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HALF-HOUR SERIES.

SOME RECOLLECTIONS

RUFUS CHOATE

BY EDWIN P. WHIPPLE

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SOME RECOLLECTIONS

OF

RUFUS CHOATE

BY

EDWIN P. WHIPPLE

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SOME RECOLLECTIONS
OF
RUFUS CHOATE.

RUFUS CHOATE enjoys a peculiar and exceptional fame among American lawyers, statesmen, and orators, because of his unlikeness to any of his celebrated contemporaries. One of his friends bluntly remarked, "Webster is like other folks, only there is more of him; but as to Choate, who ever saw or knew *his* like?" He not only idealized but individualized every thing he touched, and the driest law case, when he was one of the counsel engaged, was converted into a thrilling tragedy or tragic-comedy founded on an actual event. He was a poet at the heart of his nature, and instinctively gave a dramatic or epical character to the leading persons concerned in a jury trial. It was once common for legal pedants, possessed of learning *minus* genius, to denounce as "flummery" the arguments of this advocate, who possessed learning

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plus genius; but it is now universally conceded that he was profound in the knowledge of the law, that he was both an acute and comprehensive reasoner, and that his practical sagacity in the conduct of a case was as marked as the romantic interest with which he invested it. It is to be feared, however, that this shining ornament of the legal profession will be hereafter known chiefly by the traditions of his splendid successes. My purpose is simply to record a few memories illustrating the force and flexibility of his genius and the geniality of his nature.

My admiration of Mr. Choate was formed a long time before I had the honor and pleasure of making his acquaintance. At the period when he was a young lawyer, practicing in the courts of Essex County, he "pervaded"—if I may use one of his own terms—the Salem bookstores in his leisure hours. He was specially attracted to the store of Mr. John M. Ives, and he never entered it without falling into conversation with some legal or illegal brother interested in letters, and he never left it without leaving in the memory of those who listened some one of the golden sentences which dropped as naturally from his mouth as pearls from the

lips of the fabled fairy. There was a circulating library connected with Mr. Ives's bookstore, and I have a vivid remembrance when, as a boy, I was prowling among the books on the shelves, suspending my decision as to taking out a novel of Richardson, or Fielding, or Miss Porter, or Scott, of listening, with a certain guilty delight, at the chaffing going on among my elders and betters in the front store. I remember perfectly how I was impressed and fascinated by the appearance of Mr. Choate. He was not a Thaddeus of Warsaw, or a hero of the type which Mrs. Radcliffe had stamped on my imagination; but there was something strange, something "Oriental," in him which suggested the Arabian Nights. In after-years I wondered, as I wondered then, that such a remarkable creature should have dropped down, as it were, into Essex County. There seemed to be no connection between the man and his environment. He flashed his meaning in pointed phrase while his interlocutors were arraying facts and preparing arguments, and darted out of the store with a ringing laugh before they had time to send a cross-bow shaft in reply, or retort to the Parthian arrow he had gayly sped at parting.

Boy as I was, I learned then what was characteristic of Mr. Choate through life—his horror of commonplace. Why, he seemed to say, argue about a thing which an intelligent human being should detect at the first glance? He always tried to evade bores, in youth as in age; and to him the most dreadful of bores were well-meaning men, deficient in quickness of apprehension and directness of insight, who were fond of exercising their powers of disputation in the weary work of placing on a logical foundation the indisputable. Godwin once mentioned to Coleridge that he and Mackintosh had been engaged for three hours in an argument without arriving at a definite conclusion. "If there had been a man of genius in the room," Coleridge retorted, "he would have settled the question in five minutes." Choate had this impatience of a man of genius with long-winded controversies.

I may add that, in my boyish remembrances, the beauty of Choate's face and person early caught my fancy. He was an Apollo, though, as he walked the streets of Salem, he was an Apollo with a *slouch*. He had a way of lifting his shoulders, and an angular swinging of his frame, which were as individual as they were inartistic. Yet

he was, on the whole, the most beautiful young man I ever saw. Thought, study, care, the contentions of the bar, the wear and tear of an unreposing life, at last broke up the smoothest and comeliest of human faces into weird wrinkles, which he often laughed at himself when he surveyed his countenance as depicted by the photographer. Of one of these likenesses, in which the sun had not spared a single thought-ploughed mark, he said, "It is as ugly as the devil; but still I must admit it is like—very like." Yet in his youth that face almost realized the ideal of manly beauty. His complexion was brown, but health infused into it a faint red tint which made it singularly charming to the eye. I recollect as if it were yesterday one Sunday afternoon when he entered Dr. Brazer's church in Salem just before the services began. He marched up the aisle—I can hit on no better expression than "marched"—and entered a pew just above that in which I was seated. The sermon was no doubt good—as all the sermons of Dr. Brazer were good—but my attention was fixed on Choate. For an hour I watched his expressive face, noticing every variation of its lines, as they indicated agreement or disagreement with the

eloquent clergyman's Unitarian discourse; and all I knew of the sermon was gathered from what I considered its effect on the wonderful creature who seemed to my boyish imagination to have strayed into the pew from some region altogether apart from any civilization heretofore known to Salem. There was something mysterious about him. In glancing over the other pews, occupied by the merchant aristocracy of the town, I was struck by their commonplace character, as contrasted with this stranger, who appeared to belong to another race, and who might, for all I knew, have been imported by these merchants from Calcutta or Singapore, bringing with him the suggestion of

“Gums of Paradise and Eastern air.”

He was then in the perfection of his manly beauty—the beauty of robust physical health combined with that indefinable beauty which comes from the palpable presence of intellect and genius in brow, cheek, eye, lip, and the very pose of the head. I was then about ten years old; but the kind of admiring wonder I then felt in looking at him affected me, many years afterward, when I had made his personal acquaintance. There was always in him something “rich

and strange," something foreign to our New England "notions," something which distinguished him from all other eminent Americans. A humorous friend of mine once declared that he was originally intended for an inhabitant of Jupiter, but the earth caught him in his passage and hauled him in. Mr. Choate, in some such way, always seemed to me to have been arrested by the insolent gravitating power lodged in the earth, and drawn violently into our prosaic New England while he was joyously speeding on to his appropriate home in some distant Mars or Jupiter.

As regards Mr. Choate's whole nature, I was impressed not so much by any particular faculty as by its central force. He was fundamentally strong at the heart of his nature—strong in personality, strong in will, strong in mental manhood; and he used his rare powers not merely to please, persuade, astonish, and convince those whom he addressed, but to *overcome* them. He must have been personally conscious of that grand mood which Wordsworth celebrates:

"Such animation often do I find,
Power in my breast, wings growing in my mind."

In his diary, July, 1844, he indicates what

he considers should be the characteristics of a legislator's speech. These are: "Truth for the staple, good taste the form, *persuasion to act*, for the end." It was the "persuasion to act" that was always in his mind, whether he addressed a popular gathering, a jury, or the Senate of the United States.

Indeed, in jury trials his main object was to influence the *wills* of the twelve men before him. He addressed their understandings; he fascinated their imaginations; he stirred their feelings; but, after all, he used all his powers in subordination to that one primal power which dwelt in his magnetic individuality, by which he *subdued* them, bringing on that part of their being which uttered its reluctant "yes" or "no" the pressure of a stronger nature as well as of a larger mind. As an advocate, he thoroughly understood that men in the aggregate are not reasonable beings, but men with the capacity of being occasionally made reasonable, if their prejudices are once blown away by a superior force of blended reason and emotion—in other words, by force of being. His triumphs at the bar were due to the fact that he was a powerful *man*, victorious over other men because he had a stronger manhood, a stronger selfhood, than any

body on the jury he addressed. On one occasion I happened to be a witness in a case where a trader was prosecuted for obtaining goods under false pretenses. Mr. Choate took the ground that the seeming knavery of the accused was due to the circumstance that he had a deficient business intelligence—in short, that he unconsciously rated all his geese as swans. He was right in his view. The foreman of the jury, however, was a hard-headed practical man, a model of business intellect and integrity, but with an incapacity of understanding any intellect or conscience radically differing from his own. Mr. Choate's argument, as far as the facts and the law were concerned, was through in an hour. Still he went on speaking. Hour after hour passed, and yet he continued to speak with constantly increasing eloquence, repeating and recapitulating, without any seeming reason, facts which he had already stated and arguments which he had already urged. The truth was, as I gradually learned, that he was engaged in a hand-to-hand—or rather in a brain-to-brain and a heart-to-heart—contest with the foreman, whose resistance he was determined to break down, but who confronted him for three

hours with defiance observable in every rigid line of his honest countenance. "You fool!" was the burden of the advocate's ingenious argument; "you rascal!" was the phrase legibly printed on the foreman's incredulous face. But at last the features of the foreman began to relax, and at the end the stern lines melted into acquiescence with the opinion of the advocate, who had been storming at the defenses of his mind, his heart, and his conscience for five hours, and had now entered as victor. He compelled the foreman to admit the unpleasant fact that there were existing human beings whose mental and moral constitution differed from his own, and who were yet as honest in intention as he was, but lacked his clear perception and sound judgment. The verdict was, "Not guilty." It was a just verdict, but it was mercilessly assailed by merchants who had lost money by the prisoner, and who were hounding him down as an enemy to the human race, as another instance of Choate's lack of mental and moral honesty in the defense of persons accused of crime. The fact that the foreman of the jury that returned the verdict belonged to the class that most vehemently attacked Choate was sufficient of itself to

disprove such allegations. As I listened to Choate's argument in this case, I felt assured that he would go on speaking until he dropped dead on the floor rather than have relinquished his clutch on the soul of the one man on the jury whom he knew would control the opinion of the others.

Mr. Choate was well aware of the contemptuous criticisms made on the peculiarities of his manner, both in respect to elocution and rhetoric. Having within himself the proud consciousness of unrecognized power, he notes in his diary, under the date of September, 1844: "If I live, all blockheads *which* are shaken at certain mental peculiarities shall know and feel a reasoner, a lawyer, and a man of business." Now as every blockhead is still entitled to the claim of being "a man and a brother," there is something delicious in this substitution of "which" for "who" in referring to the ceremonious and pompous blockheads of the bar; for, grammatically, this change of the pronoun reduces them from the dignity of persons into "animals and inanimate things."

Mr. Choate of course possessed the art of concealing the art by which he overcame opposition. In his steady pressure on the wills of the jury he appeared to be cozily

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arguing with them, or lifting them into a region of impassioned sentiment and imagination where he was at home, and where the jury were made to feel that they shared with him all the delights of such a lofty communion with every thing beautiful and sublime. In the celebrated Tirrell trial, the inhabitants of Boston, constituting themselves into a jury, deciding on the evidence presented in newspaper reports, had declared that the accused was guilty of murder, and should be hanged. The judgment of the most eminent representatives of the bench and the bar was this—that the verdict of “Not guilty” was legally right and just. But the jury had a hard time of it when they returned to their usual avocations, as all their companions and friends jeered at them for being taken in by Choate’s humbug. One of these jurymen defended himself by a statement which has survived: “Oh!” he declared, “we didn’t care a sixpence for that stuff about som-nam-bulism; but then, you know, we couldn’t believe the testimony of them abandoned women. Now could we?” He had yielded to Choate without knowing it, and had yielded on the point where the government’s case was defective—a point which Choate had specially emphasized.

