

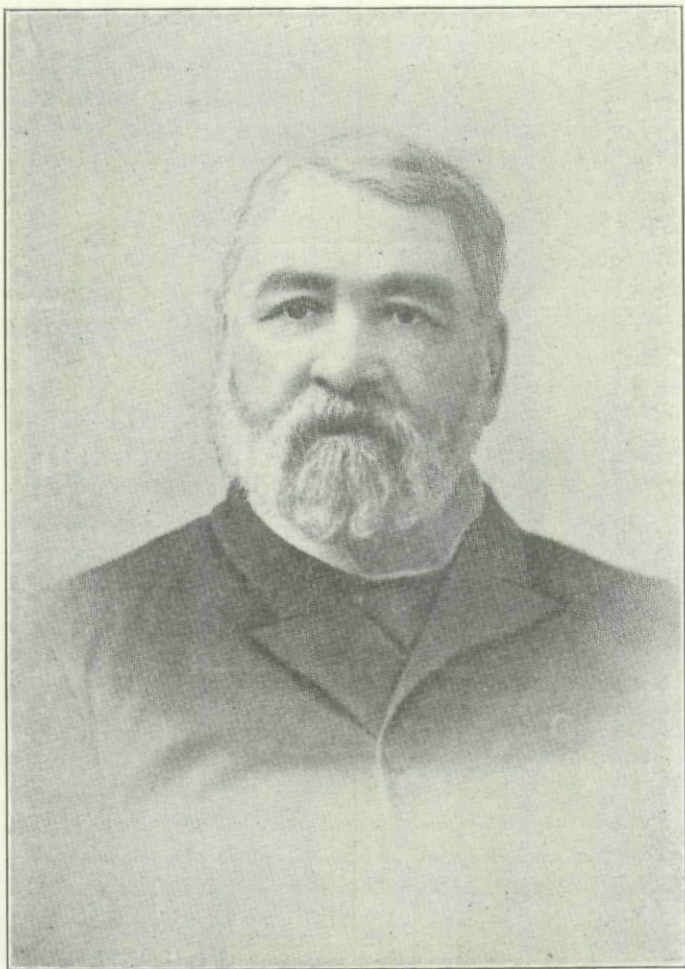
the nursery. The business was successfully carried on until 1848, when Henderson concluded to take Horace Greeley's advice to go west, and after filling a box with soil, he planted about 300 root grafts in it, and loaded the same on to his wagon and started across the plains for Oregon, where he arrived in due time, after a long and tedious journey, with his trees in good condition, some of them having made a growth of three feet on the trip. This was truly pioneer horticulture, and evinced a zeal worthy of the cause. John Lewelling remained and continued the nursery business at Salem until 1850, when he crossed the plains, and joined Henderson in Oregon in the nursery business until 1852, when he returned to Iowa, and during the summer of 1852 sold out his interest in the business in Oregon, and moved to San Francisco in 1853, and in 1854 planted a large orchard at Mission, San Jose, for E. L. Beard.

JOHN FITCH KINNEY

John Fitch Kinney was born in New Haven, Oswego County, New York, April 2, 1816. His parents were Stephen F. and Abby (Brockway) Kinney. He attended public school, and later private schools at New Haven and at Hannibal, New York. He also attended the Rensselaer Academy at Oswego, New York, for two years. In 1835 he took up the study of law with Orville Robinson in Mexico, New York, and after two years, or in 1837, removed to Marysville, Ohio. Here he became acquainted with Augustus Hall, a young lawyer from Batavia, New York, with whom he read law one year.

Mr. Kinney at this time became acquainted with Mr. Hall's sister, Hannah D. Hall, whom he married at Mount Vernon, Ohio, January 29, 1839. This marriage doubtless exerted a decided influence on his early public career. Her three brothers, Jonathan C., Augustus and Benjamin F. Hall, were all very influential in Iowa's early history, and destined to be contemporaneous with Mr. Kinney's early professional life in Iowa, Jonathan C. attaining a very large practice in early Iowa courts and becoming a member of the Supreme Court. Augustus became a member of Congress from Iowa and later chief justice of Nebraska Territory.

