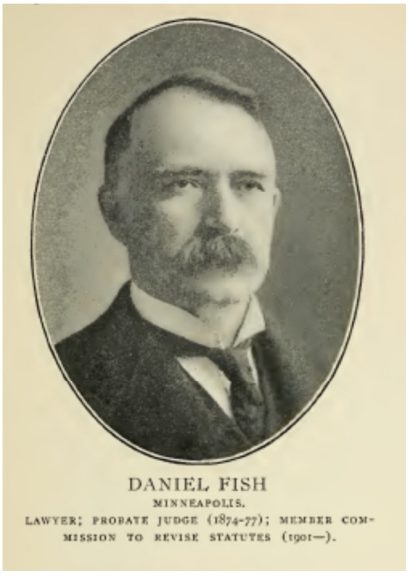
LEGAL PHASES OF THE LINCOLN AND DOUGLAS DEBATES

BY

JUDGE DANIEL FISH

On July 14, 1909, Daniel Fish, a Minneapolis lawyer who had served as Probate Judge of Wright County, 1875-1876, and would serve as Minneapolis City Attorney 1911-1914, and as District Court Judge in Hennepin County, 1914-1921, delivered an address on the 1858 Lincoln-Douglas debates to the annual convention of the Minnesota State Bar Association in Minneapolis. He then had it printed as a pamphlet which he gave to friends and acquaintances, one of whom was William Watts Folwell, former President of the University of Minnesota. Folwell donated his copy, inscribed by Fish, to the Minnesota Historical Society, where it can be found today.

Fish told the convention that inasmuch as 1909 was "Lincoln's Centennial year, it was considered that the subject would be of interest to the members of the Bar." But it takes little research to determine other reasons that moved Fish to speak about Lincoln. He was a Civil War veteran. He enlisted on January 4, 1864, at age 15, and was discharged on July 12, 1865. He was in uniform when Lincoln was assassinated. He engaged in a life-long pursuit of books and papers on Lincoln. His collection became well known and he acquired a reputation as a Lincoln bibliographer. In 1923, the year before his death on February 9, 1924, at age 76, his autobiographical sketch was published in Marion Daniel Shutter's *History of Minneapolis, Gateway to the Northwest*. These are excerpts where he describes his war experiences and near bibliomaniacal interest in Lincolniana:



DANIEL FISH
MINNEAPOLIS.
LAWYER; PROBATE JUDGE (1874-77); MEMBER COMMISSION TO REVISE STATUTES (1901—).

Three of his brothers having already become soldiers of the Union he naturally embraced the first opportunity to follow their example. On January 4, 1864, four weeks short of his sixteenth birthday, he enlisted in Company G of the Forty-fifth Illinois Infantry and after a short period of drill joined his regiment then in camp near Vicksburg. Soon afterward the command engaged in the Georgia campaign, forming a part of the First Brigade, Third Division of the Seventeenth Corps. Upon the fall of Atlanta a brief illness led to a furlough. A few days after reaching home he learned of Sherman's intended march to the sea, and waiving the remainder of his leave, hurried south, only to be stopped at Chattanooga. Atlanta had been destroyed and the regiment was beyond reach on its way to Savannah. Some three thousand officers and men in like situation were formed into a provisional division of the army of the Tennessee and sent back to Nashville, there to help in repelling Hood's threatened attack. In the ensuing battle, fought on the 15th and 16th of December, 1864, the lad met his first experience under fire. Thirty days of hard marching followed, in a futile endeavor to overtake fragments of Hood's shattered army. The division was then transferred by land and sea to the coast of North Carolina. "While moving from Newbern towards Goldsboro the column was attacked by a considerable force led by Joe Johnston. This encounter, variously called the battle of Kinston, Southwest Creek or Wise's Fork, resulted in a Confederate retreat which left open the way to the intended junction with Sherman. It raged furiously for a few hours and young Fish, acting as a sergeant in the improvised division, was the ranking "officer" of his company, the captain assigned to it having become suddenly ill before the fight came on. Most of his comrades, however, were veterans; there was no occasion to assume command and he was well content to wield his musket.

The surrender of Lee and Johnston speedily followed. Sherman's army hurried to Washington, a jubilant foot race

between the Fifteenth and Seventeenth Corps testing to the utmost their marching ability. After participating in the Grand Review the brigade was moved to Louisville, Kentucky, and there mustered out on the 12th of July, 1865. Benefited rather than harmed by his military service the lad, still in the first half of his eighteenth (sic) year, turned to meet the demands of civil life. . . . .

The writings of a busy lawyer usually are buried in the files of the courts. A few public addresses given by Judge Fish have been published in pamphlet form and an occasional magazine article has appeared. He has long indulged the fad of collecting and classifying the great array of books and pamphlets relating to Abraham Lincoln. Many years ago, while serving as a member of the Minneapolis Library Board, he published "Lincoln Literature," a list of such publications, and in 1906 this was expanded into an extensive bibliography, which appeared in connection with an elaborate edition of Lincoln's "Complete Works." He wrote by request the Lincoln article for the latest edition of the Cyclopedia Americana and his address before the American Bibliographical Society in 1908 on "Lincoln Literature and Lincoln Collections" may be found in the annals of that body. His own Lincoln collection is widely known and prized. A visit to Europe in 1905 was largely inspired by the search for obscure publications of the character indicated and his work in this field has brought him into pleasant relations with Lincoln admirers and students in many quarters. [1]

Judge Fish's address follows. It is a combination of the first two pages of the pamphlet in which his address was reprinted followed by transcript of his speech to the Bar Association.