During Mr. Choate's contests with the leaders of the Suffolk bar he was once opposed by an impudent advocate from another State, imported specially to put him down by sheer force of assurance. Choate described him as perverting the law with "an imperturbable perpendicularity of assertion" which it was difficult to upset. On this occasion the lawyer closed his argument with the remark that he was more confirmed in his view of the law of the case because the distinguished counsel opposed to him had taken the same ground in an argument a few days before at Lowell. Instead of denying the false assertion, which most lawyers would have done, Choate quietly replied, "Yes, and was overruled by the Court." It seems to me that this is a wonderful example of his quickness in instantly deciding on the right way of meeting before a jury a seemingly crushing appeal to popular prejudice.

On one occasion Mr. Choate was called upon to defend a Roman Catholic priest who was accused of making what appeared to be the first approaches of a criminal assault on a girl he met in one of the side streets of Boston. The advocate took what was in all probability the true view of the

situation, that the priest was returning from his church absorbed in his devotions, had accidentally met the girl in his path, and that the abrupt jostling with the fair prosecutor was accidental. But the case was prosecuted with all the animosity of Protestant prejudice, and the foreman of the jury was an orthodox deacon. I remember of the case only this statement: "I have proved to you, gentlemen, that this collision was purely an accident; such an accident, Mr. Foreman, as might have happened to you or to me returning from a Union meeting, or a liberty meeting, or a Jenny Lind concert, or, what is infinitely better, a *monthly concert of prayer*." If solemnity was ever imaged in a human countenance, it was when Choate, advancing to the deacon, brought his sad, weird, wrinkled face into close proximity with the foreman's, and in low, deep tones uttered that magical form of words by which orthodox Protestants recognize each other all over New England—the "monthly concert of prayer." I think he gained his case by that happy display of sympathy with the absorption in divine things which is supposed to follow such a "concert" in all Congregational churches.

In one of Mr. Choate's contentions at the

bar, his opponent, a man distinguished for his high moral character, took it into his head that his learned brother had impugned his honesty; and he made a fervid speech, declaring that such an imputation, during his long professional career, had never been even insinuated before. Mr. Choate, preserving his admirable composure, disclaimed any such imputation, with the preliminary statement that he was quite unprepared "for such a tempestuous outbreak of extraordinary sensibility" on the part of his friend. His power of constructing what may be called architectural sentences like this on the spur of the moment was by no means the least of his gifts. Adjectives, quaint, witty, or resounding, instantly came at his call to describe, illustrate, or qualify any substantive that was uppermost in his mind at the time.

In an insurance trial in which Mr. Choate was engaged he spent a day or more in the cross-examination of a witness who swore positively as to the facts in dispute, but who was compelled by the advocate's searching questions to admit his general bad character. The testimony of this scamp had to be broken down, or the case must be lost. In addressing the jury, Mr. Choate gave a

vivid presentation of the vices and crimes of the witness, whom he represented as the basest and meanest of mankind, and then asked, "Do you suppose, gentlemen, that in this vast violation of all the sentiments and virtues that bind men together in civil society, *veracity* alone would survive in the chaos of such a character?—the 'last rose of summer' on *such* a soil?" The emphasis on "veracity" and "such" was potent enough to kill the witness. The jury disbelieved him, and Mr. Choate gained his case. The rogue may or may not have testified truly as to the point under discussion, but truth could not be reasonably expected from a person who was self-convicted of almost every wickedness but perjury.

In his arguments for persons who had become complicated in seemingly criminal acts of which they were, at least, not so guilty as they were accused of being, his masterly way of putting himself, by imagination, in the place of his clients, and exhibiting all the pathos that could be elicited from their embarrassments and struggles, often drenched his clients themselves in irrepressible tears. They hardly knew before what heroes and martyrs they were. They wept at the eloquent recapitulation of what

they had suffered and done; they became poetic personages, worthy of the pen of Scott or Dickens; indeed, they were so much affected that they considered Lawyer Choate should charge little for presenting them before the community in their true light, and therefore often forgot or neglected to pay him any thing. His dramatic power in exhibiting the interior feelings of the half guilty, the quarter guilty, and the guilty who are perfectly innocent in their own conceit, and therefore regard a prosecution as a persecution, was so wonderful that many of the persons who were acquitted through his exertions never paid him what they would have paid an advocate who had less identified himself with their interests and characters. Indeed, after his work was done he appeared himself to set a modest estimate on its value. The occasions when he obtained large fees were due to his partner, who made the contracts beforehand; for Mr. Choate generally considered the obstacles in the way of getting a verdict for his clients formidable until the case was settled, and was indifferent to the amount of the fee only after he had succeeded.

But he was not only an accomplished lawyer: he was, at times, an eager politician. I

will try to recall some sentences in his popular addresses. In a campaign appeal to the Boston Whigs, when Polk, a comparatively unknown man, was the Democratic candidate for the Presidency, Mr. Choate gave full play to his peculiar wit and fancy. "We will," he exclaimed, "*return James K. Polk to the Convention that discovered him!*" In depicting Polk's sure defeat, he declared that he would "disappear like the lost Pleiad, where no telescope could find him!" In reading an "open letter" of the Free-soil Democrats, "surreptitiously" published in the *New York Evening Post*, he paused at the end, as if overcome by surprise. "I find, gentlemen, that this letter is marked 'private and confidential,' and such, I trust, you will consider it!" The idea of confiding a secret of that sort to three thousand people struck every man in the audience with a sense of its humor, and there was a roar of applause, which for some minutes prevented the orator from proceeding. On another occasion he addressed a Union meeting in Faneuil Hall, composed equally of Whigs and Democrats. I wish types could express the wit of one passage by indicating the rise, culmination, and sudden fall of his voice. "You Whig!" he exclaimed, "and YOU DEMOCRAT WHO

ARE JUST AS GOOD AS A WHIG—in your own opinion!” The last clause should be printed in the smallest type which the printer can command. The laughter which succeeded the qualification was deafening, and it came from the representatives of both parties.

When Mr. Sumner's first election to the Senate of the United States was in doubt, Sumner met Choate as he was entering the Court-house. “Ah, Mr. Choate,” said Sumner, pleasantly, “marching, I suppose; to another forensic triumph?” Choate had on his old camlet cloak—known to all members of the bar—and drawing it melodramatically up over his weird face, and looking like one of the witches in *Macbeth*, he mockingly answered, in his deepest tones, “Glamis thou art, and Cawdor!” and then disappeared through the door. Sumner was accused of lacking the perception of humor, but he always told this incident as if he had it in a high degree.

A distinguished Free-soiler, after the nomination of Taylor for the Presidency, accosted Mr. Choate in the street, and told him that the Free-soil section of the Whig party was determined to oppose the nomination at the polls. “What can you do?” said

Mr. Choate. "Perhaps little," was the reply; "but at least Massachusetts can fire her gun in the air." "Yes," at once retorted Mr. Choate, "and hit her guardian angel in the eye."

When Dr. Webster, the murderer of Parkman, was in prison after his conviction, Mr. Choate met in a street car an eminent clergyman who was inclined to believe that the criminal was innocent, and who visited him frequently. "How do you find the object of your pastoral care?" asked Mr. Choate. "Well," was the reply, "I always find him *in*." "And," returned Mr. Choate, "it will be long, I think, before you find him *out*." Indeed, in repartee he always had the last word. Nobody ever went away from him with the consolation that he had surpassed him in quickness of retort.

In one of his literary lectures Mr. Choate referred to the fact that Marie Antoinette, after her unsuccessful attempt to escape with her husband from France, entered on the evening of that day her new prison-house a beautiful woman, and on the next morning emerged from it with her loveliness all gone. He put it in this way: "The beauty of Austria fell from her brow, like a veil, in a single night." Any body who appreciates the

meaning of the word "imagination" can not fail to note the force of "the beauty of *Austria*." It was not merely the queen's individual beauty, but the beauty of her mother, Maria Theresa, and of all the princesses of the Hapsburg house since its foundation, that fell from *her* brow "like a veil" in a single night. The hopelessness of the struggle of all rank and beauty against the ghastly uprising of an oppressed people is also indicated in this grand imaginative generalization. The beauty was a mere "veil," that must be dropped when the fierce passions of a famished and enraged populace overturned all the sentiments which sprung from an aristocratic chivalry, based on a worship of beauty nobly born. What was most curious in this utterance was the lowness of the tone of the orator's voice as he delivered it. I am sure that the words "like a veil" could not have been heard by fifty people among the three thousand who listened to the lecture. I happened to be very near the speaker, and noted how completely he seemed abstracted from the audience when, in a tone of thrilling, tender sadness, he interpolated this statement as a parenthesis between the rush of words which preceded and followed it.

On one hot summer afternoon, a day or two after he had delivered his address on Kossuth before the literary societies of a Vermont College—an address all ablaze with the characteristics of his resplendent rhetoric, but still with a statesman-like judgment and forecast regulating its impassioned eloquence—I met him at the Boston Athenæum, and naturally alluded to the splendid success of his oration. “Ah!” he replied, with an immense yawn, “was it a success? I thought not. By-the-way, didn’t you talk to the same societies last year?” I was reluctantly compelled to admit that I was guilty of the offense. “Well, the truth is (between ourselves, mind you!) that I found you had so corrupted the young men with your confounded rhetoric, that my plain common-sense had no effect on them whatever.” The impressive seriousness with which this reproof was given was only relieved by a power, which Mr. Choate possessed, of indicating the humor of a remark through a peculiar flash from the white portion of his left eye, while the rest of his countenance remained in immovable and impenetrable gravity. The wink he gave me!—shall I ever forget it?

On another of the occasions when I had

the pleasure of meeting him the topic was the relative rank of the great generals of the world. "On the whole," he said, "I think we must take Hannibal as the greatest of them all. For just look at the effrontery of the fellow—scaling the Alps with a lot of Carthaginians—ragamuffins, *niggers*—to fight the *Destiny* of Rome! And then, you know, the scamp, with his rascal rout, nearly succeeded in his purpose of overturning the design even of Divine Providence! You may depend upon it, he is the biggest general of the whole gang of them!"

Choate was never tired of eulogizing Cicero and Burke. "The man," he once said to me, "who will write an article adequately describing, comparing, and contrasting those two men of genius will do a great work." "But," I answered, "that is the very thing that all of us are eager for you to do. You can do it better than any body else." "Oh, of course," he answered, with a shrug of his shoulders; "you may be sure it shall be done." Of course he never did it.

On a transient meeting with him, the conversation turned on the charge that Burke's seeming apostasy to the cause of liberty in his works on the French Revolution was caused by a desire for power and a pension.

