "I believe, if Your Honor please, this court is called the 'Oyer and Terminer.' I think it ought to be called the 'Oyer sans Terminer,'" and sat down. The next morning when counsel were called for motions, Mr. Butterfield called up a pending motion for new trial in an important case. "The motion is over-ruled," said Judge Thomas abruptly. "Yesterday you declared this court ought to be called *Oyer sans Terminer*; so," continued the Judge, "as I had made up my mind in this case, I thought I would decide it *promptly*." Mr. Butterfield seemed for a moment a little disconcerted, but directly added, "May it please Your Honor, yesterday this court was a court of Oyer *sans* Terminer; to-day Your Honor has reversed the order, it is now *Terminer* SANS *Oyer.* But I believe I should prefer the injustice of interminable delay rather than the swift and inevitable blunders Your Honor is sure to make by guessing without hearing argument."

VALUATION AND APPRAISAL LAWS AND MY FIRST $500 FEE.

Few, if any, decisions of the Supreme Court of the United States have been so influential upon State legislation, and I think I may add, upon public morals, as the judgments of that court, declaring the laws enacted by the State legislature, known as valuation and stay laws, void. In 1841, the people were heavily in debt, and the State had ceased to pay the interest upon her bonds, having incurred great responsibilities by a reckless system of internal improvements. It was a period of great business depression and depreciation of property. Under these circumstances, demagogues sought to debauch the public morals and stain the public faith, by advocating the repudiation of the State liabilities, and the indefinite postponement of the legal enforcement of private contracts.

To this end the legislation, in February, 1841, enacted laws, giving the right of redemption in all cases of land to be sold under mortgages and deeds of trust, whether such sales should be made under decrees in equity or at law, and providing that before any judicial sale the property would be appraised, and unless two-thirds of its appraised value should be bid, it should not be sold. Practically, these laws suspended for the time being the collection of debts. The levying of a moderate tax to aid in paying the interest on the State debt, the passage of the Canal bill of 1842-3, and the decision of the Supreme Court holding all these stay laws, so far as they applied to existing contracts, void, all contributed very much to the growth and prosperity of our State, and to the high credit which Illinois has ever since enjoyed. I did what I could to oppose all schemes of repudiation, and I opposed the stay laws both in the legislature and in the courts. I believed them to be

unconstitutional, and took measures to bring that question before the Federal Courts.

In December, 1841, I filed a bill in the United States Circuit Court for Arthur Bronson, of New York, against my friend, John H. Kinzie, upon a mortgage given to secure money loaned, praying for a strict foreclosure, or a sale to the highest bidder for cash, and without regard to the redemption, appraisal and stay laws. At the hearing, Judge Pope and McLean being divided in opinion, certified the questions arising upon the validity of these laws to the Supreme Court of the United States for decision. At the January term, 1843, the case of *Bronson v. Kinzie*, was argued, and will be found reported in the 1st Howard, 311. In preparing the argument I found a volume giving in full, with many pamphlets, the controversy in Kentucky between the Old and New court parties. The Judges of the Old court in Kentucky held that the stay laws out of that state were void. Thereupon, the legislature legislated the Judges out of office and created a new court, made on purpose to sustain the stay laws, which, as a matter of course, they did. This created great excitement in that State, and at one time threatened anarchy. The volume I refer to as a magazine of the ablest arguments against this class of legislation, and was as applicable to Illinois as Kentucky. From this volume I drew largely in the preparation of my argument. I was then young and ambitious in my profession, and you will sympathize with my gratification when Chief Justice Taney announced the decision of the Court sustaining my position, and holding these laws unconstitutional and void, on the ground that they impaired the obligation of contracts.

In the case of *McCracken vs. Hayward* (2 Howard, 608), I raised the same questions on a sale of an execution upon a judgment at law, and the decision in *Bronson vs. Kinzie* was re-affirmed.

