

THE
AMERICAN LAW REGISTER.

APRIL, 1863.

THE LIFE AND WORKS OF RUFUS CHOATE.¹

We have approached this subject with the most unaffected diffidence and distrust. It is no holiday task to set forth, in a manner befitting the subject, the leading incidents and characteristics of the life, and labors, of such a man as RUFUS CHOATE.

But we did not feel at liberty to pass by so important an incident in the history of forensic life, in America, as the publication of the life of such a man, without bearing a brief testimony in its behalf.

At a time when mediocrity is so generally in the ascendant; when mightier armies than ever Wellington or Napoleon commanded, are, of necessity, committed to the guidance of men who never built a rampart nor set a squadron in the field; when the cabinet and the council, from the commander-in-chief to his humblest subaltern, must read as they run, or run as they read, laboring to learn their lessons as they practise them: when all is change and uncertainty on the one hand; and presumption and arrogance, on

¹ The Works of Rufus Choate, with a Memoir of his Life. By Samuel Gilman Brown, Professor in Dartmouth College. *Εν μνηρον κλαδι το ξιφδς εφορει.* In two volumes. Boston: Little, Brown & Co., 1862.

the other ; and all tending towards the same dead level of inexperience and incompetence ; at such a time, we may find some indulgence, for expressing our gratitude to the author of this biography, and the editor of these papers, for commending us to the study of something in the history and the works of our own day, against which the charge of mediocrity cannot hope to prevail. For whatever may be said, or thought, of the genius, the talents, or the works of Rufus Choate, no one will presume to characterize them by the term mediocrity. He moved in a sphere, and breathed an atmosphere, so much above and beyond the mass of his associates and compeers, as to silence, at once, competition and envy.

Men did differ, indeed, during his life, and will be expected to differ, now that he has passed away from his earthly labors, very widely it may be, in regard to the precise place and grade to be assigned him, in the several spheres in which he moved : but all, without exception or hesitation, will be found cheerfully to concur in assigning him a position of great excellence and superiority, in all that he undertook. Such uncommon unanimity upon a subject where common men meet so much conflict of opinion in regard to their proper position, beginning with his collegiate exercises, and ending only with his earthly life, is a thing in regard to which there can be but one opinion : it could only have resulted from great excellence. There was indeed very much in the character and in the undeviating kindness and courtesy of the man, to disarm and blunt the edge of criticism. One could scarcely meet him an hour at a college commencement, or in a public library, and not feel the overpowering charm of his gentleness, and of his exhaustless good feeling. And in the rudest conflicts of the bar ; or the senate chamber, we do not find that his good nature, or his equanimity, ever forsook him, for a moment. This will no doubt do much to disarm bitterness, and to conciliate rivalry, and competition. But Mr. Choate, strictly speaking, had no rivals, and no competitors, to disarm. He might have moved all his life with men more than his equals, in some of the departments of learning, or study, or action. He would be more than mortal, who did not. But in the main course of his life, we apprehend, he was accustomed to measure

himself, rather by an ideal standard of his own, than by that of any present compeer or competitor.

We believe it was this life and death struggle, day after day, and year after year, for nearly fifty years, not to accomplish what the occasion demanded, but to bring himself up into some ideal level, above and beyond the range of common effort and success, where only the inspirations of genius, or the dreams of fancy, or the visions of poetry and of the imagination, can hope to reach; which, all through Mr. Choate's professional life, inspired him to undertake almost superhuman labors, which gave him the care-worn and anxious look of disease, in middle life, and finally carried him to a premature grave, at a period in life when most men are in their full strength, and when, in the old world certainly, the ablest statesmen, the ripest scholars, and the profoundest thinkers, just begin to do the great work of life.

But in estimating the real position of Mr. Choate, we must remember that he depended upon no extraneous aids. He had no hired retainers, no paid letter-writers; no array of early associates and college companions to quote and to commend him; no social or literary coteries to cater for him. Whatever of fame he acquired was fairly earned; and it will, we believe, grow brighter and brighter, in comparison with others in the same field, his associates and cotemporaries, as time advances. He will always be held in high regard, as a brilliant and effective forensic speaker, more eminent, it may be, for tact and address, for gorgeous embellishment and graceful illustration, than for severe logic and overwhelming argument, but nevertheless no common-place champion in all the arts of dialectic controversy and successful debate.

