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THE ASSASSINS OF LINCOLN.

To the Editor North American Review, New York City.

DEAR SIR: The correspondence between Judge Holt and Hon. James Speed, published in the NORTH AMERICAN REVIEW for July, 1888, does not contain all that should be published. The subject was one which Mr. Speed made up his mind not to speak of, and so had expressed himself to Judge Holt previous to any correspondence. He would only say that in his judgment Judge Holt needed no vindication, and that matters which came to his (Mr. Speed's) knowledge by reason of his position as a cabinet officer he would not detail. Such matters he regarded as confidential, and he would neither write nor talk on the subject.

Notwithstanding Judge Holt's strictures upon this exercise of his judgment, he always had, and expressed, the kindest feelings towards Judge Holt, and he made use, before his death, of an opportunity to express those feelings.

At the annual meeting of the Ohio Commandery of the Loyal Legion, of which Mr. Speed was a member, held at Cincinnati, May 4, 1887, Mr. Speed responded to the toast, "Abraham Lincoln." In his address he said:

"The nation imbibed his magnanimity. The spectacle of so vast a collision, with none brought to punishment, stands alone in history. Only that group of friends who stilled the pulsations of Lincoln's great heart paid the penalty of crime. A maudlin sentiment has sought to cast blame on the officials who dealt out justice to these. One in particular is my distinguished friend, the then Judge Advocate General of the Army. Judge Holt performed his duty kindly and considerately. In every particular he was just and fair. This I know. But Judge Holt needs no vindication from me nor any one else. I only speak because I know reflections have been made, and because my position enabled me to know the facts, and because I know the perfect purity and uprightness of his conduct."

When he delivered that address Mr. Speed was in the seventy-sixth year of his age. He was very feeble at the time. It was his last utterance in public. In less than two months after delivering it he died. It was delivered before more than three hundred of Judge Holt's old comrades. It was published in the daily newspapers. Judge Holt saw it, read it and commented on it to his friends. Mr. Speed's word was all he could give Judge Holt. He gave it as publicly as he could, and it should have been published with the correspondence.

I send you by same mail a marked copy of the address referred to.

I also inclose you an article on the trial of Mrs. Surratt, which Mr. Speed prepared just after the nomination of General Hancock, at your request. After its preparation Mr. Speed decided not to send it on. You may conclude that its historic value is of sufficient importance to publish it now.

Very respectfully, JOHN SPEED.

I would not undertake to give within the compass of a short article the details of the monstrous crime of the assassination of President Lincoln; nor would it be possible in such limits to set forth the facts which demonstrate the guilt of the persons punished for that crime.

But as the nomination of General Hancock has invested this subject with a fresh interest, I will briefly present some of the points connected with it.

Mr. Lincoln was assassinated April 14, 1865. A few days before this General Lee had surrendered the army of Northern Virginia. But the war was not by any means over at that time. For more than a month afterwards armies of the Rebellion were still in the field, and for many months the angry billows of the war did not entirely subside. For four years the sulphuric atmosphere of actual war had hung over the country. At the national capital no other air was breathed. Four years of fierce bloody conflict raging all around, within sight and hearing, and almost up to its very gates, had constituted Washington practically a military camp. The city was policed by soldiers. The public buildings were guarded by soldiers. The army was the protector as well as defender of the capital. This condition of affairs perfectly answered Lord Coke's definition of war :

"So when, by invasion, insurrection, rebellion or such like, the peaceable course of justice is disturbed and stopped, so the courts of justice be as it were shut up, *et inter arma leges silent*, then it is said to be time of war."

It was in the midst of such a disturbed state of affairs that the assassination took place. The dreadful event, of course, intensified those conditions. The assassins were taken and held to answer for the awful crime. The question arose, Should they be tried by the civil or military courts? The victim was not an ordinary citizen. He was the Commander-in-Chief of the Armies of the Union, which at that time numbered more than a million men. The crime was most extraordinary. The times were equally so. Every substantial consideration of justice and fairness and common-sense demanded that the military arm of the Government should try the accused and deal with them according to the facts.

That Mrs. Surratt had a fairer trial before a military court than she would have had before the civil tribunals at that time is to my mind unquestionable. In the midst of the fearful excitements of that hour the place of greatest calm was military headquarters. The soldiers were the peace-officers of the times. They quelled mobs, they prevented lynchings. Such was the upturned condition of society that judicial calmness was more to be expected from trained and experienced officers of the army than from a civil magistrate and a jury.

In the opinion I gave as Attorney General of the United States upon this question, this language is used:

"It is manifest, from what has been said, that military tribunals exist under and according to the laws and usages of war, in the interest of justice and mercy. They are established to save human life and to prevent cruelty as far as possible."

The following language is also used:

"That the judgments of such tribunals may have been sometimes harsh and sometimes even tyrannical, does not prove that they ought not to exist, nor does it prove that they are not constituted in the interest of justice and mercy. Considering the power that the laws of war give over secret participants in hostilities, such as banditti, guerrillas, spies, etc., the position of a commander would be miserable indeed if he could not call to his aid the judgments of such tribunals. He would become a mere

butcher of men without the power to ascertain justice, and there can be no mercy where there is no justice. War in its mildest form is horrible; but take away from the contending armies the ability and right to organize what is now known as the Bureau of Military Justice and they would become monster savages, unrestrained by any and all ideas of law and justice. Surely no lover of mankind—no one who respects law and order—no one who has the instincts of justice or who can be softened by mercy, would, in time of war, take away from the commanders the right to organize military tribunals of justice; and especially such tribunals for the protection of persons charged or suspected with being secret foes and participants in hostilities."

