

THE HON. CHARLES R. KINNEY

Leader of The Albemarle Bar From 1825 to 1845.

(From the Wake Forest Student.)
By Pulaski Cowper and R. B. Creevey.
"The world has never known its greatest men."

Charles R. Kinney, the subject of this sketch, was trained and hardened from infancy in the furnace of adversity fortune. When a child he fell from his nurse's arms and was deformed for life. That fall left him with a hump between his shoulders, which marred the symmetry of nature's workmanship. His head was a dome of thought, but was not puffed upon his shoulders. His shoulders were broad, strong and capable of the strenuous work and endurance of an athlete. His arms were muscular, long and disproportioned to the upper part of his person. He was alert, active and of nervous temperament—delighted in nimble out-door sports—was a spirited horseman, and was master of feats of horsemanship that were unequalled by his fellows. Nature had cast him in a mould that called for six feet, but an accident in infancy had reduced it to five feet seven inches in height. Nature made him an Apollo. His voice was an Aeolian harp, and its strings were tuned to all the notes of human passion, from the melting moods of tender charity to the alto notes of the storm king's wrath.

Such is a photograph of the personal aspect and outline of Charles R. Kinney, who for twenty years—from 1825 to 1845—after an unsuccessful struggle with the surging wave of adverse fate, rose by an apparent accident upon the crest of the wave, and for over twenty years there held sway, almost without a peer or a parallel, in the Albemarle section of North Carolina.

Born and reared in Connecticut—arrived at the age of manhood after obtaining a classical education in the primary schools of that educational State, he entered upon a mercantile life in the town of his nativity; but Providence had other work for him to do, in a distant section, among strangers, a work from which he was not to be diverted by the misfortunes of childhood and age. He failed in merchandise. While a merchant he had married, and when a broken merchant he had under his tender care a wife and infant child. In his anxiety he thought of a brother who had come South to Louisiana some years before, and from New Orleans had gone to Mobile, Alabama, and was a lawyer there. His name was Asa Kinney. In the changes of a chequered life, his name had become changed from Kinney, in Connecticut, to Kinnie, in New Orleans; but they recognized and kept up their relationship.

On his way to Mobile, Charles R. Kinney got as far as Norfolk, Va., and was sitting in the hotel where he stopped, and a gentleman from Camden county, N. C., by the name of Noah Gregory came in, and they being alone, got in a conversation, when young Kinney told him he was on his way to Mobile, Ala., but was a stranger in Norfolk, and had exhausted his means of travel. Mr. Gregory offered him a place as private teacher to his children in Camden county. He accepted the position and came out to Camden county the next day.

He came over to Elizabeth City, occasionally, in times of leisure, and formed the acquaintance there of John L. Bailey, a leading lawyer, and afterwards a distinguished judge of the Superior court of law and equity of the State of North Carolina, and Mr. Bailey proposed to him to study law in his office. The offer was accepted and they commenced a friendship that lasted until death.

Charles R. Kinney became the fast friend of John L. Bailey, and it was to the kindness and aid of that good man that Charles R. Kinney was enabled to attend the courts of his small circuit, after he came to Elizabeth City to live. Here and there it was that Mr. Kinney began the ascent of that steep where fame presides—a steep which he did not ascend, but after trials and struggles before which anyone would have fallen in despair, but one who was clothed by the Deity with the wrath of the immortals.

About 1825, Mr. Kinney waxed strong in professional fame and practice. He made friends on his circuit of courts, and was recognized, as a charming conversationalist. It is within living memory that ambitious mothers in the town of Edenton kept their children up beyond bed time to hear him talk, and to be improved by his conversation when a visit was expected from Charles R. Kinney. And yet charming and entertaining as he was as a grave conversationalist, he was an utter failure in the role of anecdote, and he, apparently, was unconscious of the defect.

