

F  
69  
B59

MEMOIR  
OF  
GEORGE TYLER BIGELOW.



Class F 69

Book B 59













*S. J. Bigelow*



MEMOIR  
OF  
GEORGE TYLER BIGELOW,

SOMETIME

CHIEF JUSTICE OF MASSACHUSETTS.

BY

GEORGE B. CHASE.

[REPRINTED FROM THE PROCEEDINGS OF THE MASSACHUSETTS  
HISTORICAL SOCIETY.]



BOSTON:  
JOHN WILSON AND SON.  
University Press.  
1890.

F69  
B59

IN EXCHANGE

*Botan. Med. Library*

JUL 1 - 1915

## MEMOIR.

---

HARD by the Waltham boundary, and somewhat to the north of the old Sudbury road in the village of Watertown, there could be seen, down to the middle of this century, some traces of one of the earliest dwellings in New England. To this spot on the last day of October, 1642, John Bigelow, whose marriage on that day is the first entered upon the records of Watertown, led his young wife Mary Warren.

Of the early years of the bridegroom, from whom all of the name on this continent trace their descent, it would be interesting to have some knowledge; but of his antecedents before he came to Massachusetts nothing has been ascertained. His name,<sup>1</sup> variously spelled during his own life, does not seem to have been determined till a later generation. The careful investigations of an accomplished antiquary<sup>2</sup> have, however, led many to believe that John Bigelow, of Watertown, was the offshoot of one of the English families of not dissimilar name from whom descend in England all who now bear, in various walks of life, the name of Baguley. Such a connection is at least possible; and a certain probability is indeed given to it from the close resemblance between the occasional spellings of the English and American names two centuries ago.

Born in 1617, John Bigelow was yet a very young man when he arrived in New England. But little is known of his long life save that he was the father of thirteen children,

<sup>1</sup> His name is otherwise spelled upon the early records as Bigulah, Bigullough, Biglo, Biglew, Begalow.

<sup>2</sup> The late H. G. Somerby.

eleven of whom survived him. By the death of his wife, on the 2d of October, 1691, nearly half a century after his marriage, he was left alone at his fireside. On the same day of October three years later, at the ripe old age of seventy-seven, he was again married to Sarah the oldest child of his friend Joseph Bemis. She could scarcely in those days have been deemed too young to become his wife, for she was already in her fifty-third year; she was older too than any of her rather late coming husband's children, several of whom had already founded families of their own in other and distant settlements. We may at any rate presume she made a good wife, for her husband lived fairly into the next century, dying in his eighty-seventh year on the 14th of July, 1703.

Following the descendants of John Bigelow down to the third generation, the family line brings us to Daniel Bigelow, a soldier of the old French wars, who, dying at the great age of ninety-two years, lived to see his sons David and Timothy honorably distinguished in the revolutionary annals of Massachusetts. The elder, David Bigelow of Worcester, born in 1730, was in the prime and vigor of life at the outbreak of the Revolution. Recalling his services eighty years later, in a letter written to the subject of this memoir, his son<sup>1</sup> said: "As a member of the Committee of Public Safety, upon whom you know devolved for the time nearly all the duties of civil government, he devoted his days and nights to public service, — travelling for miles from his home, winter and summer, several times a week to attend this committee, with a family of seven young children (I, the youngest, born in 1778, in the very heat of the Revolution), just then settled on one hundred acres of very wild land." It is hardly necessary, in so brief a mention of his life, to add anything to his son's spirited words; yet it is well to note that such was the confidence which the town of Worcester ever held in his discretion and steadfast purpose that, in addition to his service upon the Revolutionary Committee, he was chosen her delegate to every convention within the county, and to the Province and State conventions at Concord, Cambridge, and Boston, from the first measures of

<sup>1</sup> The late Tyler Bigelow, Esq., of Watertown.

defence in 1774 to the presidency of Washington in 1789. By his marriage with Deborah Heywood, he had seven children, the youngest of whom was the late Tyler Bigelow, long an eminent member of the Middlesex Bar.

Born August 13, 1778, Tyler Bigelow was prepared for a collegiate education at the Worcester High School. He entered as freshman at Harvard College in 1797, and graduated with honors in the class of 1801. He then studied law at Groton in the office of his cousin, Hon. Timothy Bigelow,<sup>1</sup> a lawyer of extensive practice and large political influence. Casting about, after his admission to the bar in the spring of 1804, for a "vacancy," as country lawyers in those days used to term a township where there was no lawyer, Mr. Bigelow was led to select Leominster, in the northern part of his native county. Though kindly received upon his coming, he found little employment there. Too energetic to remain idle, he organized a class for evening reading, which was maintained during the few months of his stay. His eager desire for employment was impelled by his impatience to be married, for he was engaged — almost hopelessly it must then have seemed to him — to his cousin Clara, daughter of Col. Timothy Bigelow, of Worcester, whose monument on Worcester Common recalls his conspicuous service as Colonel of the Fifteenth Massachusetts Regiment in the Revolutionary War. A rumor of a

<sup>1</sup> Hon. Timothy Bigelow, of Groton, born at Worcester, April 30, 1767; H. U. 1786. A prominent federalist, he served as representative from Groton, 1792-1797; as Senator, 1798-1801; as Councillor, 1802; as representative from 1804 to 1820; he was chosen Speaker in 1805, again in 1808 and 1809, and again from 1812 to 1819 inclusive. His memory was so retentive that when Speaker he was able to name any member in a house of six hundred representatives on the third day of the session. He was the last Speaker of the House before the separation of the District of Maine from the State of Massachusetts. As one of the four delegates from Massachusetts to the Hartford Convention, he was conspicuous among all for courage and determination. A great capacity for labor united to talents of a high order well fitted him for a public career, while a buoyant disposition and pleasing manners contributed to his popularity. Fond of anecdote, humorous, and a good talker, he was everywhere a welcome guest in private life. He married Lucy, daughter of Hon. Oliver Prescott, of Groton. At the time of his death, May 18, 1821, he was a member of the Council, a Commissioner for settling the boundary between Massachusetts and Connecticut, and a Commissioner for the disposition of the public lands.



vacancy at Watertown, by the death of William Hunt,<sup>1</sup> at length reached Mr. Bigelow, followed by letters from his friends Loammi Baldwin<sup>2</sup> and Luther Lawrence,<sup>3</sup> urging him "to come there forthwith and settle there to prevent interlopers."

The briefless attorney at once acted upon his friend's advice, and in December, 1804, opened an office in Watertown, at that time a thriving town of one thousand inhabitants. He succeeded at once to the practice of his predecessor, soon became a county magistrate, and rose to a high position at the Middlesex Bar. For nearly forty years he continued in the faithful and energetic discharge of professional work, and is still remembered by some of the oldest lawyers of his circuit for the care with which he prepared his cases and the vigor with which he argued them. He was married to his cousin Clara Bigelow on the 26th of November, 1806. In 1808 he purchased Riverside, then a retired spot on the north bank of Charles River, east of the village, where adding gradually to his estate, he lived for nearly fifty-seven years. Keen as was his interest in political affairs, the support and education of a large family prevented his acceptance of public honors, which more than once were offered to him. Beyond an occasional oration or lyceum lecture, he neither sought nor cared for public distinction. His first duty was to his family, his next to the beautiful town — the old home of his race — in whose welfare he took a deep interest.

<sup>1</sup> William Hunt, H. U. 1768, a successful lawyer. His place at Watertown, together with the fine old house built by him on a hill overlooking Charles River, is held by the Stickneys. Mr. Hunt married a daughter of George Bethune, H. U. 1748, and left several children.

<sup>2</sup> The younger of the name; H. U. 1800.

<sup>3</sup> The Hon. Luther Lawrence, born Sept. 28, 1778; H. U. 1801. A lawyer of Groton, Mass., which he represented for many years in the Legislature. A Speaker of the House, Member of the Constitutional Convention of 1820, afterwards Mayor of Lowell. He married, June 19, 1805, Lucy, daughter of Col. Timothy Bigelow, of Worcester. He was the eldest of several brothers, three of whom — Amos, William, and Abbott — are so well remembered by their beneficent use of great wealth, and by the deserved honors they obtained in public and private life. Mr. Luther Lawrence and Mr. Tyler Bigelow were classmates, and their marriage with sisters created a close and affectionate intimacy between the families at Groton and at Watertown. Mr. Lawrence died April 17, 1839. See also Groton Historical Series, vol. i. No. 17, pp. 2-6.