[1] Marion Daniel Shutter, ed., 3 *History of Minneapolis, Gateway to the Northwest* 346, 350 (1923). The photograph of Fish on the first page is from *Men of Minnesota* (1902).

Legal Phases of the Lincoln and Douglas Debates

Annual Address before the State Bar Association of Minnesota At Minneapolis, July 14, 1909

By Daniel Fish

[Reprinted from the Proceedings]

1909

Complements of
Daniel Fiske

[Pierce Butler, President of the Association]: The annual address this year will be delivered by the Honorable Daniel Fish. His subject is "The Legal Aspects of the Lincoln and Douglas Debates." (Applause.) I will say that Judge Fish knows more of the great principles involved than Lincoln did himself. (Laughter and Applause).

Mr. Daniel Fish:

Mr. President, and Gentlemen: It is only fair to myself that I should remind those of the Association who have not been informed that my appearance in this capacity is due entirely and only to the fact that all the other distinguished orators declined the job. (Laughter.) Inasmuch as this is Lincoln's Centennial year, it was considered that the subject would be of interest to the members of the Bar.

LEGAL PHASES OF THE LINCOLN AND DOUGLAS DEBATES

A government of the people, by and for the people, cannot maintain protracted warfare, against any considerable power, unless the people are fairly and firmly convinced of its justice. The American republic, at any rate, must be able to show that its occasions for war are legally, no less than morally, impregnable; for the American conception of justice comprehends both. To that end co-operation on the part of the legal profession is indispensable, a truth signally illustrated in the large part which the Bar of America has taken in the two great and significant wars of our national history.

Both were waged on the national side in support of definite principles of law; both were fought and won in the arena of debate; and the true history of each is to be found in the annals of an intellectual struggle rather than in the story of battles or campaigns. The War of Independence was bottomed on the denial, as a proposition of law, that

parliament had authority to legislate for the Colonies without their consent, upon any subject whatsoever. Not at first, to be sure—the doctrine was gradually developed as the great argument proceeded. From a mere protest against onerous taxation, upon considerations of expediency only, the fathers passed to the ground that there could be no lawful taxation without representation in the taxing body. Otis never went further than that in his leadership of new England revolt, but his successors, driven from his position by logical necessity, advanced to the final stand that America was legally exempt from parliamentary control altogether.

In like manner the legal basis of the War for the Union emerged slowly and painfully from a flood of conflicting ideas. At first the controversy involved only the constitutional power of Congress to exclude slavery from the federal territories; next the legality of secession; and finally the constitutional right of the government to invoke the war power in defence of its own existence. It is often said that these problems were insoluble except by the arbitrament of arms. In fact they were examined and settled in the forum of reason, else force would have been of no avail. The nation was first convinced, else the requisite military and naval power would have been lacking. We know that they were settled rightly, an assurance that could not rest upon the chance outcome of a mere trial of fighting ability. Principle triumphed, and not brute force.

If I were to select a single episode of the revolutionary struggle as best illustrating the very pith of it, I would point to the official discussion carried on with consummate ability between Thomas Hutchinson, the last royal governor of Massachusetts, and the two houses of the General Court, led by Otis and Adams. Not elsewhere, probably, can we find a more graphic exposition of the legal contentions then mooted. And it is only through the study of some such record of the times that we can reach a correct understanding of the war which followed. Much more

distinctly, however, as a key to Civil War history, stands out that memorable series of debates between Lincoln and Douglas in 1858. The Massachusetts duel was fought under the immediate threat of war; that of Illinois was but lightly shadowed by a sinister cloud hanging low in the south, its portent not yet widely observed. But the war of secession nevertheless was actually impending; the beginnings of a bloody national conflict might have been heard in the clash of ideas championed by two patriotic sons of the prairie state. And Abraham Lincoln, a village lawyer but slightly known outside his own state but soon to be the Commander-in-chief of a million armed men, was there marshalling and moulding the moral forces which were to give the victory.

Outwardly the scene presented only a contest for office. To Douglas, the stake was more than a senatorship, for he was an avowed and hopeful candidate for the presidential chair. He could not give up the one without certain loss of the other. It may be, though it is by no means certain, that Lincoln saw in his own local triumph a possibility of like preferment for himself—he was not so modest as his words, taken at their face, might seem to imply. But it is certain that he was impressed far more deeply than Douglas by the gravity of the issues with which he was dealing. Humorist that he was, he was far more serious by nature than the truculent antagonist whose sense of fun was woefully deficient. But if lacking in moral power, Douglas possessed advantages which for the exigencies of popular debate were never surpassed—a kind of reckless courage, remarkable fluency combined with terseness and vigor of style, a conscience not over rigid, and a quick eye for exposed points of attack. If Lincoln had intellectual reach corresponding to his superior stature, Douglas had the agility and audacity typified in a bantam figure.

We must drop back a little in order to obtain a favorable view of this unique contest. The institution of Negro Slavery, originally lawful in all

the states, had died out in the North, not from pure philanthropy we may agree, but from lack of adaptation to Northern interests. Where slave labor was not especially profitable the practice of owning slaves yielded readily to the scruples of those who for any reasons opposed it. South, on the contrary, particularly in the cotton-growing regions, and more especially after the invention of Whitney's "Yankee notion" called the cotton gin, which vastly increased the production of that staple, slave labor became increasingly desirable. The profits, moreover, extended to regions beyond the cotton belt, where slave breeding for the market grew into favor. Thus two systems of labor, antagonistic in character, produced two modes of life radically unsympathetic and, in many features not merely sentimental, distinctly hostile.