I hope I shall be pardoned for relating the, to me, pleasing incident of receiving, in the Bronson case, my first $500 fee. I had spent much time in preparing the argument, and I did my best, and being on the right side, gained my cause. It was the day of small fees, and my charges were moderate and modest. I think I charged only $150 besides expenses. A few days after the case was decided, I received from Bronson the amount of my bill, as made out, and a check for $500 in addition, with a letter much more complimentary than my argument deserved; also a few copies of the argument and opinion of the Court, bound in crushed Levant Morocco, with all the beautiful ornamentation which a Bedford or a Mathews could have desired.

I was a poor young lawyer then, but I valued the books quite as much as the check. The proceeds of the check were, as is usual with us lawyers, quickly spent, but I kept one of the books until, with all my other books and papers, it went up in the great fire of 1871. There were a few copies of the argument printed and distributed to some of my friends, and if any one possessing a copy should happen to see this egotistical digression, and send it to me, I shall not regret indulging in the weakness of mentioning this incident.

LINCOLN AND DOUGLAS

When forty years ago the Bar used to meet here at the capitol, in the Supreme and United States Courts, and ride the circuit in our different sections of the State, Lincoln and Douglas did not occupy a position of such overshadowing importance as they do to-day. They did not beat us in our cases when law and justice were with us, and we did not realize that they were greatly our superiors. But these two men have passed into history, and justly, as our great representative men. They are the two most prominent figures, not only in the history of Illinois, but of the Mississippi Valley, and their prominence,

certainly that of Mr. Lincoln, will be increased as time passes on. I will, therefore, endeavor to give such rough and imperfect outlines of them as lawyers, and advocates, and public speakers, as I can. We, who knew them personally, who tried causes with them and against them, ought, I think, to aid those who shall come after us, to understand them, and to determine what manner of men they were. In the first place, no two men could be found more unlike, physically and intellectually, in manners and in appearance, then they.

Lincoln was a very tall, spare man, 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 have been instantly picked out as a Western man. His stature, figure, dress, manner, voice and accent, indicated that it 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 remarkably simple, homely, but expressive Saxon language, and next by his wonderful wit and humor. Lincoln was more familiar with the Bible than with any other book in the language, and this was apparent, both from his style and illustrations, so often taken from that Book. He verified the maxim, that it is better to know, thoroughly, a few good books than to read many.

Douglas was little more than five feet high, with a strong, broad chest, and strongly marked features; his manners, also, were cordial, frank and hearty. The poorest and humblest found him friendly. He was, in his earlier years, hale fellow well met with the rudest and poorest man in the court room

Those of you who practiced law with him, or tried causes before him when on the bench, will remember that it was not unusual to see him come off the bench, or leave his chair at the bar, and take a seat on the knee of a friend, and with one arm thrown familiarly around the friend's neck, have a friendly talk, or a legal or political consultation. Such familiarity would have shocked our English cousins, and disgusted our Boston brothers, and it has, I think, disappeared. In contrast with this familiarity of Douglas, I remember an anecdote illustrating Col. Benton's ideas of his own personal dignity. A distinguished member of Congress, who was a great admirer of Benton, one day approached and slapped him familiarly and rudely on the shoulder. The Senator haughtily drew himself up, and said, "That is a familiarity, sir, I never permit my friends, much less a comparative stranger. Sir, it must not be repeated."

Lincoln and Douglas were, as we know, both self-educated, and each the builder of his own fortune. Each became, very early, the recognized leader of the political party to which be belonged. Douglas was bold, unflinching, impetuous, denunciatory and determined. He possessed, in an eminent degree, the qualities which create personal popularity, and he was the idol of his friends. Both Lincoln and Douglas were strong jury-lawyers. Lincoln, on the whole, was the strongest jury-lawyer we ever had in Illinois. Both were distinguished for their ability in seizing, and bringing out, distinctly and clearly, the real points in a case. Both were very happy in the examination of witnesses; I think Lincoln the stronger of the two in cross-examination. He could compel a witness to

tell the truth when he meant to lie. He could make a jury laugh, and, generally, weep, at his pleasure. Lincoln on the right side, and especially when injustice or fraud were to be exposed, was the strongest advocate. On the wrong side, or on the defense, where the accused was really guilty, the client, with Douglas for his advocate, would be more fortunate than with Lincoln.

