

THE COUNSEL ASSIGNED

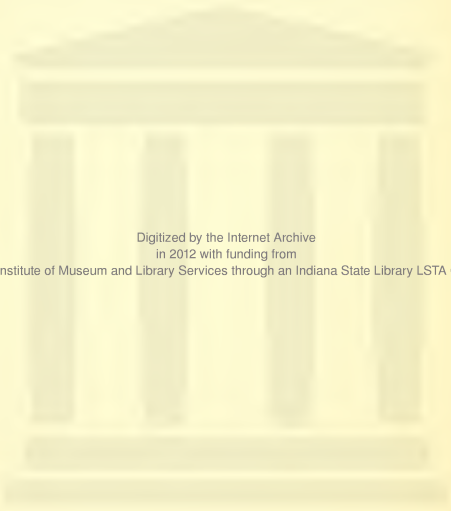


MARY RAYMOND SHIPMAN ANDREWS

Author of "The Perfect Tribute"

Annie E. Dougherty

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BUT LINCOLN STOOD GUARD

THE
COUNSEL ASSIGNED

BY

Mary Raymond Shipman Andrews

Author of "The Perfect Tribute," etc.



NEW YORK
Charles Scribner's Sons
1914

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Published March, 1912



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A VERY old man told the story. Some twenty years ago, on a night in March, he walked down the bright hallway of a hotel in Bermuda, a splendid old fellow, straight and tall; an old man of a haughty, high-bridged Roman nose, of hawklike, brilliant eyes, of a thick thatch of white hair; a distinguished person, a personage, to the least observing; not unconscious possibly, as he stalked serenely toward the office, of the eyes that followed. An American stood close as the older man lighted his cigar at the office lamp; a red book was in his hand.

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“That’s a pretty color,” the old fellow said in the assured tone of one who had always found his smallest remarks worth while.

The American handed it to him. As he turned over the leaves he commented with the same free certainty of words, and then the two fell to talking. Cigars in hand they strolled out on the veranda hanging over the blue waters of the bay, which rolled up unceasing music. There was a dance; a band played in the ball-room; girls in light dresses and officers in the scarlet jackets or the blue and gold of the British army and navy poured past.

The old man gazed at them vaguely and smiled as one might at a field of wind-blown daisies, and talked on. He told of events, travels, advent-

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ures—experiences which had made up an important and interesting life—a life spent partly, it appeared, in the United States, partly in Canada, where he was now a member of the Dominion Parliament. His enthusiasm, it developed, was for his profession, the law. The hesitating, deep voice lost its weakness, the dark eyes flashed youthfully, as he spoke of great lawyers, of legal *esprit de corps*.

“It’s nonsense”—the big, thin, scholarly fist banged the chair arm—“this theory that the law tends to make men sordid. I’m not denying that there are bad lawyers. The Lord has given into each man’s hand the ultimate shaping of his career; whatever the work, he can grasp it by its bigness or its pettiness, according to his nature. Doctors look after men’s

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bodies and parsons after their souls; there's an opinion that lawyers are created to keep an eye on the purses. But it seems to me"—the bright old eyes gazed off into the scented darkness of the southern night—"it seems to me otherwise. It seems to me that the right lawyer, with his mind trained into a clean, flexible instrument, as it should be, has his specialty in both fields. I am a very old man; I have seen many fine deeds done on the earth, and I can say that I have not known either heroic physicians or saintly ministers of God go beyond what I've known of men of my own calling. In fact——"

The bright end of the cigar burned a red hole in the velvet darkness, the old man's Roman profile cut against the lighted window, and he was si-

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lent. He went on in his slow, authoritative voice:

“In fact, I may say that the finest deed I’ve known was the performance of a lawyer acting in his professional capacity.”

With that he told this story:

The chairman of the county committee stopped at the open door of the office. The nominee for Congress was deep in a letter, and, unpretentious as were the ways of the man, one considered his convenience; one did not interrupt. The chairman halted and, waiting, regarded at leisure the face frowning over the paper. A vision came to him, in a flash, of mountain cliffs he had seen—rocky, impregnable, unchangeable; seamed with lines of outer weather

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and inner torment; lonely and grim, yet lovely with gentle things that grow and bloom. This man's face was like that; it stood for stern uprightness; it shifted and changed as easily as the shadows change across ferns and young birches on a crag; deep within were mines of priceless things. Not so definitely, but yet so shaped, the simile came to the chairman; he had an admiration for his Congressional candidate.