Mr. Kinney once met Hamilton C. Jones at the Supreme court in Raleigh, and heard him tell his story of Cousin Sallie Dillard. At the next term of the Circuit court he told the brethren of the bar that he had a treat for them of a story he heard in Raleigh, which he would repeat to them when they had leisure. At Gates court, after supper, the lawyers were assembled in the sitting room of the hotel, and Mr. Kinney made good his promise. He looked around to see that all were present, when the court scene of the verbose witness who couldn't testify as to a fight at "Captain Rice's," unless he began at the beginning, and when interrupted tried to begin anew at "Captain Rice, he gin a treat." The judge constantly stopped him, and ordered him to tell about the affray at Captain Rice's; and the witness as constantly commenced his testimony with, "And Captain Rice, he gin a treat." The lawyers around were enjoying the double treat of the persistent witness and the bungling reciter. At length Malachi Haughton, of Edenton, who never said a funny thing, and never knew a joke, in a loud and somewhat harsh tone, said: "Kinney, damn the judge, why don't he let the witness go on?"—and Haughton never did know why the lawyers turned from Mr. Kinney and laughed at him.

Mr. Kinney was now getting to be a leader and a man of mark, but distinction has its penalties, and he was not the exception. When Kinney's star twinkled in the horizon, the star of Frederick Shepard was in full effulgence. Shepard was of fine physique, brave, ambitious, intelligent, aspiring,

high-bred, rich, and a born leader of young men. The young men of Elizabeth City bowed at his beck, and readily did his bidding. Kinney was not of that make of man. No toady was in his composition. Shepard finding he would not fall into the procession of his following, determined to crush him. He unleashed his agents of irritation. Kinney was ridiculed, denounced, insulted—his personal infirmities divulged—his "vociferous devotions" ridiculed. He was held up to public and private scorn as a Yankee "pig," without lineage and unworthy the association of Southern gentlemen. A fictitious public sentiment was created against him, and he was surrounded with a cordon of social fire that made his life a foretaste of the very infernal regions. Criminations and recriminations, threat and defiance, street encounters without much damage, publications and counter publications—challenges to mortal combat given and declined—repeated and accepted with protests of disapproval, all followed.

The grave and quiet citizenship was with Mr. Kinney; the young Hotspurs and aggressive citizenship ardently did the dictate of Shepard. The street corners were black with posters pro and con. From the character of the contestants Kinney was on the defensive. To the charge that his family nest in Connecticut was low and foul, he replied with fiery indignation: "She who bore me," he said, "died ere I had learned to lip a mother's name. My father yet lives, old and venerable. He never had the honor of sending or accepting a challenge. Ere he had reached the threshold of manhood he bared his bosom to the battle's rage in the eventful struggle that separated the American colonies from British dependence."

Had these fires confined themselves to Elizabeth City, the damage would not

Fowls slept on the ground the night before. Collins and Henderson slept here, or were otherwise delayed; and while on the way to the ground were arrested by a constable and a justice of the peace, and all bound over to keep the peace.

All this historic fight in the District produced but one sound fruit, a drama, entitled, "War Without Fighting," written by Charles R. Kinney, and credited to "Serjeant Gab," which are all that have not passed from memory.

When Mr. Kinney fought through the "War Without Fighting," he was a briefless lawyer feeding on the scant crumbs that fell from the table of the professional Dives.

But what is bred in the bone is bound to come out in the flesh, saith the proverb. In the life of the successful lawyer, if closely observed, there is generally some pivotal case on which his success turns, and which is the stepping stone that leads on to fortune. Mr. Kinney was no exception. His pivotal case in the lower counties was State vs. John Chittim, charged with being an accessory before the fact, in the murder of Joseph Lindsey of Currituck county. Chittim was a wealthy man, Lindsey was an old man, and poor and had a pretty young wife upon whom Chittim looked as Potiphar's wife upon young Joseph of Egypt. Thereby hangs a tragedy, and on that tragedy hung the fate of Charles R. Kinney.