Lincoln studied his cases thoroughly and exhaustively. Douglas had a wonderful faculty of extracting from his associates, from experts, and others, by conversation, all they knew of a subject he was to discuss, and then making it so thoroughly his that all seemed to have originated with himself. He so perfectly assimilated the ideas and knowledge of others, that all seemed to be his own, and all that went into his mind came out improved.

The ablest argument I ever heard him make was in the case of *Daniel Brainard vs. The Canal Trustees*, argued at Ottawa, June, 1850, reported in 12 Ill. Reports, 488. The question involved the extent of the right of preemption by settlers upon canal lands, within the city of Chicago. The Judges were Treat, Trumbull and Caton. Judges Treat and Trumbull concurred in deciding the case against Douglas, Judge Caton dissenting. He made, is his case, one of the ablest arguments I ever heard at any bar.

In 1841 Mr. Douglas, being then not quite twenty-eight years old, was elected one of the Judges of the Supreme Court. He was not a profound lawyer, but with his clear common sense and incisive mind, after a case was well argued, he always knew how to decide it. He held the position of Judge for about two years, and was then, after a very active canvass, elected to Congress by a small majority over O. H. Browning. From this time until his death, in the early summer of 1861, he remained in Congress, serving in the House until 1846, when he was elected to the Senate, of which he continued a member to the time of his death. His ablest speech in the House was made on the 7th of January, 1844, on a bill to refund to General Jackson the fine imposed upon him by Judge Hall, during the defense of New Orleans. In this masterly argument he took the then bold and novel ground that the fine was imposed in violation of law. It is a curious fact that, in this speech, Douglas claimed for General Jackson many of the war-powers exercised by President Lincoln and his generals during the rebellion, and for which the President was so bitterly denounced by his political opponents. This speech gave him a national reputation. After the death of the hero of New Orleans a pamphlet copy of this speech was found among his papers, with an endorsement in Jackson's hand-writing, and signed by him, in these words: "*This speech constitutes my defense. I lay it aside as an inheritance for my grandchildren*."

Mr. Lincoln remained in active practice at the Bar until his nomination for the Presidency in 1860. His reputation as a lawyer and advocate was rising higher and higher. He had a large practice on the circuit all over the central part of this State, and he was employed in most of the important cases in the Federal and Supreme Courts. He went on special retainers all over Illinois, and occasionally to St. Louis, Cincinnati, and Indiana. His law arguments addressed to the Judges were always clear, vigorous and logical; seeking to convince rather by the application of principle then by the citation of authorities and cases. On the whole, I always thought him relatively stronger before a jury than with the court. He was a quick and accurate reader of character, and understood, almost intuitively, the jury, witnesses, parties, and judges, and how best to address, convince, and influence them. He had a power of conciliating and impressing every one in his favor. A stranger coming into court, not knowing him, or anything about his case, listening to Lincoln for a few moments would find himself involuntarily on his side, and

wishing him success. His manner was so candid, so direct, the spectator was impressed that he was seeking only truth and justice. He excelled all I ever heard in the statement of his case. However complicated, he would disentangle it and present the turning point in a way so simple and clear that all could understand. Indeed, his statement often rendered argument unnecessary, and often the court would stop him and say, "If that is the case, we will hear the other side." He had, in the highest possible degree, the art of persuasion and the power of conviction. His illustrations were often quaint and homely, but always clear and apt, and generally conclusive. He never misstated evidence, but stated clearly, and met fairly squarely his opponent's case. His wit and humor, and inexhaustible stores of anecdote, always to the point, added immensely to his power as a jury advocate. Time will not permit me to linger over particular trials. I will only refer to two or three.

