

THE HON. THOMAS TODD,

FORMERLY CHIEF JUSTICE OF THE STATE OF KENTUCKY, AND LATE ONE OF THE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

A BIOGRAPHICAL notice of the late Mr. Justice TODD has been procured for the reporter, by the kindness of an eminent and much valued judicial friend.

It has long been desired to insert in the reports of the decisions of the supreme court, a memoir of the life of one known and esteemed for every private virtue, and by every judicial qualification and attainment. This was due to the state of his birth, the state in which he lived, distinguished and honored ; and where he died, deeply lamented by all. Such a memoir is now presented. Part of it was originally inserted in "The Western Monthly Magazine ;" and part of it has been written by the judicial associate and friend of Mr. Justice TODD ; who shared in his high official labors, and who holds his memory in sacred regard.

OBITUARY.

THOMAS TODD, youngest son of Richard Todd, was born on the 23d of January 1765, in the county of King and Queen, on York river, in the state of Virginia. His father was descended from one of the most respectable families in the colony ; his ancestors being among the early emigrants from England ; his mother was Elizabeth Richards. At the age of eighteen months, his father died, leaving a considerable estate ; which, by the laws of primogeniture of that day, descended to the eldest son, William, afterwards high sheriff of Pittsylvania county, in that state. This event rendered it necessary that his mother should exert herself to provide for the support and education of her orphan son. She repaired, for this purpose, to Manchester, opposite to Richmond ; and by the proceeds of a boarding-house, under her care and management, she was enabled to give, at her death in 1776, a handsome patrimony to her son, in the care of his guardian and her executor, Dr. McKenzie, of that place. By the aid of his friend, Thomas Todd received a good English education, and advanced considerably in a knowledge of the Latin language, when his prospects were clouded by the unexpected embarrassment of his guardian, which terminated in the loss of the patrimony bequeathed him by his mother.

At a tender and unprotected age, he was again thrown upon the world, to depend, for his support, education and character, upon his own efforts.

To these contingencies, which seemed at the time to be remediless misfortunes, may be traced that energy and enterprise which afterwards signalized his character. During the latter period of the revolutionary war, he served a tour of duty for six months as a substitute ; and often in after-life referred to the incident, as being the first money he had ever earned. He was afterwards a member of the Manchester troop of cavalry, during the invasion of Virginia by Arnold and Philips. He was shortly afterwards invited by his relation, the late Henry Innes, of Kentucky, who was a cousin of his mother, to reside in his family, then in Bedford county. By his friendship at that interesting period (a friendship cemented by forty years of affectionate intercourse through life), he obtained a knowledge of surveying and of the duties of a clerk. In 1785, Judge Innes visited Kentucky ; and having resolved to remove his family, the following year, committed them to the care of his young friend, who arrived at Danville in the spring of 1786. Mr. Todd's pecuniary means were so limited, that whilst residing in the family of Judge Innes, at Danville, he was engaged during the day in teaching the daughters of his friend, and at night, prosecuting the study of the law by fire-light. This was an interesting period in the history of Kentucky ; the people were actively engaged in measures to procure a separation from the parent state ; and such was the opinion entertained of his capacity for business, that he was chosen clerk of all the conventions held from that period until 1792, for the purpose of erecting the former into an independent member of the Union.

He commenced the practice of law, very soon after he came to the state, and made his first effort at Madison old court-house. His horse, saddle and bridle, and $37\frac{1}{2}$ cents in money, constituted his whole means, at the commencement of the court ; at the close of the term, he had made enough to meet his current expenses, and returned to Danville with bonds for two cows and calves, the ordinary fees of that day. The high judicial stations he afterwards occupied, with such reputation to himself, and such benefit to the country, are a proud commentary on the spirit of our institutions ; and form the noblest incentives to industry and perseverance in the prosecution of a profession.

