

A
DISCOURSE

COMMEMORATIVE OF

THE LIFE AND CHARACTER

OF THE

HON. JOSEPH STORY, LL. D.,

AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,
AND DANE PROFESSOR OF LAW IN HARVARD UNIVERSITY;

PRONOUNCED

ON THE EIGHTEENTH DAY OF SEPTEMBER, A. D. 1845,

AT THE REQUEST OF THE CORPORATION OF THE UNIVERSITY,
AND THE MEMBERS OF THE LAW SCHOOL,

BY

SIMON GREENLEAF, LL. D.,
ROYALL PROFESSOR OF LAW IN HARVARD UNIVERSITY,

“Satis diu vel naturæ vixit, vel gloriæ: at (quod maximum est) patriæ certe parum.”
Cic. pro Marcello.

BOSTON:
CHARLES C. LITTLE AND JAMES BROWN.

1845.

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AT a meeting of the President and Fellows of Harvard College, upon special notice, on Thursday, the 11th day of September, 1845 : —

Being informed of the decease of our late associate, the Hon. JOSEPH STORY, which took place at his late residence in Cambridge, last evening, Wednesday, 10th September, instant, and a special meeting having now been called to take the same into consideration, it is thereupon

Resolved, That we have received with feelings of profound sorrow, intelligence of the decease of our late beloved and most respected associate, the Hon. JOSEPH STORY, the oldest member of this board. Whilst he may be more extensively known abroad as an eminent civilian, as the senior judge of the highest judicial tribunal of the Union ; here, and to us, he was more intimately known, and thoroughly appreciated, in daily intercourse, as an ardent and sincere friend of this College, always zealous in his coöperation with others in promoting its honor and prosperity, ever active in devising and executing measures to promote its highest usefulness, by the cultivation and diffusion of sound learning in all departments, through the whole community, a friend, on whose energy, zeal, and firmness his associates could at all times rely, with entire confidence.

Resolved, That we sincerely sympathize with the bereaved widow and family of our deceased associate, in the irreparable loss which they have sustained, and this sympathy, we are confident, will be deeply participated in, not only by the numerous personal friends of the deceased, but by the very large community throughout which he was known and respected.

Resolved, That, as an expression of our respect for the memory of the deceased, and our sympathy in the sorrows of his afflicted family, it would have been gratifying to us to attend the funeral of our associate, with the officers and members of the College, as a body ; but having learned that a private funeral would be preferred, we cheerfully yield to that intimation, and will therefore attend the funeral only as individuals, and personal friends of the deceased and of his family.

Taking into view the conspicuous and influential position held by our deceased associate, in this College, both as a member of this board, and as the head of the Law School, now so important a department of the University, and considering how deep an impression the loss of such a man, under such circumstances, is fitted to make upon the hearts and minds, not only of the law students immediately under his care, but of

all the officers and members of the University, and that it seems alike required by a just respect for the memory of the deceased, and a proper regard for the feelings of the living, that the event be duly commemorated by the College, by a solemn and appropriate service, adapted to the occasion, therefore

Resolved, That a time be set apart, as soon as conveniently may be, for such a service, which may be attended by all the officers, instructors, and members of the College, and that upon that occasion, MR. GREENLEAF, Royall Professor of Law, and now surviving Professor in the Law School, be requested to deliver an address commemorative of the life and character of the deceased.

Resolved, That the President of this Board for the time being be requested to communicate a copy of these proceedings to the widow and family of the deceased.

S. A. ELIOT, *Secretary pro tem.*

AT a meeting of the President and Fellows of Harvard College, in Boston, September 27th, 1845,

Voted, That the thanks of the Corporation be presented to Professor GREENLEAF for his appropriate and excellent discourse on the life and character of Judge STORY, delivered in Cambridge, on the 18th instant, and that he be requested to furnish a copy for the press.

A true copy of record.

Attest,

J. A. LOWELL, *Secretary pro tem.*

AT a meeting of the members of the Law School of Harvard University, holden September 11th, 1845, to take some measures relative to the decease of the Hon. JOSEPH STORY, late Dane Professor in that Institution, the following resolutions were adopted : —

Resolved, That we receive the sad intelligence of the death of Mr. Justice Story with the profoundest sorrow, and that it is our duty, as well as our only satisfaction, to pay some tribute of respect to the memory of a man. whom all have regarded with admiration for his brilliant powers and unequalled learning; and whom we must ever remember for those personal qualities, which make us regret his death as the loss of an instructor and a friend; for those generous principles, and that natural ardor, which lent to his teachings the glow of conversation; for a temper equal, placable, and gentle, almost beyond example; for his affectionate and ready sympathy; and for that open and genial benevolence, which made his presence a delight, and which leaves the memory of him, without one kind action omitted, or one word to be recalled.

Resolved, That we wear crape on the left arm for the space of thirty days; and that Professor GREENLEAF be requested to deliver an eulogy on Judge STORY, before the members of the School, at such time as he may designate.

Resolved, That a Committee be appointed to consider and report on the expediency of procuring a painting, bust, statue, or other memorial, of Judge STORY, on behalf of the Law School.

Resolved, That these resolutions be communicated to the family of the deceased, with the expression of our sympathy for their sudden and irreparable bereavement.

Resolved, That these resolutions be forwarded to the Daily Advertiser, Boston; the Tribune, New York; and the National Intelligencer, Washington.

A. BURLINGAME, *President.*

M. G. COBB, *Secretary.*

AT a meeting of the members of the Law School of Harvard University, holden September 18th, 1845, it was unanimously

Resolved, That the thanks of the Law School be presented to Professor GREENLEAF for his able and excellent discourse on the life, character, and services of Mr. Justice STORY, and that a committee be appointed to request a copy of the same for publication.

Resolved, That Messrs. Charles E. Hooker, James H. Morton, and Edward H. Welch be that committee.

Attest,

M. G. COBB, *Secretary*.

ADVERTISEMENT.

IN the composition of this Discourse, free use has been made of a biographical article on the same subject, written by me several years ago, for the "National Portrait Gallery." The materials of that article having been derived from the most authentic sources, the use of them on the present occasion was unavoidable. This explanation is necessary, in order to avoid the imputation of having disingenuously appropriated to myself the literary property of another.