The great patent case of *McCormick vs. Manny*, reported in 6 McLean Rep. 539, was argued at Cincinnati in 1855. He, with Edwin M. Stanton, afterwards his Secretary of War, and George Harding, of Philadelphia, were for Manny. McCormick was represented by William H. Seward, Reverdy Johnson, Edward N. Dickinson, and Arnold and Larned, as the local solicitors. It has been often said that Mr. Stanton did not, on this trial, treat his associate with proper professional courtesy, and that Mr. Lincoln's argument was crowded out. He went to Cincinnati fully prepared, and I believe with the expectation of making an argument, but made none. Those who knew him, and especially his great natural skill in mechanics, will need no assurance that, however able the arguments of Messrs. Stanton and Harding, his would have fully equaled them. If the story is true, that Stanton somewhat rudely crowded Mr. Lincoln's argument out, their subsequent history furnishes another illustration of his magnanimity, and disregard of personal considerations when he selected Stanton as one of his cabinet.

The last case Mr. Lincoln ever tried, was that of *Jones vs. Johnson*, tried in April and May, 1860, in the United States Circuit Court, at Chicago. The case involved the title to land of very great value, the *accretion* on the shores of Lake Michigan. During the trial Judge Drummond and all the counsel on both sides, including Mr. Lincoln, dined together at my house. Douglas and Lincoln were at the time both candidates for the nomination for President. There were active and ardent political friends of each at the table, and when the sentiment was proposed, "May Illinois furnish the next President," it was, as you may imagine, drank with enthusiasm by the friends of both Lincoln and Douglas.

THE CASE OF THE NEGRO GIRL NANCE.

One of the most interesting and important cases which Mr. Lincoln ever argued in the Supreme Court, and one, the study of which, I believe, in part prepared the way for his anti-slavery measures, was the case of *Bailey vs. Cromwell*, argued and decided at the December term, 1841, and an imperfect report of which will be found in 3d Scammon's Rep., p. 71.

A negro girl named *Nance*, alleged to have been held as an indentured servant, or slave, had been sold by Cromwell to Bailey, and promissory note given in payment. Suit was brought in the Tazewell Circuit Court upon the note, and judgment recovered for the amount. The case was taken to the Supreme Court, and was presented by Mr. Lincoln on one side, and Judge Logan on the other, and Mr. Lincoln made an elaborate argument in favor of reversing the judgment. He maintained, among other positions, that the girl was free by virtue of the ordinance of 1787, as well as by the constitution of the State prohibiting slavery; he insisted that as

the record showed the consideration of the note to have been the sale of a human being, in a free State, the note was void; that a human being could not, in a free State, be the subject of sale. The court opinion, by Judge Breese, reversed the judgment. The argument of Mr. Lincoln, a very brief statement of which is given in the report, was most interesting. The question of slavery under the ordinance, and the constitution, as well as under the law of nations, was very carefully considered. This was probably the first time that he gave to these grave questions so full and elaborate an investigation. He was then thirty-two years of age, and it was not improbable that the study of this case deepened and developed the anti-slavery convictions of his just and generous mind.

THE LINCOLN AND DOUGLAS DEBATE.

I now propose to speak for a few moments of what I regard as the greatest debate which has occurred in this country, the Lincoln and Douglas debate, of 1858.

The two most prominent men in Illinois, at that time, were Douglas and Lincoln. Each was in the full maturity of his powers, Douglas had for years been trained on the stump, in the lower house of Congress, and in the Senate, to meet in debate the ablest speakers in the State and Nation. For years, he had been accustomed, on the floor of the Capitol, to encounter the leaders of the old Whig and Free Soil parties. Among them were Seward, the Fessenden, and Crittenden, and Chase, and Trumbull, and Hale, and Sumner, and others, equally eminent, and his enthusiastic friends insisted, that never, either in single conflict, or when receiving the assault of a whole party, had he been discomfited. His style was bold, vigorous and aggressive, and at times, defiant. He was ready, fertile in resources, familiar with political history, terrible in denunciation, and handled with skill, all the weapons of debate. His iron will, restless energy, united with great personal magnetism, made him very popular; and with these qualities, he had indomitable physical and moral courage, and his almost uniform success, had given him perfect confidence in himself.