By his first wife, who died in 1846, he had eight children, two of whom alone survived him. He married a second time, Dec. 15, 1847, Mrs. Harriet Lincoln Whitney, daughter of Abraham Lincoln, of Worcester. She died in 1853. Although he lived alone during the last twelve years of his life, he retained his interest both in people and affairs till the end. An amusing incident of his hold over the people of Watertown, and of the confidence they reposed in his judgment upon all matters concerning their common welfare, occurred in his eightieth year. At a meeting of the townspeople, to consider what action they should take upon a proposal that the town should incur new responsibilities in the maintenance of the old highway over the Hancock free bridge to Boston, Mr. Bigelow was induced to come out from his retirement and take part in the debate. So many years had then passed since he had last addressed his neighbors in town-meeting, that he was absolutely unknown to the larger part of the gathering. He had, however, long years before been thoroughly familiar with the town's policy about highways, which he had himself done much to shape. Unable to hear a word of the discussion, or to know what was passing around him save from the occasional hints of a neighbor who sat next to him, Mr. Bigelow rose at length to oppose the plan which, with every prospect of success, had been urged upon the meeting by the eminent counsellor who had been brought there for the purpose. "Grasping the whole argument in such a wonderful way," as one of his opponents<sup>1</sup> remarked in recently describing the scene, Mr. Bigelow denounced the project on the ground of public economy, with such knowledge of the case, such earnestness and power of argument, that at the conclusion of his speech the town with one voice refused to consider the matter more.

Mr. Bigelow's nervous and active disposition prevented any sudden rust upon or dimming of the brightness of his mind. He read much upon all subjects, both of books and newspapers; and such had been the simple pleasures of his long

<sup>1</sup> Hon. E. Rockwood Hoar, to whom the author is indebted for this anecdote. The town subsequently reversed its action.

and temperate life that, when past fourscore, he got the same hearty enjoyment as in youth from a game of whist or backgammon, from the last history or novel, or from a reckless drive about the country in his gig, heedless alike of the sharp but unheard whistle of the engine at railway-crossings, or of the roughness of the roads.

So deaf that conversation with him even with the aid of an ear-trumpet was difficult, no one ever found him an indifferent listener. Quaint in illustration, and earnest in expression, he was tenacious of opinion and fond of argument. Nor in discussion was he often overcome. Sometimes, however, when among his children and grandchildren he saw defeat impending, he would, with one last remark — a sharp and sudden thrust — stifle rejoinder by quickly removing his ear-trumpet, and gazing with complacent composure upon the baffled features of his antagonist.

Few men of any age in the North during the late rebellion followed the progress of the hostile armies with greater interest than he. The doors of his library were covered with maps of the Border and Southern States, upon which pins of different colors of his own make always accurately marked the lines of hostile armies. Yet he was almost eighty-three when the war began. He lived, however, to see peace restored, dying when near the close of his eighty-seventh year, May 23, 1865. He left a considerable estate to his children, and founded, by a proviso of his will, the scholarships at Harvard which bear his name. So well did he retain his powers till the close, that, at the request of two young girls of the village who were occasional visitors at his house, he read aloud to them Collins's "Ode to the Passions" on the last evening he ever passed in his library.

Of Tyler and Clara Bigelow's children, two were daughters; of six sons, one died in infancy; one, Charles Henry, a graduate of West Point and a Captain of Engineers, after long experience in civil life, died in the military service of the Government at New Bedford, in 1862; four were graduates of Harvard, and of these the second, who alone outlived him, is the subject of this memoir.



George Tyler Bigelow, the seventh Chief Justice of Massachusetts since the independence of the United States, was born at Riverside, Watertown, Oct. 6, 1810. He was only in his tenth year when he was sent to live with a relative in Boston, that he might become a pupil of the Public Latin School, which he entered in the summer of 1819.

“At his coming to school, where he was the youngest, or youngest but one, of the class,” his life-long friend the late George W. Phillips wrote to the writer, “he was a slight, withy, active boy, of uncommon spirit, a bright expression of face, and quick, brilliant eyes. His manners were those of a well-bred boy, courteous and pleasing. All the time he remained at the school, he was diligent, studious, and ambitious to excel, — very quick to apprehend and interested in his school work. The same alertness of spirit that marked him all along till his health was broken, was a marked characteristic of him then. I recall, particularly, that he differed from most boys I have ever known, especially of such an age, in an intelligent interest in matters of public nature, in affairs of State. He knew about public men, politics, as few boys did. I always supposed he must have had some advantages in this respect. I judge his father must have made a companion of him more than most busy fathers do, for he certainly could have got his interest and information about the matters alluded to in no other way.” The early interest Mr. Bigelow took in politics is here rightly attributed to the stimulating conversation and influence of his father. He encouraged his children to listen to the conversation of his visitors upon politics and questions of the times, and often asked them afterwards about what they had heard. It was about the time George was first sent away from home, that he began to indicate a natural preference for the profession he was to follow in life. His childish imagination often led him to stop in the hall of the house at Riverside, and gaze with admiration upon an engraving of a certain Lord Chancellor in his robes, which as he looked up to it, hanging in its frame upon the wall, seemed to him to be the very embodiment of the majesty of Law. And so, when vacation came with midsummer, and the long evenings gave

their hours of rest to the men employed on the place, it was the delight of the future Chief Justice to organize a criminal court in the woodhouse, over which his father's farmer, a kind-hearted New Hampshire man, presided with silent dignity. Before this tribunal the young advocate, inspired by the recollection of the Lord Chancellor's splendor, was accustomed to appear with as much magnificence as limited resources and the somewhat furtive character of the proceedings would permit. Robed for the judicial presence in his father's overcoat and driving-gloves, the rustle of the parental skirts announcing his approach, he would gravely enter the courtroom to plead the cause of the accused. This part was assumed by his younger brother, who always satisfied the requirements of justice by a prompt appearance upon the empty barrel, which served as the prisoner's dock. Waving his arms half lost in heavy gauntlets, the slender voice of the young counsel could be heard at the neighboring windows as he piped forth his impassioned plea. This youthful amusement, however, came to an untimely end. The head of the flour-barrel at length fell in, precipitating the accused with shins badly scraped to the bottom, where he cried lustily for help until lifted out by his nurse; while Bench and Bar, sadly demoralized, stole silently away.

“George was a *good*, spirited boy,” says Mr. Phillips, “impulsive, quickly roused, but never long minded in his temper. He and I, then and afterwards more intimate with each other than with any other friends, had sometimes a little friction,—but he was always magnanimous, it never lasted, no matter where the fault lay. He was always generous in his treatment of others. I recall nothing low, vulgar, or coarse in him. I think a good judge of boy character would, at that early day, have foretold for him, if opportunity offered, distinction in future life.”

Such was the boy who, at the age of fourteen, was admitted in the summer of 1825 to the Freshman class of Harvard College. In this remarkable class, perhaps the most eminent in its after life of any that ever left the University, the “Class of 1829,” Bigelow attained a good place. “He stood well as a

scholar in all the college branches," Mr. Phillips wrote. "He was ambitious to improve himself; his life was a pure one. I do not think I ever knew a young man who seemed constitutionally more indifferent to the ordinary temptations that beset young men. He had a decision and a healthy indifference to the opinions of others. In some college trouble, our class called and held a regularly organized meeting; resolutions were passed, somewhat of the 'peaceably if we can, forcibly if we must' sort. A member of the class had presided. The Faculty took the thing up and began calling on the members alphabetically, and examining them as to the meeting. The first one or two had managed to get off without much disclosure of affairs, when suddenly they went to the other end of the alphabet and called up Y. He, taken by surprise, honestly told the whole simple truth. The consequence was our presiding man was summarily expelled, and the honest witness was as summarily put into Coventry. We thought it fine then; but all, since and long ago, confessed we were shabbily wrong. The poor fellow was sorely damaged, and suffered through the remainder of college life, of which there were some three years. Only two members of the class stood up and manfully kept a friendly acquaintance with him. One was S. F. Smith, author of 'My Country, 't is of Thee'; and G. T. B., afterwards Chief Justice, was the other."