Out of these differences arose an active rivalry, on the one side for the extension of slave territory, and on the other for its curtailment, or at east its restriction. To the political rancor inherent in such a contest was added the bitterness due to attack and defence on the part of extremists. The abolitionist, so called, was unsparing in denunciations of slave holding upon moral grounds, the hot-blooded Southern responding angrily with countercharges of hypocrisy and bad faith. To those of us who remember the ferocity of this ante bellum conflict these recitals seem idle, but none can appreciate the gigantic struggle of arms of which the Lincoln and Douglas campaign was the prelude without some knowledge of the heat and intensity of the slavery quarrel.

Successive compromises by Congressional action—the latest known as the compromise measures of 1850—extension of Southern territory southward by the acquisition of Texas and parts of Mexico, and continued success of the pro-slavery party at presidential elections, had postponed the evil day; but in 1854 the bill for the organization of Kansas and Nebraska, championed by Douglas in the Senate, ruthlessly repealed all the compromises and re-opened the partly healed wounds.

These compromise measures, it should be said, fixing the lines across the territories beyond which slave holding should not be permitted, were based upon the legal theory that Congress had plenary authority over that subject. As the Congress of the Confederation had dedicated the great Northwest Territory to freedom by the Ordinance of 1787, so it was assumed that under the constitution Congress might lawfully exclude slavery from every part of the public domain not already organized into a state.

The Kansas-Nebraska bill, which provided for the admission of those territories into the Union with or without slavery, as their respective inhabitants might elect, was upon its face a mere refusal on the part of Congress to legislate either for or against the establishment of that order of society; but since both territories were wholly north of the division line so lately agreed upon, its passage was fiercely resented. The compact of 1850, which both the old parties had effusively approved in speech and platform, was regarded as shamelessly violated and the whole controversy was started afresh with redoubled acrimony.

This Kansas and Nebraska legislation was defended upon the legal ground that the prior compromises were void, in so far as they negatived the right of any slave owner to carry his chattels into the territories and hold them there as his own; that Congress was constitutionally powerless thus to discriminate between kinds of property; that the brute cattle of the free state immigrant and the human cattle of the slave owning settler were alike property, and their possessors equally entitled to protection in the common domain; and that the question of admission or exclusion to or from any part of the National territories must await the formation of a state, which alone could decide. And Senator Douglas, who had been especially voluble in felicitating the country upon the compromise measures of but four years before, now lent himself to the enactment of this new doctrine into a federal statute. He was compelled to do so, in

truth, or else forego all hope of becoming the presidential candidate of his party.

The angry episode known as the "Kansas imbroglio" speedily followed, a fierce struggle for numerical and strategic supremacy in the coming state, a struggle attended by fraud and violence within the territory and by intense excitement throughout the Union. The story of "Bleeding" Kansas was familiar in every Northern household. It was re-told by participants fresh from the field to the first state convention of Illinois republicans at Bloomington on May 29, 1856, where Lincoln's famous "lost speech" was delivered—lost because its fervor and eloquence led all the reporters to drop their pencils and join in the shouting. Douglas had failed of the nomination that year, the prize going to Buchanan, but 1860 was not far away. Buchanan was elected, last of the pro-slavery presidents, over John C. Fremont, the first candidate of the new republican party. Lincoln, meanwhile by his narrow defeat for the senate in 1854, at the hands of Lyman Trumbull, and by his activity in succeeding campaigns, had become the unquestioned leader of the Illinois phalanx and was beginning to be recognized elsewhere in political circles.

Two days after the inauguration of President Buchanan the legal contention of his party was signally re-enforced by a decision of the United States Supreme Court (in the case of Dred Scott) wherein it was explicitly laid down that Congress was indeed powerless to prohibit the holding of slaves within the territories. Scott had brought trespass in the U. S. Circuit Court of Missouri against one Sanford, alleging assault and imprisonment of himself and like offences against his wife and daughters. As jurisdictional facts he declared himself a citizen of Missouri. Sanford being a resident of New York. There was a plea to the jurisdiction, based upon the averment that Scott was not a citizen of Missouri, because, in the words of the pleader, "he is a negro of African descent, whose ancestors were of pure African blood and were brought into this country

and sold as negro slaves." Scott demurred to this plea, thereby admitting the facts so alleged. The Circuit Court sustained this demurrer, whereupon the defendant pleaded over, justifying the acts complained of upon the ground that plaintiff, his wife, and his daughters were all slaves owned by him and that the pretended trespasses were within his rights as master; to which plea there was the usual replication.