Lincoln was, also, a thoroughly trained speaker. He had contended successfully, year after year, at the Bar, and on the stump, with the ablest men of Illinois, including Lamborn, Logan, John Calhoun, and others, and had often met Douglas himself—a conflict with whom he always rather courted than shunned. Indeed, these two great orators had often tested each other's power, and whenever they did meet, it was, indeed, "Greek meeting Greek," and the "tug of war" came, for each put forth his utmost strength.

In a speech of Mr. Lincoln in 1856, he made the following beautiful, eloquent, and generous allusion to Douglas. He said, "Twenty years ago, Judge Douglas and I first became acquainted; we were both young then, he, a trifle younger than I. Even then, we were both ambitious, I, perhaps, quite as much as he. With me, the race of ambition has been a failure. With him, it has been a splendid success. His name fills the Nation, and it is not unknown in foreign lands. I affect no contempt for the high eminence he has reached; so reached that the oppressed of my species might have shared with me in the elevation, I would rather stand on that eminence than wear the richest crown that ever pressed a monarch's brow."

We know, and the world knows, that Lincoln did reach that high, nay far higher eminence, and that he did reach it, in such a way that "the oppressed" did share with him in the elevation.

Such were the champions who, in 1858, were to discuss before the voters of Illinois, and with the whole Nation as spectators, the political questions then pending, and especially the vital questions relating to

slavery. It was not a single combat, but extended through a whole campaign, and the American people paused to watch its progress, and hung, with intense interest, upon every movement of the champions. Each of these great men, I doubt not, at that time, sincerely believed he was right. Douglas' ardor, while in such a conflict, would make him think, for the time being, he was right, and I *know* that Lincoln argued for freedom against the extension of slavery, with the most profound conviction that, on success, hung the fate of his country. Lincoln had two advantages over Douglas; he had the best side of the question, and the best temper. He was always good humored, always had an apt story for illustration, while Douglas, sometimes, when hard pressed, was irritable.

Douglas carried away the most popular applause, but Lincoln made the deeper and more lasting impression. Douglas did not disdain an immediate, *ad captandum*‡ triumph, while Lincoln aimed at permanent conviction. Sometimes, when Lincoln's friends urged him to raise a storm of applause, which he could always do, by his happy illustrations and amusing stories, he refused, saying the occasion was too serious, the issue too grave. "I do not seek applause," said he, "nor to amuse the people, I want to convince them."

It was often observed during this canvass, that, while Douglas was sometimes greeted with the loudest cheers, when Lincoln closed the people seemed solemn and serious, and could be heard, all through the crowd, gravely and anxiously discussing the topics on which he had been speaking.

Douglas, by means of a favorable apportionment, succeeded in securing a majority of the Legislature, but a majority of the vote was with Lincoln. These debates made Douglas Senator, and Lincoln President.

‡ to catch or win popular favor

There was something magnetic, something almost heroic, in the gallantry with which Douglas threw himself into this canvass, and dealt his blows right and left, against the Republican party on one side, and Buchanan's administration, which sought his defeat, on the other. The Federal patronage was used, by the unscrupulous Slidell, against Douglass—but in vain; a few were seduced, but the mass of the Democratic party, with honorable fidelity, stood by him. This canvass of Douglas, and his personal and immediate triumph, in being returned to the Senate, over the combined opposition of the Republican party, led by Lincoln and Trumbull, and the administration, with all its patronage, is, I think, the most brilliant personal triumph in American politics. If we look into English struggles on the hustings for its parallel, we shall find something with which to compare it, in the late triumph of Mr. Gladstone. If we seek its counterpart in military history, we must look into some of the earlier campaigns of Napoleon, or that in which Grant captured Vicksburg.

Douglas secured the immediate object of the struggle, but the manly bearing, the vigorous logic, the honesty and sincerity, the great intellectual powers exhibited by Mr. Lincoln, prepared the way, and two years later secured his nomination and election to the Presidency. It is a touching incident, illustrating the patriotism of both these statesmen, that, widely as they differed, and keen as had been their rivalry, just as soon as the life of the Republic was menaced by treason, they joined hands to shield and save the country they loved.