D I S C O U R S E .

WE are assembled, my friends, under circumstances of melancholy interest. A great man has fallen. Our country has lost one of the ablest supporters of her institutions; — her tribunals, a wise and most learned judge. The State is deprived of an illustrious citizen; — the University, of a trusty and faithful counsellor and devoted son; — the Law School, of its beloved father and head; — society, of one of its brightest ornaments; — and we all mourn a dear and most affectionate friend. In the midst of our regrets at the resignation of the respected head of the University, death has entered our circle, manifesting his presence by an appalling stroke; bringing home to our bosoms the abstract teachings of religion by the sad reality of fact, and causing us to feel, as well as to know, that man is mortal. We acknowledge the instability of earthly grandeur, and the uncertainty of human prospects; but

while they remain in our minds as mere speculative truths, though they may aid to conduct our reason to just conclusions, they have comparatively but little influence on our hearts and conduct. To give them this effect, we need deeper impressions, — the presence of sensible objects, — the incarnation of truths, — something that the mind may realize and the imagination grasp. It is only when we behold human distinctions signally confounded, and earthly hopes destroyed, that presumption shrinks back, and the heart itself bows before the sovereignty of God. And thus solemnly are we at this moment addressed by the voice of his providence, in a dispensation, which, as we may in vain seek to explore its reasons, it becomes us only to study to improve.

The duty you have assigned me, highly honorable as I feel it to be, of addressing such an audience on such a subject, oppresses my heart in its deepest fountains; — for I too am bereaved; — the ties of an intimate friendship of thirty years are sundered; — my loving and beloved friend and companion is stricken down at my side. But the voice of friendship, speaking from the grave, invites me to pay this tribute to his memory, and I address myself to the melancholy office, thus called, as I seem to be, both by the living and the dead.

To expatiate upon the death of Mr. Justice Story as a public calamity would be superfluous. Already, as

successive posts arrive, with intelligence from the State tribunals, we see them suspending their labors, and responding to each other, in mournful echoes, that a great judge is no more. From the highest seat of justice to the lowest magistracy, from one end to the other of this widely extended country, and throughout the vast complication of social and political relations in the civilized world, wherever his name is known, all that imagination can conceive of darkness, from the sudden eclipse of the brightest legal luminary, will be felt to its full extent, in this sad bereavement. I deem it better suited to this place and the present occasion, to review the leading features of his public character and labors, forming, as they do, a model of professional life and conduct, unsurpassed either in intrinsic excellence or in brilliant and successful career and consummation; and constituting a standard to which every member of our profession may well aspire, though few may hope to attain.

His best eulogy is the simple narrative of his life; — the most enduring monument of his fame is that which shall best impress his character and principles upon the men of our country.

He was born at Marblehead, in this State, on the 18th of September, 1779, and was the eldest child of a second marriage. His father, Dr. Elisha Story, was a native of Boston, ardent in the cause of liberty, an active participator in the memorable destruction of the

tea, and afterwards a surgeon in the army of the Revolution. Subsequently retiring from the service, he settled in Marblehead, where he practised medicine with celebrity and success, until the close of an honorable and active life, in the year 1805. His mother, a lady of masculine understanding and great energy of character, is still living, in the enjoyment of a green old age. The son received his early education in the academy of his native town, then under the superintendence of the Rev. Dr. Harris, afterwards President of Columbia College in New York; but under the more immediate care of Mr. Michael Walsh, a gentleman well known, not only as a mercantile tutor, but as an accomplished classical scholar. With these instructors, such a pupil could not but make rapid advances in good learning. He accordingly entered this University in 1795, a half year in advance; and was graduated, with high and well earned reputation, in 1798. On leaving the University, his prompt decision was for the profession of law; the study of which he commenced under the Honorable Samuel Sewall, late chief justice of Massachusetts, then in the practice in Marblehead; and completed, after the appointment of Mr. Sewall to the bench, under Mr. Justice Putnam, of the same court, then practising at the bar in Salem. To the mastery of this science he devoted himself with unconquerable vigor of application, ardent thirst for knowledge, and

the compacted and various energies of a superior mind.

The period of his admission to the bar, in 1801, is still fresh in the recollection of many, as one of great political excitement. The democratic party, after years of laborious struggle, had just gained a general victory, by placing its chief in the presidential chair; but it had still to contend, with unabated efforts, for the control of the remaining State governments, against an opposing party, everywhere formidable in numbers and talents, and in some States vastly superior in strength. The existing divisions had unfortunately and unjustly been made to turn on our political relations with the two great contending powers of Europe; and the principles of the Revolution were successfully invoked to swell the ranks of the dominant party. In Massachusetts, the democratic party, in which Mr. Story was then found, composed at that time a minority, numerically strong indeed, but most strenuously opposed. Yet, even amid the bitterness of party strife, the respect in which New England ever holds pure integrity and intellectual greatness could not but sooner or later be manifested towards a son so eminently deserving her confidence. He had brought into his profession untiring diligence, native eloquence, keen sagacity, integrity unspotted, and a tenacity and firmness of purpose which opposition could seldom withstand. He was of course much re-

sorted to, at a very early period, and received solid proofs of the wisdom and discernment of the public, in the great extent and variety of his professional engagements. Political considerations, also, may have had their influence in opposing him, so young, and often alone, in important causes, against the most eminent lawyers of that day. A distinction like this, at once so honorable and so perilous, is a felicitous event in the life of any professional man; since it brings him into immediate contact with powerful minds, and familiarizes him with the depths of his science.

In 1805, he was elected one of the representatives of the town of Salem in the legislature of Massachusetts; to which office he was annually reëlected, until his appointment to the bench. In times of such political excitement, generous spirits are always found foremost in the battle; but the high estimation in which he was held is evinced by the fact, that, during his legislative career, he was the acknowledged leader of the party with which he acted; and that on him, in 1808, was mainly devolved the task of defending the embargo policy of the national administration against the resolutions, introduced and supported by Christopher Gore, then in the fulness of his intellectual strength, and in the zenith of his influence. It should, however, be remembered, to the honor of Mr. Story, and for the benefit of younger politicians and of later days, that he never was the slave of party.

