

RUFUS CHOATE.

fling at "ideas which never travelled beyond a *nisi prius* case," and a sneer for the note book. But in this relation it is pleasant to recall the spirit in which, a short time before his death, Burke called on Erskine, and holding out his hand said, "Come, Erskine, forget all! I shall soon quit this stage, and wish to die in peace with everybody, and especially with you." But we confess that we have always had great respect for Mr. Choate's little books as evidencing the care given to the preparation of his cases, the security against possible confusion or forgetfulness. How else could counsel who goes into the argument of case after case on the same day, do full and exact justice to each of them? It is said that Sugden once got hold of the wrong brief, and argued in support of his adversary. A like mistake is reported of Dunning. Neither of them had kept the little books. Neither did our former attorney-general, Samuel A. Talcott, who made a like blunder. As he was about to close, the attorney of the party came into court and in a troubled whisper told him of his mistake. Not at all disconcerted, and artfully concealing his error, Mr. Talcott re-arranged his papers and said: "May it please the court, I have thus presented fully and fairly, the case as understood by my learned friends opposed. I shall now proceed to show that that view of the case is utterly erroneous." The late B. Davis Noxon, who was present, told me that the promise was made good; that the argument that followed was one of the most able and brilliant he ever heard from that distinguished counsel.

Mr. Choate's study of the law, apart from his preparation in particular causes, and from those in which he had been concerned, was extraordinary. In the range of legal biography to which we have had access, we do not recall an instance of equal devotion. His methods of noting the facts of cases reported in the books, and writing out opinions, as if for judicial use, of preparing arguments in support of the decisions or against them, of criticising the authorities cited, and finding others to confirm or qualify them, of seeking to discover how far a doctrine underlying a series of adjudications might have been fortified or made to appear more just in the light of history, reason, and of

scientific tests, have been from time to time so fully stated in this Journal that present illustration is unnecessary. Such a course of study, so close, symmetrical, critical, deserves great respect. But an entry here and there, in his diary and journal, as he notes how he applied his morning hour, seems articulate with admonitions. He has a few moments with the poets, with historians, with the critics, and then the genius of the law beckons him away. Thus, he says, "I have read and digested a half-dozen pages of Greenleaf on Evidence, and as many of Story on the Dissolution of Partnership;" and, later, "I read Phillips' Evidence, beginning at title 'Incompetency,' and commonplace a reference or two;" and, yet again, later, and while in London, after saying, "Mr. Bates called and made some provision for our amusement," he adds, "I read bible, prayer book, a page of Bishop Andrews' prayers, a half-dozen lines of Virgil and Homer, and a page of Williams' Law of Real Property." All this and more, to keep the law, even in its simplest elements, fresh in mind, a purpose from which not even the delights of travel, of new scenes, of courteous fellowship, could wholly divert him.

The fruit of such devotion was wholesome and nutritious. Thus trained and strengthened, his vision could take in, as from a tower of observation, the domain of the law. It lay before him as a familiar and inviting landscape. The practical benefit was obvious. On a trial or an argument, when unexpected difficulties might arise and an appeal be made to principles and noted in his "little book," the countervailing doctrine was in his mind ready for use.

The law thus faithfully pursued, leads to logic, to ethics, to metaphysics, and in a word, to the whole scope of special sciences. Even such views of it may not indicate adequately, certainly not with precision, Mr. Choate's estimate of the law as pervading all space, and subordinating to its use all knowledge. If so, that estimate may reveal to us the reasons which led him to more enlarged and liberal studies than are commonly regarded as necessary to the profession.

—Am. Ex.