He no doubt strove, as we all do, as well for mastery as for truth; and that is one of the legitimate aims of all forensic contest. And all men who make much progress in that field soon learn to adapt their efforts to the demand of the times, and the place, and to do the work, for which they are sought after and paid. And in doing this, there is a kind of justice not to be lightly esteemed, or evil-spoken of, by the tame and the obtuse. The forensic orator, who thinks more of his client than of himself; and more of his cause than of public praise or censure; may some-

times fail, for a time, to command public approbation, but he will be likely in the end to stand upon a higher level of moral character and feeling, than he who studies only to serve himself. Forgetfulness of self, in any place, and in any calling, is a difficult and an eminent attainment, and one which feeble men, and cowards, never do attain. The public sympathy which always greets it with so much enthusiasm is no blind impulse. For it is the stuff without which heroes and great men are never made. And it was this a good deal we believe, which made Mr. Choate always a favorite with the people, and which left him free to choose his own course, on whichever side he chose to fight.

We do not intend to intimate, that this devotion to one's cause, or to one's friends, or clients, in entire *abandon*, as the French call it, is the very highest aim of a public speaker. There is doubtless a pure love of truth, above and beyond all this, a love of truth so pure and unalloyed, as to be quite unattainable by most mortal men, which is oftener supposed to have been already attained, by the simple, or the self-conceited, than by the single-hearted and the sober-minded, but which is, nevertheless, worthy of all praise, whether it appear in the devoted patriot, or in the Christian martyr, but which is in small demand at the bar, where all that the advocate promises, or is expected to do, is to make the most of his client's cause, and where if he is guilty of no forbidden practices, he is not worthy of censure.

We give Professor Brown our sincere thanks for this labor of love, in thus attempting to rescue from oblivion those light and evanescent shades of thought and feeling, of word and deed, which so soon fade from the memory, and the knowledge of the most devoted friends, and intimate associates of a mere forensic orator; one whose daily life is spent in the trial of causes, important only, it may be, in the majority of instances, on account of the pecuniary amount involved, or the public or social position of the parties, or, more briefly expressed, important only to the parties, and their immediate friends. Of all the distinguished members of the American Bar, how brief a record remains, when they have once shuffled off the mortal coil of daily and nightly toil! A stale joke, a brilliant repartee, an adroit evasion, or an ingenious checkmate, it may be,

tells the brief story of their history, in the very halls made eloquent with their words, for half a century. And how impossible it is to catch the nice shades of character and talent, of thought and feeling, of look and gesture, which made up the sum of their greatness and power, while here among the moving scenes of life ! How little, how less than nothing it seems, as we look upon the mere skeleton of life, which we have been able to catch and confine to paper, of thoughts that breathe and words that burn ; of all which went to make the life and fame of him, whose history we essay to write !

We are sure that we now remember many a rude advocate, at a provincial bar, whose fame never passed beyond the narrow horizon of his own state, of whom we can recall many more passages of brilliant wit, and overwhelming eloquence, than all which now remain of one, who for years before his death, was the acknowledged leader and champion, the *facile princeps*, of the American Bar, in all that goes to make up the eloquent speaker and successful advocate. We do not allude to this, in any sense, with a view to disparage the work before us. Far from it, but to show the innate difficulties of the undertaking.

We believe that Mr. Choate's fame has fallen into the very best hands in this instance. Professor Brown was the devoted friend and admirer, of him of whom he writes. His own large and rich attainments, in many of the departments of thought and study, where Mr. Choate most excelled, qualified him in an eminent degree to do justice to his subject. And he has contrived, as far as the sparse and scattered materials for biography left him would allow, in a very happy manner, to hide the author from the view of the reader, and to let the subject of his pen tell his own story. He has given us a very interesting sketch of Mr. Choate's days of childhood, of his college life, of his literary studies and rare attainments then, and of his character, eminence and estimation, as a public man and a statesman, so far as he had any pretensions of that kind, which was indeed a thing quite apart from the general purpose and current of his life. In all these respects, the book is executed

with admirable taste and ability, and, in our humble judgment, with eminent success.

But these were things apart and altogether one side of the main current of Mr. Choate's lifelong toil, to which he gave his waking thoughts and his nightly vigils, which he studied in his office, and in his library, which he pondered by the wayside, in the market place, at the place of public concourse, and at the social gathering of his friends, which absorbed his very nature, and shortened his days, which gave him the exhausted look, and the sallow hue of advanced life, in early youth; and which finally sent him to a premature grave, when most men in such occupations, as we have said, just begin to reap the ripe harvest of their long novitiate of study and preparation.