He acknowledged no party ligament, binding him to the support of measures which his sober judgment could not approve. He recognized no code of political ethics distinct from the principles which govern every good man in his private life. On the great questions of national politics, he was always a disciple of the school of Washington.* While the restrictive system of Mr. Jefferson was avowedly resorted to and pursued merely as a measure of precaution, temporary in its nature, it could command his willing support, without any compromise of consistency. But when it afterwards came to be acknowledged as a system of permanent policy, he stood faithful to his principles in as earnestly seeking its repeal.

It was fortunate for Massachusetts that so much influence was at that time possessed by Mr. Story. From causes, not necessary now to be stated, her supreme judiciary, beside the general odium in which

* His political principles were thus stated by himself, in a letter dated January 23, 1831. "I was at all times," he observes, "a firm believer in the doctrines of General Washington, and an admirer of his conduct, and measures, and principles, during his whole administration, though they were to me matters of history. I read and examined his principles, and have made them in a great measure the rule and guide of my life. I was and always have been a lover, a devoted lover, of the Constitution of the United States, and a friend to the union of the States. I never wished to bring the government to a mere confederacy of States; but to preserve the power of the general government, given by all the States, in full exercise and sovereignty, for their protection and preservation."

the tribunals of justice are too often undeservedly held, had become peculiarly obnoxious to the democratic party; and yet the aid of that party was indispensably necessary, in order to make some important alterations in the administration of justice, and to place the salaries of the judges on the permanent foundation intended by the Constitution. Prior to the year 1806, their stated compensation, which was very small, had become far inadequate to their support; and it had long been customary for the legislature to make the judges an annual grant of money, to supply this acknowledged deficiency. Yet the language of the Constitution in relation to these officers is, that they shall have "honorable salaries, ascertained and established by standing laws." A vacancy occurring at this time in the office of chief justice of the Supreme Judicial Court, the appointment was offered to Mr. Parsons, then in extensive practice in Boston; but it was declined by him, unless the salary should first be made both honorable and permanent, in the spirit of the Constitution. This measure was accordingly resolved upon. His legal eminence rendered his appointment desirable, on *public* grounds. It was an era of necessary reform and improvement in the law; to effect which his transcendent talents and weight of character were deemed indispensable. Obnoxious as the bold and decided tone of his politics had rendered him to the party then in power, the friends of the measure, re-

lying with confidence on the magnanimity of Mr. Story, and his devotedness to the true interests of the Commonwealth, at once intrusted to his hands the projection of the means to carry it into effect, and the superintendence of their execution. He accordingly moved the subject in the House of Representatives, was appointed chairman of the committee to whom it was referred, and reported a bill, fixing the salaries of the judges at what was then deemed an adequate provision. The proposition met the usual fortune of similar measures, in being furiously assailed ; but its fate, from the position in which Mr. Story was placed, was wholly in his power ; and to his vigorous efforts, and the earnest appeal of his commanding eloquence, it is but justice to accord the merit of its success.

The same causes, which led to the permanent establishment of these salaries in 1806, soon rendered another effort necessary to augment them. The judicial administration of Chief-Justice Parsons had fully satisfied the public anticipations ; but the experiment, as far as the emoluments of office were concerned, had convinced him that, in accepting it, he had sacrificed a portion of the income necessary for his family. He therefore came to the resolution of returning to the bar, unless this deficiency was supplied by the State. At this time, in 1809, his political opponents controlled both branches of the legislature, and, flushed with re-

cent success, felt little disposed to gratify a leading adversary, especially in a grant of money, a measure not unfrequently hazardous to the party in power. The alternative, too, of losing the public services of the Chief Justice, had little weight with those who, in that case, would have the opportunity of appointing his successor. But Mr. Story was still in the legislature, possessing undiminished influence; and his magnanimity and love of law and order were again invoked, not in vain, to place the judges on such an establishment as would at all times command for that eminently responsible office the first order of legal talent. A bill for increasing the salaries of all the judges was accordingly reported, and, in the hot contest which ensued, the blows fell with indiscriminate force upon all its supporters, and upon none more furiously than on him who again led the column of its friends; but it was at length triumphantly carried. His able report on this occasion is an unanswerable argument in favor of an honorable and permanent support for all persons to whom the administration of justice is confided. That period was a crisis in the history of our judiciary. The judges were all of the federal party; and the usages of that day, sanctioned by ancient custom, seemed not only to permit, but to require, from the court, in the charge to the grand jury at the opening of each session, a discourse on the political institutions and affairs

of the country. In expounding these, it was hardly possible to avoid discussing some of the essential doctrines of the two great contending parties; a practice in no sense welcome to the men then in power, and which they were resolved, by any legal method, to prevent. The most obvious and simple process was to drive the judges from office by depriving them of competent support; the first step to which was a clamor against high salaries. Had it been openly and generally adopted as a party doctrine, that the emoluments of office were already too high, and must be reduced, the tone of political morals, at *that* day, would have bound the party to be consistent, by making a general and extensive reduction; and it is easy to foresee the fate of the administration of public justice, confided, as in that event it must have been, to men of inferior abilities. It was necessary that this threatened evil should be speedily stayed, and the public mind disabused of the prejudices which were beginning to fasten upon it; and it is no disparagement to the other friends of sound policy and good order to state, that, for the salutary change of sentiment on this subject, Massachusetts is chiefly indebted to the discernment, the straight-forward honesty, and moral courage of Mr. Story. Few young men, in the ascending node of power, would have ventured on so bold a measure as openly to oppose the darling prejudices and pas-

sions of their friends; and it proves much for the good sense and discernment of those friends, that such a measure was permitted to be so completely successful. It is to the permanent and honorable provision then made for the judges, that the people of this Commonwealth may attribute the blessings they have since enjoyed in a wise, dignified, and firm administration of justice.