"He was frank and ingenuous," continued Mr. Phillips, "without disguise. I recall somewhere in our college life, — it must have been in the Sophomore year, the winter of 1826–27, when he was sixteen years old, — the elder Beecher (Dr. Lyman Beecher, a distinguished preacher of that day) attracted great audiences. A number of our class went down to Cambridgeport one evening to hear him, and accepted the invitation given at the close of the services, to meet the Doctor in the vestry-room adjacent after the audience was dismissed. There were some six or more of us. B. and I sat next each other. Dr. Beecher came along and spoke to each of us, separately, a few words meant to be private; but it was impossible not to hear something that was said. One or two had made a sham of it and tried to quiz the old gentleman. When



B.'s turn came, — I can recall it all, as I have often done, as if it were but yesterday, — he said, ‘I ought to tell you, Sir, that I came down to hear you preach, and from motives of curiosity came in here; but my parents are Unitarians and think differently from you. I have been taught to respect their sentiments.’ The old Doctor, evidently pleased with this honest avowal, especially after the foolish talk which had just preceded it from other quarters, said, ‘My young friend, that is all well. I would not perplex myself with Unitarianism or Trinitarianism; but put this question to yourself, with such views as you have and as your parents have taught you, Are you satisfied with your present relations to your Maker?’ Bigelow admitted that this was fair dealing. He always spoke of it with respect, and long years afterwards, after he was a judge, in some casual street meeting with me, something recalling that conversation, he would refer to it with interest and say, ‘That question comes to me sometimes now.’”

Graduated in the summer of 1829, at an age when young men nowadays are but preparing to enter college, young Bigelow had held respectable rank in his class. The place and nature of his Commencement part seems to show that he was twentieth in a class of fifty-eight. He knew, however, better than others, that he had not done his best work in college, and regret for lost opportunities was soon to come. Though destined for the law, he was deemed too young to begin the study of it. His father therefore determined to send him to the South for an absence of two years, there to find some situation as a teacher of the classics, and summed up his views of the advantages to be gained by his son, in a letter to him in these words: —

1. “To induce a more thorough and critical examination of the classics, and other college studies, by spending some time in the business of instruction. This will be best effected in the highest schools. The more your pupils know, the better for you.

2. “To introduce you into good society, and thus give you a practical knowledge of men and things. You should therefore avail yourself of every opportunity to multiply and enlarge your acquaintance with business men, with literary, professional, and all the best classes of society.

3. "To acquire some means to enable you to go on and complete your study in some profession, at least to come in aid of those which I shall be able further to afford you.

4. "These objects rank in importance in the order in which they stand, the whole, however, to be made subservient to the one chief and primary object of your life, — personal discipline, — the full development and high cultivation of your intellectual and moral powers, the improvement and salvation of your soul, that you may become a man, a gentleman, and a Christian, and make yourself useful and felt as such in the world."

It is a satisfaction to know that the father who thus sent his son five hundred miles from home at the age of eighteen to find his own way in life, lived to see the boy, developing from that hour, become thirty years later Chief Justice of Massachusetts.

The summer of 1829 rapidly passed in the young graduate's preparation for the work of a teacher. His college instructors, by all of whom he was liked, had given satisfactory certificates of his attainments in ancient and modern languages. In October President Quincy, on behalf of Dr. Henry Howard, of Maryland, sent for the young graduate to offer him the position of master of the academy at Brookville in that State. Not deeming it best to accept the offer, but reluctant to decline it, he was soon equipped for a journey which had Washington for its ultimate destination. He had never been forty miles from home, when he set out for Philadelphia. Passing but one night in New York, where he arrived six hours late, "on account of the head winds and heavy seas which continued through the whole passage," he reached Philadelphia on the third day. Letters of introduction from Mr. Abbott Lawrence at once obtained for him a cordial welcome. Mr. Cresson, a wealthy Quaker, was especially kind. "He has done everything to make my visit delightful," writes the young traveller. "On Saturday I took tea with him, where, besides his own family, I was introduced to a gentleman from South Carolina, and our justly celebrated artist, — Thomas Sully."

Several situations as teacher were soon found, but in all of them the small salary left no hope of any savings at the end of the year. He soon continued his journey to Baltimore, where, again disappointed, he at last applied by letter, and as a sort of forlorn hope, for Brookville Academy. Awaiting Dr. Howard's reply at Washington, he there passed several delightful days in company with his cousin, John Childe, then a young lieutenant of engineers. "I doubt whether any true patriot," writes the boy, just nineteen, "ever contemplates the vast pile of the Capitol without some swellings of natural pride; the breast of a young man leaps with fond anticipations." Andrew Jackson appeared to him "a feeble old man, with a resigned and still careworn expression on his strongly marked countenance." Receiving a favorable reply, he found himself installed as principal of Brookville Academy by the end of November. How the situation appeared to young Bigelow may be best judged by extracts from his letters to the family at Watertown:—

"I have charge of a school of twenty pupils, and a fair prospect that I may earn four hundred dollars per annum. I board with Dr. Howard, decidedly the king of the place both as to education and property. He is very kind to me. His house is kept by a Mrs. Pleasants, his wife's mother,—a name you will recognize as one of some eminence in their native State, Virginia. She is a Quaker, and one of the most kind and motherly old ladies I ever met with. But then I do not like the academy. I cannot improve myself while instructing a school so backward; and lastly, the compensation is far too small for the labor required. I have the use of an excellent and well-selected library. It has one advantage which perhaps you cannot well estimate, but which has long been felt by me. It has no novels. I could tell you how much I have been injured by them; they had more effect upon my college life than you or any one else could have imagined."

"Mrs. Pleasants wishes me to tell my mother not to be anxious about me. 'Thee has a mother here. If thee is sick, thee shall be taken care of.' I must again repeat her praise. She is everything I could wish."

Regret for misspent hours at college seems often to recur to his thoughts:—



“ You were pleased to allude to my ambition. Alas ! I know not how you discovered that I had any at all. I have often looked back upon my college life and wondered where it had kept itself.”

His attempts to find a situation which would give him sufficient leisure for his own pursuits were rewarded, in the spring of 1830, by the offer and acceptance of a position of tutor to the children of Henry Vernon Somerville, a gentleman honorably prominent in public and private life, then living at his seat, Bloomsbury, about five miles from Baltimore. “ Without the vexation and trouble of a petty school,” he writes to his parents, “ I shall have . . . much leisure for my private pursuits, and more than all, an opportunity of enjoying the society and advantages of a large city.”

Dr. Howard greatly regretted to lose his young principal, and generously wrote his father at Watertown in these words : —

“ I congratulate his parents in possessing a son reflecting so much credit on his parentage ; who is justly entitled to make large drafts on their tenderest affection and confidence, who will never be a debtor in any society where virtue and intelligence prevail, and who, at no distant period at the bar or in the councils of the Nation, will cause Watertown to exult in claiming him as her native son.”

Passages from Mr. Bigelow’s letters give a pleasant glimpse of his life at Bloomsbury : —

“ A month’s residence in Mr. Somerville’s family has convinced me that I have much reason to congratulate myself on my good fortune. There is so much here to contribute to my improvement, as well as comfort and happiness, that I am persuaded no equally advantageous situation, all things considered, could have fallen to my lot. I have the charge of five children, to whom I devote about five hours *per diem*. Two of them are studying the languages ; Tiernan, the eldest, who is about fifteen years of age, was withdrawn from St. Mary’s College to be placed under my care. He is considerably advanced in French and Latin, and consequently it is rather a pleasure to instruct him. . . . You will readily see that I have much time at my own disposal. I have the command of a library of two thousand volumes, collected in Europe, forming one of the most valuable sources of information ; and I

am confident that the society and conversation of Mr. Somerville will be of much use to me.

