

Lincolniana

A Glimpse of Lincoln in 1864

By J. HUBLEY ASHTON

THE REMINISCENCE printed below was written by J. Hubley Ashton, assistant attorney general of the United States from 1864 to 1869. The original manuscript is owned by Bethuel M. Webster¹, whose late wife Eleanor Ashton Webster was a granddaughter of Ashton's. J. Hubley Ashton was born in Philadelphia in 1836. He attended the University of Pennsylvania Law School and at the age of twenty-eight was appointed assistant attorney general. In Washington he represented the government in several of the so-called Prize Cases, which upheld Lincoln's right to exercise martial powers prior to an official declaration of war. In 1865 Ashton befriended the controversial poet Walt Whitman, then forty-six, who was dismissed from the Department of the Interior because the new Secretary, James Harlan, did not wish to employ

the author of Leaves of Grass, then considered scandalous. Ashton was influential in obtaining a clerkship for Whitman in the office of Attorney General Edward Bates. Ashton resigned in 1869 and the following year joined the first faculty of Georgetown University Law School. In 1874 he resumed private practice and specialized in international law. He was a founding member of the American Bar Association in 1878, a delegate to the International Sanitary Conference of 1880, counse; for the government at the Venezuela Claims Commission of 1885, and counsel for Chinese aliens in the Chinese Exclusion Cases of the 1890's. He also edited Volumes 9-12 of Opinions of the Attorneys General of the United States. Ashton died in 1907.

¹ Bethuel M. Webster is a partner of Webster, Sheffield, Fleischmann, Hitchcock 8c Brookfield of New York City. His collection of Ashton family material also contains several Walt Whitman books and autographs. Webster provided the biographical information about Ashton cited in note.2. The Ashton reminiscence was given to the Journal by Herbert J. Mitgang, Lincoln biographer and member of the editorial board of *The New York Times*.

² For more information on Ashton, see District of Columbia Bar, *Proceedings of a Meeting of the Members of the Bar of the District of Columbia to Take Action Upon the Death of J. Hubley Ashton, March 29, 1907* (Washington, D.C.: n.p., 1907); Thomas William Herringshaw, ed., *Herringshaw's National Library of American Biography* (Chicago: American Publishers' Assn., 1909-1914), I, 162; Albert Nelson Marquis, ed., *Who's Who in America*, 1903-

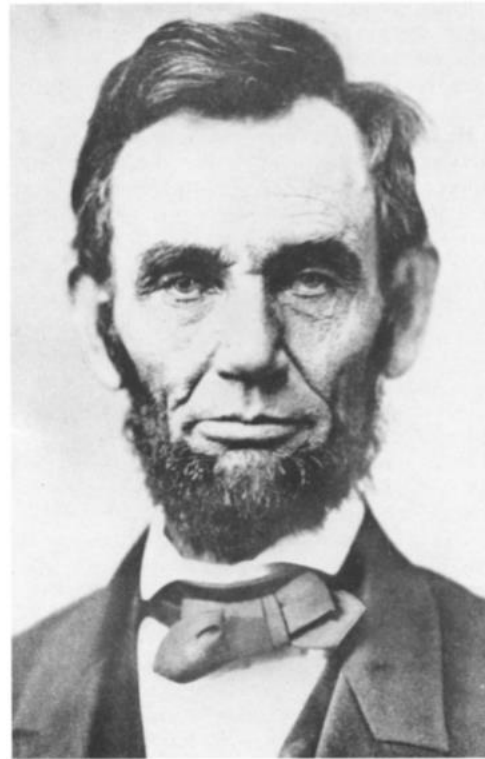
1905, 1906-1907; Clara Barrus, *Whitman and Burroughs, Comrades* (Boston: Houghton, 1931), pp. 27-30; Horace Traubel, *With Walt Whitman in Camden* (New York: M. Kennerley, 1914), III, 472-77; Henry Seidel Canby, *Walt Whitman, an American: A Study in Biography* (Boston: Houghton, 1943), pp. 243, 246-47, 253; James S. Easby-Smith, *Georgetown University in the District of Columbia, 1789-1907* (New York: Lewis Pub. Co., 1907), II, 87; *Catalogue of the Trustees, Officers, and Graduates of the Departments of Arts and Science and of Honorary Graduates of the University of Pennsylvania, 1749-1880* (Philadelphia: Society of the Alumni, 1880). For Ashton's legal career, see American Bar Association *Reports*, 1-5 (1878-1 882) and reports and record on appeal of *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *Lau Ow Bew v. United States*, 144 U.S. 47 (1892); *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). *Wong Kim Ark*, 169 U.S. 649 (1898).

Two incidents occurred in my intercourse with President Lincoln, during the time I held official relations to his administration as Assistant Attorney General of the United States, which illustrate his deep and abiding sense of justice, and the great kindness and tenderness of his heart, and I will endeavor to tell them simply and briefly as they happened.

The first occurred the day after I reached Washington, and on the occasion of my official introduction to the President by the Attorney General, who was Edwin [sic] Bates, of Missouri, himself one of the greatest and best of men, of whom Mr. Lincoln was personally very fond.