During his continuance in the legislature, the subject of a separate chancery jurisdiction attracted much of the public attention. The early fathers of the Commonwealth, with their plain good sense, thought that the courts should be enabled to administer relief commensurate with the wrong received; and that, where the apparatus of the common law failed to reach the case, its deficiency should be supplied by that of equity. An act for this purpose was accordingly passed, under the old colonial charter; but the royal assent to it was withheld. Something, however, in the shape of equity was afterwards administered by the governor and council; but unfortunately it became associated in the minds of the people with other attributes of royalty not quite to their taste, and of course came to be regarded with distrust. Yet the want of an equity jurisdiction continued to be felt as a defect in the municipal code; and, at the period now referred to, an attempt was made to supply this deficiency, by

the establishment of a separate court of chancery. The committee, to whom this subject was referred, was raised on the motion of Mr. Story; and their report was justly attributed to his powerful pen. Its substance was afterwards wrought by the author into an instructive article in the "North American Review."

About this period he prepared an edition of Mr. Chitty's treatise on Bills of Exchange and Promissory Notes, which was published in 1809, with a large body of annotations of his own, and proved a most acceptable present to the profession. In the following year, he published an edition of the valuable treatise on the Law of Shipping, by Mr. Abbott, afterwards Lord Tenterden, with notes of American cases and statutes, considerably augmented in a subsequent edition, and leaving little to be desired on this subject.

In the year 1809, Mr. Story was, without opposition, elected a representative in Congress, to supply the vacancy in Essex South District, occasioned by the death of Mr. Crowninshield. He served only for the remainder of the term for which he was chosen, and declined a reëlection.* But in that

* Of his withdrawal from political life, he thus speaks, in the letter before quoted: — "I had been long satisfied, that a continuance in public life was incompatible with complete success at the bar; and the few though brilliant exceptions, which I have since known, to the truth of the remark, and the many confirmations of it, have made me resolute at

brief space, in two important movements, he gave earnest of the elevation of his views as a statesman, and of his deep devotedness to the policy of the Father of his Country. The first was a motion made by himself, for a committee to consider the expediency of a gradual increase of the navy ; which he supported in a speech, marked, at the time, for its great brilliancy and force. But, unfortunately, the party then in power had, in Washington's time, vehemently denounced the first proposal for augmenting the navy, as a measure dangerous to the liberties of the people ; the clamor had been continued and increased under the administration of his successor, until its authors felt themselves too deeply committed on the subject to recede with honor or safety ; and hostility to the system of naval defence, except in harbours, by batteries and gun-boats, had become a cardinal article in their political creed. Mr. Story's resolution, therefore, was a little in advance of that age ; and it was put down, not by argument, but by a party vote, as a measure inconsistent with the policy, and hostile to the

all times in my advice to ambitious young lawyers, never to seek public life, if they meant to be eminent at the bar. Besides, I cannot disguise that I had lost my relish for political controversy, and I found an entire obedience to party projects required such constant sacrifices of opinion and feeling, that my solicitude was greatly increased to withdraw myself from the field, that I might devote myself with singleness of heart to the study of the law, which was at all times the object of my admiration and almost exclusive devotion."

interests, of the administration. The other great measure alluded to was the repeal of the Embargo Act. This statute, at first proposed as a temporary resort, either for the prevention of war, or as ancillary to farther preparations for that event, or as preparatory to negotiation for a firm and stable peace, had been sustained by the friends of the administration with exemplary generosity and forbearance. But its long continuance, with no beneficial results, had begun to exhaust the patience of the people, whose urgent demands at last drew from Mr. Jefferson the avowal, that he relied on the measure as an essential part of a permanent system of policy; and that, in his opinion, it was unwise in this nation "ever more to recur to the ocean." A declaration so startling rallied at once that independent class of his friends, whose faith was not bound in the formularies of a party, to attempt the change of a system so fraught with ruin to the strength and resources of the country. In this attempt, also, Mr. Story bore an early, an active, and a conspicuous part; so efficient, indeed, as to draw from Mr. Jefferson the complaint, which posterity will interpret as highly to his honor as it was intended otherwise, that, but for him, the repeal would not have been effected.*

* His own account of the matter is thus given, in the letter referred to

In the spring following his return from Washington, he was again elected to the House of Representatives in Massachusetts; and in January, 1811, and again in May, on the organization of the new House, he was called to the Speaker's chair. For the arduous and often delicate and embarrassing duties of that office he was peculiarly fitted; and many of us distinctly remember the full and concurring testimony of all parties, to the dignity, ability, and impartiality with which he discharged them.

It was in November, 1811, at the early age of thirty-two, that Mr. Story was appointed by Mr. Madison as one of the Associate Justices of the Su-

in a preceding note: — “Mr. Jefferson has imputed mainly to me the repeal of the Embargo, in a letter to which I have already alluded,” (he refers to Mr. Jefferson's letter to General Dearborn, in 1811, in his published correspondence, Vol. IV., p. 48,) “and has stigmatized me on this account with the epithet of ‘pseudo-republican.’ ‘Pseudo-republican,’ of course, I must be, as every one was, in Mr. Jefferson's opinion, who dared to venture upon a doubt of his infallibility. But Mr. Jefferson has forgotten to mention the reiterated attempts made by him, through a committee of his particular adherents (Mr. Giles, Mr. Wilson C. Nicholas, and Mr. G. W. Campbell), to detach me from my object. In the course of those consultations, I learned the whole policy of Mr. J., and was surprised as well as grieved to find, that, in the face of the clearest proofs of the failure of his plan, he continued to hope against facts. Mr. J. has honored me by attributing to my influence the repeal of the Embargo. I freely admit that I did all I could to accomplish it, though I returned home before the act passed. The very eagerness with which the repeal was supported by a majority of the republican party ought to have taught Mr. J. that it was already considered by them as a miserable and mischievous failure.”

preme Court of the United States. Never was this high honor so early achieved ; never more purely and worthily worn. Adjusting himself to the proprieties of the station to which he was now called, he withdrew at once from the political arena ; and, though never an indifferent spectator of his country's fortunes, he ever afterwards participated in them not as a partisan, but as a judge.