“I find him ready and willing to communicate with me on all subjects. . . . The society which I meet here is all of the *haut ton* of Baltimore, among whom I felt sufficiently awkward until the Brookville rust was worn off. Literary and fashionable people — beaux, belles, and *litterati* — all meet here. . . . Mr. Somerville I find to be a gentleman in every sense of the word. He is like all Southerners, warm and enthusiastic in his feelings. He has led a life of comparative retirement, devoting himself to agriculture and literature, until the late electioneering campaign, when as the Adams candidate for elector, he took the field and met his opponents at the hustings.

“I am following your advice, and have commenced Blackstone. I find it easy to comprehend on account of the perspicacity with which it is written, and amusing and interesting on account of the subject on which it treats. Whether I inherit it from you, or, as Natty Bumpo would express it, ‘whether it is the nature of the beast,’ or the result of education, I know not; I always had an irresistible inclination to become a lawyer. I remember that in the earliest day-dreams of childhood, I used to look forward to the time when I should sport the ‘green bag,’ and *look wise*, give advice, and plead causes as the summit of my wishes. I cannot but think it is a glorious profession.”

“My situation here is still all I could wish,” he writes to his mother; “everything conduces to my happiness and improvement, and I am confident I shall long have reason to remember with pleasure the time I spend at Bloomsbury.”

There were indeed few houses in the Southern country, sixty years ago, in which life was made more delightful than at Bloomsbury; and as the year of Mr. Bigelow’s stay there was of exceeding benefit to him, some sketch of that estate and of its amiable and scholarly owner may well find a place here.

Henry Vernon Somerville, of Bloomsbury House, Catonsville, was born in 1790, on the plantation of his father, William Somerville, a large land and slave owner in St. Mary’s County, Maryland. Educated at Charlotte Hall, he inherited a large fortune upon the death of his father, in 1807, and soon after he attained his majority, purchased the fine estate of more



than a thousand acres, now in the possession of the Lürman family, and well known to visitors by its beautiful view of Baltimore with its neighborhood, the Patapsco River, and Chesapeake Bay. In 1817 he was married to Rebecca Tiernan, the daughter of an Irish merchant long resident in Baltimore. A student and a wide reader, Mr. Somerville gradually formed the large library, at Bloomsbury which sixty years ago ranked as one of the best private collections in the country. Here among his books he wrote much for the magazines and newspapers, but principally upon political subjects, in which he took a deep interest, and concerning which he was always well informed.

He never cared to mingle personally in politics, when it could be avoided, nor to seek public office; but he was more than once honored by his party as candidate for elector, and in 1832, as a member of the Maryland Convention, drafted the address to the people in favor of the nomination of Henry Clay. Like his elder brother William, author of a popular volume of letters from Paris on the French Revolution, and afterwards minister to Sweden, he was a stanch friend and supporter of John Quincy Adams; and like him he enjoyed a wide acquaintance with the leaders of the Republican party, and often entertained them at his house.

With both Mr. and Mrs. Somerville the young tutor soon became a great favorite. Very pleasing in manners and appearance, he had the peculiar good fortune for a lad of nineteen to see much of a society which, in those days less formal and restrained than that of New England, was not more conspicuous for hospitality than for beauty and gracious manners, the charm of which had already won for the women of Baltimore a reputation that had crossed the then difficult ocean.

“The gay season has passed here,” Mr. Bigelow writes at last to his mother on October 26, “and we have begun to settle down in the retirement of the country to a more quiet life for the winter. I shall have a fine opportunity for study and reflection. I begin now to anticipate the time of my return to Massachusetts to pursue my studies, and I look forward with much anxiety to the time when they shall be completed.”

The news of his elder sister's engagement to Mr. Theodore Chase, of Portsmouth, New Hampshire, and the appointment of her marriage for the following April, soon brought his father's command to return to the North in season for that event. His approaching departure from Bloomsbury revived his anxiety about his profession. He writes:—

“It is of little consequence to me when I commence my professional career, but it is of infinite importance to select a place where the talents of a young man can find encouragement, — where his industry and exertions can meet their reward, and where the hopes of a generous ambition can be satisfied. . . . If my health is spared, and I am not kept back by the irresistible force of circumstances (or destiny, if you like it better), I have but little to fear for the future.”

In his last letter from Maryland to his mother, Mr. Bigelow wrote: —

“I perceive by the tone of my father's letter that he cherishes great anticipations of witnessing on my return a vast increase in my mental attainments. I hope that he will be more moderate in his expectations. He should remember that my college life was squandered in idleness and folly; that when I left Massachusetts for the South I was a mere boy, without any knowledge of books or men; and that consequently I have had much to learn and everything good to gain. When I look back and recall the feelings and opinions with which I left you, I can with difficulty realize now that I ever cherished them.”

The end of March found him preparing for his journey home. He had some weeks before informed Mr. Somerville that his engagement must terminate at that time, and of the reasons why it could not be prolonged. He had been in intimate intercourse with this charming family for eleven months, and he received in parting the kindest assurances of their personal interest in his future career. And now, more than fifty years since Mr. Bigelow left that happy household, never to see any member of it again, Mrs. Somerville's surviving brother sends to the author the pleasant message that he “well remembers Mr. Bigelow as a handsome young man; that the family were exceedingly fond of him, and greatly regretted his departure, always holding him in the kindest remembrance and speaking of him with the highest regard.”

On his return to Watertown his family were delighted with the improvement eighteen months of change had wrought in him. "He left home," wrote his sister, "a boy with the ways of a boy, and returned to it a man. I have never, I think, seen," she continued, "a young man so much improved by foreign study and travel as my brother George seemed to be by his residence in Maryland."

He was soon hard at work in his father's office, satisfying that stern parent by his industry; his days were spent over law books, his evenings given to miscellaneous reading. It had been his practice at Bloomsbury to copy passages from authors he thought perfect in form and expression; and this habit he now resumed, helping to form for himself that excellent style in composition which afterwards characterized his legal opinions. He accompanied his father to and from the terms of the county courts, and sat by his side as he fought his cases with a vehemence which is yet remembered at the Middlesex Bar. In close communion with that veteran lawyer, the young student perfected himself in the fundamental principles of law. Two years were thus spent with no holiday but the New England Sabbath, and with few hours of leisure save the short evenings of a quiet country household.

Soon after he came of age he began an interesting correspondence with Mr. Somerville. His first letter to Maryland shows how rapid was his development: —

WATERTOWN, MASS., Jan. 28, 1832.

MY DEAR SIR, — I should have written to you shortly after my return to New England, according to the promise I made you when we parted, had I not been prevented by the number and variety of the avocations and duties imposed upon me by the study of my profession. To be candid with you, too, I have felt not a little diffidence at the thought of *commencing* a correspondence with you, because I well know the advantages and pleasure of an epistolary intercourse would be wholly in my favor, and that I should in some measure be subjecting you to an irksome and profitless task.

I cannot forbear to avail myself of this opportunity to express to you the gratification with which I look back upon the year I passed in your family. Your own good humor and good taste gave zest and



enjoyment to your improving society ; your extensive library afforded delight and instruction to my desultory mind, and the amiability and intelligence of your children lightened the burdens and enlivened the dulness of ordinary tuition. The relation in which I stood to your family would necessarily render the situation, in some respects, unpleasant and galling to any one who entertained a due and proper pride of character, for it can be said of private tutors, as Shylock said of his persecuted nation, that “sufferance is the badge of all our tribe” ; but I owe it to the kindness and friendship you manifested towards me to say that my situation was as little so as the circumstances of the case would permit. I had the pleasure of observing your name among the members of the National republican convention, who have placed Mr. Clay before the people, in an authoritative and direct manner, as a candidate for the Presidency. The address, so unanimously adopted, seems to me to be intended rather for the enlightened and high-minded than for the prejudiced and uninformed part of our community. It is in too lofty a tone, too much in the spirit of a cold and calculating moralist, to be fully understood, comprehended, and felt by the great mass of the people. It is an old maxim with us that “an ounce of fact is worth a pound of preaching” ; and it would have been better, on this principle, to have dealt out one or two sturdy and undeniable realities, than to have published such a long and prosing homily under the sanction of the convention. The contest, however, is, I fear, a desperate one, and the only encouragement to further resistance is the satisfaction of finally dying with a better grace. . . .