I alluded to the impossibility that character and passion could be subsidized as well as imagination and genius; that Burke must have been morally honest in writing the works that incidentally gave him some fifteen thousand dollars a year, and that those writers who accused him of being bought by the English court grossly misapprehended him. "Misapprehended him!" exclaimed Choate; "they were *beasts!* BEASTS!" The way he rose from his chair and strode about the room as he uttered this opinion convinced me, at least, that his own political course could never have been influenced by the desire either of power or money. Indeed, every body who knew Choate knew that there was nothing in the power of the people of the United States to give in the way of political preferment that he regarded as worth striving for as a matter of political ambition. He had been a Representative and a Senator in Congress, but as he grew old he disliked every thing in politics which drew him away from his library during the brief hours of leisure which his professional engagements enabled him to enjoy. He spoke for his political party and his political convictions when he was called upon to do so, but the ordinary details of politics

were abhorrent to him. They were a bore. The only assaults on his political integrity were made during the later years of his life. Those who opposed his opinions—and I ranked among them—must have known that it was a real sentiment of patriotism, however misdirected, and not any paltry love of lucre or place, that inspired the thrilling addresses with which he bravely confronted the dominant sentiment of Massachusetts after 1850. It is curious that those who accuse him of cowardice and time-serving at this period forget that only obloquy could result from the position he took. The coward and the time-server are seen in the wake of the reformer when the reformer has the vote of the State with him. Choate withstood an impulse so strong that any sagacity much less keen than his must have known that it was more politic to follow than to withstand the movement; but he deliberately chose the unpopular side, and cheerfully submitted to be lampooned by hundreds of politicians who would have hailed him as the noblest and most eloquent of men if he had only drifted with the stream instead of manfully breasting it. His opinions were so opposed to mine, that it is a delight to record this testimony to

his political honesty. He had nothing to gain by the course he pursued, and he had much to lose. Now that the passions of that time have subsided, all Republicans can afford to do justice to Choate. He was not on their side; but had he been on their side they would have forced honors upon him. He never, by-the-way, during his political career had any need to solicit office; it was always freely urged upon him as a testimony of his fellow-citizens to his genius and capacity.

But to return to my recollections of him. It was impossible to meet him for even half a minute, as he was striding from his dwelling to his daily business, without eliciting from his ever-active mind some quaint remark. A friend of mine greeted him one day just as he was turning from Washington Street into a narrow lane leading to the Court-house. Mr. Choate answered the salutation, and, as he turned to go down the narrow passage, said, with much mock gravity, "Convenient, though ignominious!"

He was once engaged in the great legal controversy between the different owners of water-power on the Blackstone River. The case was one which really rested on nice mathematical computations, and was final-

ly settled by mathematicians. Choate was puzzled by the intricacy of the case, and meeting Mr. Folsom, the librarian of the Boston Athenæum, one morning in a bookstore, he said to him: "Pray, Mr. Folsom, have we in the Athenæum any books relating to the flow of water, the turning of it back, and playing the devil with it generally?"

There was so much intensity in Mr. Choate's nature that I often wondered how he could help tormenting himself in thinking over the cases he lost where the verdict should have been for the side on which he was engaged. One afternoon, after he had made an address to the Legislature, or a committee of the Legislature, of one of the New England States, and had plainly failed of success through a political prejudice excited against him by the opposing counsel, I met him calmly exploring the alcoves of the Athenæum in search of some book. In alluding to the palpable injustice of the reception of his legal argument the day before, I expressed my astonishment that he should seem so careless about the result. "Oh!" he answered, "when I have once argued a case, and it is settled, I am done with it. I cast it forcibly out of my mind, and never

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allow it to trouble my peace. I should go mad," he added, with a sudden lift of his hand through his abundant locks, "if I allowed it to abide in my thoughts. What, by-the-way, do you think of this curious life of Shelley, written by a fellow who calls himself a Jefferson somebody—Hogg?" In an instant the conversation was thus changed to Shelley and his latest biographer. I never met a man whose genius was as sensitive as his who had such a complete control of his mind and sensibility. He was the absolute autocrat of all the thoughts and fancies teeming in his fertile mind, exercised over them a tyrannous dominion, and never allowed them to possess *him*, but always possessed them.

One of the charms of Mr. Choate's conversation was his habit of exaggeration. To attend the performance of Mozart's *Don Giovanni* was like listening, he said, to ten thousand *forests* of birds. He knew that no exaggeration in mere words could adequately express the delight that a sympathetic mind feels in coming into vital acquaintance with a work of transcendent genius in any department of literature and the fine arts. Ten thousand birds would be a small testimony to the melodies of Mozart; but ten thousand

forests of birds is a comparison which indicates the rapture of wonder and admiration which Mozart's masterpiece excites in all souls capable of feeling its beauty. With this tendency to verbal exaggeration Choate had that instantaneous humorous recoil from extravagant assertion characteristic of ardent natures whose sense of the ludicrous is as quick as their sense of the beautiful and the sublime. "Interpret to me the libretto," he said to his daughter, "lest I dilate at the wrong emotion." Sydney Smith never said any thing better than that!

Nobody at the bar ever equalled him in paying ironical compliments to the judges who blocked his way to the hearts and understandings of juries. Judge Shaw was specially noted for the gruff way in which he interposed such obstacles, and Shaw's depth of legal learning was not more conspicuous than his force of character. "'Tisn't so, Mr. Choate," was a frequent interruption, when Shaw was on the bench and Choate was arguing a case before him. Choate's side remarks on the judge have passed into the stereotyped jokes of the bar, and are now somewhat venerable. One is, I think, not commonly stated in the exact words. "I always approach Judge Shaw," he said,

“as a savage approaches his fetich, knowing that he is ugly, but feeling that he is great.” Of Judge Story he once remarked, “I never heard him pronounce a judgment in which he did not argue the case better than the counsel on either side; and for which,” he added, with a twinkle in his eye, “he might very properly have been impeached.” He delighted in gravely joking with a judge. Thus he once asked that a case might be postponed, owing to his engagement in another court. The judge replied that the case was one in which he might write out his argument. With a mock solemnity, which it always seemed to me no other human countenance could so readily assume, he replied, “I write well, your Honor, but *slowly*.” As his handwriting resembled the tracks of wild-cats, with their claws dipped in ink, madly dashing over the surface of a folio sheet of white paper, the assembled bar could not restrain their laughter. Indeed, it is affirmed that he could not decipher his own handwriting after a case was concluded, and had to call in experts to explain it to himself. He congratulated himself on the fact that if he failed to get a living at the bar, he could still go to China and support himself by his pen; that is, by

decorating tea-chests. On one occasion he was employed by a half-crazed litigant to carry a case, dismissed by the court below, to the Supreme Court of the State. It was a case resembling the one immortalized by Scott—that of Peter Peebles *versus* Plainstaines; but the Peter Peebles in this controversy was as rich as he was litigious. Choate frankly told him that the exceptions his counsel had taken were of no account in law; but the client insisted that he should present them to the assembled judges, and was indifferent as to the fee. There never was a more solemn face presented to a bench of jurists than the face of Choate as he argued point after point of this hopeless case; but it was observed that every time he made a new point he introduced it with a sly wink to some one of the lawyers in attendance. The bench and the lawyers were tormented with the agony which comes from laughter decorously suppressed, while the advocate, except his occasional winks to his brother lawyers, was the very personification of legal gravity.

At dinner parties he was the most delightful of companions. "That," he remarked of some "Ashburton sherry," which was rather strong than delicate—"that is a

very good Faneuil-Hallish drink!" His talk on books was always delightful and discriminating, with an occasional eccentric deviation from the general judgment on an author, which made it all the more fascinating. The world of books, indeed, was that "real world" in which he lived whenever the pauses of his professional engagements enabled him to indulge in the luxury; and he adroitly dodged every social invitation in order to devote to Bacon, Shakspeare, Milton, and Burke—his favorite English authors—the hours which others lose in what is typically called "Society." In fact, few people in Boston could converse with him unless they met him in his daily walk around the Common, or in the Athenæum, or as he went from his residence to the Court-house. Yet no Bostonian seemed more open to conversation, and certainly no one ever left, in his chance meetings with acquaintances of all grades and pursuits, such an impression of good nature and brilliancy. Boston swarms to-day with admirers of Choate who only met him accidentally, as I did. In a minute's conversation he condensed what could have been obtained from no other celebrities of the city in an hour's discourse. He appeared, flash-

ed on you a remark, and then disappeared to his work. Yet more people knew him and talked about him than knew or talked about any other eminent Bostonian.

Mr. Choate greedily devoured every book relating to ancient Greece, even the most ephemeral. Of one of these he said: "The author seems to know a good deal, but he is too confident as to those mysterious Pelasgians, at the bottom of the whole history; he *Pelasgizes* too much." The English historians of Greece, even Thirlwall and Grote, he thought were more or less biassed by party feelings. In writing about ancient Greece, "they were consciously or unconsciously influenced," he said, "by their opinions as to the personal and political character of Charles James Fox." As to his own method of learning the history of Greece, it may be affirmed that he studied the works of the Greek orators, philosophers, and historians in order to become mentally a citizen of Greece, and thus to look at Greek life through a Greek's eyes. By his realizing imagination he instantly nullified the hard conditions of Time; sent his mind and heart back two thousand or twenty-five hundred years to contemplate a civilization entirely different from ours; and often, while

he was striding around Boston Common in the age of Buchanan, he was really making himself a contemporary of the age of Pericles. His imagination was in ancient Athens, while his body was in what is ironically called "the modern Athens." As he pushed rapidly along in his favorite afternoon walk it was plain that he was not regarding the objects before his bodily eyes, but those before his mental vision; that he was attending, perhaps, the performance of a tragedy of Sophocles or a comedy of Aristophanes; or was indulging in a pleasant game of chaffing with Socrates, in some Athenian mechanic's shop, on the transcendental "good and fair," as contrasted with the descendental bad and mean; or was contesting with Demosthenes a cause before the "fierce democracy" of Athens; or was exhibiting, in a visit to Aspasia, that exquisite courtesy to women in which he excelled all other gentlemen of his time. If I ever crossed him in his walks, and saw the weird eyes gazing into distant time and space, I made it a point of honor not to interrupt his meditations, but to pass on with a simple bow of recognition. Why should I, for the sake of five minutes' delightful conversation, interrupt this hard-worked man of

genius in his glorious imaginative communion with the great of old? The temptation was strong, but I always overcame it. When he was in Boston, I ventured to accost him; when he was in Athens, I very properly considered that he was in much better company than any which Boston could afford; and, as an humble denizen of the place, I thought it judicious not to obtrude myself into a select circle of immortals to which I was not invited.