That opinion also set forth that armies have to deal not only with open active enemies in the field, but also with secret enemies, spies, brigands, bushwhackers, assassins; that the military arm of the United States was put forth to deal with the assassins of the President and Commander-in-Chief of the Army, slain by them in the midst of the very fiercest conflagration of war. For this there could be no complaint. It was proper and humane.

The military commission which tried the assassins of the President was carefully selected. It was composed of men taught by experience and habit to maintain coolness and equanimity in the midst of the most exciting scenes. If it was possible at that period and at that place to have secured a fair trial, the method adopted was the most certain to secure it. That commission certainly had no desire to wantonly and recklessly inflict punishment upon woman. It patiently investigated the case. If Mrs. Surratt had not been guilty, if there had been any reasonable doubt of her guilt, she would have been acquitted as some of the other accused persons were. The Government never showed any disposition to deal severely with any of those guilty of crimes connected with the rebellion. Its military power was exercised mildly and humanely. It was only in a few instances of absolutely hideous crimes that the perpetrators suffered the extreme penalty.

There is no ground for any complaint that the military court was harsh, or unjust, or cruel. There is every ground for the conclusion that it did its duty with judicious calmness and perfect conscientious impartiality. It found the proofs of guilt clear and incontestable, and rendered judgment accordingly.

The propriety of unusual and even extraordinary action on the part of the military arm of our Government when some extraordinary occasion calls for it, has just been most strikingly illustrated in the nomination of General Hancock by the Democratic party. According to every Democratic authority that party claims to be the champion of the principles of military subordination to civil authority, at all times and in all places when war is not flagrant. At the same time, according to every Democratic authority, the grounds upon which the nomination was given to General Hancock are contained in his general order No. 4 promulgated at New Orleans in November, 1867. This was more than two and a half years after the surrender of General Lee. The meritorious part of that order, according to Democratic authority, is as follows :

"The right of trial by jury, the habeas corpus, the liberty of the press, the freedom of speech, and the natural rights of person and the rights of property must be preserved. Free institutions, while they are essential to the prosperity and happiness of the people, always furnish the strongest inducements to peace and order. Crimes and offenses committed in this district must be referred to the consideration and judgment of the regular civil authorities, and *those tribunals will be supported in their lawful jurisdiction.* Should there be violations of existing laws which are not inquired into by the civil magnates, or should failure in the administration of justice by the courts be complained of, *these cases will be reported to these headquarters when such orders will be made as shall be deemed necessary.*

"While the General thus indicates his purpose to respect the liberties of the people, he wishes all to understand that armed insurrection or forcible resistance to the laws *will be instantly suppressed by arms.*"

This order was issued more than two years after the war had closed. The merit claimed for it is that it recognizes the civil authority of the State of Louisiana as the lawful governing authority of that State. And for this reason and on this account the Democratic party has avowedly given General Hancock the nomination for the Presidency. Yet it is perfectly plain that the order in every part of it contemplates the supremacy of his headquarters over the civil authority of the State of Louisiana.

Imagine for a moment such an order at this time in Louisiana or any other State. Imagine General Hancock saying now to the

people of New York (his headquarters now being in that State) that if the civil courts of New York fail to administer justice, complaint can be made at his headquarters and he will issue such orders as the case may require.

This suggests to the mind the patent fact that what is appropriate for one time may not be appropriate at another time. A distinguished soldier is nominated for the Presidency for doing in 1867 that which, if done to-day, would be regarded as the act of a demented person. In the same way that it was proper and laudable for General Hancock in 1867 to hold the army in terrorem over the civil courts of Louisiana, for the humane protection of citizens of that State, so was it right and just and humane to try the assassins of President Lincoln by a military court in 1865.

No one doubts that President Lincoln was assassinated by Wilkes Booth. No one doubts the guilt of his male accomplices. No one complains of the punishment they received. But there is a sentimental idea that there was some sort of injustice done to the woman Mrs. Surratt. It is creditable to the chivalric feelings of the American people that they recoil at the idea of hanging a woman. Yet it is perfectly true that all the crimes in the calendar have at one time or another been perpetrated by females. It was Jezebel who stirred up Ahab, and incited him to commit the foulest murders. Only recently, in the State of Indiana, a woman has been found guilty of the murder of her husband, and is now under sentence of death by hanging. It is needless to cite examples, however.

There was an additional guaranty of the fairness of the proceeding against the assassins of the President in the fact that General Hancock, a disciplined, trained, and accomplished soldier, was in command at Washington at the time. His calmness and equipose in the midst of excitement, cultivated by familiarity with scenes of carnage in the whirlwind of scores of terrific conflicts, would naturally inspire calmness in others. Had the assassins been turned over to the civil courts for trial, the result would doubtless have been the same; and in that case we would have heard a more just complaint perhaps; that instead of a trial by an impartial military tribunal, they were remanded to the mercies of an angry and revengeful mob of passionate civilians from whom it was impossible to obtain a fair jury.

JAMES SPEED.