The candidate folded the letter and put it in his pocket; he swung about in his office chair. "Sorry to keep you waiting, Tom. I was trying to figure out how a man can be in two places at once."

"If you get it, let me know," the other threw back. "We've a use for that trick right now. You're wanted

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to make another speech Friday night."

The big man in the chair crossed his long legs and looked at his manager meditatively. "I didn't get it quite figured," he said slowly. "That's my trouble. I can't make the speech here Friday."

"Can't make—your speech! You don't mean that. You're joking. Oh I see—of course you're joking."

The man in the chair shook his head. "Not a bit of it." He got up and began to stride about the room with long, lounging steps. The chairman, excited at the mere suggestion of failure in the much-advertised speech, flung remonstrances after him.

"Cartright is doing too well—he's giving deuced good talk, and he's at

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it every minute; he might beat us yet you know; it won't do to waste a chance—election's too near. Cart-right's swearing that you're an atheist and an aristocrat—you've got to knock that out."

The large figure stopped short, and a queer smile twisted the big mouth and shone in the keen, visionary eyes. "An atheist and an aristocrat!" he repeated. "The Lord help me!"

Then he sat down and for ten minutes talked a vivid flood of words. At the end of ten minutes the listener had no doubts as to the nominee's interest in the fight, or his power to win it. The harsh, deep voice stopped; there was a pause which held, from some undercurrent of feeling, a dramatic quality.

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“We’ll win!” he cried. “We’ll win, and without the Friday speech. I can’t tell you why, Tom, and I’d rather not be asked, but I can’t make that speech here Friday.” The candidate had concluded—and it was concluded.

Travelling in those days was not a luxurious business. There were few railways; one drove or rode, or one walked. The candidate was poor, almost as day laborers are poor now. Friday morning at daybreak his tall figure stepped through the silent streets of the western city before the earliest risers were about. He swung along the roads, through woodland and open country, moving rapidly and with the tireless ease of strong, accustomed muscles. He went through villages. Once a woman busy

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with her cows gave him a cup of warm milk. Once he sat down on a log and ate food from a package wrapped in paper, which he took from his pocket. Except for those times he did not stop, and nine o'clock found him on the outskirts of a straggling town, twenty miles from his starting-point.

The court-house was a wooden building with a cupola, with a front veranda of Doric pillars. The door stood wide to the summer morning. Court was already in session. The place was crowded, for there was to be a murder trial to-day. The Congressional candidate, unnoticed, stepped inside and sat by the door in the last row of seats.

It was a crude interior of white walls, of unpainted woodwork, of

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pine floors and wooden benches. The Franklin stove which heated it in winter stood there yet, its open mouth showing dead ashes of the last March fire; its yards of stove-pipe ran a zigzag overhead. The newcomer glanced about at this stage-setting as if familiar with the type. A larceny case was being tried. The man listened closely and seemed to study lawyers and Judge; he was interested in the comments of the people near him. The case being ended, another was called. A man was to be tried this time for assault; the stranger in the back seat missed no word. This case, too, came to a close. The District Attorney rose and moved the trial of John Wilson for murder.

There was a stir through the court-

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room, and people turned on the hard benches and faced toward the front door, the one entrance. In the doorway appeared the Sheriff leading a childish figure, a boy of fifteen dressed in poor, home-made clothes, with a conspicuous bright head of golden hair. He was pale, desperately frightened; his eyes gazed on the floor. Through the packed crowd the Sheriff brought this shrinking, halting creature till he stood before the Judge inside the bar. The Judge, a young man, faced the criminal, and there was a pause. It seemed to the stranger, watching from his seat by the door, that the Judge was steadying himself against a pitiful sight.

At length: "Have you counsel?" the Judge demanded.

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A shudder shook the slim shoulders; there was no other answer.

The Judge repeated the question, in no unkind manner. "Have you a lawyer?" he asked.

The lad's lips moved a minute before one heard anything; then he brought out, "I dunno—what that is."

"A lawyer is a man to see that you get your rights. Have you a lawyer?"

The lad shook his unkempt yellow head. "No. I dunno—anybody. I hain't got—money—to pay."