To obtain a complete idea of Mr. Choate's various talents and accomplishments, the reader is referred to the edition of his works, in two octavo volumes, published in Boston in 1862, and edited by Professor S. G. Brown, who also contributed a long and excellent biography. The biography includes copious extracts from Mr. Choate's private journals and familiar correspondence. These enable us to penetrate to the inmost heart of the man, and prove how false were many of the rash judgments passed upon him while he lived. It also contains a number of communications from his legal and political associates and opponents, who, whether they agreed or disagreed with him, preserved a vivid impression of the force and fertility of his mind, and the manliness and kindness

of his nature. But its great merit consists in vindicating Mr. Choate from the vulgar imputations on his legal and political integrity; that is, on his intellectual conscientiousness. It shows conclusively that he considered the exercise of his powers in jury trials as an "office" and not a "trade;" that he was convinced that his part in the determination of a cause was as much provided for in the law of the land as the parts assigned to the judge, to the opposing counsel, and to the jury; and that as an "official" in the administration of justice, it would be scandalous for him to spare time, labor, knowledge, eloquence, in defense of his particular client. *That* course was decreed by the whole theory of English and American law. He felt the obligation imposed upon him so keenly, that, in his early private memoranda, when a cause was decided adversely to his view, he reproached himself for not having done more for his client; in other words, for not having fulfilled his duties, as an *official* in the administration of the law, with more address, ability, and command of the law. It was only by degrees that he surmounted this self-distrust, and became able to dismiss from his mind at once a case when it had been finally

settled. The volumes edited by Professor Brown contain also Mr. Choate's most valuable literary and patriotic addresses, and his best speeches while he was a Senator of the United States. Whatever may be the criticisms on his political career, there can be no doubt that he never had, like the elder brother mentioned in Scripture, any "ulterior views on the fatted calf." He was almost forced by his party into every high political position he occupied. He was not without political ambition, but it was an ambition disconnected from any possibility of personal emolument, and, indeed, sadly interfering with his professional business and with his natural desire to provide a modest competence for his family. Every thing mean and base in politics he absolutely loathed. To him "machine politics" were equally a bore and a blunder. But when great national interests were at stake he was willing to sacrifice what few hours he could steal from his professional engagements, from his study of the poets, historians, and philosophers of Greece and Rome, from his delightful communion with the spirits of Shakspeare, Bacon, Milton, and Burke, to the preparation of orations designed to influence the legislative or pop-

ular mind at periods where what is called a "crisis" threatens the interests of a nation. The editor has demonstrated that whether Mr. Choate was right or wrong in the varying aspects of his political creed, he was pure from all forms of avarice—the insidious avarice of fame no less than the more open avarice of money and office. In short, he was at heart a patriot, even when the course he took disappointed many of his best friends and admirers.

What Professor Brown does not notice—probably as beneath the dignity of biography—are some of the peculiar relations of Choate with Webster. They were strong personal and political friends; when Webster desired to raise money, he sometimes got Choate to indorse his note; when Webster ventured on a daring political move, he got Choate to indorse his policy; and the result was that in either case the indorsement entailed on Choate pecuniary embarrassment or popular obloquy. If one should consult the archives of the Boston Merchants' Bank, there would doubtless appear sufficient reasons why Choate should have been occasionally troubled with a want of money, on account of heedlessly affixing the hieroglyphic which passed for his name on

the back of a promise to pay which bore the more flowing and familiar signature of Daniel Webster; and whenever his immense popularity as an orator was at all abated, it was generally found that what he lost in popular estimation was due to his honest and cordial indorsement of his friend's political conduct. The only occasion on which he was ever charged with showing the white feather was in his contest with Clay during the early days of Tyler's Administration. Clay was the champion of a bill for the establishment of a United States Bank. The bill was sure to pass both Houses of Congress. Choate had been probably informed by Webster that the President would veto it unless certain clauses were omitted, and he eagerly urged that such omissions be made, in order to insure its becoming a law. Clay instantly detected that some communication had passed from the Secretary of State to the Senator of Massachusetts, and pitilessly forced Choate into a corner, whence it was impossible for him to escape. "Why are you so confident that the bill will be vetoed? What right have you to suggest to the Senate of the United States, a co-ordinate branch of the government, that the Executive is opposed to a bill, before it

has been presented to him for his signature? What are your private means of information? Tell us the name of the man from whom you received such information." What could be done by dexterity in evading the real point in issue Choate did marvellously well; but his friend Webster had got him into a "fix" from which neither courage nor ingenuity could get him out. Clay was insolent and overbearing, for he was attacked by one of his periodical fits of hatred against his great rival for the prize of the Presidency, who was then Secretary of State, and he lavished on Choate the wrath he intended to fall on Webster. It was sounded all over the country that Choate had quailed before Clay. Even in the State he represented Choate was long considered to have lacked, in this instance, that intrepidity which he had never before failed to show in any contest at the bar or in the Senate. The truth is that Clay, on the next meeting of the Senate, magnanimously apologized for the rudeness of his assault, and shook hands with Choate with all the cordiality that can be expected from a statesman who is immeasurably ambitious. As far as Choate was wrong in this conflict it was owing to his friendship for Web-

ster; and that there was not a taint of cowardice in his nature was soon after shown in his contest with the great fire-eater of the South, the redoubtable Senator M'Duffie, of South Carolina. His reply to M'Duffie's violent and insolent assault on his tariff speech is a masterpiece of argument, edged with every appliance of scorn, sarcasm, and invective which his wit and fancy could command. There was no question as to his courage in *that* encounter. M'Duffie was a duellist debater, whose body was riddled with bullets received in many a quarrel which his effrontery had provoked; but he submitted to Choate's "punishment" without a thought of sending him a challenge. It is doubtful if his contentious and belligerent temper ever before quietly endured such a series of polished insults as Choate heaped upon him.

Still it must be admitted that Choate, in his political connection with Webster, seemed to submit to the control of a mastermind. No two men could be more widely contrasted in their characters, in their mental processes, in their style of expression. They were often brought into conflict in the trial of causes; at times it appeared as if they were mortal enemies, so strenuous

was each in supporting his particular side; and as an advocate, Choate grappled with Webster—mind with mind and man with man—with an intrepid pertinacity which left no doubt on the court and jury that his respect for him did not control the vehement logic and still more vehement rhetoric with which he urged, against Webster's arguments and eloquence, the strong points of the case he was employed to state and defend. On one occasion, while Webster sat gravely listening to the impassioned eloquence of his opponent, he turned to one of the junior counsel and remarked: "Some of our technical brethren of the bar would call all that flimsy humbug; if it be so, which I deny, it is still humbug which stirs men's souls to their inmost depths. It is reason impelled by passion, sustained by legal learning, and adorned by fancy." There were few advocates that Webster feared more than Choate when there was a trial of strength between them. On such occasions it was observed that he studiously refrained from any attempt to rival his opponent in eloquence. He adopted a dry, hard, sensible tone of statement and argument. He ironically complimented the learned counsel opposed to him for his impassioned

flights of eloquence, which, as poetry, he had himself enjoyed as much as he supposed the twelve honest and practical men who were to decide on the case had doubtless enjoyed them. Nothing could be better, if questions of fact and law were to be influenced by beautiful displays of wit and imagination, than his learned brother's argument; but, gentlemen—and here Webster assumed all the weight and consequence which his imposing form and penetrating voice naturally gave him—this is a question not of poetry, but of fact. It is purely a matter of commonplace, every-day occurrence. There are no heroes and no heroines in it, no tragedy and no comedy, but plain people like you and me—mere Smiths and Robinsons—and you are called upon to decide between them as you would decide a dispute between your own friends and neighbors. He would then proceed to reduce all the circumstances of the case to the low level of actual life, pitilessly ridicule Choate's high-wrought rhetoric, and exhibit the bare, skeleton facts, stripped of all their coverings, in connection with the law that applied to them, confident that there were twelve solid and sensible Websters in the jury-box who would sustain

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him in his judgment of the case. He sometimes succeeded, sometimes failed, in this process of disenchantment; but, at any rate, he rarely, in his legal contests with Choate, availed himself of his latent power of overwhelming declamation, in which his logic was made thoroughly red-hot with passion, and, so to speak, burned its way into the minds of the jury. Thus in the famous "Smith will" case, in Northampton, Choate was opposed to Webster, and made one of the most learned, ingenious, powerful, and impassioned arguments ever addressed to a Massachusetts court. Webster replied by a simple statement of the case, and studiously avoided any rivalry with Choate in respect to eloquence. He obtained the verdict, not so much by the force of his argument as by the singular felicity with which he conducted the examination of the principal witness in the case, who was afflicted by a nervous timidity which, in a jury trial, might have been converted into an indication of insanity, had not Webster extended to him his powerful protection, and prevented the other side from cross-examining him into delirium. As the case really depended on the sanity of this witness, Choate's magnificent argument proved of no avail.

It is a pity, however, that his subtle analysis of morbid states of mind which are ever on the point of toppling over into insanity has not been preserved.

But while, as an advocate, Choate boldly confronted Webster in the trial of causes, and at the bar was ever ready to put his individuality as well as his intellect and legal learning into opposition to Webster's, he showed, as has been previously stated, an unmistakable sense of inferiority to him in statesmanship, and in questions of public policy almost always followed his lead. He did it in his own peculiar way, but every body more or less felt that he was a follower and not a leader in matters of the higher politics of the country. There were several occasions—notably that after Webster had made his speech of the 7th of March, 1850—when he might have easily assumed the leadership in Massachusetts of the party which, ten years after, obtained the control of the whole political administration of the country; but he preferred, against all temptations that could be presented to his ambition, to stand by the man whom he had deliberately elected as his chief. There was no servility in this choice; it was rather owing to an inward feeling that in po-

litical experience and sagacity he was no match for the great lawyer he had fearlessly enough encountered at the bar.

Perhaps the weight and power of Webster's character were due as much to the hours he spent in the woods and fields and on the ocean, chatting with farmers or sailors as he was engaged in hunting or fishing, as to the hours he spent in his study. He was essentially an out-of-doors man, devoting a full third of the year to the pursuits or sports of a country gentleman; often, indeed, following out the trains of a logical argument while he was tramping along through muddy forests, rifle in hand, eager for an opportunity to get a good shot at game, or framing sonorous periods as his boat swayed up and down on the waves of the Atlantic, while he was eagerly watching an opportunity to hook a large cod or a giant halibut. It is reported that the celebrated passage, which every school-boy in the land knows by heart, "Venerable men! you have come down to us from a former generation," was both conceived and audibly uttered as he was exultingly hauling in a huge fish; and the dying cod or halibut, however sad might be his condition in respect to a more important matter than list-

ening to eloquence, had at least the advantage of being the first living thing that heard that immortal apostrophe to the survivors of the Revolutionary war. Now such communion with nature, both passive and active, gave to Webster's logic and eloquence an *objective* character. The breath of the pine woods of New England, the exhilarating ocean breeze, in some mysterious way stole into his profoundest arguments addressed to the Senate or the Supreme Court, while his intimate knowledge of ordinary men in their ordinary occupations recommended what he said as conformable to the plain good sense of average mankind. "He is one of our folks," was the general judgment pronounced at thousands of New England village firesides when one of his great speeches in the Senate was read aloud to the assembled family; and they thoughtfully pondered on it the next day, when they were urging reluctant oxen through miry roads, or were ploughing their fields.