March, a slave, murdered Lindsey, was tried and convicted, and Chittim was put on trial as an accessory before the fact. Chittim retained every lawyer that attended Currituck court in his defense, with the sole exception of Kinney. Mr. Iredell, who had been solicitor for the State, was appointed judge on the circuit, vice Judge Lovry, deceased, by the Governor of the State, and he appointed Charles R. Kinney to prosecute for the State, there being no other attorney unemployed to appoint. Mr. Kinney procured a continuance, and the case was tried at the succeeding term, Judge Strange presiding. He made an able argument, having had

"This suggestion recalls to my memory a case tried before me while acting as one of the judges of the Superior Courts of Law and Equity in the county of Perquimans. The plaintiff owned a mill on the outlet of a swamp some miles below its entrance. The defendant produced but one sound fruit, a drama, entitled, "War Without Fighting," written by Charles R. Kinney, and credited to "Serjeant Gab," which are all that have not passed from memory.

The daughter of his first wife married an Episcopal minister by the name of Harvey Stanly, who was a nephew of the late distinguished John Stanly, stricken with paralysis while speaking in the old Governor's Mansion at the foot of Fayetteville street, when it was occupied by the General Assembly of the State. Some of Mr. Harvey Stanly's sons were noted public men in Maryland, whose descendants may now be living in that State.

Mr. Kinney's second wife was a Miss Davis, a daughter of Dr. Davis, of Currituck county. There were several children by this marriage, and the last one of his children, a daughter, died near South Mills, in Camden county, within the last twelve months. As far as I have knowledge, there are now living no descendants or representatives of this second marriage. Death is sometimes called a man's great enemy, an enemy that he can not conquer. Indeed, it is man's greatest friend, heals all wounds, soothes all sorrows, allays all bitterness, buries all animosities.

In the Fall Circuit of Courts, Mr. Kinney, who had been for several months in feeble health, resumed his active practice, after recuperating his health at the Virginia White Sulphur Springs. He attended Chowan Superior Court at Edenton, and was employed in all the leading cases on the docket. The Norcom and Mesmer case was for trial, and was of intense interest. It had torn the community into hostile factions, and had much embittered old friendships. Mr. Kinney was employed in it. The first witness called was stubborn, and Mr. Kinney gave him a scorching examination. In the progress of the examination he became excited—had a hemorrhage, and had to leave the court room. He ordered his horse, and left for his home near Elizabeth City. In passing through Hertford, Perquimans county, twelve miles from Edenton, he had a second large hemorrhage, and was taken into Dr. David Johnson's office, where, with a few friends near, he expired on the 9th day of October, 1845, with the words addressed to a young friend whom he recognized: "I know my fate. I am not alarmed. My wife and children, that's all."

Thus died Charles R. Kinney, one of the brightest stars in the legal galaxy of Eastern North Carolina. From the fall of his sudden attack he doubtless felt his end was near, and made an early effort to reach the bosom of his family, that he might die in their presence and embrace. His efforts failed, and he fell by the wayside, not, however, in the land of strangers, but at the home of friends. His death was a great loss, and the loss was universally felt throughout his section. No man controlled a greater influence, and no death created a more heartfelt vacancy.

He was buried in the Episcopal church yard in Elizabeth City. No monument marks his silent resting place, but it is in early contemplation, both by the county of Pasquotank and the members of the bar, to erect a suitable monument over his remains.

It is meet that the sacred spot, now overgrown with the weeds and the briars, and where the poisonous reptile may nestle in security, should be replaced with a monument commemorative of the deeds and services of one of the most useful and eminent men that ever lived in the Albemarle section.

The intent of this short imperfect sketch will have been accomplished, if it shall evoke in the minds of the rising generation an impulse or an inspiration to emulate a life whose example is worthy to be followed, and whose record it is to be imitated.