"Do you wish the court to assign you counsel?" He was unconscious that the familiar technical terms were an unknown tongue to the lad gasping before him. With that, through the stillness came a sound

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of a boot that scraped the floor. The man in the back seat rose, slouched forward, stood before the Judge.

“May it please your Honor,” he said, “I am a lawyer. I should be glad to act as counsel for the defence.”

The Judge looked at him a moment; there was something uncommon in this loose-hung figure towering inches above six feet; there was power. The Judge looked at him. “What is your name?” he asked.

The man answered quietly: “Abraham Lincoln.”

A few men here and there glanced at the big lawyer again; this was the person who was running for Congress. That was all. A tall, gaunt man, in common clothes gave his

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name. Frontier farmers and backwoodsmen in homespun jeans, some of them with buckskin breeches, most in their shirt-sleeves, women in calico and sunbonnets, sat about and listened. Nobody saw more. Nobody dreamed that the name spoken and heard was to fill one of the great places in history.

The Judge, who had lived in large towns and learned to classify humanity a bit, alone placed the lawyer as outside the endless procession of the average. Moreover, he had heard of him. "I know your name, Mr. Lincoln; I shall be glad to assign you to defend the prisoner," he answered.

The jury was drawn. Man after man, giving his name, and, being questioned by the District Attor-

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ney, came under the scrutiny of the deep eyes under the overhanging brows—eyes keen, dreamy, sad, humorous; man after man, those eyes of Lincoln's sought out the character of each. But he challenged no one. The District Attorney examined each. The lawyer for the defence examined none; he accepted them all. The hard-faced audience began to glance at him impatiently. The feeling was against the prisoner, yet they wished to see some fight made for him; they wanted a play of swords. There was no excitement in looking at a giant who sat still in his chair.

The District Attorney opened the case for the People. He told with few words the story of the murder. The prisoner had worked on the farm

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of one Amos Berry in the autumn before, in 1845. On this farm was an Irishman, Shaughnessy by name. He amused himself by worrying the boy, and the boy came to hate him. He kept out of his way, yet the older man continued to worry him. On the 28th of October the boy was to drive a wagon of hay to the next farm. At the gate of the barn-yard he met Shaughnessy with Berry and two other men. The boy asked Berry to open the gate, and Berry was about to do it when Shaughnessy spoke. The boy was lazy he said—let him get down and open the gate himself. Berry hesitated, laughing at Shaughnessy, and the Irishman caught the pitchfork which the lad held and pricked him with it and ordered him to get down. The lad

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sprang forward, and, snatching back the pitchfork, flew at the Irishman and ran one of the prongs into his skull. The man died in an hour. The boy had been thrown into jail and had lain there nine months awaiting trial. This was the story.

By now it was the dinner hour—twelve o'clock. The court adjourned and the Judge and the lawyers went across the street to the tavern, a two-story house with long verandas; the audience scattered to be fed, many dining on the grass from lunches brought with them, for a murder trial is a gala day in the backwoods, and people make long journeys to see the show.

One lawyer was missing at the tavern. The Judge and the attorneys wondered where he was, for though

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this was not the eighth circuit, where Abraham Lincoln practised, yet his name was known here. Lawyers of the eighth circuit had talked about his gift of story telling; these men wanted to hear him tell stories. But the big man had disappeared and nobody had been interested enough to notice as he passed down the shady street with a very little, faded woman in shabby clothes; a woman who had sat in a dark corner of the courtroom crying silently, who had stolen forward and spoken a timid word to Lincoln. With her he turned into one of the poorest houses of the town and had dinner with her and her cousin, the carpenter, and his family.

“That’s the prisoner’s mother,” a woman whispered when, an hour

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later, court opened again, and the defendant's lawyer came up the steps with the forlorn little woman and seated her very carefully before he went forward to his place.

The District Attorney, in his shirt sleeves, in a chair tipped against the wall, called and examined witnesses. Proof was made of the location; the place was described; eye-witnesses testified to the details of the crime. There appeared to be no possible doubt of the criminal's guilt.

The lad sat huddled, colorless from his months in jail, sunk now in an apathy—a murderer at fifteen. Men on the jury who had hardy, honest boys of their own at home frowned at him, and more than one, it may be, considered that a monster of this sort would be well removed. Back in

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her dark corner the shabby woman sat quiet.