Now Choate, superior to Webster in quickness of apprehension and imagination, was an in-doors man. The larger portion of his mature life was passed in the stifling atmosphere of the courts, or in what Milton calls "the still air of delightful studies;" that is,

in his library. He, of course, was not so foolish as to neglect exercise; but his exercise was commonly confined to long walks through the streets or around the Common of Boston. No one ever enjoyed Nature more intensely; but he never sojourned with her. His friend Charles G. Loring, one of his competitors for the leadership of the Suffolk bar, once invited him to pass a summer day at his beautiful residence on the Beverly shore. Mr. Choate was full of enthusiasm as he walked among the woodland paths or gazed at the varying aspects of sky and ocean; he doubtless stored up in his mind images of natural beauty which flashed out afterward in many a popular speech or legal argument; but he exhausted the capacity of the place to feed his eye and imagination in half a dozen hours. "My dear Loring," he said, in parting, "there has not been a twentieth part of a minute since I entered this terrestrial paradise that I have not enjoyed to the top of my bent; but let me tell you that should you confine me here for a week, apart from my work and books, I know that I should die from utter *ennui*. You are fortunate in being able serenely to delight in it day after day." Now this did not indicate any incapacity in Mr. Choate

to take into his mind all that ocean and woodland scenery suggests, but simply his incapacity to dwell long upon what other less active and restless minds find to be a perpetual source of tranquil delight. In the fourth canto of "Childe Harold" Byron described in immortal verse the architecture, the statues, the paintings, which make Rome a holy city to the artist and the poet. The stanzas devoted to St. Peter's Church, the Apollo Belvedere, the Venus de Medici, the Dying Gladiator, not to mention others, are in the memories of all who visit Rome; still it is not remembered that Byron staid in Rome only a few days, though in that brief period he did more than an ordinary man of talent could have done by residing there for years. Choate, in the same swift way, rapidly assimilated what he saw in a novel scene, and, with a similar restlessness of brain, hurried away to some new experience. He honored Webster as much as he could honor any man of his time; still, if he had been asked to pass a fortnight with Webster at Marshfield or at his New Hampshire farm, and had accompanied him day after day in his shooting or fishing expeditions, not even Webster's conversation could have saved him from being devoured with an

impatient desire to escape from the monotony of such an existence. All the eccentric *originals* of the neighborhood, whom Webster delighted in year after year, he would have delighted in for a day, and then dismissed them from his mind as intolerable bores; the mountain or ocean scenery might have enthralled him for a few days more; but the shooting and fishing, in which Webster took such pleasure, would have seemed to him a scandalous waste of time, which might have been more profitably bestowed on Æschylus and Aristophanes, on Thucydides and Tacitus, on Hooker and Jeremy Taylor, on Bacon and Burke, on Shakespeare and Milton. By the necessity of his mental constitution he could find no repose except in varying the direction of his intellectual activity. The serenity of mind which comes from the calm contemplation or indolent enjoyment of nature and country life he never obtained, while to Webster it was a habitual mood. Webster had leading and fixed ideas, which were inseparable from his individuality; through the mind of Choate a throng of ideas was constantly passing, pressing and sometimes trampling on each other, but on account of their number and variety disturbing the process by which

ideas settle into convictions and dominate will. It is hardly fanciful to assert that the permanent impression which Webster's ideas and rhetoric left on the politics and literature of the country were, in a considerable measure, due to his out-of-doors life and his talks with "uncultivated," natural men.

In one particular Choate excelled Webster—that of constant high-bred courtesy to men and women of all ranks. While pouring forth the treasures of his mind, he always had the art of disguising his own superiority by graceful subterfuges of expression, indicating that he was only recalling to the attention of his companion things, events, and thoughts which were in the memory of both. "You remember that fine passage in Southey;" "I need not remind you that Burke, on this point, says;" "You, of course, recollect Cicero's statement as to the problem in question;" "You have doubtless often felt the force of De Quincey's remark;" "You need not to be reminded of that grand sentence in Hooker:" such were his ordinary ways of introducing allusions to authors of note, whose works were lodged as securely in his brain as they were on the shelves of his library; and he always gave you new information by thus amiably inti-

mating that you were already in possession of it. In familiar conversation he never put on the airs of a "superior intelligence;" he had a comic dislike of the grave, portentous, superserviceable bore who approached him with the notion that he was "the great Mr. Choate;" and never appeared more happy than when his companions of a lower intellectual grade thought they were communicating knowledge to him, though they were in fact receiving it. Such entire absence of dogmatism and pretension, such tenderness for the feelings and respect for the opinions of others, I never witnessed in any other man of equal talents and accomplishments. Webster was generally charming when among his intimate friends, and ponderously condescending to comparative strangers, if he happened to be in good health and spirits; but in case he was sick or "disgruntled," or had his autumnal "hay fever," he put on a boorish "God-Almightiness" which had all the offensiveness of dignity without any of its majesty, and made him personally hateful to many politicians who were willing to admit the essential grandeur of his genius and character. Choate, on the other hand, whether in health or out of it, was always courteous; and I do not believe that any

man ever met him in the street, in his house, or in his office without being impressed by the sweetness and serenity of his temper, and by that graciousness of manner which was the farthest possible remove from the insolent affability characteristic of the eminent "personage" who condescends to treat with elaborate politeness the humbler creature whom he admits, for the moment, to be a human being. Nothing could abate Choate's chivalric courtesy, not even his horror of bores. On one occasion I was present when a good man propounded to him a self-evident proposition, and, to support it, proceeded to state a considerable number of irrelevant facts, on which he founded a series of inconclusive arguments. The thermometer was 90° in the shade; Choate was physically exhausted by the labors of the forenoon, and required some more stimulating discourse to rouse him into attention; but he listened patiently to the end, and bowed his acquiescence to the foregone conclusion arrived at by an illogical process. When the bore departed, thankful that he had deposited an important truth which would bear fruit in his listener's mind, Mr. Choate turned to me, and remarked: "What an excellent person

A. Y. Z. is! but don't you think he would be much better than he is if he could tell in a quarter of half a minute what he has consumed fifteen minutes in telling?" That remark was the only revenge he took for being robbed of his precious time. Webster would have growled the talker into silence at the end of his first sentence, or have contemptuously turned on his heel and left him to talk to himself. Choate was incapable of offending the self-love of a benevolent egotist by any disrespect, even the disrespect of inattention to his tedious discourse. It is difficult to determine how many influential enemies Webster made by his surliness, especially when he had one of his attacks of the "hay fever." I remember one occasion when he came down from Boston to deliver a lecture on the framers of the Constitution to a city in — County, the leading personages of which were disposed to think of themselves as among the elect, the *élite*, perhaps the *effete*, of the earth. In the anteroom of the hall the mayor was busy in introducing the distinguished citizens of the place to the great man, who had an ominous thundercloud on his brow, and shook hands with each prominent citizen as he came forward with a savage expression in his countenance, indi-

cating that he would rather use his hands to inflict mortal injury on each of the persons who came forward than to clasp theirs in a spirit of amity and brotherhood. The cloud on his brow grew blacker and blacker, and the bolt flashed out just as a political opponent, of the reptile race of local politicians, came cringing and smiling toward him to say, "I am glad to see you, Mr. Webster." Webster contemptuously turned on his heel, and, with his back to the purring, crawling, poisonous sycophant, gruffly exclaimed, "Enough of this, Mr. Mayor; let us go in to the hall." Those who witnessed the rebuff can never forget the instant change in the face of the man who was thus disappointed in having the honor to shake hands with the "Defender of the Constitution," the "god-like Dan." Mortification and rage were blended in the tones with which he whispered to another political opponent of Mr. Webster by his side: "Damn him! I always said, you know, that he was an enemy to his country!" Choate could never, under any circumstances, have been provoked into such an incivility. It may be added that Webster further expressed his sense of intolerable boredom by saying to the gentleman who was to follow his speech with the reci-

tation of an original poem, "Are you familiar with this city? In my opinion 'tis the dullest place on God's earth." It is plain that this is not the way by which a prominent statesman can acquire friends or conciliate enemies. Webster himself could never have been guilty of such manners to a farmer, or fisherman, or body-servant; but in his ugly moods he was capable of heaping any insult on a politician.

Mr. Choate, as the great Whig orator of Boston, was always called upon to address the monster meetings of the Boston Whigs when an important election was pending. Unless inflamed with the passion of the time, unless the question up for settlement was one which spontaneously inspired him, he considered this demand on the little leisure which his professional engagements allowed him as an intolerable bore. On one occasion, when he was suffering from one of his attacks of bilious headache, he was almost dragged out of his bed and practically forced to go down to Faneuil Hall and make a speech. I was among the crowd, and noticed, as he pressed through the seething, sweltering mass of citizens which obstructed his way to his allotted position on the platform, that his face looked weary and

haggard, and that a strong odor of camphor followed him in his progress; but I also noticed, as he passed, that there was a humorously wicked look in his eyes, which indicated that he intended mischief to the chairman of the meeting, who had invaded the privacy of his chamber and insisted on his making a speech though he was palpably suffering from physical pain. My anticipation proved true. Nothing could be more splendid and inspiring than the oration as a whole; but he took every opportunity, in the pauses of his declamatory argument, to give a sly thrust at the chairman. The first sentence apprised all who were familiar with Choate's moods that mischief was brewing. "You, Mr. Chairman," he began, "called upon me last Thursday, and demanded that I should address the Whigs of Boston to-night. I respectfully informed you that, owing to ill health and the pressure of my professional engagements, it was utterly impossible for me to be present on this occasion, and *accordingly here I am.*" This delicious *non sequitur* elicited roars of laughter and applause from three or four thousand people, and prepared them for what was to follow. Choate was determined to punish the chairman—one of the

ablest men of business that Boston ever produced, but who knew as little of Latin as of Cherokee—for forcing him into his irksome position. With this end in view, he took a malicious delight in hurling every now and then at the chairman long resounding sentences from Cicero, always prefacing them with an inimitable mock deference to the good merchant in the chair, as though, in familiarity with Latin learning, the able business man was infinitely superior to such a poor scholar as himself. The chairman had to smile blandly and nod his head in approval as every quotation from Cicero was shot at him in the most penetrating tones of the orator's magnetic voice. The mass of the audience did not at first take the joke. Indeed, the most ignorant people like to hear Latin, as the father of Charles, in Fletcher's play of *The Elder Brother*, liked to hear Greek, for, he said, "It comes so thundering as 'twould waken devils." The mere noise of the unintelligible language has an effect on the ear, though it conveys no sense to the mind; and Choate's citations from Cicero passed muster for about fifteen minutes before his pushing, swaying, clamorous, and delighted mob of auditors became aware of the exquisite

pleasantry of prefacing every rolling, resounding Latin sentence with such remarks as these: "As you, Mr. Chairman, will remember;" "As you, Mr. Chairman, can not forget;" "As you, Mr. Chairman, must have often recalled to your memory in the present strife of irreconcilable factions in this terrible crisis of our country;" but at last the full malicious fun of the orator they were applauding became evident to their sense of humor. They knew that the chairman was as ignorant of the language of Cicero as they were, and they delighted in seeing him helplessly bending under the pitiless peltings of this linguistic storm. The shouts and acclamations with which they welcomed every point which Mr. Choate made in the English tongue were redoubled on every occasion when he solemnly turned to the chairman and capped his climax in magnificent Ciceronian Latin. The fun waxed more and more fast and furious, and when Mr. Choate, utterly exhausted, sat down, it seemed as if Faneuil Hall would rock to its foundations with the clappings of hands and the stampings of feet. The orator who had raised all this uproarious hubbub, declining all compliments, proceeded quietly to do what he always did after

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making a great effort—that is, to invest his throat and lungs with voluminous wrappings, in order to protect them against the night air—and then stalked out at a rapid pace to the peaceful chamber from which he had been unwarrantably drawn to serve a transient purpose of his party. The chairman of the meeting doubtless never afterward compelled Mr. Choate to make a speech against his will, unless he had previously devoted days and nights to the study of Cicero in Cicero's native tongue.