At the trial it was agreed, in effect, that Scott and his family were slaves as claimed, unless their emancipation had resulted from the fact, also admitted, that for some years prior to 1838 the parent couple, after a short residence in Illinois, had lived with their respective masters in a territory of the United States north of latitude 36:30, to wit, at Fort Snelling, now in Minnesota. As to this, plaintiff invoked the Act of March 6, 1820, known as the Missouri Compromise, whereby it was expressly declared that no slave should be owned or held north of the line just named. The trial court held that this circumstance did not work a manumission of either parents or children; that Scott was still a slave and therefore not a citizen; and upon the verdict returned, with fine scorn of consistency, judgment was rendered in favor of defendant, and against his own property, for his taxable costs. This judgment was reviewed on writ of error and was twice argued in the Supreme Court. The majority opinion, given by Chief Justice Taney, answers two questions which are stated as follows: "Had the Circuit Court jurisdiction to hear and decide the case between these parties?" Held, that it had not, for the reason that a negro, descended from slaves, was not and could not be a citizen, within the meaning of the constitution, whether bond or free. 2d. "If the court had jurisdiction, is the judgment it has given erroneous or not?" Held, erroneous, not on the merits, but for the reason that the court, having no jurisdiction of the case, (diverse citizenship not existing), no judgment could be given therein save a judgment of dismissal.

It would be impossible for any tongue or pen to portray the astonished rage which this deliverance produced on the one side, or the uproarious joy on the other. The official report of it was issued for popular use in cheap pamphlet form and its 240 pages were eagerly scanned. Of the myriad copies thus circulated but few remain, one of which I have preserved as a curious memento of the times. The case might have been disposed of briefly, upon the jurisdictional ground alone, but the record is extremely voluminous. All of the Justices filed elaborate opinions, two of them dissenting. The concurring majority seemed to be under the delusion that the whole unhappy controversy might be quieted by a labored judicial exposition. Naturally the leading opinion was misunderstood and misrepresented. It is widely believed to this day, I suppose, that it declared as a fixed rule of current law that a negro, whether free or not, "had no rights which the white man is bound to respect." It does not go quite that far. The remark occurs in the course of a highly prejudiced historical review and has reference, not to the law or facts of the time, but to opinions said to have been universal when the Union was formed.

But it matters little. Dred Scott and his family were probably the only slaves ever held under that decision. The question went to a higher tribunal, where the precedent was not followed—over-ruled by the stump speeches of Abraham Lincoln of Illinois.

Another event of that period entered largely into the Lincoln and Douglas campaign and must be briefly noticed. The lawlessness prevalent in Kansas had led to the assembling, at Lecompton, of a bogus or "snap" convention, dominated by pro-slavery interests and impudently claiming to represent the resident majority. This body framed a proposed constitution which would have fastened slavery upon the state irrevocably and through a series of tricky manœuvers, caused it to be laid before Congress as a basis for admission into the Union. Despite abundant proof of its fraudulent origin and character the President and

his party attempted to consummate this Lecompton swindle. Much as Douglas disliked to break with the slave protagonists he could not aid in that measure and retain for an hour the support of his home constituency. Making a virtue of necessity, therefore, he joined loudly in opposition and contributed not a little to the defeat of a nefarious intrigue. But his political fate was sealed. The South already had begun to doubt his fidelity and now, to complete his eventual ruin, a few sap-headed anti-slavery leaders were led to treat him as a hopeful convert to their cause. In this posture of affairs the "little giant" came home to urge his claims for a second return to the Senate.

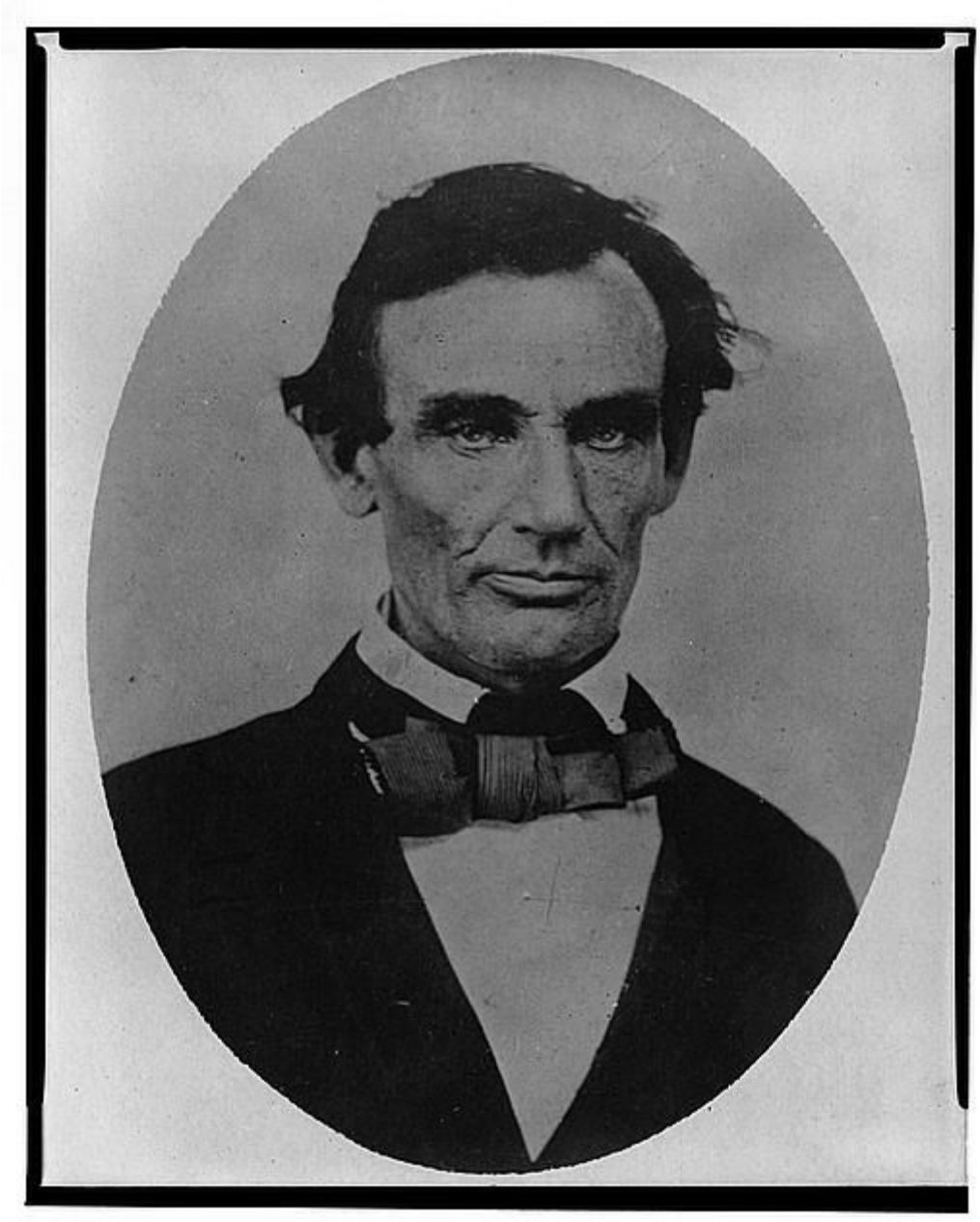
It was a very different reception from that accorded to him four years earlier, when he came red-handed from the slaughter of the compromise measures. Then his first Illinois audience, at Chicago, overcoming his resolute effort to be heard, literally drove him from the stand in a whirlwind of obloquy. Now, restored to favor by his spectacular resistance to the rape of Kansas, he was met with extraordinary demonstrations of approval, especially in northern Illinois where free-soil democracy was largely predominant. And many republicans joined in the acclaim, misled thereto by the advice of Horace Greeley and others in the East who deemed it "good politics" to permit the re-election of a revolting democrat by default. But the Buchanan office-holders were mildly against him, and the cry that he was "no longer a democrat" had considerable effect in the southern counties derisively called "Egypt." It is not clear that the Buchanan administration took much part in this opposition, but Douglas made the most of it wherever an appeal for sympathy on that ground could be made with effect.