It may be proper here to advert to the only remaining instance in which he was called to serve the public in labors not purely juridical. In the year 1820, after the separation of Maine from Massachusetts, it became necessary to make some alterations in the Constitution of this State, demanded by the exigency of that occasion ; and a Convention being called for that purpose, he was elected a member from Salem. It was a body altogether resplendent in talent ; for none could anticipate the changes which a spirit of innovation, if once aroused, might attempt ; and hence the selection of delegates to the Convention was generally made from the highest order of minds within the reach of the electors. In that assembly he exerted the most extensive and salutary influence ; and again maintained the independence of the judiciary, in an elaborate argument *against* a proposed amendment to the Constitution authorizing the legislature to diminish, as well as to increase, the salaries of the judges dur-

ing their continuance in office. Though the measure had once been carried in the Convention by a large majority, his argument against its final adoption was completely successful. His speeches, published as they were uttered, and without revision, particularly his splendid speech on representation in the Senate, attest the unabated fervor of his eloquence, his wisdom as a statesman, and his great power as a debater.

To those who have been much in his society, or are familiar with even his professional writings, it would be almost superfluous to remark, that he had in early life been a votary of the poetic Muse; since a highly cultivated taste, and a lively sensibility to the beauties of poetry and the richer creations of the imagination, are so visible in his compositions. His gravest juridical discourses, though wrought in enduring marble, are finished with the highest ornaments of intellectual affluence. But in the successful culture of elegant literature, he was not unmindful of the severer demands of the law, whose worth, he knew, would "not, unsought, be won." In the year 1805, he published a Selection of Pleadings in Civil Actions, from the pleadings of the most eminent in this science in England and America, with occasional annotations of his own; a work, the appearance of which, with its valuable body of notes, gave a new impulse to study in this department of professional learning; and which, after the lapse of forty

years, is still resorted to, with all the confidence originally reposed in its safety as a guide.

The judicial duties of Mr. Justice Story, other than those in the Supreme Court, have been confined to the first circuit, comprising the States of Maine, New Hampshire, Massachusetts, and Rhode Island; and his judgments in this circuit are contained in fourteen volumes, published by successive reporters. At the period of his accession to the bench, the principles of admiralty and maritime law were but imperfectly understood by the profession in this part of the Union; their jurisdictional limits were ill-defined, and the practice in admiralty was almost literally without form. The relative rights and duties of ship-owners, ship-masters, and seamen, also demanded the powers of his mind, in their exposition and adjustment. The administration of the law of prize, too, unsettled as it was, and almost unknown to the profession before the war of 1812, fell heavily to his share, in consequence of the extensive commerce of the Northern States; and it was discussed and illustrated with equal ability and learning. The proximity of the British dominions, the conquest of part of our territory by the enemy, and the practice of trading under licenses, and of making collusive captures, gave rise to a multitude of questions before him, embarrassing in their nature, the solution of which forms a luminous commentary on this branch of the law. It was, moreover, his singular fortune to

be obliged to revise and settle, and it may be said almost to create, the American law of patents. Prior to his elevation to the bench, the restrictive policy of Mr. Jefferson had forced upon the commercial States the necessity of employing a great portion of their capital in manufactures; and consequently had increased the value of every improvement in the mechanic arts, and led to increased vigilance in securing this value to the inventor. Hence, probably, more questions in the law of patents have been litigated in the first circuit, than in all the other States in the Union.

From the disorder in which he found these subjects of his jurisdiction, they have been redeemed and brought to their present condition of beautiful symmetry by the labors of this enlightened judge; and were there no other memorials of the comprehensive variety and the exactness of his legal learning, his judgments in his own circuit on these questions would transmit his name to posterity, as an associate in all respects meet for the gifted Marshall.

But his familiarity with these departments of science was not acquired at the expense of excellence in any other. There is, perhaps, no judicial office in the world which demands such an extent and variety of learning as that of a Judge of the Supreme Court of the United States; and the elaborate judgments of this great magistrate, upon the various cases which

have come before him, both in his own circuit and elsewhere, whether in equity or common law, and regarding either private rights or the constitutional limits of legislative power over private property, all evince his peculiar fitness for that exalted station.

The year 1829 was the commencement of a new era in his life, in the foundation of the Law School of this University, by that eminent lawyer and statesman, Nathan Dane. Impressed with a deep and just sense of the value of sound law, as a conservative element in a free government, he conceived the plan of this School; and, sending for Mr. Justice Story, submitted it to his judgment, requesting him to become the first occupant of the professor's chair. That his acceptance of the office was made the indispensable condition of its endowment by Mr. Dane is now perfectly certain; without it, the plan would not have been carried into effect. Honor to the memory of the patriot, whose enlightened forecast originated the noble conception, and whose munificence gave it vitality! Honor to the illustrious *fundator perficiens* who generously gave *himself* to secure its success! The overture having been accepted by the Corporation of the University, with its condition, that the first professor should be appointed by the founder, he designated Mr. Justice Story; who thereupon removed his residence from Salem to Cambridge. To the duties of this new office, accepted purely for the advancement

of the science of law, he brought all the affections and energies of his early manhood ; and continued to expend them for that object, with almost prodigal liberality, during the remaining years of his life.

The first fruit of his labors in this chair was the publication of his “Commentaries on the Law of Bailments,” being the substance of his lectures on that head. In the method of this work, he followed the example of Domat and Pothier ; and not only incorporated into the text every position in their treatises, which could be of use to the student of the common law, but may be said to have exhausted the works of the civilians and common law writers, of whatever could illustrate the subject.

His “Commentaries on the Constitution of the United States” were published in the year 1833, in three volumes ; followed by an abridgment by the author, in one volume, as a text-book for students. This great work, comprising a sketch of the charters, constitutional history, and jurisprudence of the British American colonies ; a review of the constitutional history and the confederation of the States ; with a history of the origin and adoption of the present Constitution, and a full exposition of all its provisions, admirable alike for its depth of research, its spirited illustrations, and its treasures of political wisdom, has accomplished all in this department which the friends of constitutional law and liberty could desire.

If, among Americans in general, his fame may be regarded as resting chiefly on this masterly history and exposition of their Constitution, perhaps the jurists of continental Europe may speak of him with stronger emphasis as the author of the "Commentaries on the Conflict of Laws." In this work, which he published in 1834, the conflicting laws of different nations are treated with especial reference to the subjects of marriage, divorce, wills, successions, and judgments. Others have written more voluminously on these topics, but none with greater power. The work has received the highest commendation of the learned in all the principal states of Europe, has been cited as an authority in the British House of Lords, and is expressly commended by a late eminent European judge, as one that "no jurist can peruse, without admiration of the industry, candor, and learning with which it has been composed."

