

MARGINAL NOTES

LINCOLN'S GUERDON OF FAME.—The centenary of Abraham Lincoln's admission to the Bar of Illinois occurred on the first day of the present month. That membership in the legal profession had an important bearing on his selection as the Republican candidate for the Presidency of the United States in 1860 justifies some general mention here of this man of destiny who, without training in statesmanship and skill in arms, preserved the integrity of one of the greatest nations of the earth when impelled by civil war towards dismemberment and destruction.

The dictum that "all history is a sound aristocrat", with its implication that the interests of civilized society have been better served by men of noble lineage than by those of plebeian origin, finds support in the careers of such men as Pericles, Julius Caesar and Henry Tudor, Earl of Richmond, but fails of exactitude when confronted with the life-story of Abraham Lincoln. Born in the year 1809 on a barren farm in Kentucky, Lincoln was a grandson of one of the Virginian emigrants who crossed the Appalachians in the latter part of the 18th century in quest of a better subsistence in the middle west than they were afforded on the eastern sea-board. Abraham's father, Thomas Lincoln, was an illiterate man, restless and infirm of purpose. After several migrations during his son's early childhood, he settled in Indiana just a short time before its admission to statehood in 1816. There the boy was employed as a farm-hand, his periods of work being interspersed with sporadic attendance at such schools as were accessible to him—the whole extent of the educational training so vouchsafed him not exceeding twelve months. When Abraham had reached the age of twenty-one, his father's obsession for change led him to abandon the farm in Indiana and move to central Illinois. There Abraham maintained himself by taking on odd jobs until he heard the call to the temple of the Law. It is said that upon his nomination for the Presidency he was asked for some account of his early life, and the enquirer was answered in this wise: "It is a great folly to make anything out of me or my early life. It can all be condensed into a single sentence; and that sentence you will find in Gray's 'Elegy'—'The short and simple annals of the poor.' " In these words we have some indication of the simplicity of heart and boldness to speak the truth which characterized the man acclaimed by James Russell Lowell as one

"whom America made, as God made Adam, out of the very earth, unancestried, unprivileged, unknown, to show us how much truth, how much magnanimity, and how much statecraft await the call of opportunity in simple manhood when it believes in the justice of God and the worth of man."

Dr. Oliver Wendell Holmes was pleased to say that "everybody likes and respects self-made men. It is a great deal better to be made in that way than not to be made at all." Certainly Abraham Lincoln was compelled to make himself in that way. How he fitted himself in the absence of scholarly training to make himself supreme master of the spoken word is a mystery to all who ponder the flawless perfection of the Gettysburg Address and the Second Inaugural. The problem is explicable only on the assumption that his native gift for speaking to the occasion in unforgettable words of forthrightness and charm was exceptional indeed. No doubt that native gift was stimulated and enriched in early life by his habit of reading and re-reading the best books in the limited range of literature available to him—among them being the Bible, "Pilgrim's Progress", and "Robinson Crusoe". The belief that moral right was subsumed in the legal right touching man's freedom in society, the patent sincerity of purpose, the lucidity of phrase—all these qualities which are revealed in Lincoln's public addresses on the slavery question may owe somewhat of their source to these great pieces of literature.

* * Concerning the origin of Lincoln's incitement to enter the legal profession there is some doubt. One story goes that while he was the owner of a country store in New Salem, Illinois, he found a copy of Blackstone's Commentaries in a barrel of odds and ends which he had purchased for fifty cents, and that his desire to become a lawyer emerged from a sedulous perusal of that immortal (*pace*, the shades of Bentham and Austin!) work. Rebutting the accuracy of this legend is the following account of an incident occurring earlier in his career while he was taking on any job that was open to him. It was related by an employer who found Lincoln one day "cocked on a hay-stock with a book" instead of busy with his job. "What are you reading?" enquired the irate employer. "I'm not reading, I'm *studying*," was the reply. "What are you studying?" was the further enquiry, and this the rejoinder in the words of the narrator: "Law," says he, "as proud as Cicero!"

When Lincoln failed as a store-keeper in New Salem he obtained employment as a land-surveyor, which enabled him to

carry on his law studies with more convenience. He had been elected to the legislature two years before proceeding to the Bar, but when the State capitol was removed to Springfield he took up his residence there and obtained his licence to practice law. He was then twenty-seven years of age.

Membership in the legislature of some eight years in duration coupled with an extensive practice before the courts in his early manhood furnished helpful training for the supreme place in the public life of the United States that Lincoln was destined ultimately to occupy. Without this combination of parliamentary and forensic experience his native talents could hardly have qualified him to excite the nation-wide attention that was accorded to his argument in the famous controversial debate between him and Douglas; nor without it could he have succeeded in convincing the public mind that Chief Justice Taney and the concurring judges of the Supreme Court erred in the construction of the Constitution of the United States in the Dred Scott case. What an instance of the irony of fate was presented in Washington on the 4th of March, 1861, when Chief Justice Taney was called upon to administer the Presidential oath to a man who was shortly after to issue the Emancipation Proclamation which sent the Dred Scott case into the limbo of fateful mistakes! That case having pushed the American nation into the Civil War, it remained for Lincoln to keep the Constitution on its pedestal throughout the Civil War.