Perhaps the most notable of his popular addresses was one delivered before the Democrats of Lowell, Massachusetts, in the summer of 1856, after he had concluded to come out for Mr. Buchanan, the Democratic candidate for the Presidency. There were four or five thousand persons present eager to applaud the great Whig orator, who had been constrained to accept their candidate because he thought the Democratic party then stood, more emphatically than the party he left, for "the Union." The floor of the immense hall began to sink before the orator began to speak. It sank more and more as he proceeded in his discourse, and at the end of half an hour a sound was heard calculated to frighten the audience into a

stampede for the doors—a course which would have resulted in their destruction. Mr. B. F. Butler, who presided, told the audience to remain perfectly quiet while he went to discover if there were any cause for alarm. He discovered that the condition of the supports of the floor was such that the slightest demonstration of applause would be likely to bring the floor, the roof, and the walls of the building itself, to the ground, and bury the audience in the ruins. He calmly returned to the platform and, as he passed Choate, whispered hoarsely in his ear, “We shall all be in — in five minutes.” Then, with admirable *aplomb*, he told the crowd before him that there was no immediate danger if they slowly dispersed, but he considered it judicious to adjourn the meeting to another locality to hear the conclusion of Mr. Choate’s speech. The post of danger, he added, was just under the platform, and that he and those with him on the platform would be the last to go out. As Choate slowly walked by the side of Butler in the rear of the procession, expecting every moment that a dreadful catastrophe might occur, he still could not resist the temptation to indulge in a bit of humorous mischief at the expense of the politician and

lawyer he had fought for so many years, and whispered to him: "Brother Butler, when you told me we should *all* be in five minutes in that locality unmentionable to ears polite, did you have the slightest idea of insinuating that both of us would go to the *same* place?" It may, however, be added that Mr. Butler probably saved, by his admirable coolness in that hour of peril, as many men as he was afterward the instrument of killing in his office of Major-General.

Many illustrations might be cited of Mr. Choate's insidious power over a jury, secret even to the twelve who were to render the verdict. One of these was furnished by a hard-headed, strong-hearted, well-educated farmer, who was one of a jury that gave five verdicts in succession for Choate's clients. The way he expressed his admiration of the great advocate was peculiar. It was in these words: "I understand, Sir, that you are a relative of Mr. Choate. I must tell you that I did not think much of his flights of fancy; but I considered him a very *lucky* lawyer, for there was not one of those five cases that came before us where he wasn't on the right side." This was said with the utmost simplicity, and without the remotest notion that an imaginative mind could ex-

ercise a subtle effect on a mind entirely unimaginative through that grand function of the imagination by which the person who has it enters into the interior recesses of natures which differ fundamentally from his own, and, identifying himself for the moment with their individualities, extorts from them their well-considered "Yes."

But perhaps a stronger instance of Choate's method of concealing his power at the time he was exercising it with the most potent effect occurred in an important case where the evidence was so conflicting and the points of law so intricate that dispassionate minds might have long paused before deciding the question in dispute. One resolute jurymen said to another, as he entered the "box," "Now, mind you, there is one man in this crowd who will not give a verdict for the client of that man Choate. Why, Sir, he is the great corrupter of juries. I know all his arts. He is engaged by fellows who wish to subvert justice between man and man. I hate him with my whole heart and soul." When the verdict was given for Choate's client, with hardly a discussion in the jury-room, the wonder was expressed that this obstinate member of the conclave agreed so readily with the rest.

“Oh,” he said, “the case was a plain one; Choate was right this time; and you know it would have been scandalous for me to violate justice because I had a prejudice against the person who supported it. Let him appear before us in a case where he is palpably wrong, as in the Tirrell trial or the Dalton trial, and I will show you that I’m all right. He never can humbug me!”

His power of lifting, of idealizing his clients, of making them the heroes or heroines of a domestic or sensational novel, was never more brilliantly illustrated than in the celebrated Tirrell trial, to which I have before alluded. Here were murder and arson, committed in a low brothel, as the subject of the picture or story; but a great artist—a sort of Yankee Spagnaletto or Victor Hugo—was suddenly improvised to paint or narrate the scene and incidents. The whole event was elevated into the domain of high tragedy. Those who listened to Mr. Choate’s argument can never forget the strange kind of interest with which he invested the wild and “fast” young man and his stupid, drunken harlot. It was as if Albert Tirrell and Maria Bickford were on a par with Othello and Desdemona. Indeed, the advocate might have been supposed to hold a

brief from Othello against a charge of murdering his wife. There are certain almost miraculous effects produced by the mere tone of voice with which a great advocate pronounces the simplest words. Thus when Choate said, "Albert *loved* Maria," the auditors felt the same kind of pity which they might have felt had Garrick or Kean uttered the words, "Othello loved Desdemona." It is considered a great merit in an actor's or orator's voice if, in pathetic passages, he has "tears in his tones;" but Choate, in this instance, had in his tones something which suggested the whole sad, horrible incidents of guilt and misery which it was his task to recount, and which resulted from the fatal attachment of "Albert" to "Maria." There is no accurate report of his argument in this trial; and indeed if every word he spoke had been faithfully taken down, still his voice, his tones, the meaning he put into his utterance of some plain words, could not have been reported.

One incident of this trial afforded Mr. Choate an excellent opportunity of exerting his incomparable power of ridiculing what he might find it difficult to dispose of by reasoning. Roxbury is but four miles from Boston, and is now, indeed, incorpo-

rated with the city proper. After the evidence for the defense was all in, and the arguments were to begin, the prosecuting attorney brought forward a resident of Roxbury to give additional evidence against Tirrell. Choate's method of demolishing the effect of what this witness had to say is among the cherished traditions of the Suffolk bar. "Where was this tardy and belated witness, that he comes here to tell us all he knows, and all he doesn't know, forty-eight hours after the evidence for the defense is closed? Is the case so obscure that he never heard of it? Was he ill, or in custody? Was he in Europe, Asia, or Africa? Was he on the Red Sea, or the Yellow Sea, or the Black Sea, or the Mediterranean Sea?.....No, gentlemen, he was at none of these places (comparatively easy of access), but—and I would call your attention, Mr. Foreman, to the fact, and urge it upon your attention—he was at that more remote, more inaccessible region, whence so few travellers return—Roxbury."

One of the greatest of Webster's arguments was that on the trial of the Knapps for the murder of Mr. White, of Salem. It is now generally conceded that as the law of Massachusetts stood at the time John

Francis Knapp was illegally convicted. As far as the technical law was concerned, he was as innocent as any peaceful citizen who walked the streets of Salem. His guilt was plain, but he was not legally guilty; and it was only by Webster's overmastering hold on the minds and consciences of the jury that they rendered a verdict equitably just but legally wrong. At the time of the trial Mr. Choate was a young lawyer, engaged in doing some minor services to the leading counsel who appeared for the prosecution. Had he been then the man who saved Tirrell from being illegally hanged, and had been counsel for John Francis Knapp, there can be little doubt that, with the law on his side, he would have been more than a match for Webster. It is curious that what is called "Lynch law" is sometimes conducted under all the solemn forms of regulated courts of justice. That it was not exercised in the Tirrell case was owing to Rufus Choate.

The effect of Choate's oratory was aided by the strength of expression he could throw into his face. "Why," said an old farmer, listening to an argument directed against his own interests—"why, that fellow can *cant* his countenance so as to draw

the tears out of your eyes." He also had a singular power of so changing the tone of his voice that, in conversing gravely with one person, he could throw in an "aside" to another which was audible to the latter alone. On one occasion two members of a legal firm called upon him in order to suggest the naming of a day for consultation on an important case in which he was engaged as leading counsel. He happened at the time to be overwhelmed with business, and hastily remarked that the only hours he had to spare within a week were after five o'clock in the afternoon of the ensuing day. That day was Sunday. The senior member of the firm, with a slight Pharisaical sniff meant to indicate a superior scrupulosity in the matter of ceremonial piety, solemnly replied: "Mr. Choate, I have been for thirty years a member of the bar, but my conscience has forbidden me ever to transact any worldly business on the Sabbath." Choate himself was in religious matters a Calvinist of the austere type. He gave one glance at the reprover of his sacrilegious proposal—a glance which penetrated to the inmost depths of the little pettifogging soul that wriggled plainly to his eye under its mere crust of religious

formality, and gravely remarked: "You know, Mr. A——, this cause is peculiarly one which falls under that class of cases somewhere, I think, mentioned in Scripture, which concerns the doing of good on the Lord's Day; but I honor your scruples so much that I would not for the world ask you to do violence to them." The conclusion of this address was accompanied with a wave of his hand which brought it for a few moments before his mouth; and the junior partner caught these words: "He's an infernal fool; you come." How this swift, significant command entered his ears without getting into those of his senior, the young man could never understand, as the three were only a few feet apart during the short conference. Meanwhile the oracular teacher of the proprieties of religion moved pompously out of the office, fully impressed with the idea that he had risen amazingly in the estimation of the great Mr. Choate by his conscientious refusal to perform a duty of justice and mercy on what he erroneously called the "Sabbath." The only departure from literal fact in the narration of this anecdote is in substituting the milder adjective of "infernal" for the stronger one impatiently

used by Mr. Choate in qualifying the noun "fool."

In alluding to Mr. Choate's imaginative power of transforming himself into the personalities of his clients, of surveying acts and incidents from their point of view, I have expressed my wonder that he could so quickly relieve himself of the burden he carried when the cause was decided against him. Byron, for instance, is an example of intense genius, with sensibility so blended with imagination that the type of human nature he adopted as the fit vehicle for the expression of his ideas on human life dominated at last his own individuality. The type he adopted was the misanthropical type of our immensely various humanity. He dashed into it; but the trouble with him was that when his genius got *in* to this form of individual character, it could not get *out*. Hence the monotony of his splendid poetry. Shakespeare, in his drama of *Timon of Athens*, went deeper into the spiritual sources of misanthropy than even Byron did, and expressed the imaginative experience he gained by it in passages of more dreadful scorn and hatred of ordinary men and women than Byron ever dreamed of uttering; but, unlike Byron, he

found no difficulty in escaping from the mental mood which engrossed him for the time, and passed on to enter into and reproduce other forms of character representing more healthy and joyous perceptions of human life. Now Choate, with much of Byron's intensity, had more of Shakespeare's comprehensiveness. The self-abandonment by which he seemingly became a person entirely different from himself, in identifying himself with his client, was accompanied by an admirable power of self-direction, which enabled him easily to escape from his transient metamorphosis. He could not only go *in*, but get *out* of, every individuality he assumed for the time. And this flexibility of mind was not necessarily a violation of intellectual conscientiousness. It simply shed light on the case in dispute by bringing in individual character as a factor in settling a complicated case of right or wrong. But, at all events, Mr. Choate cleared his mind of all the vexations of a jury trial after the decision had been made. "I sometimes feel," he remarked to a legal friend, "when a case has gone against me, like the Baptist minister who was baptizing in winter a crowd of converts through a large hole made in the ice. One brother

—Jones, I think—disappeared after immersion, and did not re-appear; probably drifted ten or fifteen feet from the hole, and was vainly gasping under ice as many inches thick. After pausing a few minutes, the minister said, ‘Brother Jones has evidently gone to kingdom come: bring on the next.’ Now I am not unfeeling; but after all has been done for a client that I could do—and I never spared myself in advocating his legal rights—the only thing left for me is to dismiss the case from my mind, and to say, with my Baptist brother, ‘Bring on the next.’”