In the course of the three following years, he composed and published his two volumes of "Commentaries on Equity Jurisprudence," in which the principles of this important branch of the law are traced up to their true source, in the fountains of morality and religion, while their practical application to the affairs of life is stated and illustrated with striking felicity. This work was succeeded, in 1838, by a treatise on the science of Pleading in Courts of Equity; a subject which, however abstruse and forbidding in its

formularies, he has most successfully laid open, exhibiting its true principles and grounds, vindicating its character, and bringing it within the easy comprehension of the student. There are no works in our language in which the true doctrines and practice of the law of equity, and its importance to the administration of complete justice, are so convincingly taught; and probably no one of his works has been received by the profession with greater thankfulness, or is more frequently consulted.

No sooner was the last of these works completed, than he addressed himself, with elastic vigor, to the composition of a treatise on the Law of Agency, which was published in the year 1839. This treatise was followed, in the year 1841, by another on the Law of Partnership; in 1843, by another on the Law of Bills of Exchange; and this by his last work, on the Law of Promissory Notes, which, but a few weeks since, was issued from the press. Of these works it is enough at present to say, that they exhibit the unabated fulness of his learning, and bear the strong impress of his comprehensive and vigorous mind. Had he written no others, these alone would enrol his name among the first legal authors of the age.

Contributions like these would seem amply to have paid the debt which, in the judgment of Lord Bacon, every man owes to his profession; and a mark far lower than this would have satisfied the desires of

almost any aspirant after honorable fame. But the fertility of his mind has left us yet others to record ; for almost every walk of literature bears the marks of his footsteps. The enumeration of them is due to his memory, though that alone must at present suffice. In the numbers of the "North American Review," may be found his review of the "Course of Legal Study" of that learned jurist, Professor Hoffman ; a review of Mr. Jacobsen's Sea Laws, comprising a beautiful compend of the history, and an account of the writers on commercial law ; of Mr. Johnson's Chancery Reports, with a learned discourse on that branch of jurisprudence ; an elaborate article on commercial law, with a review of Mr. Phillips's "Treatise on the Law of Insurance" ; a review of Mr. Dane's great "Abridgment of American Law" ; and a highly finished sketch of the life and public services of Mr. Chief-Justice Marshall. This last article he enlarged for the "National Portrait Gallery," and afterwards incorporated into his public discourse, commemorative of the life, character, and services of that great man. He also contributed largely to the "Encyclopædia Americana," in the titles of Congress, Contract, Courts of the United States, Criminal Law, Capital Punishment, Domicil, Equity, Jury, Lien, Law, Legislation and Codes, Natural Law, National Law, Prize, Usury. The memorial of the inhabitants of Salem, in the year 1807, against the British Orders

in Council, and that of the merchants of that town, in 1820, on the subject of the tariff, proceeded from his pen.*

Among his published discourses and addresses are his eulogy on Captain Lawrence, of the frigate Chesapeake, in 1813, his impressive charge on the abominations of the slave-trade, given to the grand jury of Maine, in the year 1821; his address to the gentlemen of the Suffolk bar, in the same year; his eulogies on Mr. Samuel Dexter, and on Mr. Chief-Justice Parker; his biographical notices of Mr. William Pinckney, Mr. Justice Washington, and Mr. Justice Trimble; his discourse at the anniversary of our Phi Beta Kappa Society, in the year 1825; his centennial address before the Essex Historical Society, in 1828, upon the two hundredth anniversary of the settlement of the colony of "the Massachusetts"; a discourse before the Mechanics' Institute of Boston; an address at the consecration of the rural cemetery of Mount Auburn; his discourse upon the occasion of his own inauguration as Dane Professor of Law, in 1829; another, at the funeral of his colleague, the late Professor Ashmun, in 1833; and his

* The elaborate notes on the principles and practice in Prize Causes, in the appendix to the first and second volumes of Mr. Wheaton's Reports, and that on Charitable Bequests in the appendix to the fourth volume, were written by Judge Story. He also furnished many articles for the earlier numbers of the American Jurist.

address, in 1842, to the associated Alumni of this University.

He also found time to manifest the deep and beneficial interest he ever felt in the subject of education, both elementary and scientific; not only in contributing his full proportion of lectures to the lyceums and institutes of education, but in effectual and active coöperation in the government of this University. He was elected an Overseer of the College in the year 1818, and in 1825 was chosen a Fellow of the Corporation. In January of the latter year, while yet an Overseer, he delivered at the board, and afterwards published, an argument against the memorial of the professors and tutors, who claimed the exclusive right of being the only candidates for election as Fellows of the Corporation; an argument replete with his characteristic research, not only into all the law touching this question, but into the statutes and usages of the English colleges. On every other occasion which has presented itself, whether of danger to the interests of this ancient institution, or of opportunity to advance its prosperity and usefulness, with ever-waking vigilance he has always been among the foremost of its friends. While the cause of good learning, in whatever soil or clime it were cultivated, had his liberal and hearty support, it was here, in Harvard, to his beloved *Alma Mater*, that he poured forth the warmest affections of his soul.

During the entire period of his judicial life, and in the midst of labors so great and exhausting, he maintained an active correspondence with the most distinguished jurists in Europe and America; and was constantly consulted, on grave and perplexing questions, by judges in almost every State in the Union. Some of the most important acts of Congress, especially those concerning the administration of justice, were drawn up by him; others were submitted to his private revision, in their legislative progress, often receiving from him the most essential improvements. Few measures, affecting either the permanent institutions, or the trade, manufactures, or foreign relations of our country, have been discussed in the halls of Congress during the last thirty years, on which statesmen have not sought the aid of his judgment and counsel; and few questions of constitutional law have been there argued, upon which the light of his opinion and his suggestions have not been previously sought and most readily imparted. These free and liberal contributions to the public weal, yielding no earthly reward but that which lies hidden in the secret chambers of the heart, entitle him to be placed among the patriots and great statesmen of his day, and to the front rank among the expounders and defenders of the Constitution. To maintain this Constitution in all its strength, and the rights of the Supreme Court, as the only department of the government intrusted with its authoritative ex-

position, was the constant effort of his life. In this labor, he always gratefully acknowledged the coöperation of his renowned compeer and friend, the venerable Chancellor Kent, in his invaluable "Commentaries on American Law"; and the endeavours of these two champions to put down the modern heresy, which teaches that each great branch of the government is equally entitled to interpret the Constitution for itself, has given to their opinions the name, intended as a reproach, but redounding to their honor, of "the school of Story and Kent."