Mr. Somerville’s reply was the first of a number of letters to Mr. Bigelow, extracts from several of which are here given : —

BLOOMSBURY, Feb. 23, 1832.

MY DEAR SIR, — I received your letter in due season, and am quite gratified you have not forgotten us. It was only the evening before the arrival of your letter that we were speaking of you, and my whole family expressed surprise that you had not written. Had I known your post-office, I should have given you some intimation that we had not yet crossed the Stygian Lake, and that, in memory of you, we still have pork and beans. The truth is, you ought to have written sooner, it was your duty to have done so ; for you left a character with us that would do honor to any man, and besides, you ought to have known that I felt some interest in your future career. I write in candor and not in compliment. You have youth, health, talents, and ambition ; and if you exert all the attributes which God and nature have given you, you have it in your

power to be distinguished. Nevertheless, in your course through life there are some evils which the vessel of your adventure must endeavor to avoid. The first of these impediments is the rock of extra modesty, which is not very remote from that of *mauvaise honte*; if your hopes are shipwrecked upon either, it will be doing injustice to your skill as a pilot. . . . The next obstruction which opposes itself to your prospect of distinction is your undaunted admiration of female beauty. This is a kind of *ignis fatuus* in which there is no positive danger in itself; but a student of law who wishes to become eminent in his profession should admit with great caution the distracting influence of that dear little divinity called woman. The transition is not very natural from love to politics, but it is of easy gradation from woman to addresses, of which I shall speak presently. I remember in one of our political talks you remarked to me that your opinion of General Jackson was by no means so unfavorable as mine. I think enough, and more than enough, has transpired since you left us to prove that my estimate of the hero's mind and character scarcely did justice to the ignorance of the one or the degradation of the other.

John Randolph said in his speech at Richmond, which perhaps you have heard, that "he did not know whether the dissolution of the Cabinet was owing to Van Buren's head or to Margaret Eaton's ——; but at any rate he was glad of it."

I have been much engaged of late in preparing an address to the people of Maryland, in obedience to a resolution of the National Convention. . . . I have, in every part of this appeal, endeavored to make facts the basis of the whole superstructure, simply throwing in here and there a little spice in the way of illustration. Your comment on the address of the convention is perfectly correct. It is a political 30th of January sermon. . . .

Believe me, I greatly miss your society and our frequent intellectual chit-chats, and that you are respectfully remembered through my whole family.

MAY 23.

The Central Committee of Baltimore have ordered five thousand copies of my address, but whether it will produce much good effect in our State is a doubtful matter. We still enjoy good health and spirits, and at this very delightful season you will be pleased to see how much Bloomsbury has improved. My orchards have grown beyond my hopes; and the cutting of trees, and particularly the antiquated chestnuts in the fields below, have opened to the view from my front door a prospect of nearly three thousand fruit trees. The bloom is magnificent, and exhibits every variety of hue.

Your successor continued with me till a few days since, and has now removed to Florida. He was amiable, but no companion for me; how much of a long winter's evening I missed our agreeable and instructive conversations! Believe me I shall ever remember with feelings of gratification your very kind and gentlemanlike deportment while a member of my household. . . . Let me know what you think of the address.

OCT. 9, 1832.

I have written you twice, and Tiernan once, since we received your first letter. How happens it that you have never since written? Have you forgotten us, have our letters never reached you; or is your time absorbed in law, politics, and love? As you will have learned before this reaches you, our party was beaten in Baltimore by nearly five thousand votes. The Irish population controlled the vote. Mr. Tiernan<sup>1</sup> was a candidate for the House of Assembly; and while both friends and foes admitted the purity of his politics and the excellence of his character, and while all acknowledged that as president of the Hibernian Society, his time and his purse had ever been freely given in kindness to his emigrating countrymen for nearly forty years, yet still he was deserted by those whom he had most befriended, for the sake of striplings in politics of whom the people knew nothing save and except that they electioneered under the Jackson banner. This was not all; the morning after the contest, the partisans of the hero shrouded the door of Mr. Tiernan's counting-house with black crêpe and low verses in ridicule of his defeat. Such is Jacksonism in Baltimore! . . .

Miss Fanny Kemble is playing wonders in New York, and the Nullifiers the devil in South Carolina. There is one comfort, at any rate, — these Southern madcaps cannot nullify the graces of pretty women. For myself, unsought, unseen, I had rather be under the government of Miss Fanny and legislate in her own little capitol all the days of my life, than be subject to a Southern confederacy, headed by Calhoun or McDuffie, with the seat of government no man knows where, and the sort of government God only knows what.

We walked through the peach orchard to-day which you helped to plant. You would be surprised at its wonderful growth. I could not refrain from laughing at the recollection of the planting scene; 't was pretty much like running from post to pillar, — you, with your lank roundabout, something like Peter Slimmel with his seven-league boots, and then my long, graceless flannel gown, the breeze of Boreas throwing it sky-high like Randolph's similes.

<sup>1</sup> Mrs. Somerville's father.



To obtain some knowledge of the practice of a city lawyer. Mr. Bigelow entered Mr. Charles G. Loring's office in the summer of 1833, and after six months of hard study was admitted to the bar, at the December term of the Court of Common Pleas, held at East Cambridge, Jan. 9, 1834. Undecided as to his future home, he returned to Watertown, and got his first practice in his father's office. His correspondence with his friend Phillips, who was already practising law in Boston, was now a source of amusement to him. Phillips was imaginative, spirited, and mirthful, and the two young men wrote to each other with a free pen. One of Phillips's letters to Bigelow was prophetic. Written June 27, 1834, and addressed to George T. Bigelow, Esq., Watertown, it was so folded as in opening to disclose apparently another letter, postmarked Jan. 1, 1844, franked "G. W. Phillips, U. S. S., Free," and addressed to "Hon. G. T. Bigelow, Ch. Justice of S. J. C. of Mass. and commander in chief of the Watertown blues." Seven years afterward the recipient of that letter was colonel of the Boston Regiment of Infantry, nine years later a judge of the Supreme Court, and after ten more years its Chief Justice.

If the writer of it never attained political distinction, it may be truly said of Mr. Phillips that it was not for the want of superior abilities, but rather his preference for the quiet life of an advocate in which distinction awaited him.

After nearly eighteen months of such country practice as his father turned over to him, making justice writs and trying them, Mr. Bigelow opened an office in Boston, in June, 1835, at No. 10 Court Street, in pleasing proximity to his friend Phillips, whose office was in the same entry. For a young stranger of twenty-four to obtain clients, it was first necessary he should be known. To this end Mr. Bigelow adopted a suggestion of the Hon. Abbott Lawrence,<sup>1</sup> and took lodgings at the Bromfield House, then a favorite old coaching-house in Bromfield Street; and among his first clients were acquaintances here formed.

<sup>1</sup> Mr. Abbott Lawrence's wife, Katherine Bigelow, daughter of Hon. Timothy Bigelow, of Groton, and afterwards of Medford, was cousin to the subject of this memoir.

The nomination of General Harrison for President by the Whigs of Maryland induced the following letter to Mr. Somerville: —

JAN. 23, 1836.

I could hardly believe my own eyes, when I saw your name appended to an official account of the proceedings of the late Whig convention in your State, which nominated William H. Harrison as a candidate for the Presidency. I had supposed that you, at least, faithful among the faithless found, would have stood firm in the support of the only man, now before the people, fully worthy of the highest honors of the Constitution. So then, we are to have William H. Harrison for the next President, and why? Because he gained a doubtful glory in a tomahawk fight at Tippecanoe? . . . The case is a plain one. It is not asked who is the best qualified for the office. . . . But the great question is, who is the most available candidate; who can be run into office the most easily by dazzling the eyes of the people by the false glare of military glory: and thus it comes to pass that the clerk of a county court in Ohio, a man of defective education, limited capacity, and slight experience is preferred to a long-tried public servant, the ablest defender of the Constitution. . . . It is a question beyond argument, and I leave it here.