That this habit of mind was entirely disconnected from any languid abandonment of the cause of his client while there was the slightest hope of saving him is humorously shown in a letter which Professor Brown publishes in his biography, relating to a cause decided against his clients by the Supreme Court at Washington. “The court,” he wrote to the Washington lawyer engaged with him in the cause, “has lost its little wits. Please let me have—1, our brief (for the law); 2, the defendant’s brief (for the sophistry); 3, the opinion (for the foolishness); and never say die.” The august Supreme Court of the United States,

which Choate was accustomed publicly to celebrate as the perfection of wisdom and equity, was never so disrespectfully treated as in this deliciously impudent private letter. The humor of it could hardly have been exceeded by Swift, Sterne, or Sydney Smith.

Of the extravagance of this humor let me give some instances. Thus, Mr. C—— was distinguished among all the able leaders of the Suffolk bar for his strict attention to the interests of his clients, for his attendance at a consultation at the exact minute appointed, for the gravity of his behavior and life in every respect, and especially for his rigorous observance of office hours. In fact, he was the very incarnation of Boston respectability. On one occasion, when he was solemnly conferring with the directors of a great corporation on a pending suit, Mr. Choate darted into the room, exclaiming: "Well, Mr. C——, I am glad to find you in your office for *once*. Do you know that for the past forty-eight hours I have hunted for you day *and* night through every theatre, bar-room, and dancing hall in Boston, without getting a sight of you? I desire a consultation in the case of —— and ——; and now I have at last discovered you, aft-

er my long search, I shall insist on an interview." The delicious incongruity of the charge with Mr. C——'s character, he being known as the most punctual, punctilious, and decorous of Boston mankind, raised a roar of laughter from the business men present; and tradition obscurely hints—though this is of doubtful authenticity—that even Mr. C—— smiled.

On the morning after Charles Sumner's Fourth-of-July oration on "The True Grandeur of Nations," there naturally gathered at his office in Court Street a crowd of approvers and disapprovers of his extreme views of the policy and duty of peace. Professor Lieber, among others, was there, and I remember the earnestness with which he assailed Sumner on the ground that his abstract principles degraded from their intrinsic dignity all the great battle-fields of freedom. Sumner was evidently annoyed, but could only get in here and there a palliating word in the rush of Lieber's indignant eloquence. "Do you tell me, my dear Sumner," he shouted, "that I must give up Thermopylæ and Marathon and Sempach?" Then Choate, whose office was on the same floor, suddenly dashed into the room, adding: "And Waterloo! Come, Lieber, to my

den; don't bother Sumner any more. I have something to discuss with you; and we'll fight it out, yard-arm to yard-arm, to your heart's content. Our dear Charles will be sufficiently punished for his heresies on military glory by less redoubtable antagonists than you. Come along, I say." And he half coaxed, half dragged, the impassioned Lieber from Sumner's office into his own, though the great publicist had only begun the harangue he intended to address to his friend. I never witnessed a more comical scene. Even Sumner, irritated and harassed as he was, joined in the general laughter at the success of Choate's flank movement to protect him from the disastrous effects of Lieber's direct assault.

There are so many traditions of Choate's wit and humor that the task of selection is difficult. Thus, on his first election to the national House of Representatives he was once asked by a lady why Mrs. Choate did not accompany him to Washington. "I assure you, madam," he replied, "that I have spared no pains to induce her to come. I have even offered to pay half her expenses." Then there is his remark on John Quincy Adams's relentlessness as a debater. "He had," said Choate, "an instinct for the jugu-

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lar and the carotid artery as unerring as that of any carnivorous animal." Of a lawyer who was known to be as contentious as he was dull-witted he said, "He's a bulldog with confused ideas." While arguing a case he assumed a position which appeared to be equitable; but the court demanded that he should find a precedent for it. "I will look, your honor, and endeavor to find a precedent, if you require it, though it should seem to be a pity that the court should lose the honor of being the first to establish so just a rule." Of an ugly artist who had painted a portrait of himself he declared, as though he were paying a compliment to the skill of the painter, that "it was a *flagrant* likeness." When he met the Rev. Mr. W. R. Alger, shortly after the latter had sent him a copy of his *Poetry of the East*, he remarked, with a felicitous combination of wit and wisdom: "The Orientals seem to be amply competent to metaphysics, wonderfully competent to poetry, scarcely competent to virtue; utterly incompetent to liberty." He was once engaged as leading counsel in an important mercantile case. The jury was composed mostly of farmers and drovers drawn from the western part of Massachusetts, and it was feared that

they would hardly be capable of doing justice to the merits of a complicated commercial transaction, the very phrases and figures of which they were necessarily incompetent to comprehend. His anxious client, just before the trial began, asked him what he thought would be the verdict. "Oh," he replied, "the law on our side is as strong as thunder, but"—with a slight shrug of his shoulders—"what those bovine and bucolical gentlemen from Berkshire may say, God only knows!" It is my impression, however, that, in spite of the difficulties he encountered, he won the verdict.

Much has been written of Mr. Choate's handwriting. It was always the favorite jest of the Suffolk bar. A genius akin to that of Young or Champollion would be required to decipher his briefs. Yet, with his eye on his brief, Mr. Choate never hesitated for a word in making a statement in which every word used was significant and important. Every body who has attended a jury trial knows that the best advocates often pause in their exposition of their case and indulge in that hateful sound which may be expressed in letters in this way: "*err, err, err.*" That sound tends to kill the effect of all eloquence. To

be sure, we are told that "to err is human ;" but when an orator indulges in that interruption of the stream of his talk, we feel, in closing the quotation, that it is indeed "divine" to "forgive." The short-hand which Mr. Choate used, though undecipherable by any other human intelligence, never left him at a loss for the exact word, even in legal arguments before an assembly of jurists ; and he never "err-err-erred."

Mr. George Ticknor, the historian of Spanish literature, was once called as a witness in a case in which Mr. Choate was engaged. After his examination he sat by the side of the eminent counsellor within the bar. He was attracted by the notes which Mr. Choate had made of the evidence, and remarked to him that the handwriting reminded him of two autograph letters in his possession, one of Manuel the Great of Portugal (dated 1512), and another of Gonsalvo de Cordova, the great captain, written a few years earlier. Nobody who has looked over such collections as those of Mr. Ticknor or Mr. Prescott can refrain from feeling a sensation of wonder that any sense can be elicited from such seemingly unintelligible scrawls. "These letters," said Mr. Ticknor to Mr. Choate, "were written three hundred and fifty years

ago, and they strongly resemble your notes of the present trial." Choate, with that droll, quizzical expression which lent such humor to his face, instantly replied: "Remarkable men, no doubt; they seem to have been much in advance of their time." How delicious this is! the quiet assumption that the infallible sign of advance in chirography is to make handwriting more undecipherable than Egyptian hieroglyphics! It may here be stated that one of the most charming addresses he ever prepared for lyceums was a lecture on the "Romance of Sea." Those who heard it forty years ago now speak of it as a masterpiece of eloquence; it enjoyed a popularity similar to that of Wendell Phillips's lecture on "The Lost Arts:" all who listened to it were clamorous to see it in print. The manuscript, however, was stolen by some literary rogue, who probably conceived he might make a modest yearly income by delivering it in remote country towns to which its reputation had not extended. One can imagine his consternation when he found that he could not decipher a word of the manuscript; that he had wickedly come into possession of a treasure belonging to that description of lost property which is com-

monly advertised as of no value except to its owner.

It is sad, in reviewing a career like that of Mr. Choate, to see on how frail a foundation rests the reputation of a great lawyer and advocate, unless he becomes connected here and there with causes that assume historic importance. Erskine, a man whose natural powers were much below Choate's, owes his eminent position to his advocacy of certain persons who were in danger of being convicted of high treason at that miserable period in English history, the last six years of the eighteenth century, when the administration of the younger Pitt, commanding an immense majority in the House of Commons and the House of Lords, seemed bent on depriving the English people of the right of free speech, and of the right of associating to protest against abuses in government, and to petition for their removal. The greatness of Erskine is due to his success in making a jury of twelve men, as in his defense of Hardy, in 1794, overturn the tyrannical projects of King, Lords, and Commons. The men marked out by the ministry to be hanged, drawn, and quartered for high treason were saved by his skill and eloquence, and the liberal principles of

the English Constitution vindicated against every department of the English government, including the judicial. There is no other example in history where one man has so influenced twelve other men as to make them nullify the laws of a constitutional government, of which every department was against both him and them. So unmistakably was the popular spirit indicated by juries directed by Erskine, that the government found itself in the dilemma of being compelled to abolish trial by jury altogether, or to abandon its doctrine of constructive treason. Erskine thus comes into an important period of English history as an eminent force, fully equal to the great Mr. Pitt, inasmuch as he prevented the execution of the worst measures of the government. Still, as a debater in the House of Commons, Erskine made no figure at all; and the great majority of his arguments at the bar, however successful in private causes, are forgotten.

Now Choate never had a similar opportunity to become historical by successfully vindicating before the courts a precious principle of liberty which the courts were inclined to repudiate. The causes in which he was engaged were private, not public

causes, and the great powers he exhibited in conducting them have left no record in history or literature. In his private diary he frequently mentions the unsatisfactoriness of all the fleeting reputation gained by his political speeches and legal arguments. At one time he conceived the idea of writing a series of essays, in which he could set down the results of his wide extra-professional reading and thinking. The volume was to be called *The Lawyer's Vacations*. He even went so far as to tell his friend Judge Warren that he intended to write such a book. "How far have you got in it?" asked the judge. "Well," Choate replied, "I've got as far as the title-page and a motto. The title is *The Lawyer's Vacations*; the motto I've forgotten. But I shall show that the lawyer's vacation is the space between the question put to a witness and his answer." And, in fact, such was hardly an exaggerated representation of the vacation that Choate allowed himself.