The sultry afternoon wore on. Outside the open windows a puff of wind moved branches of trees now and then, but hardly a breath came inside; it was hot, wearisome, but yet the crowd stayed. These were people who had no theatres; it was a play to listen to the District Attorney drawing from one witness after another the record of humiliation and rage, culminating in murder. It was excitement to watch the yellow-haired child on trial for his life; it was an added thrill for those who knew the significance of her presence, to turn and stare at the thin woman cowering in her seat, shaking with that continual repressed crying. All this was too good to lose, so the

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crowd stayed. Ignorant people are probably not wilfully cruel; probably they like to watch suffering as a small boy watches the animal he tortures—from curiosity, without a sense of its reality. The poor are notoriously kind to each other, yet it is the poor, the masses, who throng the murder trials and executions.

The afternoon wore on. The District Attorney's nasal voice rose and fell examining witnesses. But the big lawyer sitting there did not satisfy people. He did not cross-examine one witness, he did not make one objection even to statements very damaging to his client. He scrutinized the Judge and the jury. One might have said that he was studying the character of each man; till at length the afternoon had worn to an end, and

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the District Attorney had examined the last witness and had risen and said: "The People rest." That side of the case was finished, and court adjourned for supper, to reopen at 7.30 in the evening.

Before the hour the audience had gathered. It was commonly said that the boy was doomed; no lawyer, even a "smart" man, could get him off after such testimony, and the current opinion was that the big hulking fellow could not be a good lawyer or he would have put a spoke in the wheel for his client before this. The sentiment ran in favor of condemnation; to have killed a man at fifteen showed depravity which was best put out of the way. Stern, narrow—the hard-living men and women of the backwoods set their thin lips

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into this sentence; yet down inside each one beat a heart capable of generous warmth if only the way to it were found, if a finger with a sure touch might be laid on the sealed gentleness.

Court opened. Not a seat was empty. The small woman in her worn calico dress sat forward this time, close to the bar. A few feet separated her from her son. The lawyers took their places. The Sheriff had brought in the criminal. The Judge entered. And then Abraham Lincoln stalked slowly up through the silent benches, and paused as he came to the prisoner. He laid a big hand on the thin shoulder, and the lad started nervously. Lincoln bent from his great height.

"Don't you be scared, sonny," he said quietly, but yet everyone heard

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every word. "I'm going to pull you out of this hole. Try to be plucky for your mother's sake."

And the boy lifted his blue, young eyes for the first time and glanced over to the shabby woman, and she met his look with a difficult smile, and he tried to smile back. The audience saw the effort of each for the other; the Judge saw it; and the jury—and Lincoln's keen eyes, watching ever under the heavy brows, caught a spasm of pity in more than one face. He took off his coat and folded it on the back of his chair and stood in his shirt sleeves. He stood, a man of the people in look and manner; a comfortable sense pervaded the spectators that what he was going to say they were going to understand. The room was still.

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“Gentlemen of the Jury,” began Abraham Lincoln, standing in his shirt sleeves before the court, “I am going to try this case in a manner not customary in courts. I am not going to venture to cross the tracks of the gentleman who has tried it for the prosecution. I shall not call witnesses; the little prisoner over there is all the witness I want. I shall not argue; I shall beseech you to make the argument for yourselves. All I’m going to do is to tell you a story and show you how it connects with this case, and then leave the case in your hands.”

There was a stir through the courtroom. The voice, rasping, unpleasant at first, went on:

“You, Jim Beck—you, Jack Armstrong——”

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People jumped; these were the names of neighbors and friends which this stranger used. His huge knotted forefinger singled out two in the jury.

“You two can remember—yes, and you as well, Luke Green—fifteen years back, in 1831, when a long, lank fellow in God-forsaken clothes came into this country from Indiana. His appearance, I dare to say, was so striking that those who saw him haven’t forgotten him. He was dressed in blue homespun jeans. His feet were in rawhide boots, and the breeches were stuffed into the tops of them most of the time. He had a soft hat which had started life as black, but had sunburned till it was a combine of colors. Gentlemen of the Jury, I think some of you will remember

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those clothes and that young man. His name was Abraham Lincoln."

The gaunt speaker paused and pushed up his sleeves a bit, and the jurymen saw the hairy wrists and the muscles of hand and forearm. Yes, they remembered the young giant who had been champion in everything that meant physical strength. They sat tense.