But this was not all. For the last sixteen years, he still found time to discharge all the duties of the professor's chair; giving his full number of lectures in each term, with the zeal and animation of youth, and pouring forth the floods of his learning to the listening throng of pupils, with a copiousness that knew no bounds. Had this been his sole employment, his labors in this department were all that could reasonably have been demanded by its founder. His attention to students was unwearied; his anxiety for their proficiency incessant; his desire to extend the benefits of the Law School to the whole body of our profession, to advance its prosperity and its usefulness, was insatiable. He was not satisfied to render it the best in the country; he would fain see it the first school of law in the world. Its library, he hoped, would one day contain an apparatus sufficient for the

study of the jurisprudence of all countries and in all times. It was here that he placed the foundation of his own fame ; holding in little estimation the harvest of honors he had already reaped, in comparison with those he hoped to acquire with a grateful posterity, as the father of this School ; and pressing forward to this object with a strength of will and an intensity of effort to be expected only from one whose race is just commenced.

Such, and so actively useful, was the life of this eminent benefactor to his country and his age ; — a life how compact with beneficence, how resplendent in virtue ! Admonished at length, by advancing years and physical infirmities, that some repose had become indispensably necessary, he resolved to retire from the bench to the classic shades of this his favorite retreat, and to pass the residue of his days in expounding the constitution and laws of his country. Looking down the vista of future years, his delighted imagination beheld a long succession of ingenuous youths, into whose souls he might infuse the lofty conceptions of his own, and through whom he might reproduce himself to future generations, and continue to impart new vigor to the institutions he had already done so much to strengthen and adorn. He regarded this period as one in which he was destined to accomplish the great work of his life. He wished to draw around him a numerous throng of pupils, that

they might be again sent forth, deeply imbued with sound principles of law, with high and just views of the dignity of their position as ministering officers in the temple of Justice, and above all, with a deep sense of their duty to the cause of learning and religion, and of their ultimate accountability to posterity and to God. He looked to you, beloved pupils, as in some degree the trustees both of his fame and of your country's fortune. He was well aware of the influence to be exerted by you upon the community in which we live, and he was anxious that it should be exerted only for good. The lawyer whom he would create, he would first of all have an honest and a virtuous man, — a man of deep religious feeling, of incorruptible integrity, of high and holy aspirations, of spotless purity in private life, of expansive benevolence, of exalted patriotism. He would have him administer the law as an angel of mercy; concerning himself with controversies only to bring them, if possible, to an amicable, but at all events to a just and righteous termination. He regarded the lawyer's first service as due to the preservation of peace and mutual kindness among men; his next, to the impartial administration of the law. In his own appropriate language, he described the advocate of his choice as one who loved the law, as a science, and not as a trade; who felt the full dignity of his profession, and deemed himself under deep responsibility, not to his client alone,

but to the court and to the cause of public justice ; — one who studied to know what the precepts of the law were, that he might apply them to his cause, and not pervert them to aid the triumph of injustice, or swell the trophies of cunning, or avarice, or profligacy ; — whose notions of professional morals and obligations were far different from such mean and debasing palterings with conscience ; — one who disdained to mislead the court or jury, if he could ; and who gave to both, on all occasions, the support and instruction of his ample studies.*

But in the midst of these plans of future beneficence, and in the enjoyment of all that earth can give, whether of high and palmy fame, of fortune, or of social love ; surrounded by admiring friends and devoted pupils ; mature in years, maturer in honors ; mysterious Heaven, as if to recall our homage from the earthly judge to him at whose tribunal both he and we must stand, summoned him to itself. He had conscientiously devoted the past season to the task of examining and deciding, before his retirement from the bench, every cause which had been argued before him, or submitted to his decision ; — a labor which he pursued during the heats of summer with fatal intensity. In the discharge of this duty to others, he unhappily could not discern the higher obligation of

* See his Discourse on Chief Justice Marshall, pp. 62, 63.

sparing himself; and, having thus exhausted the physical powers of a constitution already enfeebled in the public service, upon the occurrence of a slight cold, he was seized by an acute return of chronic disorder, which, in a few days, baffled the highest medical skill. Though suffering great bodily pain until near the termination of the disease, he suffered without murmur or complaint; and when nature was at last exhausted, and he was fully aware of his approaching dissolution, he met death with the silent calmness of a great mind, reposing in the confident anticipation of an eternity of bliss; breathing his last, without a struggle, on the tenth of the present month of September, a little before nine o'clock in the evening. The day on which we are now honoring his memory is the sixty-sixth anniversary of his birth.

And he is gone. Who shall wear his armor? What arm shall again bend his bow? What glory can panegyric add to the simple story of his achievements?

Viewing him as a Judge, we are at once struck with the variety and extent, I might almost say the universality, of his learning. It has already been remarked, that probably no judicial court in the world demands for its judges such a combination of gifts and variety of attainments as that of which he was a member. To others is confided the administration of the law in one or two of its departments; this has to deal with them all. The judge of this Court must

be equally familiar with the law of admiralty and prize, and of trade, commerce, and manufactures; with patents and copyright, and penal justice; with the abstruse technicalities of the common law of real property, and with the wide and free range of equity jurisprudence, up to its sources in that of imperial Rome; with the local usages of each member of this increasing family of nations, and with the highest themes of constitutional and international law. I speak from personal observation, in saying, that upon the opening of a cause before him, under whatever of these divisions it might fall, his superior familiarity, not only with the general doctrine of the subject, but with its minuter distinctions and qualifications, and with the authors who have treated it, frequently surprised even those who had prepared themselves to speak to the particular case. His judicial deportment was dignified and urbane, and his kind regard to the feelings of all who approached him, especially the younger members of the bar, was almost proverbial. No judge ever maintained the rights of the bench with greater vigilance and firmness; yet none, with less offence. No judge was treated with more profound respect; but it was not the tribute of deferential terror; it was the grateful homage of love. In the despatch of business before him, he had great and ready tact; always rapid, yet never in a hurry; the course of his court resembling, not the babbling of a mountain brook,