I am so negligent a correspondent that I fear you will think I have almost forgotten you, but it is not so. Scarcely a day passes by, without some moments being spent in recurring to my residence at Bloomsbury. If you knew how much pleasure I take in recalling the incidents of the year I passed with you, how strongly my character and feelings were influenced in that most important period of my life by your counsels and opinions and by the stores I gathered from your library, you would ask for no professions of remembrance nor exact special punctuality in correspondence.

Mr. Bigelow's aptness in making friends, his industry and earnestness about whatever business came to his office, attracted about a year later the attention of Bradford Sumner, a well-known lawyer of the day, who proposed to him a business association, which the young advocate's confidence in his own powers led him to decline.

He was elected, in May, 1837, as ensign of the New England Guards, then a very popular company in the city militia, which survived till the late war between the States, and ended its



own existence in providing officers for several regiments of volunteers.<sup>1</sup>

High-spirited and naturally combative, he had a strong taste for military duty. He studied books of tactics, was constantly in evening attendance at the company's armory, and was delighted in the work there. But he had hardly got his uniform home, when on June 11, Mayor Eliot's summons of the Boston militia to quell the Broad Street riot found him the only officer of his company in town on that pleasant Sunday afternoon. Already aware of the disturbance, he went quickly to Faneuil Hall, and taking command of as many members of his company as were there gathered, marched at the head of the assembled infantry, as preceded by the Lancers it approached Broad Street. "There was a fixed determination in his face that the law should be enforced which communicated itself to others."<sup>2</sup> As the column came near the scene of the tumult, feathers from the beds, torn open by the rioters at the windows of the tenement houses, filled the air like snowflakes. The Lancers — a new organization, then making its first appearance — steadily cleared the street, but fighting still continued in the houses. Directed by the Mayor to clear a house on the right hand from whose windows the furniture was flying, Mr. Bigelow advanced at the head of his company, to find the entrance barred by a large man who stood across the narrow doorway with knees and arms braced to prevent intrusion. "Give way!" shouted the young ensign, whose hot temper was instantly aroused. Grasping, upon the rioter's refusal, the heavy old-fashioned sword he carried, he brought it down with all his might upon the man's shoulder, and felled him to the ground. The act was seen at many windows by those who kept a lookout upon the troops, and instantly had its effect. Rioting soon after ceased in the neighborhood, and in a short time comparative quiet was restored.

Military life in any form had a great charm for Mr. Bigelow; and as it was much the custom of that day for the Boston

<sup>1</sup> The Twenty-fourth Regiment and Forty-fourth Regiment of Massachusetts Volunteer Militia were largely officered from this Company.

<sup>2</sup> Hon. J. C. Park, speech at bar meeting, April 18, 1878.

companies to elect their officers from the young members of the bar, he was enabled to find the amusements of his leisure hours in a pursuit which largely increased his acquaintances among the young men of the city, and which was thus a positive advantage to him in his profession. The Guards soon found they had got an energetic young officer, who did his work thoroughly and as if his heart were in it. Though a firm disciplinarian, his cordial disposition and pleasant ways among his company, when not on duty, won for him rapid promotion; and in January, 1839, he was chosen its captain.

In the following November he was first elected as a Representative from the city of Boston, and entered the Legislature in January, 1840. Four times re-elected, he served in the Lower House five years. From the beginning alert and industrious, he worked hard in committee and spoke exceedingly well in debate. His pleasing manners won for him popularity, and his abilities influence. In his second year he was made chairman on the part of the House of the Joint Committee on Manufactures, then, in its importance, the second committee in the House, and from that hour maintained his rank as an earnest and active leader of the young Whigs. Though he did not neglect his profession in these years of political activity, he found time to gratify in some degree his strong military tastes. In the summer of 1840 he encamped his company at Woburn, and there thoroughly drilled them in artillery and infantry tactics, winning as the reward for his exertions a generous recognition of his military success throughout the regiment. With these congenial military duties, however, his law practice began to interfere, and to the regret of his company and against their unanimous petition, he resigned his commission. Chosen, however, a year later colonel of the Boston regiment of infantry, "he infused into it an efficiency, promptness, and thoroughness which was never reached before."<sup>1</sup> By the singular distinction of his appearance at the head of his regiment, and the ease and precision with which he handled it, Colonel Bigelow won the admiring regard of his soldiers, and attracted to himself the favorable notice of the community. He held

<sup>1</sup> Mr. R. H. Dana, speech at bar meeting, April 18, 1878.

this, to him, delightful command for three years, when again yielding to the increasing demands of his profession, he retired from military service, for which it seemed to so many Nature had designed him. He formed in 1843 a law partnership with his friend Manlius S. Clarke, and, devoting himself to the business of a jury advocate, soon acquired a lucrative practice.

The murder of the warden of the State Prison, by Abner Rogers, a convict, in 1844, had painfully excited the public mind, and there was a widespread thirst for vengeance when he was arraigned for the crime. By a merciful provision of our courts, by which counsel are appointed for those who are destitute, Mr. Bigelow was appointed counsel for him, who proved to be as bereft of reason as of friends.<sup>1</sup>

The distinction he gained by his argument in defence of Rogers only served to fire Mr. Bigelow's ambition. Indefatigable in the preparation of his cases, he fought them with courage, tenacity, and at times temper. It may be doubted if opposing counsel understood or altogether approved the general favor as an advocate in which he came to be held. "In the trial of a cause he meant business and a good deal of it; he did not intend to lose anything by too much courtesy to his opponent or by too great deference to the court, or too little arrogance of manner in general."<sup>2</sup> But he was rapidly rising as an advocate. "He was quick in action," said Mr. Dana; "he knew human nature. He could read character, and he balanced facts well. He exerted himself to the utmost. He never relied upon supposed powers to carry him through, which others might not have. Every one of his successes was deserved."

He was chosen a Senator from Suffolk County for the year 1847, and was again chosen in the autumn of that year. So successful was his political service that he seemed sure of further and higher distinction, when he resigned his seat in the Senate on his appointment by Governor Briggs as judge of

<sup>1</sup> Rogers was acquitted because of insanity, and was sentenced to confinement in the asylum at Worcester, where, leaping one day wildly from a window in an insane delusion, he was instantly killed.

<sup>2</sup> Hon. Peleg W. Chandler, at the bar meeting, April 18, 1878.



the old Court of Common Pleas in March, 1848. In those days the appointment to the bench of a man of thirty-seven, who had given so much time to military and political life, and whose record at the bar, though undoubted and full of merit, was yet comparatively brief, and hardly such as to promise success in a place so different and responsible, provoked general criticism. "His military feeling, his executive faculties, his guardsman's air, forced his friends to meet the question whether his mind was sufficiently judicial."<sup>1</sup>

It may be here said that Governor Briggs, surprised at the criticism his nomination had occasioned, was from the first confident of the fitness of this appointment, which had been suggested to him by the Hon. P. W. Chandler, then City Solicitor of Boston; though Colonel Bigelow had served Governor Briggs for some years as his chief aide, and during his legislative service had come much in contact with him. Nor did he himself feel a moment's doubt of his ability to justify his elevation to the bench. He had been long enough at the bar to know the measure of his own powers, and though conscious that other pursuits had interfered with his study of law, he felt sure of success. He subsequently told his old friend, Mr. J. C. Park, that the moment his appointment to the bench was confirmed, he took up every book on Evidence that he could find and mastered its contents; and that in court, "as soon as a new question of law came up before him, he assumed all the courtesy in his power and said, 'Gentlemen, I will hear you on that point,' and at the conclusion of the argument he would give an opinion in a manner which would lead people to believe that he was perfectly familiar with the point at issue, whereas he had grasped every idea advanced, and had then been able to make up his mind at once. 'I do not call it tact,' said Judge Wilde when told of this; 'it is talent to make other people do the work and appropriate the results yourself!' He had the wonderful power of seizing every point presented; he could eliminate every point of law from the facts with which it was surrounded."<sup>2</sup>

<sup>1</sup> Mr. Dana.

<sup>2</sup> Hon. John C. Park, speech at bar meeting, April 18, 1878.