Mr. Todd was appointed clerk of the federal court for the district of Kentucky, the duties of which he performed until the separation from Virginia ; when he was appointed clerk of the court of appeals, under the new constitution. He held this office, until December 1801, when he was appointed by Governor Garrard fourth judge of the court of appeals ; an office created, it is believed, with the special object of adding some younger man to the bench, already filled by judges far advanced in life. In this station, he continued, until the resignation of Judge Muter, in 1806, when he was appointed, during the administration of Governor Greenup, to be Chief Justice. During the session of congress of 1806-7, the increase of business and of population in the western states, and the necessity of bringing into the supreme court some individual versed in the peculiar land law of those states, induced congress to extend the judiciary system, by consti-

tuting Kentucky, Tennessee and Ohio, as the seventh circuit, and adding another member to the supreme court. In filling this new office, Mr. Jefferson adopted a mode somewhat different from that pursued in later times. He requested each delegate from the states composing the circuit to communicate to him a nomination of their first and second choice. Judge Todd was the first or second upon the nomination of every delegate, although to some of them he was personally unknown. His appointment was the first intimation to him that he had been thought of for the office. In this high and arduous station, he continued until his death, February 7th, 1826.

In 1791, before the separation, he was commissioned by Governor Randolph of Virginia, to be captain of a company of cavalry, in Lincoln county; and in May of that year, he was appointed a lieutenant of a troop of cavalry, of which Major Thomas Allen, late clerk of Mercer county, was captain, and the Hon. James Brown, late minister to France, was a lieutenant, upon the campaign led against the Wea towns, on the Wabash, by General, afterwards Governor, Scott.

In June 1792, soon after the organization of the state, he was commissioned by Governor Shelby to be lieutenant-colonel of the militia of Lincoln county; and he was elected, without opposition, to the office of clerk of the House of Representatives of the General Assembly, for the first fifteen years of the state government. These various offices, civil and military, were indications of the estimation in which his character was held by his contemporaries; and are the more decided, as it is known that he never solicited any of them. It was a maxim with him so to act, that office should seek him—not that he should seek office.

In 1788, he married Elizabeth Harris, a niece of William Stewart, from Pennsylvania, an early adventurer to Kentucky, who fell in the battle of the Blue Licks. Five of their offspring, three sons and two daughters, arrived to maturity; only two survived him, the youngest daughter and the second son, Col. C. S. Todd, advantageously known as an officer of the late war, and as the first public agent of the United States in Colombia, South America. In 1811, Mrs. Todd died, and in 1812, Judge Todd married the widow of Major George Washington, a nephew of General Washington, and the youngest sister of Mrs. Madison, wife of the late President. He left one daughter and two sons by this marriage.

Mr. Todd possessed in an eminent degree the respect and esteem of his friends. His stability and dignity of character, united with manners peculiarly amiable, left a deep impression on all with whom he had intercourse. His deportment on the bench, as well as in the social circle, secured him universal veneration. The benevolence of his character was manifested in the patronage and support he extended to many indigent young friends and near relations, whole families of whom he advanced in life, by his friendly influence and means. There is one incident of this sort, which, being connected in some degree with his official career, deserves to be mentioned.

In 1805-6, some influential members of the legislature of Kentucky pre-

vailed on Justice Muter to resign, upon an assurance of being allowed a pension during life. He had devoted his property, and the prime of his days, to his country, in the revolutionary war; and was now in indigent circumstances, and far advanced in life. The pension was granted by the legislature, at the next session, but repealed at the second session after the grant. In the meantime, Judge Todd had succeeded his old friend as chief justice; and about the time the legislature repealed the pension, he was appointed a judge of the supreme court of the United States, with a salary more than double that of the chief justice of Kentucky. He proposed to his friend Muter to come and reside with him; especially, as a better adverse claim had deprived Muter of his home. The offer was accepted; and Muter, who had commanded a ship of war, during the revolution, with the rank of colonel; and who had, without reproach, presided in the civil tribunals of the state, from its early settlement, spent the remainder of his days upon the bounty of Judge Todd. As a testimony of his gratitude and affection, Muter, having no family, made Todd his heir and residuary legatee, though, at the time, his debts greatly exceed his available means. But, as though Heaven had decreed, that an act so generous in an individual, when contrasted with the ingratitude of the state, should not go unrewarded, even in this world, the revolutionary claims of Judge Muter have been acknowledged by congress, and the proceeds have descended to the widow and younger children of Judge Todd.