Partly as a means of circumventing the mischievous Greeley program the republicans of Illinois adopted a course then without precedent; that of formally nominating their own candidate for the senatorship, thus directly appealing to the popular vote. Very likely Lincoln was a party to

this move, though not openly so for obvious reasons. His letters of that period show that he was keenly alive to the evils of such a defection as the highly influential "Tribune" had proposed. At any rate, when the state convention, called to nominate candidates for state offices, had unanimously named Abraham Lincoln as its "first, last, and only choice" for the Senate, he was ready with an acceptance speech more carefully prepared than any political address he had ever delivered. It was the famous "House-divided" speech, opening with a declaration of his belief that the nation could not endure, permanently, half slave and half free.

"I do not expect the Union to be dissolved," he continued, "I do not expect the house to fall—but I do expect it will cease to be divided. It will become all one thing or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike lawful in all the states, old as well as new, North as well as South."

The prophetic character and the profound significance of that utterance are wholly lost upon those who do not remember, or have not studied, the awful crisis through which the nation passed within the next seven years. No voice had spoken the like before, no man had thus laid bare the delusions of compromise, or summoned the public conscience so impressively. More than four months elapsed before William H. Seward echoed the same warning in his "irrepressible conflict" speech at Rochester. Lincoln's was the first clear call to a final choice between two utterly antagonistic systems, not of labor merely but of social organization, one of which must destroy the other that peace might come. The argument which followed this solemn exordium clearly disclosed the prevailing tendency toward universal bondage and the appeal was for a reversal of that tendency through defeat of the pro-slavery party.



Abraham Lincoln, head-and-shoulders portrait, taken on October 1, 1858, in Pittsfield, Illinois, by Calvin Jackson, photographer, two weeks before the final Lincoln-Douglas debate in his unsuccessful bid for the U. S. Senate. Source: Library of Congress.

But how, lawfully and peacefully, could such a reversal be accomplished? How arrest the further spread of slavery, how mark it for ultimate extinction? Certainly not by acquiescence in the Dred Scott decision as a rule of political action; more certainly not by approving the course of Douglas, father of the Kansas-Nebraska bill whose legal theory the

Supreme Court had so opportunely confirmed. So the validity of the Dred Scott decision became the great and pivotal question which the people by their votes must decide.

The relations of this judicial pronouncement to the political activities of Senator Douglas call for but little further explanation. Having been coerced by his presidential ambitions, as we have seen, into supporting the compromise repeal, he necessarily had accepted the slogan of the repealers, to wit: "popular sovereignty"—in a word the sovereign right of the inhabitants of a territory to decide for themselves whether their state, when formed, should be slave or free. The settlers of the new commonwealth, it was said, were the only proper judges of the industrial system best suited to their needs, and now it was decided that they were the only lawful judges. Under the operation of this doctrine the fierce struggle for Kansas went on between the "border ruffians" of Missouri, so called, and immigrants from the North aided it was claimed by the anti-slavery societies. Naturally the bona fides of such settlements was questioned and popular sovereignty, in the speech of the day, became "squatter sovereignty"; a term sufficiently descriptive and not quite so taking.

