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HISTORY
OF THE
HARVARD LAW SCHOOL
AND OF
EARLY LEGAL CONDITIONS
IN AMERICA



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OF THE SUFFOLK BAR

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ence to his constant fits of hypochondria, which sometimes took the form of an almost insane delusion. These attacks, however, never controlled the vastness of his legal mind.

Samuel Dexter, born in 1761, was eleven years younger than Parsons and died in 1816, three years after Parsons. He graduated from Harvard in 1781, a classmate of John Davis (U. S. District Judge) and studied law under Levi Lincoln (later Attorney General of the United States). In 1799, he was United States Senator; in 1800, Secretary of State and Secretary of the Treasury under President Adams. Of all Massachusetts lawyers of the early 19th Century, with the exception of James Sullivan, Dexter alone could be regarded as the compeer of the Chief Justice; and in most of the important cases in the early Massachusetts Reports, Dexter's name appears.⁽¹⁾

Of all Massachusetts lawyers, Dexter's services were sought for an argument of cases at Washington, in the early years of the United States Supreme Court. And it was into his place that Daniel Webster may be said to have stepped, on Dexter's death, in 1816.

"For several years," said Joseph Story, "he passed his winters in Washington under engagement in many of the most important cases. Rarely did he speak without attracting an audience composed of the taste, the beauty, the wit and the learning that adorned the city." Just before his death he argued for the State of Virginia, with St. George Tucker, the great case of *Martin v. Hunter's Lessee*, in which Judge Story settled, against Dexter's contention, the power of the Federal Supreme Court to review the decision of a State Court on writ of error. Like John Marshall, Dexter relied on his supreme power of reasoning rather than on precedents and citation of cases. So much was this his habit that William Plumer relates an argument used by him in a case against Parsons which might almost be thought the argument of one of the unlearned lawyers of the times.

"The law in this case is as I have explained it"; said Dexter, "and it lies, as your Honors see, in the compass of a nutshell. My brother Parsons has here a basket full of law books; and he will endeavor to show from them that it is all the other

(1) For the best, though incomplete, sketch of Samuel Dexter, see *Reminiscences of Samuel Dexter*, by Lucius Manlius Sargent ("Sigma") (1857).

way. But one plain dictate of common sense, one clear maxim of the common law, is worth a cartload of such rubbish." (1)

Says Professor Parsons, "He was not a scientific lawyer—but he was a great lawyer in rem. . . . As an advocate in cases which demand a close investigation of complicated facts and rules and a clear perception and a strong hold of the guiding principle . . . and in the power to carry the court and jury with him through the long research or argument I am confident that he was never surpassed in New England." . . .

"He had a disinclination," said Story, "to blacklettered law, which he sometimes censured as the scholastic refinements of monkish ages; and even for the common branches of technical science, the doctrines of special pleading, and the niceties of feudal tenure he professed to feel little of love or reverence. . . .

. . . In commercial causes, he shone with peculiar advantage. . . . Though he might be wrong upon authority and practice, he was rarely wrong upon the principles of international justice. No man was ever more exempt from fineness or cunning in addressing a jury. He disdained the little arts of sophistry or popular appeal. It was in his judgment something more degrading than the sight of Achilles playing with a lady's staff."

Perhaps the best and liveliest description of his manner as a

(1) Daniel Appleton White, who was born in 1776, graduated at Harvard in 1797, a classmate of Horace Binney, Asahel Stearns, and Chief Justice W. M. Richardson of New Hampshire, and later Judge of Probate for Essex county, wrote May 5, 1804. (See *Mass. Hist. Soc. Proc.*, Vol. VI [1862].)

"I have passed two days at court and had the satisfaction of hearing Parsons & Dexter in the Crowningshield case. Each of them delivered a most learned and ingenious argument. Dexter had the weaker side, and therefore made greater exertions, and took up more time; but as the case turned on points of law rather than facts, Parsons appeared more eminently to advantage as a lawyer. He is indeed a wonderful man. Perfectly at home in all sorts of law, as well as of other knowledge and learning, he appears to be incapable of surprise or embarrassment; whereas Dexter for his deficiency in some of the sciences, and perhaps in some branches of the law is exposed to both; but his astonishing presence of mind and his intuitive perception and penetration secure him a safe and honorable retreat for every difficulty. These two men I believe to be the greatest among the lawyers of New England; yet they are very different. Both are subtle, ingenious, powerful in argument; but, in the one, it seems to proceed from native strength and quickness of genius; and in the other from a long and labored culture of his genius and logical powers. On subjects of equity and in addresses to the feelings or discussions of general policy Dexter may be superior, but nowhere else. Parsons is the great lawyer—perhaps the greater man. He is certainly the safer model."

lawyer is found in Story's letter to his wife March 10, 1814, describing the contests between William Pinkney of Maryland and Dexter, in a series of prize cases:

I must, however, after all, give the preference to Mr. Pinkney's oratory. He is more vivacious, sparkling, and glowing; more select and exact in his language, more polished in his style, and more profound and earnest in his judicial learning. Mr. Dexter is calm, collected, and forcible, appealing to the judgment. Mr. Pinkney is vehement, rapid, and alternately delights the fancy and seizes on the understanding. He can be as close in his logic as Mr. Dexter when he chooses; but he can also step aside at will from the path, and strew flowers of rhetoric around him. Dexter is more uniform, and contents himself with keeping you where you are. Pinkney hurries you along with him, and persuades as well as convinces you. You hear Dexter without effort; he is always distinct and perspicuous, and allows you an opportunity to weigh as you proceed. Pinkney is no less luminous, but he keeps the mind on the stretch, and you must move rapidly or you lose the course of his argument.

Besides the above, the following lawyers were distinguished at the Bar during the first quarter of the 19th Century—William Prescott(1); Christopher Gore(2); Charles Jackson(3); Edward St. Loe Livermore(4); William Sullivan(5); Samuel Hoar(6); Artemas Ward(7); and John Phillips(8), all of whom were Federalists.

(1) One of Parsons' "most valued friends", and a lawyer of great depth and soundness of learning and exclusive devotion to law was William Prescott of Salem. He was also the friend of young Joseph Story, the father of William H. Prescott the historian, and the father-in-law of Franklin Dexter. Born in 1762, a Harvard graduate in 1783, he was a favorite maritime and insurance lawyer. It was in his office, in 1815, that Theophilus Parsons the younger (later Professor in the Harvard Law School) studied. Of him Story wrote in 1820, in his article on *Chancery Jurisdiction*, "his cautious, well instructed, modest and powerful mind would adorn an equity bench and create an equity bar for Massachusetts, equal to the Chancery Court of James Kent."

(2) Born in 1758, a Harvard graduate of 1776, a student of law in the office of John Lowell, United States District Attorney in 1790, a Commissioner of the United States to London on the British Spoliation Claims, Governor of Massachusetts in 1809, United States Senator in 1814.

(3) Born in 1775, a Harvard graduate of 1795, a student of law in the office of Theophilus Parsons, Judge of the Massachusetts Supreme Court in 1813.

"Of all my pupils," said Parsons, "no one has left my office better fitted for his profession. He will prove himself the American Blackstone." (See *Life of Charles Jackson in Law Reporter*, Vol. XIII).

(4) Born in 1762 in Portsmouth, New Hampshire, a student of law in Theophilus Parsons' office, Judge of the New Hampshire Supreme Court in 1799, and afterwards practising law in Boston, especially in maritime cases.