It would be a most attractive theme to follow Mr. Lincoln, step by step, from the time of this contest; to enumerate, one after another, his measures, until he led the loyal people of America in triumph, to complete the overthrow of slavery and the restoration of the Union. From the time when he left this city, the political horizon, black with rebellion and

treason, the thunder-cloud just ready to burst—on—and on—through those long, dreary years of war and danger, down to his triumph and death; what a drama! What a spectacle for the admiration of men and angels! From the argument of the case of the negro girl *Nance*, to the debate with Douglas, the final overthrow of slavery, and his own tragic death, his life has all the dramatic unities, and the awful ending of the old Greek tragedies.

I know of nothing in all history, more pathetic than the scene when Mr. Lincoln bade good-bye to his old friends and neighbors here in Springfield, when he mounted the cars at yonder railway station, to be borne away to the Capitol, to struggle with what seemed unconquerable difficulties and dangers, to struggle,—to triumph—and—to die. Conscious of these difficulties, with a sadness which seemed like a presentiment, but with a deep, religious trust, which, in spite of what infidels have said or may say, was wholly characteristic, as he said farewell, he asked your prayers to Almighty God for himself and his country. And as he grasped the hard hand of many an old friend and client, he heard the response, "God bless and keep you, and save you from all traitors." Well was it said, happily was it written on one of those mottoes on your State house, at his funeral:

"He left us, borne up by our prayers,
He returns embalmed in our tears."

I have detained you already too long. Let me, in concluding these fragmentary recollections of some members of the early Bar, let me congratulate you that thus far the good name of our noble profession has been unstained. Fidelity to every trust, integrity and intelligence in the discharge of every duty, has characterized its members, whether at the Bar or upon the Bench. No breech of faith, no judicial or professional corruption, no embezzlement stains our records. And as we review the past, we may be justly proud of what the Bar has achieved. It has administered justice, preserved order, and maintained the supremacy of the law. It has done more: it has been the guardian, under law, of all our liberties; it has furnished the teachers of all parties, and led the advance in all true civilization and progress. Run your eye over the roll of the great men of our state—Presidents, Senators, Governors, Members of Congress, Members of Cabinets, Ministers abroad, and soldiers—and take from the record the lawyers, and how few would be left! Hitherto in our history, the trained intellect of the Bar has led, and vindicated its right to lead by results. Some call the Bar an aristocracy; it will be happy for the republic if there shall be, in the future, as in the past, such an aristocracy of intellect, honor and culture, made up largely from the members of the Bar. Happy is that country where talents, intelligence and high character, rather than money, control political affairs, and make and execute the laws.

Wealth acquired or inherited is to be protected; but money, as a means of political power, is necessarily corrupt, and is to-day the most dangerous enemy to our institutions. It has been well said, "An aristocracy of mere money is essentially the coarsest and rudest, the most vulgar and demoralizing of all aristocracies."

The accumulation of vast fortunes by individuals and corporations seems to be greater than at any time since the days of Roman corruption. If the day should ever come when money shall control the legislation and politics of the country, we shall deserve and may expect the fate of Rome. But let us cherish faith in the destiny of the Republic.

Some of us have seen Illinois grow from infancy to be the third or fourth State of the Union. But it is not her material prosperity of which we should be chiefly proud. She has something better. That was a bright page in

her history when, in her early days, she banished slavery from her borders. She may be justly proud of the intellectual conflict, when her prairies echoed to the great arguments of Lincoln and Douglas, and still more proud when Lincoln proclaimed liberty throughout the land. That was a proud day for her when her great soldier, after clearing the West of every hostile flag, was called to the command of the armies of the East, and on the banks of the Potomac and the James, and at Appomattox closed the war in triumph.

Illinois in the future as in the past, will hold the Union together. She will seek the markets of the world, across the great lakes and through the Hudson, the Mississippi, and the Gulf of Mexico to the sea; but never through foreign territory. No foreign flag or custom-house must ever intervene in any direction between her and salt water. All that has been accomplished in the past should inspire us with a still higher ambition. If in arms, in eloquence, in jurisprudence, in statesmanship, Illinois can compare favorably with her proudest sisters, the time is not remote, we hope, when she will emulate and rival their success in art and literature.

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