"The better part of a man's life consists of his friendships," the strong voice went on, and the eyes softened as if looking back over a long road travelled. "There are good friends to be found in these parts; that young fellow in blue jeans had a few. It is about a family who befriended him that I am going to tell you. The boy Abraham Lincoln left his father, who was, as all know, a man in the hum-

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blest walk of life, and at twenty-two he undertook to shift for himself. There were pretty pinching times along then, and Abraham could not always get work. One fall afternoon, when he had been walking miles on a journey westward to look for a chance, it grew late, and he realized suddenly that unless he should run across a house he would have to sleep out. With that he heard an axe ring and came upon a cabin. It was a poor cabin even as settlers' cabins go. There was cloth over the windows instead of glass; there was only one room, and a little window above which told of a loft. Abraham strode on to the cabin hopefully. The owner, a strong fellow with yellow hair, came up, axe in hand, and of him the young man asked shelter."

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Again the voice paused and a smile flashed which told of a pleasant memory.

“Gentlemen of the Jury, no king ever met a fellow-monarch with a finer welcome. Everything he had, the wood-chopper told Abraham, was his. The man brought the tired boy inside. The door was only five feet high and the young fellow had to stoop some to get in. Two children of five or six were playing, and a little woman was singing the baby to sleep by the fire. The visitor climbed up a ladder to the loft after supper.

“He crawled down next morning, and when he had done a few chores to help, he bethought himself to take advice from the wood-chopper. He asked if there were jobs to be got. The man said yes; if he could chop

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and split rails there was enough to do. Now Abraham had had an axe put into his hands at eight years, and had dropped it since only long enough to eat meals. 'I can do that,' he said.

"'Do you like to work?' the woodsman asked.

"Abraham had to tell him that he wasn't a hand to pitch into work like killing snakes, but yet—well, the outcome of it was that he stayed and proved that he could do a man's job."

A whispered word ran from one to another on the benches—they began to remember now the youngster who could outlift, outwork and outwrestle any man in the county. The big lawyer saw, and a gleam of gratification flashed; he was proud always of his physical strength. He went on:

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“For five weeks Abraham lived in the cabin. The family character became as familiar to him as his own. He chopped with the father, did housework with the mother, and tended Sonny, the baby, many a time. To this day the man has a clear memory of that golden-haired baby laughing as the big lad rolled him about the uneven floor. He came to know the stock, root and branch, and can vouch for it.

“When he went away they refused to take money. No part of his life has ever been more light-hearted or happier. Does anybody here think that any sacrifice which Abraham Lincoln could make in after life would be too great to show his gratitude to those people?”

He shot the question at the jury,

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at the Judge, and, turning, brought the crowded court-room into its range. A dramatic silence answered. The tiny woman's dim eyes stared at him, dilated. The boy's bright, sunken head had lifted a little and his thin fingers had caught at a chair at arm's length, and clutched it. The lawyer picked up his coat from where he had laid it, and, while every eye in the court-room watched him, he fumbled in a pocket, unhurried, and brought out a bit of letter-paper. Holding it, he spoke again:

“The young man who had come under so large a weight of obligation prospered in later life. By hard work, by good fortune, by the blessing of God, he made for himself a certain place in the community. As much as might be, he has—I have—kept in

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touch with those old friends, yet in the stress of a very busy life I have not of late years heard from them. Till last Monday morning this”—he held up the letter—“this came to me in Springfield. It is a letter from the mother who sat by the fire in that humble cabin and gave a greeting to the wandering, obscure youth which Abraham Lincoln, please God, will not forget—not in this world, not when the hand of death has set his soul free of another. The woodsman died years ago, the two older children followed him. The mother who sang to her baby that afternoon”—he swept about and his long arm and knotted finger pointed, as he towered above the court-room, to the meek, small woman shrinking on the front seat—“the mother is there.”

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The arm dropped; his luminous eyes shone on the boy criminal's drooping golden head; in the court-room there was no one who did not hear each low syllable of the sentence which followed.

"The baby is the prisoner at the bar."

In the hot crowded place one caught a gasp from back by the door; one heard a woman's dress rustle, and a man clear his throat—and that was all.

There was silence, and the counsel for the defence let it alone to do his work. From the figure which loomed above the rude company virtue went out and worked a magic. The silence which stretched from the falling of Lincoln's voice; which he let stretch on—and on; which he held to its in-

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sistent witchcraft when every soul in the court-room began to feel it as personally harrassing; this long silence shaped the minds before him as words could not. Lincoln held the throng facing their own thoughts, facing the story he had told, till all over the room men and women were shuffling, sighing, distressed with the push and the ferment of that silence.