President Lincoln cannot be ranked as a virtual dictator—but it was his uncompromising stand for the right that carried his country through its greatest period of crisis. In this connection the following statement by President Roosevelt is interesting reading :

My great ambition on January 20, 1941, is to turn over this desk and chair in the White House to my successor with the assurance that I am at the same time turning over to him as President a nation intact, and a nation at peace."

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LIBEL AND "JUDICIAL PROCEEDINGS".—The case of *Farmer v. Hyde*, [1937] 1 All Eng. R. 773; 183 L. T. Jour. 189, is interesting both in fact and in law. The facts disclose that during the trial of a libel action a rank outsider to the case who was present in the court rose to his feet and shouted : "May I make an application?" "Who are you, sir?" demanded the Judge. "I am the rector of Stiffkey, and I want to contradict the many lies that have been told in this court," was the reply. Before

this untoward interruption only one witness had given evidence in the case, and he brought an action for libel against five newspapers which had each published a report of the case and in the course of the report had printed the particulars of the interruption as set out above. In summing up, the trial Judge suggested that while the matter complained of might be defamatory of the plaintiff, yet if the jury took the view that plaintiff was a man of very low character—so much so that the damage would be perhaps only nominal,—then they could find a verdict for the defendants. The jury found a verdict for the defendants.

The Court of Appeal thought that the trial judge had misdirected the jury, and as the jury had no opportunity to assess damages it was impossible to say that a substantial miscarriage of justice had not occurred. But it was held that the application made by the interrupter was made in the course of "proceedings" within the Law of Libel Amendment Act, 1888, sec. 3, and fair and accurate reports of the incident were consequently privileged.

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REST FOR THE WEARY.—At long last the wearisome duty imposed on English Judges sitting at *nisi prius* of taking a full note in long-hand of the evidence adduced before them is in process of being abolished on the recommendation of the Legal Procedure Committee of the Council of the Law Society. This relief to an over-worked Bench will take shape in the system of short-hand reporting of oral evidence which has prevailed for so long a time in Canadian Courts. Even where the Judge used the pen of a ready writer the tempo of the trial was necessarily slow. Indeed Lord Hewart, C. J. had declared a year or so ago, before the Commission on the Dispatch of Business at Common Law, that the adoption of stenographic reporting would be equivalent to the addition of another Judge to the King's Bench in preventing the congestion of business, moreover, in his view, it would enable the trial Judge to observe more closely the demeanour of the witnesses and more readily estimate its effect upon the value of the evidence given by them.

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THE LAWS OF MANU AND WOMAN.—In the February number of "The Justice", a monthly journal devoted to the interests of the Bar in India and published at Lahore, Miss S. K. Nehru, Advocate, writes interestingly on the position of women in the Laws of Manu. After speaking of the two schools of thought

now dominating Hindu society respecting the social status of women—one, believing in the value of a return “to the glorious past” and “clamorous to instal the woman in her correct position as *Griha Lakshmi*”; the other, “blindly asking for reforms and more reforms without paying even a thought to the fundamentals on which modern Hindu society is built up”—Miss Nehru proceeds to say : “There is scarcely a Hindu in any sphere of life who does not draw his inspiration from the code of Manu, and it is an interesting study to see what the real position of woman is according to this great law-giver.” Following upon this explanatory comment she introduces portions of the sacred text, beginning with the following priceless passage—“The names of women should be easy to pronounce, not imply anything dreadful, possess a plain meaning, be pleasing and auspicious, end in long vowels and contain a word of benediction.” In other quoted passages there are counsels to men against the wiles of the softer sex, couched in language which in Mr. Podsnap’s day would certainly have brought “a blush to the cheek of the young person”, and language which implies that the mythical author of the code had first-hand knowledge of the ways of womankind on this terrestrial orb. We omit them here, favouring rather such edifying admonitions to men as the following passages afford :

“Women must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law who desire (their own) welfare.”

“Where women are honoured, there the gods are pleased; but where they are not honoured, no sacred rite yields rewards.”

“Where the female relations live in grief, the family soon wholly perishes; but that family where they are not unhappy even prospers.”

“The houses on which female relations, not being duly honoured, pronounce a curse, perish completely, as if destroyed by magic.”

“Hence men who seek (their own) welfare, should always honour women on holidays and festivals with (gifts of) ornaments, clothes, and (dainty) food.”

The conclusion is inescapable that deportment between the sexes on this planet has changed to some extent since the code of Manu was promulgated.

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CONCERNING COMMUNISM.—In Victorian times when G.B.S. was writing tracts on Socialism and generally making himself a nuisance by applauding the roaring of the young Fabian lions in London, one of the English judges was pleased to remark that “now we are all Socialists”. But at the present day we are adjured to accept Communism as the only hope for the

permanence of civilisation, and counselled to read its sibylline books for our soul's behoof. Well, we have tried to read them, but they have failed of our understanding. To us they seem to belong to the same class of literature as that which troubled Alice in Looking-glass House—"the books are something like our books, only the words go the wrong way." Indeed, we have been obliged to go back as far as Aristotle's *Politics* to learn what Communism means. Freely translated, Aristotle tells us that in a State so organized for government—

that which is common to the greatest number has the least attention bestowed on it. Men in accepting the idea are induced to believe that in some wonderful manner everybody will become everybody's friend, especially when some one is heard denouncing the evils which are said to arise out of the possession of private property. The great majority of men are natural dunces and sluggards—such people must be ruled in politics and directed in industry.

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