It was a little after 9. O clock on a bright morning in May, 1864, that I accompanied my official Chief to the White House for the purpose of being presented to the President.

My first sight of him was that of the veritable Mr Lincoln, rather than the President, for we discovered, as we entered his office, that he was **in the hands of the barber**, who, at the moment, was vigorously rubbing his head. He sat in a high chair, with a long, a very long, towel tucked under his chin; **his legs were stretched out at full length; and his hair stood up like quills upon the fretful porcupine**, as the Attorney General announced me to him as his new Assistant. With a kindly tone in his voice, he asked us to be seated, and while the barber was putting the finishing touches on his hair, I had an opportunity for a little study of the President. I remember that, stretched out in the way I have described, he appeared to be the *longest* man whom I had ever seen. His countenance was in complete repose, and judging from the peaceful expression upon his face, it was clear that he had enjoyed the manipulations of the barber. Mr Lincoln's face has been often described as a homely one, and so no doubt it was conventionally speaking; but benignity and power were written all over his countenance. Any reader of human character could see the signs of the great soul that wrote the Emancipation Proclamation and that memorable and touching letter to the widowed mother of Massachusetts who had lost five sons in battle, behind those deep-set eyes and that furrowed brow. There was to me an air of dignity all his own, and "manly self-dependence", to use an expression of De



Abraham Lincoln

Quincey, diffused over the deportment of Mr Lincoln, which left no doubt that it arose spontaneously from his nature, and yet so simple and unaffected, so kindly and cordial, was his manner that even the humblest could not feel abashed in his presence.

Presently the barber got through his work, but before the long cloak was removed, Mr Lincoln drew his feet from the chair on which they had been resting, and wrapping one leg around the other, turned to us as for conversation.

He said that he proposed to take advantage of this visit of two lawyers to put a question as to his power to grant relief to a worthy farmer, I think he mentioned, from West Virginia, who had incurred a forfeiture under a contract with the Government for the supply of a quantity of beef, at a certain point, for the use of the army operating in the Valley against General Jackson. The man had been prevented, by the movements of the troops, and entirely without his fault, from fulfilling his contract according to its terms, and the officers of the Government were disposed to exact from him, by suit, the amount

of the stipulated forfeiture, or damages for breach of the contract, which, the President said, though possibly according to law, was, under the circumstances of the particular case, as it appeared to him, most unjust. About the merits of the case, however, he said, he did not desire to trouble us. The question, he observed, which had given him trouble, was that of his *power* to remit, or affect, the liability of the party, under the contract, to the Government.

"Have I the power under the Constitution and laws", he asked, "to do anything for the relief of this man."

Mr Bates proceeded, in his characteristic manner, to expatiate upon the extent and limitations of the power of the President to grant reprieves and pardons for offences against the United States, which, he said, was in its terms and obvious sense, confined to offences, crimes and misdemeanors, against the United States, 69 and did not embrace any case of forfeiture, or loss, or condemnation, not imposed by law as a punishment for an offence.

After the Attorney General had finished, without in fact directly answering the question propounded by the President, Mr Lincoln asked me whether I had anything to suggest.

I had observed very plainly, that the President was desirous of helping this man, if he could, and while the Attorney General was speaking, my mind had recurred to a celebrated opinion of Chief Justice Taney, while Attorney General, known as his opinion in the case of "*The Jewels of the Princess of Orange*,"³ in which he had laid down the doctrine of the right of the President, under his constitutional power to take care that the laws be faithfully executed, to direct the discontinuance of any suit instituted in the name of the United States which was unjust and oppressive, or against the proper interests of the Government, and it had appeared to me that, upon the same principle, the President of the United States might be assumed to possess the power to *forbid* that an unjust and oppressive suit

should be instituted in the name of the United States against a private individual.

I replied, therefore, to the President's question, that though he had no power as the Attorney General had said, directly to remit, or discharge, the liability of the party, under his contract, yet it seemed to me that he had the power, as the Chief Executive, to direct that no suit, or action, should be brought in the name of the United States, on the contract in question, and that such an order, given by him to the proper officers of the Government, might practically accomplish, though rather indirectly, the object he had in view in this case.

"Do you ever play billiards," asked Mr Lincoln, with a look on his face.

I replied that I did not.

"Well," he said, "I thought you did, for your answer reminds me of the performance in billiards I saw the other day, where the fellow caromed on the white and hit the red on the opposite side of any object placed in the middle of the table," and slowly drawing himself out of his chair, with the barber's towel still under his chin, he proceeded to show us, with the aid of a pen, a hat, and two inkstands, how the player he spoke of could strike a ball, on one side, and hit another ball on the opposite side, of the hat, without touching the hat.

³ Taney declared that the President "had the right to discontinue a suit, brought in the name of the United States, by giving orders to the District Attorney, as an attorney might discontinue a suit for a client." The case involved the disposition of jewels stolen from the Princess of Orange and recovered on American territory. Without the President's intervention, the

jewels would have been condemned by the United States Collector since this country then had no extradition treaty with Holland. See Bernard C. Steiner, *Life of Roger Brooke Taney, Chief Justice of the United States Supreme Court* (Westport, Conn.: Greenwood Press, 1970), pp. 133-35