At the crucial moment the frayed ends of the nerves of the audience were gathered up as the driver of a four-in-hand gathers up the reins of his fractious horses. The voice of the defendant's lawyer sounded over the throng.

"Many times, as I have lain wakeful in the night," he spoke as if reflecting aloud, "many times I have

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remembered those weeks of unflinching kindness from those poor people, and have prayed God to give me a chance to show my gratefulness. When the letter came last Monday calling for help, I knew that God had answered. An answer to prayer comes sometimes with a demand for sacrifice. It was so. The culminating moment of years of ambition for me was to have been to-night. I was to have made to-night a speech which bore, it is likely, success or failure in a contest. I lay that ambition, that failure, if the event so prove it, gladly on the altar of this boy's safety. It is for you"—his strong glance swept the jury—"to give him that safety. Gentlemen of the Jury, I said when I began that I should try this case in a manner not customary. I

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said I had no argument to set before you. I believe, as you are all men with human hearts, as some of you are fathers with little fellows of your own at home—I believe that you need no argument. I have told the story; you know the stock of which the lad comes; you know that at an age when his hands should have held school-books or fishing-rod, they held—because he was working for his mother—the man's tool which was his undoing; you know how the child was goaded by a grown man till in desperation he used that tool at hand. You know these things as well as I do. All I ask is that you deal with the little fellow as you would have other men deal in such a case with those little fellows at home. I trust his life to

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that test. Gentlemen of the Jury, I rest my case."

And Abraham Lincoln sat down.

A little later, when the time came, the jury filed out and crossed to a room in the hotel opposite. The boy stayed. Some of the lawyers went to the hotel bar-room, some stood about on the ground under the trees; but many stayed in the court-room, and all were waiting, watching for a sound from the men shut up across the way. Then, half an hour had passed, and there was a bustle, and people who had gone out crowded back. The worn small woman in the front row clasped her thin hands tight together.

The jury filed in and sat down on the shaky benches, and answered as their names were called, and rose and stood.

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"Gentlemen of the Jury," the clerk's voice spoke monotonously, "have you agreed upon a verdict?"

"We have," the foreman answered firmly, woodenly, and men and women thrilled at the conventional two syllables. They meant life or death, those two syllables.

"What is your verdict, guilty or not guilty?"

For a second, perhaps, no one breathed in all that packed mass. The small woman glared palely at the foreman; every eye watched him. Did he hesitate? Only the boy, sitting with his golden head down, seemed not to listen.

"Not guilty," said the foreman.

With that there was pandemonium. Men shouted, stamped, waved, tossed up their hats; women sobbed; one or two screamed with wild joy.

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Abraham Lincoln saw the slim body of the prisoner fall forward; with two strides he had caught him up in his great arms, and, lifting him like a baby, passed him across the bar into the arms, into the lap, of the woman who caught him, rocked him, kissed him. They all saw that, and with an instinctive, unthinking sympathy the whole room surged toward her; but Lincoln stood guard and pushed off the crowd.

“The boy’s fainted,” he said loudly. “Give him air.” And then, with a smile that beamed over each one of them there, “She’s got her baby—it’s all right, friends. But somebody bring a drink of water for Sonny.”

The American, holding a cigar that had gone out, was silent. The old

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man spoke again, as if vindicating himself, as if answering objections from the other.

“Of course such a thing could not happen to-day,” he said. “It could not have happened then in eastern courts. Only a Lincoln could have carried it off anywhere, it may be. But he knew his audience and the jury, and his genius measured the character of the Judge. It happened. It is a fact.”

The American drew a long breath. “I have not doubted you, sir,” he said. “I could not speak because—because your story touched me. Lincoln is our hero. It goes deep to hear of a thing like that. He hesitated and glanced curiously at the old man. “May I ask how you came by the story? You told it with a touch of—

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intimacy—almost as if you had been there. Is it possible that you were in that court-room?”

The bright, dark eyes of the very old man flashed hawklike as he turned his aquiline, keen face toward the questioner; he smiled with an odd expression, only partly as if at the stalwart, up-to-date American before him, more as if smiling back half a century to faces long ago dust.

“I was the Judge,” he said.

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