The political dogma thus christened and nicknamed was writ large in the Kansas-Nebraska law. As finally shaped that measure contained this singular declaration: "It being the true intent and meaning of this act not to legislate slavery into any state or territory, nor exclude it therefrom; but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the constitution of the United States," language which was wittily characterized at the time as "a stump speech injected into the belly of the bill." From 1854 onward, Douglas had passionately lauded this "gr-r-cat principle," as he fondly termed it, this "sacred right of self-government,"

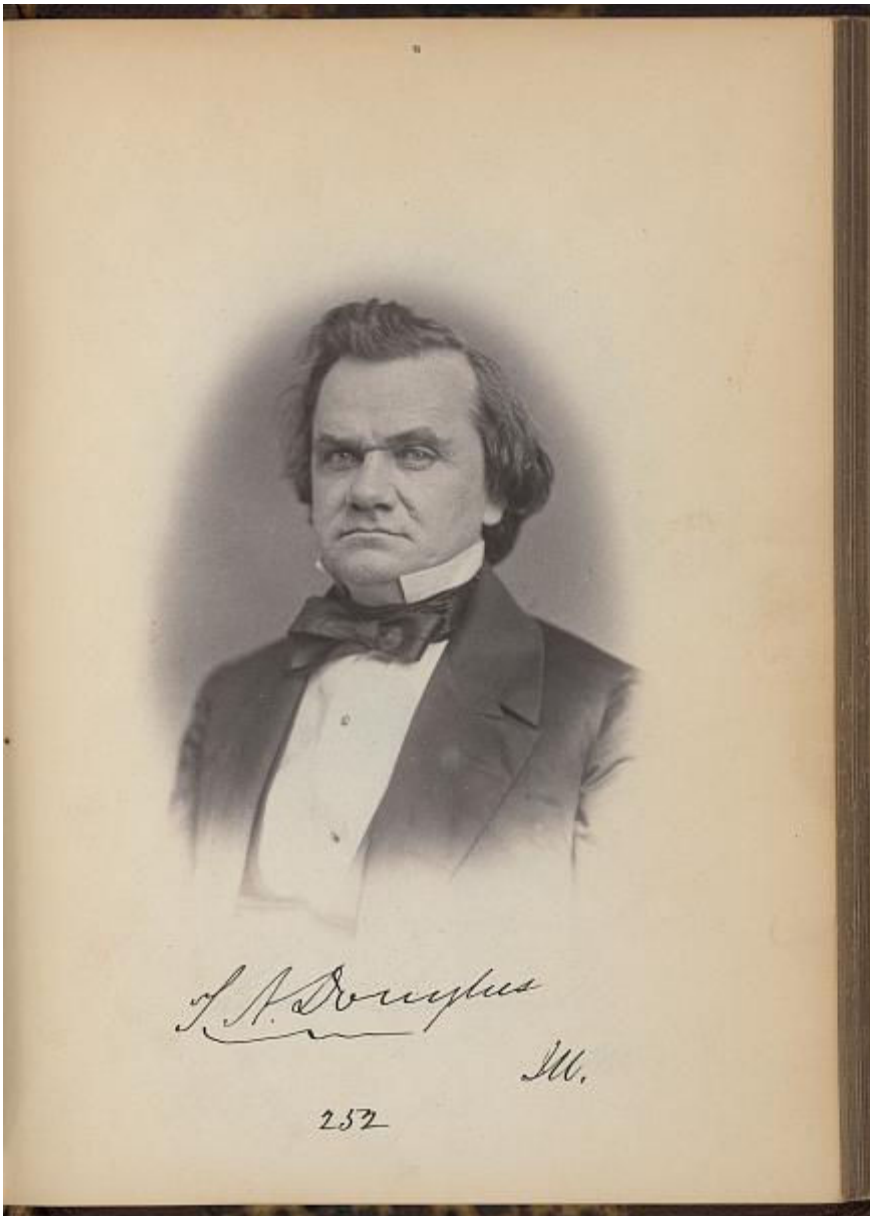
upon which the nation was founded and without which the government must surely fall. By continued insistence on its fundamental necessity he had gradually overcome the resentment of his party at home and had maintained to some extent his footing in the South.

The Supreme Court, however, in denying to Congress all power over slave holding in the territories, had equally denied such power to the people of the territories. Slave property there was even more sacred than the "sacred right of self-government," and that was a rude blow to the "great principle" upon which Douglas had so often and so loudly proclaimed his purpose to stand or fall. The people were indeed "perfectly free" to form and regulate for themselves a system of slavery, but they were not free to establish or promote the opposite system of freedom.

But Douglas had faith, apparently, that majorities of the people could be "fooled all the time," and experience thus far had not taught him otherwise. After supporting and vociferously applauding the compromise measures of 1850, he had fathered and defended their repeal in 1854, and this sudden change of front, though hotly condemned at the moment, had now been forgiven. His opposition to the Lecompton fraud, absolutely necessary to his retention of a seat in the Senate, was magnified into a heroic defence of the '"great principle." With an eye to the South he gave frequent assurances that he "cared not" whether slavery in Kansas was "voted up or voted down," insisting only upon the exercise of squatter sovereignty in the form of a free election. Surely the South would condone, in a candidate for the presidency whom she could not hope to elect without Northern aid, so venial an offense as outward conformity on his part to a dogma which the South had forced upon him. He would defend the Dred Scott decision, which had opened all the territories to slavery, and he would retain the requisite Northern support by continued thrumming of the dulcet note which had restored a local popularity once

seemingly lost. And the Southern leaders, seeing the need, would forgive the deed.