It is this conviction which causes so sad a feeling of disappointment, not at the work, for that is all we could expect, but at the reflection that Mr. Choate's fame is so irretrievably lost to the world; that it is of necessity a thing too evanescent and subtle to be gathered up; literally like water spilled upon the ground. Some will regret that there should not have been an attempt made to induce some of Mr. Choate's companions and admirers, at the bar, to do that part of the work pertaining to his character as a lawyer and an advocate. We hear it said sometimes, that only a lawyer, one familiar with his efforts at the bar, could do justice to his great ability and eminent success there. But we question very much, if the thing could have been done much more perfectly by any one, than by our author.

The delineations of character, in all the departments of life, take very much of their tone and complexion from the genius and taste of the writer. We find too, often, after wading through wearisome pages of foolscap, or letter-press, that we are learning more of the living author than of the departed subject. The *sacra vates* of most men describe themselves, oftener, than the heroes whose praises they profess to celebrate. Professor Brown has certainly escaped this fault, and we must content ourselves with the reflection, that all which our distinguished friend and associate labored most to create and to perpetuate in his own character, the *monumentum*

cere perennius of his fancy, or his hope, which he toiled so assiduously to erect and to adorn, was too subtle in its elements, too evanescent in its nature, to endure. It gave pleasure; it thrilled and entranced for the moment; it did more, it led captive juries and grave justices of the law, and conscript fathers of the Senate Chamber, but it vanished, like the coruscations of light, and is now lost for ever.

Mr. Choate was in almost every respect a peculiar man, one literally *sui generis*, but always above and beyond all his compeers in everything which he undertook. The testimony of Chief Justice PERLEY, and of his classmate Mr. Tracy, witnesses of no common capacity for power of comprehension, men of absolute and sublime truthfulness, will suffice to establish his position in college. And we believe he was as much superior to all his associates, ever after, until the day of his departure from us, as he was while in college.

The Rev. E. C. Tracy says, after stating the particulars of his great and acknowledged pre-eminence in college: "I have always felt my connection with that class as a peculiar felicity of my college life; and to us all, Choate's companionship through the four years was a blessing and an honor." Chief Justice PERLEY, after a most eloquent enumeration of his exquisite excellences and pre-eminence, put forth in his forcible and telling Saxon English, says, "no other man was ever mentioned in comparison with him." And at the bar-meeting, on occasion of Mr. Choate's death, Hon. Charles G. Loring, a most reliable witness, said of him: "for the peculiar powers desirable for a lawyer and advocate, for combination of accurate memory, logical acumen, vivid imagination, profound learning in the law, exuberance of literary knowledge and command of language united with strategic skill, I should place him at the head of all whom I have ever seen in the management of a cause at the bar." We commend these words, coming from one who stood for so long a period, so near the head of the Suffolk Bar, to the patient consideration of those who sometimes suggest the discovery that Mr. Choate was a great advocate, but not a great lawyer. If he was not, who is?

No man could hear Mr. Choate half an hour upon any, the least

important cause, without feeling that he was the man for that place, that for a good cause he was absolutely invincible, and in a bad cause he could secure the entire right and justice of his client's cause to the utmost, so that if the least flaw, or tittle, of defective procedure occurred, he was sure to receive all the advantage to which it entitled him.

But we must give some brief intimations wherein it seems to us, that, humanly speaking, Mr. Choate's course was to be regretted. It seems to us that he was in some respects better qualified for some other sphere, than for that in which his chief labor was expended. His ideal was, no doubt, in literature. Had he devoted the same amount of time to literary pursuits which he did to the law, he must have achieved a most brilliant fame, and left on record some enduring monument of his success, in history, or criticism, or philosophy. And the quiet of such a life would have enabled him to endure and to labor, at least twenty years longer than he did. He was not inferior to Macaulay or Southey or Mackintosh, or to any of his many eminent cotemporaries, in that field. And he might have associated with literary pursuits, a membership in either house in Congress, in which he might have shone as he did, as a most brilliant star, without abating his ardor, or detracting from the main current of his studies.