Mr. Kinney was admitted to the bar at Columbus, Ohio, in 1838. He began practice at Marysville, but in 1840 removed to Mount Vernon where he practiced until 1844. In the summer



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of that year he removed to West Point, Lee County, Iowa Territory, and engaged in the practice, West Point then being the county seat of Lee County. On the convening of the Seventh Legislative Assembly of Iowa Territory at Iowa City, May 5, 1845, he was chosen secretary of the Council, and served during the sessions of that assembly, and was elected to the same position by the Eighth Assembly, which convened December 1, 1845. In 1846 he was appointed district attorney for Lee County, and June 12, 1847, when but thirty-one years old, was appointed by Governor Briggs a member of the Supreme Court of the new state. He was elected to that position by the Second General Assembly in 1848 for a term of six years, but in August, 1853, he resigned, President Pierce having appointed him chief justice of the Supreme Court of Utah Territory.

Utah was created a territory September 9, 1850. Brigham Young was appointed governor and B. D. Harris of Vermont chief justice. These and the other territorial appointments were made September 20, 1850, but Justice Harris and the eastern appointees did not arrive until the summer of 1851, and assembled for duty in August. In a few weeks their disagreements with Governor Brigham Young and the Territorial Legislature were so pronounced and the antagonisms so intense that the appointees, including Chief Justice Harris, returned to their homes in the East. Lazarius Reid of New York was then appointed chief justice, went to Utah, remained about a year and returned home.¹ Kinney was Reid's successor. Justice Kinney resigned from the Supreme Court of Iowa in January, 1854. During the early summer following he drove overland, taking his family with him, and assumed his judicial duties in Utah. He at once became popular with the people of Utah and worked in harmony with Governor Brigham Young.² In the spring of 1856 the family returned to their former home in Iowa and in 1857 Judge Kinney, having been superseded as chief justice by the appointment of D. R. Eckles of Indiana, removed with his family to Nebraska City, Nebraska Territory, and entered the practice of law there. In June, 1860, President Buchanan again appointed

¹"History of Utah" by H. H. Bancroft, pp. 453-62.

²Letter to editor of the *ANNALS* from Andrew Jensen, historian of Church of Latter Day Saints, Salt Lake City, Utah, February 16, 1926.

him chief justice of Utah Territory. He went by stage to Utah, leaving his family in the Nebraska City home. By this time Brigham Young had been superseded as governor and the Federal government was trying to enforce law through its appointees. The Mormons resented it, especially the legislation against polygamy, and frequent clashes were occurring until almost a state of war existed. A detachment of United States troops was in Salt Lake City to defend the officials, if necessary, and enforce their authority. During these controversies Judge Kinney shielded the church dignitaries from molestation by his colleagues. "When it was believed that the arrest of Brigham Young was contemplated on the ground he had married another wife, Judge Kinney, as a safeguard and at his [Young's] own request, ordered him into custody for violating the act for the suppression of polygamy. The writ was served by the marshal without the aid of a posse and the prisoner, attended by a few intimate friends, promptly appeared at the State House, and the accused admitted to bail, awaiting the action of the grand jury. Although the prophet's recent marriage was well known throughout the city, no bill was found against him."³

Concerning this period of Judge Kinney's public service, Andrew Jensen, historian of the church, quoted above, says, "Judge Kinney became very much liked by the majority of the people of Utah, so much so that other Federal officers who were continually waging warfare against the 'Mormons' planned for his removal." Mr. Jensen also quotes from an obituary published at Salt Lake City at the time of Judge Kinney's death, "Judge Kinney was accounted by all who knew him as a splendid type of manhood. His death will be mourned by many and to the earlier settlers of Utah he will be remembered as a staunch friend and a just judge."