It is hardly possible, I think, to regard Douglas as a man of keen moral perceptions or deeply sincere; but the lure of the presidency is a pitiless searcher of character. Even Webster, the "god-like Daniel," staggered almost to a fall under the same unsparing test.



Portrait of Stephen A. Douglas, Senator from Illinois, Thirty-fifth Congress, taken in 1859, by Julian Vannerson. Source: Library of Congress.

Judge Douglas (for he bore that title by reason of a circumstance to be mentioned later) opened his campaign at Chicago on the 9th of July, 1858, assaulting the main positions of Lincoln's acceptance speech with his accustomed dash and vigor. Lincoln replied in the same place on the following evening and the skirmish proceeded in a somewhat desultory fashion throughout the month. Between July 24th and 30th, dispositions were made for bringing on the general engagement. Seven meetings were agreed upon, one in each Congressional district, the first two well to the north, the third in lower Egypt, then three in the central regions, and the last at Alton, where Lovejoy had suffered martyrdom at the hands of a pro-slavery mob. The dates extended from August 21st to the 15th of October.

The call for a joint discussion came from Lincoln. The late Alex. K. McClure, in an address given in February last, only a few weeks before his lamented death, asserted that Lincoln sent his challenge solely because he had learned that Douglas was about to challenge him; implying that otherwise the encounter would have been avoided. Col. McClure was generally accurate and on some phases of Lincoln history his knowledge was uncommonly full, but he gives no authority for this statement and I can find nothing to confirm it. Certain it is that much outcry was made at the time by partisans of Douglas that Lincoln was constantly dogging his opponent's footsteps in order to gain a hearing from the latter's larger audiences. The advantages to be gained from an opportunity to speak directly to the Douglas adherents sufficiently explain the challenge. Moreover, the statement is contradicted by the record, for in response to the proposal Douglas querulously wrote that it came too late—after appointments had been made for him throughout the state "covering the entire period until late in October." Nevertheless he accepted, being permitted to fix the times and places of meeting to suit his own convenience and to reserve for himself four closing speeches out of the seven.

Time does not permit us to dwell upon details of the several debates, fascinating as they are to students of the men and the times. They now hold a place among the classics of American history. So late as the beginning of 1894 but one edition of them existed in accessible form, the dingy little volume issued in 1860 as a republican campaign document. Within the past fifteen years more than a dozen verbatim reprints have been made and readily sold. There could not be a more admirable text-book of the great antebellum conflict, lighting up as it does the bare facts of the story with the human interest of a dramatic and titanic struggle between the two contemporary men best fitted, all things considered, to defend their respective sides in a popular discussion. By Lincoln's particular request the original edition of 1860 was printed just as the speeches were reported at the time, "without any comment whatever," and now, after the lapse of fifty years, the editors find very little occasion for explanatory notes.

Of course there was, on both sides, a great deal of mere sparring at the several meetings, and much repetition, but the methods of the two men thus exhibited are full of interest. In his opening at Ottowa Douglas rapidly reviewed the history of the whig party, now succeeded by the republican, and charged that Lincoln and Trumbull had conspired together, the one to "abolitionize" the whigs and the other the democrats, for the selfish purpose of securing to themselves the two Illinois senatorships. Next by plausible paraphrase and veiled misstatement he maintained the surprising theory that the Kansas-Nebraska act was in strict harmony with the compromise measures of 1850. Then, quoting certain resolutions which he averred had been adopted by a republican state convention in 1854—two years, by the way, before that party was formed—he sought by a series of questions based thereon to force his rival into extreme positions. Then followed a savage assault upon the "House-divided" speech, denouncing its criticism of the Dred Scott decision as revolutionary if not actually treasonable and demanding to know why the government could not endure, as it had endured for eighty years, divided into slave states and free as designed by the fathers.

Lincoln did not rise to supreme heights in his reply. He was not aware at the time that the resolutions read by Douglas were those of an obscure county convention in no wise binding upon the new party, and seemed in a measure disconcerted by the pugilistic rushes of the "little giant," a mode of battle more fully illustrated by the concluding speech on the same occasion. But he parried the thrusts good naturedly and emerged from the first encounter much better prepared for the second.

The debate at Freeport, six days later, looms historically above all the others. There Lincoln had both the opening and closing speeches, and he had measured at close range the strength of his foeman. It is very interesting to observe his change of attitude. At Freeport and thence to the end Lincoln deftly centered attention upon his own candidacy as the important feature. The crude arrogance of Douglas was overmatched by a quiet self-assertion skillfully put on and calmly worn. The twice chosen senator became merely a suppliant for another term, the taller giant bestriding the stage as its principal figure, contemptuous of office and hero of the scene.

He gained an immediate advantage with the audience by offering to answer the seven questions so confidently propounded by Douglas, on condition that the latter would agree to answer a like number in return, pausing for a reply. Douglas remained silent. "I now propose," said Lincoln, "to answer his questions whether he answers mine or not;" and he did answer according to their terms. But they were framed so loosely that categorical answers amounted to nothing. Then, waiving the advantage, he so restated the several inquiries as to elicit his own views upon all the subjects involved, answering each without reserve yet in such manner as to emphasize his own conservatism as compared with extreme abolition opinions.