*Col Creevey has so aided me in material and facts that I have made this sketch our joint effort. Without his aid I could have made no headway; and far more is entitled to him than to me. The association of his name will add interest, and secure a perusal that my name, alone, could in no wise have invited or secured.

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EMPEROR WILLIAM OF GERMANY.

The Emperor of Germany has a running ear. Just think of it; a man at whose beck one of the strongest armies and navies of the whole earth could be set in motion, a man whose rule is absolute over the country of medical universities, a man whose slightest caprice could press into service the most noted savants and philosophers on earth, has a running ear and is unable to find a cure!

Now contrast the experience of the following citizens of the United States with the Emperor of Germany. Like the Emperor, they failed to find a cure. But, unlike the Emperor, they happened to be plain citizens of the United States, rather than the center of the inner court of the most exclusive and carefully guarded aristocracy of the world. In his position nothing but the remedies that have met the approval of the most fastidious medical orthodox could ever reach him. In the position of these American citizens, however, they had

proved. They were at perfect liberty to try anything they chose to. They chose to try the remedy that had cured others like themselves, and thus they found a cure.

Running of the ears, deafness or all other affections of the middle ear, are due primarily to chronic catarrh. Running of the ears properly called chronic suppurative catarrh. Pe-ru-na will cure catarrh of the middle ear, as well as catarrh located elsewhere. This has been proven over and over again in innumerable cases besides the ones just mentioned. Deafness and running of the ears are but symptoms of chronic catarrh of the middle ear. Pe-ru-na cures the catarrh, when the symptoms disappear, whether it be running ears or deafness or any other affection of the middle ear. The remedy is compounded according to the formula originally devised by Dr. Hartman of the Surgical Hotel, Columbus, O., the noted writer

and lecturer on all catarrhal diseases. The second case, Mr. H. Walter Brady, Cascade, Ark., is a case of suppuration of the middle ear of 14 years' standing. He says: "I had running ears, and for 14 years I was almost an invalid. It was so offensive that I excluded myself from all society. I received a pamphlet from Dr. Hartman entitled 'The Ills of Life.' He wrote me that the remedy was simple and that I could cure myself. After using \$17 worth of his remedies I was entirely cured. The world could not buy my fortune. I recommend Pe-ru-na to all as the best medicine sold."

The third case is that of Rev. S. H. Renfro, Norborne, Mo., who had running ears. He says: "My head gathered and broke and my ears ran terribly. I tried several remedies with no relief. At last I got a bottle of Pe-ru-na and it did me so much good that I kept on using it; am on the fourth bottle, and must say it has removed all my bad symptoms. My head does not pain any more, my ears have stopped running and I feel a great deal better."

The next is the case of Master Murphy, of Iatan, Mitchell county, Texas, who had been troubled with running ears ever since he was nine months old. After a thorough course of treatment with Pe-ru-na he was entirely cured, and is now rejoicing in the fact that he is entirely free from his horrible disease. A free book treating catarrh in all of its different phases and stages, written by Dr. Hartman, will be sent free, by addressing The Pe-ru-na Drug Manufacturing Co., Columbus, Ohio.



C. R. Kinney.

have been so serious, but the contagion of strife spread out until the Albemarle became one vast military camp in which the best elements of the population from Gates to Currituck became involved.

From 1828 to 1833 the smell of gunpowder and strife was in the air. The first spread of the contagion was to Hertford, in Perquimans county. Jesse Wilson was the leading lawyer in that community. He visited Elizabeth City quite often. He was not particularly combative per se, but he liked the excitement of controversy, though not because the snuff of danger was from afar. Wilson was full of wit and pyrotechnic expression. He readily fell into the ranks of the Shepard party. He was easily indiscreet in expressions, and said some ugly words about Mr. Kinney. Mr. Kinney's war blood was up, and he promptly challenged Mr. Wilson to mortal combat. Augustus Moore, of Edenton, (father of Augustus M. Moore, of Greenville, N. C.), who had been a law student of Kinney, and was his personal friend, bore the challenge to Wilson. Moore was a careful, prudent man, and not a seeker of personal controversy, and sought to avoid them, but would fight if crowded and forced to it. Of the two men he was considerably less dangerous than Kinney, and Wilson was evidently so impressed, and Wilson adroitly turned from Kinney and made a bitter and aggressive fight on Moore, which was followed by a street encounter on the corner where the Albemarle Hotel now stands. In that encounter Wilson would have been killed but for the interference of John B. Muse, an esteemed young lawyer of Elizabeth City, who was neutral in the fight. The encounter between Moore and Wilson was followed by innumerable paper bullets, finally ending in a suit for libel.