The land-law of Kentucky, originally an act of the assembly of Virginia of 1789, forms a peculiar system, and has been established chiefly upon principles of law and equity contained in decisions of the appellate court. To this result, the labors of Judge Todd eminently contributed, as well in the state court as in the supreme court of the United States. His opinions had a prevailing influence in the decisions of the state authorities; and his decisions in the circuit court were rarely reversed in the supreme court at Washington—an exalted tribunal, whose character is illustrated by the genius and attainments of Marshall, Story, Washington and Trimble. He was cherished with peculiar regard by his associates in the state and national tribunals; his judgment and acquaintance with the principles of the land-law having, in one instance in particular (the Holland Land Company of New York), rescued the reputation of the supreme court from the effects of an erroneous decision, which, at one time, nearly all of the judges would have pronounced, against his advice.

Mr. Todd entered upon the duties of judge of the supreme court, at the age of forty-two; the station required an experienced head upon a younger man's shoulders. He possessed, at that time, the abilities to act under the system which made it the duty of the judge to sit twice a year in the three western states, and once a year at Washington; but no constitution could long survive under the operation of this incongruous system; and the last years of Judge Todd were worn down with the duties of his office. A dyspepsy which impaired his general health, gradually reduced his

strength ; and for the last two years of his life, he rarely attended the court.

Judge Todd's person was finely proportioned, and his face a model of beauty and intelligence. The soundness of his judgment, the dignity of his manners, and the probity of his conduct, made him the esteemed associate of Shelby, and other patriotic statesmen who adorned the early annals of the state ; as well as of those who, in latter days, have shed imperishable lustre on the genius and character of the first republic in the wilderness of the great west. Posterity will long venerate the name of a citizen, who, among such contemporaries, by the force of his talents and the integrity of his heart, rose to the first offices of his country.

“Mr. Justice Todd possessed many qualities admirably fitted for the proper discharge of judicial functions. He had uncommon patience and candor in investigation ; great clearness and sagacity of judgment ; a cautious but steady energy ; a well-balanced independence ; a just respect for authority, and at the same time, an unflinching adherence to his own deliberate opinions of the law. His modesty imparted a grace to an integrity and singleness of heart, which won for him the general confidence of all who knew him. He was not ambitious of innovations upon the settled principles of the law ; but was content with the more unostentatious character of walking in the trodden paths of jurisprudence : *super antiquas vias legis*. From his diffident and retiring habits, it acquired a long acquaintance with him, justly to appreciate his juridical as well as his personal merits. His learning was of a useful and solid cast ; not perhaps as various or as comprehensive as that of some men ; but accurate, and transparent, and applicable to the daily purposes of the business of human life. In his knowledge of the local law of Kentucky, he was excelled by few ; and his brethren drew largely upon his resources, to administer that law, in the numerous cases which then crowded the docket of the supreme court from that judicial circuit. What he did not know, he never affected to possess ; but sedulously sought to acquire. He was content to learn, without assuming to dogmatize. Hence, he listened to arguments, for the purpose of instruction, and securing examination ; and not merely for that of confutation or debate. Among his associates, he enjoyed an enviable respect, which was constantly increasing as he became more familiarly known to them. His death was deemed by them a great public calamity ; and in the memory of those who survived him, his name has ever been cherished with a warm and affectionate remembrance.

No man ever clung to the constitution of the United States with a more strong and resolute attachment. And in the grave cases which were agitated in the supreme court of the United States, during his judicial life, he steadfastly supported the constitutional doctrines which Mr. Chief Justice MARSHALL promulgated, in the name of the court. It is to his honor, and it should be spoken, that, though bred in a different political school from that of the chief justice ; he never failed to sustain those great principles of

constitutional law on which the security of the Union depends. He never gave up to party, what he thought belonged to the country.

For some years before his death, he was sensible that his health was declining, and that he might soon leave the bench; to whose true honor and support he had been so long and so zealously devoted. To one of his brethren, who had the satisfaction of possessing his unreserved confidence, he often communicated his earnest hope that Mr. Justice Trimble might be his successor; and he bore a willing testimony to the extraordinary ability of that eminent judge. It affords a striking proof of his sagacity and foresight; and the event fully justified the wisdom of his choice. Although Mr. Justice Trimble occupied his station on the bench of the supreme court for a brief period only; yet he has left on the records of the court enduring monuments of talents and learning fully adequate to all the exigencies of the judicial office. To both these distinguished men, under such circumstances, we may well apply the touching panegyric of the poet:

“Fortunati ambo!——
Nulla dies unquam memori vos eximet *Ævo*.”