So too, as it seems to us, if Mr. Choate could have been persuaded to accept the office of a Professorship in the Law College of Harvard, which was urged upon his acceptance, it must have proved one of the most distinguished usefulness and unqualified success. The delicacy of his feelings, almost womanly in their refinement, must have fitted him, most eminently, to inspire and to control his pupils. And his brilliant wit and eloquence, and exhaustless learning, would have given him a world-wide fame and usefulness, which few others in our country could have approached. It is a comparatively easy task to find a good lawyer, with a good address and high social qualities, and an acquaintance with society, and a plain good style of speaking or writing, in a professor of law. But it is quite another matter to secure the services of such a man as Rufus Choate, whose very droppings of wisdom and wit, of

genius and learning, from day to day, and hour to hour, contain more pith and point, than all that your mere plodder could say or do, in the lifetime of Methuselah; whose solemn bow and majestic bearing, whose generous smile and expressive eye, could do more to educate men, in all that is noble in feeling, and honorable in aspiration, than all that mere dead learning and philosophy could ever accomplish. The presence and bearing of such a man, with a numerous class of select pupils, gathered from every section of a widely extended empire, inspired like him with such enthusiastic love of country, is wonderful in its controlling and softening influences upon youthful character. It is something which few would fail to appreciate, in themselves, and which it is nevertheless difficult to describe, something which operates silently, but surely, in repressing vicious and rude tendencies in youth: which makes a class of boys look upon want of courtesy as barbarism, and want of feeling as a crime: which inspires confidence in each other, in the world, and in its Supreme Ruler: which begets more faith and zeal and trust, than all the preaching of brawling politicians and noisy sectaries, for a thousand years.

So too, it has always seemed unfortunate to us, that Mr. Choate could not have been induced to accept a place upon the bench of the Supreme Judicial Court of Massachusetts, or that of the Nation, both of which were tendered him. We know there are many who will feel surprised, that any one should have considered him eminently fitted to grace the bench of the highest judicial tribunal of one of the oldest and most commercial States in the Union, and above all that of the National Tribunal. To many it seems incomprehensible, that any man whose judgments and opinions in the law seemed so one-sided and so perverted, should ever have been capable of becoming an eminent jurist, and especially an acceptable and useful judge. But this apparent paradox is so, only in appearance. If Mr. Choate had not been educated to make the best of every cause presented to him, and to do the most he could for his clients, many of whom were, from the very nature of the case, in the most perilous condition, or they would not have been driven to seek the aid of an advocate whose powers were proverbially almost mirac-

ulous ; but for this accidental necessity of his position and his life, he would have maintained that even balance of mind and judgment, for which he was so distinguished in college, and in early life, and whose want of it in later years, was rather apparent than real. Rufus Choate, as Chief Justice of the state of Massachusetts, with twenty years' experience, would have shone among his compeers upon the American bench, without a rival or a competitor. And it is impossible to calculate the value of the services of such a man, in such a place. And in the National Tribunal of last resort, the services of one such man, day after day and year after year, will do more to form the public mind and the popular will to a correct model, than all that ten thousand other men of noise, and boisterous eloquence, could ever accomplish.

But we beg to conclude this somewhat protracted sketch, by adopting the language of an esteemed friend, who was in some respects more familiar with Mr. Choate's life and labors, than we have been :—

“The more we have read this book, the more we like it, and it seems to us just such a book as would have pleased Mr. Choate himself. It is modest, truthful, and full of the subject. Rufus Choate needs no praise, it is worse than idle to give it. It sounds of common eulogies. Let him be introduced in person, or if that is not possible, portray him *simply*—just as he was—and every heart will love him, every intellect learn of him and revere him, and every imagination be stimulated by his genius. Professor Brown has collected his materials from the best possible sources in every particular. Some of them are the verbatim testimony of the most able and accomplished of Mr. Choate's acquaintances, some of them his letters and a fragmentary occasional journal which he kept, and these last always to our joy. These materials are introduced and connected with point and appropriate comment and narration. From beginning to end the biographer is never seen. From behind the scene he directs the moving panorama and delineates every picture without an I. You are only conscious of him at the end, when you are impressed with the feeling that he

appreciated Mr. Choate, and you begin to feel a positive kindness towards him, as indisputably possessing some of the lovely traits of his great subject. Mr. Choate's life seems one of unusually uniform interest. There are no unhappy parts of it where we pity and would not linger. His purpose never failed or wavered, and his progress was constant. His boyhood, beginning with his birth in 1799, was passed in the little sea-shore village of Essex, Mass. Here, by the side of the bay, and in a Puritan home, he cultivated that love of the sea and of early New England history and character which appears in many of his addresses, and was almost peculiar to him, so strong was it. His sweetness of temper was remarked in earliest childhood; his active, precocious intellect often showed that it was busy on themes far beyond his years; and the same susceptibility to the eloquent and heroic in speech and action that contributed so much to make him a great orator, characterized all his boyhood. He made the most of somewhat indifferent opportunities of fitting for college, and near the close of his sixteenth year he entered Dartmouth College, a pure and beautiful boy, one of the youngest in his class, 'singularly attractive in person and manner,' 'and his mind from the first betraying the spirit of the scholar.' His college course was singularly brilliant. One of the most eminent of his eulogists, a member of college at the same time, and whose words we may regard as testimony, says: 'He was even then far less distinguished for the amount of his acquisitions than for vigor and grasp of mind, for the discipline and training which gave him complete command of himself and all he knew.' The year succeeding his graduation he spent as tutor in the college. His preparation for admission to the bar was made first at the Law School at Cambridge, after which he was one year in the office of Mr. Wirt, then attorney-general of the United States, and subsequently completed his introductory studies with Judge CUMMINS, of Salem. The following testimonial he received from Mr. Wirt:—