In the summer of 1862 when at Nebraska City on a leave of absence he was nominated for delegate to Congress by the Democrats of that territory, but at the election was defeated by a small majority. He then returned to Utah to resume his duties on the bench. In June, 1863, he was superseded in that position by the appointment of John Titus of Pennsylvania, on the ground that as he had run for Congress in Nebraska he had disqualified

³"History of Utah" by H. H. Bancroft, pp. 614-15.

himself for remaining on the bench in Utah. However, it was believed by his Utah friends that the principal cause of his removal was the attitude of sympathy he had shown them in the conduct of his office.

At the following general election in Utah August 3, 1863, Judge Kinney was elected the delegate from that territory to the Thirty-eighth Congress. In the first session of that Congress, on January 25, 1864, he introduced a bill for the admission of Utah as a state.

On January 27, 1864, Judge Kinney made a speech in the House of Representatives in reply to Fernando Wood, Democrat, of New York, defending his constituents, the people of Utah. Mr. Wood had referred to them as "profligate outcasts, who have always been hostile to our moral and political institutions." Judge Kinney briefly reviewed some of the troubles the Federal government had had with the Mormons, and asserted the latter had not been in rebellion against the government, and even now were loyal to the cause of the Union, while Mr. Wood himself had characterized the prosecution of the war against the South as "a hellish crusade of blood and famine." Judge Kinney thus in this speech, defended his constituents, and emphasized their and his loyalty to the Union cause.⁴

On March 17 Judge Kinney made an extended, able and eloquent speech urging statehood for Utah. He argued the constitutional reasons for not longer depriving its people of republican government, and defended them from charges of disloyalty to the Federal authorities.⁵ At the close of his service in Congress in 1865 he returned to Nebraska City and engaged in law practice, his family having remained there from 1857.

In February, 1867, President Johnson appointed him a member of a commission to visit the Sioux Indians and inquire into the Fort Phil Kearney massacre of December, 1866. This work principally devolved on Judge Kinney, and was satisfactorily accomplished. For several years previous to 1882 he was a member of the Nebraska State Agricultural Board. In 1882 he received the complimentary vote of the Democratic members of the Nebraska Legislature for United States senator. He continued in

⁴See the Congressional Globe, Part I, First Session Thirty-eighth Congress, pp. 372-73.

⁵Ibid, pp. 1170-73.

the practice of law at Nebraska City until June 27, 1884, when President Arthur appointed him agent of the Sioux Indians at Yankton, Dakota. Confirmation of the appointment was made December 11, 1884. He continued in this position until January 1, 1889, when he resigned and returned to Nebraska City. On January 29, 1889, he and his wife celebrated their golden wedding in the presence of their children and grandchildren. The same year they removed to San Diego, California, where Mrs. Kinney died May 1, 1895. In 1897 he became president of the Iowa Association of San Diego County, California.

In 1899 Judge Kinney returned to Salt Lake City, married a Mormon woman, and continued to reside there until his death August 16, 1902. Burial was in San Diego, California.

As a member of the Iowa Supreme Court, Judge Kinney established a reputation for ability and judicial fairness. Edward H. Stiles in his "Recollections of Notable Lawyers of Early Iowa," pp. 332-33, says, "He was a well educated, talented, bright young lawyer, and soon rose to prominence in the state. * * * He displayed great acumen and judicial ability. * * * Had he remained in Iowa, which he left while comparatively a young man, he would undoubtedly have added to his already excellent reputation there as a lawyer and a judge."

The *St. Louis Intelligencer* of the 5th says: During the past three or four days not less than one thousand emigrants of the Mormon persuasion have passed this city on their way to the Great Salt Lake. They are mostly English emigrants, and from appearances, quite intelligent as a body, and such as would make good citizens in any country.—*The Frontier Guardian*, Kaneshville (Council Bluffs), Iowa, June 12, 1850. (In the Newspaper Division of the Historical, Memorial and Art Department of Iowa.)

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