but the quiet, swift gliding of a deep, resistless stream. If, among the various excellences of his judicial character, we were obliged to select any one as the leading trait, we might hesitatingly select his uncommon quickness of comprehension. Some have been as ready, without his accuracy; others as correct, without his readiness. His was the happy combination of both. No man could at a quicker glance catch the entire contents of the page submitted to his perusal; none more readily understand the meaning of the speaker before him; none could sooner comprehend the half enunciated proposition, and reproduce it to the speaker in more exact terms of his own; no judge could with sharper sagacity discern the precise merits of the cause or question submitted to his judgment. This faculty, said to be dangerous in a magistrate, was tempered by self-discipline and restraint; for in truth he was a patient hearer, never silencing an advocate who had still something to say, and gladly availing himself of every light which might be shed upon the case, even to the humblest twinkling. His judgments are distinguished for their fulness of reasoning and illustration. He was anxious not only to be right, but to be confessedly so. He carefully considered all the discussions at the bar, fairly meeting by argument every point that he overruled, and justifying his own conclusions by the most cogent reasonings and authorities, with persuasive eloquence.

Even the losing party has been known to thank the judge for convincing him that his adversary was perfectly innocent of the wrong, of which he had believed him guilty.

We may easily imagine that the decisions of such a judge would seldom be reversed; and, indeed, in the fewest possible cases has the appellate court been known to dissent from his opinions. The care and caution with which he formed these opinions, communicated to me at a recent period, is so striking, that the mention of it here will be pardoned. It was his habit, after hearing an argument, in any case of importance, to defer the investigation of the matter until his mind had cooled after the excitement of the hearing, and freed itself of all bias produced by the high colorings of the advocate, and the eloquence of his appeals; leaving in his memory only the impressions made by the principal facts and the legal reasonings; of which he also took full notes. After this, he carefully examined all the cases cited and others bearing on the subject, reviewing and fixing firmly in his mind all the principles of law which might govern the case. By the aid of these principles he proceeded to examine the question upon its merits, and to decide accordingly; always first establishing the law in his mind, lest the hardship of the case should lead him to an illegal conclusion.

In all the great questions brought into judgment

before him, his extensive and profound investigations of legal doctrines will serve as the basis of operation for lawyers and judges during a long period of coming time. The law of the previous ages of British jurisprudence was revised and reëstablished in that of Coke and Hale; beyond which it is almost superfluous to seek for authorities in the common law. The decisions of that day were again reviewed, after the lapse of a century, and reaffirmed, with the modifications of modern usage, in the classic age of Mansfield. Scarcely a decree in chancery needs now be cited, prior to those of that accomplished chancellor, Lord Hardwicke. But all these and others, down to our times, have been reviewed, in the judgments of Mr. Justice Story, by the lights reflected from the body of the Roman law and the labors of its ablest commentators, and recoinced, so to speak, with additional purity and fineness, and with the impression of his own master mind.

As an instructor in jurisprudence, he never lost sight of his position as a judge, before whom the subjects of his lectures might again come under consideration. And while every topic of settled law was discussed in the lecture-room with his abundant learning and happy freedom, he carefully refrained from expressing an opinion upon open questions, and still more upon cases stated to him. Indeed his sagacity in distinguishing between a real and a fictitious case

was so well known, that in this way he was rarely approached. In his statements of the existing law, he was remarkably clear and exact; copious and striking in his illustrations; rich in anecdote and historical reminiscence; and familiar with the peculiar characters of all the judges in Westminster Hall, to whose judgments we are accustomed to refer. You, my pupils, and all who have had the privilege of sitting at his feet, will attest his unwearied patience and kindness in answering the various inquiries of the student; the native delight with which he expatiated upon the great doctrines he expounded, unconscious of the waning hour; his contagious enthusiasm, inspiring all around him with love for the science, and cheering onward the most sluggish and disheartened to new vigor in the course. Still you may seem to hear him, in tones of eloquent morality, portraying the exalted character of the lawyer, which he held up for your imitation, and describing, in terms of withering scorn, that which he would have you avoid; and, above all, enforcing the truth, that, to attain excellence in the law, the student must excel in virtue, and grow familiar, day by day, with the conceptions of Deity himself.

To the young, and especially to students, his example is of great value. He was the artificer of his own fortune. His early and untiring diligence in study, his regular deportment in college, the purity of

his character and conduct, his habit of self-discipline and restraint, and of self-culture, will inspire them with the resolution, like him to excel in whatsoever adorns the character of man, and animate them, not only to the love, but to the practice, of virtue.

To us all, my friends, his life is full of instruction. He was a constant, faithful, and most affectionate friend ; a discreet and kind adviser ; to his relatives, a father and a counsellor ; in all his domestic relations, a delightful pattern of exuberant love. With a hand open as day, he was a munificent benefactor to all whose situation required his aid ; and a liberal supporter of every enterprise for the public good. His generous temper, his warm affections, the elevation and simplicity of his life and conversation, the cheerfulness of his manner, and the cordial sympathy of his daily greetings, threw a charm over his intercourse with all around him. Let me add, that he was also a Christian. He had studied the evidences of Christianity with professional closeness and care, and had given to them the testimony of his full assent ; and he has often been heard to declare, that, in his judgment, the great facts of the gospel history were attested by a mass of evidence, which, in any court of law, would be perfectly satisfactory and conclusive. In the open and distinct avowal of his faith in its consistent practice, and in his liberal charity for others of different views, he is worthy of all imitation.

In the estimation of the great Grecian lawgiver, he alone was to be accounted happy, whom Heaven blessed with success to the last; for the happiness of one who had the dangers of this life to encounter, he deemed no better than that of the champion, while the combat is still undetermined and the crown uncertain. But this great man died, already crowned with the laurels of victory. He carried to the grave no ordinary regrets, no common honors; for he died in the midst of the most active beneficence. Let us thank God that he lived so long, and did not survive his power to do good; and that, although this brilliant light of jurisprudence has departed, yet there will for ever linger in our sky the sunset glory of his undying example.