But suppose that some kind genius at the time when Choate had arrived at the age of forty had showered upon him an independent fortune. He was then in the possession of robust health, and his mind was in the fullness of its strength and fertility. Re-

tiring from the practice of the law, his insatiable intellectual activity would have sought some subject or subjects on which it might be profitably exercised. My impression is that he would have selected a great historical epoch in the Old World, or perhaps fastened his attention on the annals of New England. All his knowledge of law, all his experience at the bar, all his acquired skill in analyzing evidence, would have been devoted to his theme. His masterly reasoning power, his capacity for large generalizations, would have been employed on a vast multitude of disconnected facts, which he would have investigated with the zeal of an antiquary, and assimilated, disposed, and combined with the skill of an artist and the sagacity of a thinker. Every philosophy of history, from Vico's to Hegel's, he would have read and digested. Being free from all calls upon his time preferred by importunate suitors, his mind would have soon gained a grand repose, without losing any of its healthy vigor. When he had obtained all the materials necessary for the foundation of his history, there can be no doubt that his narrative would have possessed an interest and fascination which would charm alike the scholar and the or-

dinary reader; for the whole representation would be alive. The individuals and events of past ages would have been made as real as the friends we daily accost in the streets, or the incidents which actually pass before our eyes. His imagination would have brooded over his generalized facts, vitalizing all it touched; not a character would have been allowed to appear on his page as a mere name; and then what wit, what humor, what bright fancy, what ingenious phrases, what happy epithets, would have aided to give variety to the generally sustained march of the style! He would, I think, have excelled Prescott, Irving, Bancroft, Palfrey, and Motley, for, without any disrespect to those eminent historians, he was intrinsically more richly gifted than any of them. But it was not allowed to Mr. Choate to exhibit his rare faculties except under the spur of continually succeeding occasions. As far as the literature of the country is concerned, he has left on it no appreciable mark of his literary powers, though in Professor Brown's two volumes there will be found some splendid specimens of his logic and rhetoric, of his learning and his command of the resources of the English language, which would do

credit to our best prose writers. It is the old irony of fate. Nature liberally bestowed on this man some of the finest and noblest qualities, which she is generally so niggardly in intrusting to her children—vivid imagination; vigorous intelligence; quickness of perception; capacity for unintermitted, self-rewarding toil; wit; humor; a genial disposition; an intense love for the beautiful and good; an instinctive attraction for the higher things of the mind; a heroic sentiment which recognized the slightest manifestation of heroism in the humblest of mankind and womankind, and which kindled into rapture when it contemplated and communed with the grand heroic spirits which illuminate history; a practical sagacity which prevented enthusiasm from obscuring the teachings of sober judgment; a heart overflowing with beneficence and good-will to all human beings; a brain teeming with facts, ideas, and images, incapable of pausing in its creative activity, and finding its repose only in a variation of the objects to which its activity was directed. And we can conceive of the old grand dame muttering, as she accomplished her work: “Well, you fools have long been waiting for a man of genius to offset the commonplace creatures I ordinarily fashion

to do their work in this miserable world: here he is!" Then we may conceive of Circumstance, the god of this lower world, stepping in and declaring that this favorite of Nature shall not be a great poet, or a great historian, or a great political philosopher, but shall exercise his genius on perishable topics, and be defrauded of his right to attain the permanent fame which men less endowed easily accomplish. He shall scatter his native gifts in a thousand ways; delight every body he meets in a chance conversation with the abundant wealth of his intellect and wit; thrill popular assemblies by occasional orations which leave no record beyond the hour; captivate senates with an eloquence which is connected with no measure he has himself originated; be allowed some few hours in a week to commune with Greek and Latin poets, historians, and philosophers, whom he aches to emulate, but whom he shall have hardly the leisure to translate; and shall be compelled to toil for his daily bread in courts of law, where his magnificent abilities shall be acknowledged and rewarded, but the results of which shall have no place on the memory of mankind. Such was Choate's fate. Circumstance controlled Nature. Every body who knew him,

every body who listened to him, whether young men of letters or grave judges, felt that a strange, original genius had somehow dropped down into our somewhat prosaic New England, had done his life-work in a wonderfully meteoric way, and had vanished from us suddenly, without leaving on our politics or literature the abiding impression which his genius seemed so capable of impressing on both. That he was one of the most remarkable men our country has produced is beyond doubt; but it is difficult for those who knew him to convey to a younger generation, which never passed "under the wand of the magician," the effect he produced on their own minds and hearts.

Mr. Choate, in his published writings, suffers much from the necessary divorce between his style and the inflections of his voice. His Dartmouth oration on Webster is among the manuscripts in the Boston Public Library, and it appears to the eye a mere chaos of indecipherable words, sprinkled with semicolons and colons, relieved here and there by fierce dashes of the pen, indicating a pause between the comma and the semicolon. It contains also the longest sentence ever written by man since Cadmus invented letters. His

penmanship was so bad that, when he wrote an important note to Daniel Webster, touching the refusal of the Boston city government to grant Faneuil Hall for a meeting of the supporters of the 7th of March speech, Mr. Webster could not make out the meaning of a single word. "Tell Choate," said Webster to Mr. Harvey, "that his handwriting is barbarous, that he should go to a writing-school and take a quarter's lessons. He gives me advice as to what it is proper for me to do, and I can not understand one of his infernal hieroglyphics."

The peculiarity of Choate's written style was this, that it required the inflections of his voice to make it as clear and flowing as it came from his own mind. I would venture to undertake the reading of the most formidable sentence in his eulogy on Webster, and by merely imitating his tones prove that the style was as lucid and exact as it was kindling and expansive. In view of the number of his adjectives as contrasted with the meagreness of his nouns, it was said of him that he "drove a substantive and six." Yet he put meaning into every one of his adjectives, and was really the least verbose of impassioned orators. His epithets always stood for things, each ad-

jective describing, qualifying, modifying, or emphasizing the main idea he desired to convey. In Fletcher's "Two Noble Kinsmen," Arcite says:

"We felt our fiery horses
Like proud seas under us."

In driving his perilous team of "a substantive and six," Mr. Choate partook in this grand elation of conscious genius, gloried in urging on his fiery steeds in headlong haste to their appointed goal, and came in at the end of the race flushed, it may be, and breathless, but still victorious over all competitors. He never met at the bar any body who could match him in fearlessly driving that "substantive and six" in the legal "Olympian games." In his case Pindar directed the chariot as well as sung the triumphs of the race.

It is to be remarked that Choate's real emphasis was in the lower note of his flexible voice. His substantive came in quietly after an ascending scale of adjectives, the last uttered in the loudest tone he could command. Thus, in the well-known caricature of his method in a supposed legal controversy as to whether the second-hand harness of his client was worth a sixpence, he is reported as saying: "To be sure, gen-

tlemen of the jury, this was not a harness distinguishable by the meretricious gloss and glitter calculated to catch the eye of the vulgar crowd; but I will put it to you as citizens and as men whether it wasn't a *safe*, SOUND, SUBSTANTIAL, SECOND-HAND harness." The substantive "harness" in this connection was, as it were, dropped in as a seemingly unimportant word; but as he pronounced it, without any physical emphasis, it became all the more mentally emphatic. This peculiarity pervaded all his spoken eloquence; the high, the almost screaming, tone with which he uttered his last smiting adjective subsided in a second to the deep, intense, quiet utterance of the noun.

I am strongly tempted, in conclusion, to imitate one of his long sentences in summing up my impression of his intellectual character. Suppose I put it in this way: "He was endowed by nature with a will singularly vigorous and a mind eminently plastic; and this combination of force and fluency, this combination by which self-direction is never lost in all the fervors of seeming self-abandonment, the flexible intellect flowing into all the multitudinous moulds which the various exigencies of the

case may demand ; now this, now that ; homely, if need be, clad in the 'russet gray' of the peasant, and anon doffing the imperial robes and putting on the regal crown ; every where and in every situation equal—just equal—to the claims of the occasion ; never faltering in any of the Protean shapes it pleased him to assume, but always strong, always earnest, always determined to carry to its ultimate the uppermost conception glowing in his ever-fertile brain ; now jesting, now reasoning, but, whether jesting or reasoning, never losing sight of his purpose to persuade, to convince, to *overpower*, the persons he was to influence ; contracting or expanding his mind with equal ease, so that it resembled the fabled tent of the Oriental prince, which might be so condensed as to become a mere toy for a lady's finger, and then again so spread out that armies might repose under its grateful shade ; gifted with wit, humor, fancy, imagination, passion, understanding ; immensely acquisitive as well as inquisitive of knowledge ; tireless in industry, so that it could be said of him, as Coke said of Raleigh, that he could 'toil terribly ;' facing the most abstruse problems of law with an intrepidity of intellect which no difficulties could daunt and no obscurity

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perplex; fearless in grappling with opposition, whether the opposition came in the substance of a man or in the spectre of an idea; so imperturbably serene at the centre of his being that in the very tempest and whirlwind of his eloquence he never lost the admirable poise of his nature, nor the fine discretion which makes eloquence efficient for its intended purpose: this man stands before us a wonderful example of the impulses and capacities of genius—of genius ever attended by that reason which looks before and after, by that learning without which reasoning is but an idle exercise, an abundant agitation of wit on matter so slight as to do no justice to the powers it so sparsely feeds with facts—facts without which the logic of Aristotle himself would be but an ingenious delusion and a pleasing snare, something that the poet has indicated in that fine line,

‘Ne subtler web Arachne can not spin;’—

and, yet more, with Reason and Learning having for their constant companion Imagination, with ‘his garland and singing robes about him,’ decorating, enlivening, penetrating, vitalizing, the argument and the facts so that the logic becomes as beautiful

as 'a golden exhalation of the dawn,' and we watch its processes as we would that of an army marching to assured victory with all its banners flaming in the consenting and joyous air; with all these powers working in glad harmony together, each assisting the other, each knowing its place, each instinctively conscious when it should be master or servant, and each seemingly unfettered in its own spontaneous movement; to all these powers and accomplishments, I say, he added the great tidal wave of passion, impelling, hurrying, every thing onward that it caught in its tyrannous sweep, and leaving but wrecks on the opposing shore, where it broke in iridescent spray and foam."

This is, of course, little better than a caricature of the way in which Mr. Choate grappled with the difficulties of the long sentence—the sentence of Hooker, Milton, Clarendon, and De Quincey; but still, if it were read by any body who could imitate the inflections of Mr. Choate's voice, and thus indicate the natural way in which every stated thought or fact suggests something which modifies or enforces it, and the accumulating process goes on to the point where it rhythmically closes, I think my feeble imitation would present little to puz-

zle the grammarian or perplex the minds of ordinary men. The fact that juries and popular audiences had no trouble in getting at his meaning proves that his long sentences were lucid, however obscure they may appear to the eye as read in the mangled reproductions of reporters. Oh, if the inflections of his voice could be printed! Then it would be shown that the soul of the man threaded every intricacy of the complicated sentence, delicately noting each variation of the dominant thought, and vitalizing the whole with its kindling inspiration. I have listened to some of the arguments and addresses in which he exhibited this mastery of the resources of the English language, making words his "servile instruments," and forcing every thing to bend to his will—syntax, it may be said, among the rest—when he inevitably brought to my mind the glorious image in which Charles Lamb celebrates the rising of the sun:

"To see the sun to bed, and to arise,
Like some hot amorist, with glowing eyes,
Bursting the lazy bonds of sleep that bound him,
With all his fires and travelling glories round him."

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