In 1830 the contagion had spread to Edenton. At Edenton court, Hugh W. Collins, a young man of the town, of wealth and influence, who had a clientage of young men of Edenton hardly less devoted than the following of Shepard in Elizabeth City, in a conversation with William Pugh, of Gatesville, used some expressions derogatory to Mr. Kinney. Pugh was a friend of Kinney, as brave as a Bengal-tiger, and promptly presented it with some severity, for which Collins challenged Pugh. Alexander M. Henderson bore the challenge. It was promptly accepted by Pugh, and Henderson was referred to Dr. Jephtha Fowles, of Gatesville, the friend of Pugh, to arrange the terms of a hostile meeting. Fowles was a quiet, sensible man, whose courage had been tested in many personal conflicts. Pugh and Fowles were known to be born fighters, and Collins and Henderson had the pride of birth and family lineage, and it was readily considered that the quarrel between Pugh and Collins would produce the first fruits of blood. The day was appointed and the place of meeting. Pugh and

ample time for preparation. Chittim was convicted, and was subsequently executed. This was in 1828. After the trial, Mr. Kinney was employed in every case on the docket, in an hour after he went out of the court house.

Mr. Kinney was especially kind and courteous to the young members of the bar, and stood ready at all times to render them aid and encouragement. On one occasion the late Governor Bragg and the late William W. Cherry were his opposing counsel in a very important case, Beale vs. Askew. Bragg and Cherry were very young men, and reared in their speeches to the embarrassment they felt in confronting their able opponent. Mr. Kinney in his speech spoke in most complimentary terms of their fine efforts and strong argument, and predicted a grand future for them both. Governor Bragg's record is well known, and though Mr. Cherry died young, yet no man in the east has ever made a greater reputation at his age, and it may be safely said that Mr. Cherry was the finest speaker the State has ever produced.

Mr. Kinney wrote, compiled and published a law book entitled "Kinney's Compendium," which received the endorsement of the bar of the State.

Ex-Attorney General Kenan called my attention to the case of Williamson vs. Canal Company, 70 N. C. 478, in which the late Chief Justice Pearson pays a just compliment to the subject of this sketch. It was a case where the plaintiff sued the defendant for damages in diverting water from his mill. The canal was cut in 1873, but it did not appear at what time the mill was built. On the question of notice and occupancy, the Chief Justice says: "It may be that the notice of occupancy by the defendant will relate back to the original charter. * * * One who starts a deer and is in pursuit has acquired an inchoate title by occupancy and no third person has a right to kill the animal before his hounds, for there is notice of an intention to appropriate the thing which is the subject of title by occupancy, and the original charter, like 'the cry of the dogs' gives notice. Upon our consultation it was suggested by Justice Rodman, who comes from a land that abounds in swamps and lakes, that notice should be presumed from the nature of the thing, for when 20,000 acres of land, that by draining can be made fit for the purposes of agriculture, are covered by water one or two feet deep, every one must know that at some time or other the swamp will be drained, and the plaintiff will be presumed to have built his mill with an intention to use the water of the swamp until it was drained, and after that to use such of the water only as was left to flow through the outlet to his mill. There is force in this suggestion and we shall be pleased to have it discussed, should the case come before us a second time."

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