The new judge held his first term "bravely" in Boston. "From the first day he took his seat," said Peleg Chandler, "he was every inch a judge. In the despatch of business, in the management of the docket, in his wonderfully clear and able charge to the jury, in his absolute impartiality, he won the applause and even the admiration of the bar." Even the juries, who at the end of their service were familiar with the talk his appointment had made, sympathizing in his success, sent him addresses of congratulation. He was now, perhaps, at the happiest period of his life. His ambition was for the time gratified, his success seemed assured, while the varied duties of the bench were peculiarly congenial to him. He liked to hold court in the shire towns; it revived the recollection of his first law practice with his father. He enjoyed the study of human nature which his position afforded him, and he attained in this way that exceeding insight and knowledge of the country people of Massachusetts, their ways, prejudices, and lines of thought, for which he was so long noted.

The young Whigs were still planning to send Mr. Bigelow from Boston to Congress, and in the summer of 1850 a movement was made to bring him forward as a candidate at the convention, to be called in the following October, to nominate a representative. The first meeting of that convention ended in an informal ballot, when thirty-nine votes were thrown for Judge Bigelow, — a clear majority of ten over every other candidate. To the surprise and disappointment of his supporters, led by Ezra Lincoln, afterwards Collector of the Port, Judge Bigelow, influenced wholly by family considerations, then withdrew his name; but in this act he decided more wisely than he then knew to remain upon the bench, where promotion was soon to come, and its highest honors to follow.

The Hon. Samuel Sumner Wilde, of Hallowell, had been appointed a judge of the Supreme Court as far back as 1815. He ended the longest judicial service in the history of the Commonwealth, by resignation, in November, 1850. Appointed to succeed him, Judge Bigelow took the oath of office on the 21st of the same month, and his seat on the last day of the November term. He was only five years old when

his distinguished predecessor was appointed, and he was hardly forty when called to sit by the side of Chief Justice Shaw, by Dewey, Metcalf, and Fletcher, — all aged men. “In his new position,” says the late Mr. Justice Foster,<sup>1</sup> “he was very useful from the beginning; he labored with constant assiduity to do each judicial duty as perfectly as possible, and coming to the bar myself about the time of his appointment, I well remember with what astonishment the older lawyers regarded the excellent performances of this brisk young judge, somewhat of a martinet in his discipline, and his ways in such striking contrast to those of his venerable associates.” If the new justice had already won by three laborious years a distinction as wide as the Commonwealth in the court from which he came, it was yet feared that his professional study had been too brief and too interrupted for his success in the determination of questions of law. But he worked hard as he had ever done to fulfil the duties of the hour; and the days were but few in all the year, at this period of his life, in which he was not engaged in study of the ever-varying questions of law which came before him. The court-room was never dull when he was on the bench, for all the parties to the case at bar felt the spur of his vigorous nature. Quick and industrious, he expected counsel to be well prepared, and was sometimes savage at any waste of time. He became unrivalled in the quickness and accuracy of his rulings upon evidence, and so increased his reputation in the trial of jury causes that it came to be said of him in his life, as was said of him after his death at the meeting of the Suffolk Bar by one of the most eminent among the jury advocates of that day, the late Mr. Somerby, that “sitting as a judge at *nisi prius* he has never had his equal, for he brought to his position a readiness, a vigilance, and an acuteness of comprehension, together with a perfect knowledge of the relations which every fact bears to every other fact, which placed him in the foremost rank of jurists.” There was no judge of that day who had a stronger faculty of impressing himself upon a jury or who could get more out of one. “Indeed,” said Mr. Sheriff Clarke, “I have

<sup>1</sup> Speech at bar meeting, April 18, 1878.



known many jurymen who counted it a pleasure to sit under him."

"I was present," said the late Mr. Dana on the same occasion, "when Judge Bigelow appeared for the first time in East Cambridge as judge of the Supreme Court. He then did what had never been done before. He had prepared with labor and care a list of all the cases which had been decided, the names of the cases, the counsel, a short statement of the facts and points such as is now published as a rescript, and the conclusion reached by the courts. He had done it, without doubt, to do credit to himself. And why should not a man be desirous of securing credit for his best gifts? He knew it would be useful to the bar. He took up the cases in order, named each counsel in the case, reviewed what was done at the time, called the attention of the bar to the points, stated the nature of the case and the results. He went through the list in order. Every member of the bar felt that it was an achievement. It was the first step to the rescript we now have. The bar was grateful for it. We all know that he was the first person who had ever done it. He was the first who was willing to give it the assiduous labor it required.

"I had the honor," Mr. Dana continued, "of knowing pretty well the late Mr. Charles G. Loring. He was a great admirer of the class of minds which had preceded him by a generation at the Suffolk Bar. He said the best jury charge he had ever heard was made by a judge who, I hope, is still remembered for his rare merit, Judge Charles Jackson. He had always preserved it in his mind as a model jury charge. But in this place where I now stand, he said to me: 'You have heard what I have said about Judge Jackson's charge. The charge just given by Judge Bigelow was its equal in every respect, and I don't know which was the best.'"

"His manner on the bench," said Mr. Chandler, "was dignified and courteous; but he held to his prerogatives, was impatient of dulness and intolerant of prolixity, nor would he allow the least arrogance on the part of the bar. Sometimes when tried in this respect, he reminded one of the West-

ern judge who threw out a signal-flag of warning to a young advocate who was going rather far, by the remark, ‘This court is naturally quick-tempered.’” And Judge Bigelow was quick-tempered. Yet his temper was generous, and if quickly raised was quickly spent; while a nature inwardly tender, united to peculiar graces of manner, compensated him who had felt its force; so that, as has often and widely been said of him, few men ever left his court with wounded feelings, and none departed from it without feeling that full justice had been accorded them.

He was most careful in the preparation of his opinions, but when his materials were ready to be put in permanent form, they were rapidly written; yet he never finished an opinion without full and far-sighted consideration of the effect it might have upon the rights and interests of the people of Massachusetts. During the ten years Judge Bigelow was an associate justice of the court he wrote several opinions upon the most difficult and intricate questions of law. Of these perhaps the most generally remembered was his opinion in the so-called Brattle Street Church case, which was argued before the full bench in 1855. When the arguments were over, the court adjourned without any consultation upon the case, and as Judge Thomas,<sup>1</sup> before his death, told the writer, without assigning the preparation of the opinion to any member of the court. Three days afterward Judge Bigelow read his opinion to the other judges, and it was at once adopted by them. “It was at a time,” said Mr. Dana, “when a judge’s written opinion was read before the assembled bar, — a good practice, but one which has been omitted in the accumulated business of the present day. Any student,” he continued, “who is far enough advanced in his studies to understand it should read it. He had the faculty of getting a bird’s-eye view of the whole country in which the contest lay. He knew exactly what points were connected with the case, and had the power of marshalling facts and arranging principles.

“While many men — or some men — who might be considered his superiors in legal training might deliver an opinion

<sup>1</sup> Hon. Benjamin F. Thomas, Associate Justice, S. J. C., 1853-1859; died 1878.



which would attract little attention, Judge Bigelow had a capacity and clearness of mind, and a faculty of stating points so clearly that no one present who had the least knowledge of law but was delighted with the opinion, and went away thoroughly comprehending it."

In that more difficult branch of law known as equity, Judge Bigelow achieved marked distinction. A court of equity brings before it all parties interested in a cause, however numerous they may be and however complicated the suit, and distributes justice to all by a decree (somewhat as water is distributed by a skilful fireman over every part of a burning building). In January, 1859, arguments in appeal were made to the full court sitting in equity in the difficult case of *Leach v. Fobes*. At their close, a recess was taken by the court, and Judge Bigelow retired to the lobby. He returned in ten minutes with a finished decree which closed forever litigation on every branch of the subject. It was a remarkable feat,<sup>1</sup> and made a strong impression upon all who witnessed it.