“Washington, November 2d, 1822.

“Mr. Rufus Choate read law in my office and under my direction for about twelve months. *He evinced great power of application, and displayed a force and dis-*

crimination of mind from which I formed the most favorable presages of his future distinction in his profession. His deportment was in all respects so correct as to entitle him to respect, and he carried with him my best wishes for his professional eminence, prosperity, and happiness.

WILLIAM WIRT.'

“He was admitted an attorney of the Court of Common Pleas in September, 1823, and two years later of the Supreme Court. From that time to the day of his death, in 1859, his life was devoted to his profession, and possesses little of what is commonly esteemed incident, but is a most completely instructive and interesting example of great powers unremittingly cultivated and worked; great acquisitions and great success. Mr. Choate was a member of the popular branch of the Massachusetts Legislature two sessions, and for one a member of the Senate. From 1831 to 1835 he represented the Essex district in Congress, and in 1841, Mr. Webster having accepted the office of secretary of state, he was elected senator in his stead. The duties of these positions hardly hindered his practice of the law, especially in the Supreme Court at Washington, and yet, with a brief visit to Europe in 1850, they are all the interruptions there was in his thirty-six years of unceasing professional toil. He delivered occasionally a lecture or more formal discourse, sometimes a political address, and made greater acquisitions in literature and general scholarship than most professed scholars; but these things were all subsidiary to his ‘profession of the law of advocacy,’ to which he ‘dedicated himself *totis viribus.*’ The ‘accompaniment of manly and graceful studies’ was obtained in the ‘snatches and interstitial spaces’ of time ‘gathered of many years.’

“About the year 1848 he was urged to take a professorship in the Law School at Cambridge, and about the same time was offered seat upon the bench of the Supreme Court of Massachusetts, both of which offices he declined. It is understood that he might have received the appointment of justice of the Supreme Court of the nation. It is also known that he was urged to take the nomination of the Whig party for governor of Massachusetts. It was at a time when the Whig party was in power, and he could have been reasonably sure of an election. He made some modest excuses to

the committee, but upon these being overruled by them, he told them there was one objection which he could present without delicacy, that was, he could not afford it, and positively declined the nomination. He was also attorney-general of Massachusetts for a short term."

At parting we cannot forbear to repeat our earnest testimony to the uncommon interest and value of these volumes, more than half of which is occupied by the congressional speeches, orations, and addresses, and other occasional papers of Mr. Choate. It is a work that will repay study and careful reflection. We trust that no member of the profession who loves its honor, and labors for its exaltation, will fail to possess himself of it. Here the scholar and the careful student will find much worthy of his earnest attention. And we trust we may be allowed to suggest, without offence, that here the sincere and earnest lover of his country will find a lesson worthy of all honor and imitation. There is another subject, too, which we cannot forbear to allude to here—we mean Mr. Choate's religious character.

We mean no reproach when we say, that, unfortunately for the country, in our humble judgment, it has come to be the law of public life, and of public men, that no inquiry shall be made in regard to religious faith and practice, not even in externals. It has thus happened that, in far too many instances, even the believers in Christianity in our country, in order it may be feared to escape criticism, sometimes, on account of the great division of sects among us, have kept aloof from any public avowal of their faith. From this cause, or some other, the fact is now undeniable that we are fast becoming an unbelieving people. Our calamities may prove our salvation in that respect. We try to hope for the best, and do not intend, in our editorial labors, connected with a journal of jurisprudence, to expose ourselves, justly, to the charge either of preaching, or, what is still more offensive, of croaking. But we cannot here forbear to allude to the clear testimony of Mr. Choate on two occasions, brought prominently out in this most exquisite biography, in favor of the Christianity of the Church and of the Bible, that which the Apostles of the faith taught, and