The crucial interrogatory of the four then submitted to Douglas developed what is known as the "Freeport doctrine," involving the utter destruction of its author as a presidential candidate. The question was thus stated:

"Can the people of a United States territory, in any lawful way, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a state constitution?"

Douglas answered "Yes," declaring with great vehemence that the people "have the lawful means to introduce slavery or exclude it," for the reason that the institution could not exist for a day or an hour, anywhere, unless supported by favoring police regulations, and these could be enacted only by a local legislature. Therefore, if the people of a territory were opposed to slavery they could effectually shut it out simply by withholding the necessary legislation, and more effectively by adverse enactments. "No matter" shouted the irate senator, "what way the supreme court may decide the abstract question," the people had power to overrule the decision through the simple expedient of "unfriendly legislation."

This answer exposed in a dramatic way the inherent antagonism between the Dred Scott decision and the "great principle" of popular sovereignty, to both of which Douglas had sworn eternal allegiance. Of course Lincoln had great fun with it throughout the remaining weeks of the campaign. The doctrine under his merciless dissection of it finally took form as the burlesque proposition that "a thing may lawfully be driven away from a place where it has a lawful right to go," a form which enabled the simplest minded voter to perceive its absurdity. Remember that Douglas had been denouncing his rival furiously because of his objections to the Dred Scott decision. It was the duty of every citizen, he maintained, to accept the findings of the Supreme Court as final. He had been very explicit and very denunciatory in pressing this duty upon his

opponents. Lincoln had retorted by calling attention to the fact that Douglas had once lent himself to a contrary practice. The Supreme Court of Illinois had rendered an unpopular decision and the legislature temporarily increased the number of its judges for the express purpose of procuring a reversal. One of the added justices was Stephen A. Douglas himself, who actually qualified and served for the brief period necessary to secure a re-hearing and a contrary ruling; and it was in that way and no other that he had acquired his title of "Judge." But now a more conclusive estoppel came into force. Here was Judge Douglas actually rating the Dred Scott decision as a mere "abstraction," which the people of Kansas might properly disregard; that their legislature might effectually override it, notwithstanding the court in declaring that Congress had no power to exclude slave holding from the territories had most carefully explained that, of course, no such power could exist in any territorial government. It was a grievous inconsistency and grievously did Douglas rue it.

A great deal of nonsense has been published about this incident. Many of the biographers represent the interrogatory as a shrewd device on Lincoln's part to entrap his opponent into a dilemma quite unforeseen, and the tenor of Douglas' answer, if he could be induced to answer at all, as a subject of anxious consultation between Lincoln and his friends. Something must have been said from which this misconception arose, but there could have been no slightest doubt how the question would be answered, nor that the answer would be given forthwith. The same ground had been taken before. In the slashing reply which immediately followed it was declared that "Lincoln has heard me answer that question a hundred times from every stump in Illinois." That was a characteristic exaggeration, but there had been no concealment. At Bloomington on July 16th, only six weeks before the Freeport meeting, the same theory had been volunteered in almost the same words and the speech had been widely published. The question did not "drive Douglas into a corner;" he was already in, being fully resolved to renounce the supreme court and all

its works, if need be, rather than abandon the Great Principle, the sheet anchor of his home support.

Lincoln, on the other hand, was equally prepared to sacrifice the senatorship, if that must follow, in order to center public attention upon the Douglas apostacy. He was combatting the Dred Scott principle, and was more than willing to enlist even Douglas in aid of that purpose. His aim was to arrest the further spread of slavery and thus contribute to its ultimate extinction. To blast the presidential aspirations of Douglas was to defeat in advance all others of his kind. And if no "Northern man with Southern principles" could be president then the line of pro-slavery presidents would become extinct. Probably he meant no more than that in saying—if indeed he said it—that "the battle of 1860 is worth two of this."

The immediate struggle ended in a divided victory. Through an unfair apportionment Douglas carried the legislature by a majority of five, but in the state at large the vote was against him by as many thousands. With his re-election assured the "little giant" hurried South to make his peace where peace could never again prevail. Returning, he traveled far and wide in the North only to find the great debate still in progress. Lincoln, in hunter's parlance, continued to "camp on his trail," finally summing up at Cooper Union in New York on February 27th, 1860, in the greatest argument upon the law and the facts, as I verily believe, that ever fell from mortal tongue.

None but a great lawyer could have charted the Nation's course through the infinite legal perplexities of an unprecedented civil conflict. Only a masterly, unerring grasp of controlling principles could have unriddled the tangled anomalies of a constitution ordained for peace yet regnant over a sea of blood. Only power of analysis and skill of speech, both of the highest, could command attention amid the crash of cannons and the wreck of war. Only patience immeasurable, and courage

unfailing, and charity unbounded, and character unspotted, could have held the people to their cruel four years' task. Only Abraham Lincoln—for there was no other like him—could have vindicated for us, in that hour of supreme trial, the prophetic dream of our fathers that the right of every man to be free is indeed a self-evident truth and not a fatuous lie.

Mr. L. E. Jones (of Breckenridge): Mr. President, I move that the thanks of this body be extended to Judge Fish for his eloquent and scholarly address.

Mr. E. G. Rogers (of St. Paul): I second that motion.

President Butler: A motion that a vote of thanks be extended to Judge Fish for his able and scholarly address has been made and seconded. Those who are in favor of it will signify by saying "Aye." (There was a chorus of "Ayes.") The thanks of this Association are extended to Judge Fish for his able address to which we have just listened. ▪

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