And thus it came about when, toward the close of August, 1860, that great and venerable judge, the Hon. Lemuel Shaw, resigned his commission as Chief Justice of the Supreme Court, which he had held for thirty years with not more honor to himself than renown to the Commonwealth, the weighty responsibility of appointing his successor devolved upon the then executive magistrate, Governor Banks. It has now long been known that after a deliberate survey of the bench and bar of Massachusetts the Governor sought the presence of Judge Shaw to tell him that while his own conclusion — confirmed, as he believed, by sufficient indications of public sentiment — pointed to Judge Bigelow as his successor, he yet felt it due to him, whose resignation he had so reluctantly accepted, to consult him upon the general fitness of his choice. "I can only say," replied the "Old Chief," as Judge Shaw was then affectionately termed by the bar, "that Judge Bigelow has eminent qualifications for the place."

<sup>1</sup> The writer is indebted for this anecdote to the late Ellis Ames, a member of the Historical Society, who was of counsel in this case.

On the 7th of September following, Judge Bigelow was appointed Chief Justice, and three days later took the oath of office. He was not yet fifty when the highest honor in the gift of Massachusetts came to him, heightened as it was by assurances from the bar of every county that he deserved his high office and the profession deemed him entirely competent to fill it. The rapid industrial growth of Massachusetts from 1846 to 1860 had caused business in the courts to increase so rapidly that the old rules and customs were no longer tolerable. Chief Justice Bigelow, as the bar had hoped from their knowledge of his driving temper and executive powers, speedily reorganized the business methods of his court, and various improvements to shorten procedure were made. Lawyers were required to submit printed briefs, to be prompt and expeditious in all their doings with the court, and to make short arguments on points of law. The bench itself worked hard. Cases no longer accumulated, dockets were shortened, and the people at large felt that the law's delays were less vexatious and hard to bear. Patient, prompt, laborious, the Chief Justice bore with ease the larger responsibilities of his position.

Popular from the first, his kindness and urbanity to the profession wherever he met them, whether in court, in the street, or at his home, was steadily maintained during the seven years he remained upon the bench. His regard for the character and good name of the profession was well indicated on the occasion when a young and gifted lawyer, whose early death was regretted by all who knew the brilliant qualities of his mind, came drunk into the court-room where he was to argue a case. As soon as the unfortunate young gentleman's condition was seen, on his attempting to rise, the Chief Justice instantly leaned forward, and in a tone of great kindness remarked, "Mr. —, the court will, if you please, take up this case to-morrow," and instantly adjourned the court. The young lawyer's condition, perceived only by the bench and by a few members of the bar, was thus not made public, and his ruin thereby averted.

For a man whose mind was largely occupied with serious business he had a curious capacity for keen and quiet observa-

tion of what was going on around and about him. There never was any such abstracted occupation of mind that he could not turn readily to anything that would attract attention for its peculiarity, humor, or interest. He could tell as well as any idler in his court-room what had happened in it outside of the trial of the case before him.

His interest in the law as a practitioner and as a judge was peculiar. While some men delight in the law as a study or pursue it as a science, and others follow it for emoluments and honors, Judge Bigelow seemed rather to enjoy it as a splendid engine to be brought to bear upon abuses which required correction, or upon men who needed its discipline. During the seven years he remained upon the bench he continued to perfect and extend his judicial reputation; but though his mind, like an exquisite machine, did its appointed work rapidly and without friction, the slow growth of certain infirmities, partly the result of long years of sedentary life, admonished him that he could not long continue upon the bench. Deafness and gout, alike the inheritance of his family, beset him. The failure of his hearing entailed upon him a sustained and at last painful effort to lose no word of what was said in the trial of a cause before him. Recognizing that it was rather a question of months than years, when deafness would compel him to descend from the bench, as twenty-five years before it had forced his father to retire from the bar, the Chief Justice determined, before the profession were even aware of the causes which influenced him, wholly to change his occupation, and in the autumn of 1867 he resigned his commission, to take effect on the last day of that year.

The announcement of his intention to resign occasioned universal regret. The bar of Massachusetts were unwilling to lose at the early age of fifty-seven, and in the perfection of his judicial training, a chief justice whose term of office they had hoped might last as long as that of his great predecessor. Petitions, signed by three hundred members of the bar, urging him to remain in office and testifying that his "retirement at this time would be a loss which the profession and the public could ill bear," were followed by many personal and written



appeals of the same kind from all parts of the State, and from the Executive itself. These tributes were indeed sweet to him. Not twenty years had passed since, fresh from the political and military service of the State, he had been made a judge of Common Pleas, amid the general criticism of the profession as to his fitness for judicial life. Now he was retiring from the highest judicial post in the service of the Commonwealth, while the bar of every county was hastening to him its appeal to remain longer in his great office.

Well might his professional career be termed, as it was, by a great advocate of that day,<sup>1</sup> “a triumphal march of honor.”

As soon as his intention to resign became known, Chief Justice Bigelow was offered the position of Actuary to the Massachusetts Hospital Life Insurance Company. He accepted this position of dignity, responsibility, and ease, and held it till his last illness. For several years he had suffered at times acutely from the gout, and he died of this disease, Friday, April 12, 1878, at the age of sixty-seven years and six months.

On the Sunday ensuing the bar assembled at his funeral at King's Chapel, to honor, as was afterward so fitly said by Mr. Dana, “the memory of a patient, industrious, indefatigable, vigilant, prompt magistrate, and an honorable, generous, high-spirited, and public-spirited citizen.”

Others may have adorned the courts of Massachusetts who exceeded him in research or who had a wider knowledge of cases; but in his power of grasping the points of an action as they were successively presented, — whether of fact or of law, — of grouping them in their proper order, and of steadily holding them in their true relation to the issues involved, no less than by the perfection of his art of stating them to a jury, or, through his surpassing faculty of legal literary expression, of embodying them in a written opinion, he has been equalled by few judges and excelled by none. As personal recollections of the late Chief Justice fade into the dim twilight of tradition and pass slowly away, the opinion of his great classmate, Mr. Justice Curtis, formerly of the Supreme Court of the

<sup>1</sup> Gustavus A. Somerby, speech at bar meeting, April 18, 1878.



United States, will surely be held by all who come hereafter to study the principles of law, as they are set forth with enduring wisdom in the Reports of Massachusetts. At a certain meeting of the "Class of '29" the conversation turned upon the merits of several of the instructors at Harvard during the period of their student life, and there was some criticism of Prof. Edward T. Channing as a teacher of rhetoric and English composition, when Judge Curtis pointed out that Channing's pupils had no tendency to that florid style somewhat common with students of other colleges, and continued as follows: "Take Bigelow; he is not here to-night, and so I can say what I should not if he had been. You all know that much of my life has been so spent as to give me a large acquaintance with judicial style; and I here express my opinion, which is not a new one, that for purity and clearness of style, I know of no living or modern judge who is Bigelow's superior."<sup>1</sup>

Peculiarly genial and companionable in private life, Judge Bigelow was fond of society and became a great diner-out. Inclined to all kinds of reading, from newspapers to the last book upon law, he was especially fond of English and American memoirs; and his mind was thus stored with a fund of anecdote which a retentive memory enabled him to use most happily in conversation. An excellent discretion usually controlled a naturally impulsive disposition, and made him somewhat shy of all public occasions where after-dinner speaking was a rule, and where his presence was often sought. Never but once after he attained distinction did he attend a public dinner; and while they who were present, among their recollections of the hour, can recall the grace and animation of his manner and the force of his speech, his own deliberate judgment led him afterward to avoid all similar occasions. He was offered and held many positions of trust and honor, before and after he left the bench, and was a Fellow of Harvard College at his death.

<sup>1</sup> Mr. G. W. Phillips, in a letter to the writer of Feb. 10, 1879. See also "Life and Writings of B. R. Curtis," vol. i. p. 34, where the same anecdote is told in slightly different language.

His connection with the Massachusetts Historical Society dated from his election to it, Feb. 10, 1859.

Chief Justice Bigelow was married, Nov. 5, 1839, to Anna, daughter of Edward Miller, of Quincy. By this marriage, which brought him into pleasant relations with several families long prominent in the Old Colony, he had four children, all of whom survive him.













LIBRARY OF CONGRESS



0 014 012 848 A



LIBRARY OF CONGRESS