Kinchen, John [1]

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by Henry W. Lewis, 1988

ca. 1745–94

John Kinchen, lawyer, Revolutionary patriot, and legislator, was born at the home of his father, William Kinchen, Jr., a well-to-do merchant-planter who settled on the south side of the Roanoke River [2] a few miles below Halifax; at the time of his early death in 1758, William represented Edgecombe County [3] in the Assembly [4]. John's mother, Mary, was the daughter of John Dawson [5] of Northampton, a member of the Council. [6] His Kinchen grandfather was the subject of one of William Byrd's rare compliments: "[A] man of Figure and Authority in N Carolina," wrote Byrd. "By the Benefit of a little pains, and good Management, this worthy Magistrate lives in much Affluence."

The well-known lawyer, Blake Baker [7], a neighbor and relation, was chosen guardian for William Kinchen's children, and it is virtually certain that John Kinchen read law under his guidance. By 1767 the young man had entered practice in Halifax and had begun amassing an interesting library. The earlier volumes that he owned included the works of Francis Bacon, Algernon Sidney, John Locke, Voltaire's *Lettres Philosophiques*, and Montesquieu's *De l'Esprit des Lois*. He bought Laurence Sterne's sermons as well as his *Sentimental Journey*, and he acquired Smollett's *Roderick Random*.

By 1770 Kinchen had decided to pursue his legal career in the rapidly developing area of Orange County [8]. He sold the 1,300 acres in Occoneechee Neck, Northampton County [9], that he had inherited from his father and moved to Hillsborough. In 1774 he sold his house and lots in Halifax to John Webb of Chowan, the man who probably took over Kinchen's Halifax practice. In Orange Kinchen soon attracted as a client "one of the most cautious and successful business men" of the colony, the Scottish merchant, William Johnston [10]. Within a few years he was recognized "as a wise counsellor, good business man, and an excellent lawyer." In the St. Mary's community, a few miles northeast of the county seat, Kinchen purchased a plantation residence that he called Tar Hill, but his law office seems to have been located in Hillsborough. He continued to add books to his shelves—among them, the complete works of Alexander Pope and James Thomson's *The Seasons*, Hume's *Essays*, and the writings of the Edinburgh "common sense" philosophers, Thomas Reid and Dugald Stewart. Nor was he slow to acquire the Parliamentary speeches of Edmund Burke when they appeared in 1774 and 1775.

In the right place at the right time, Kinchen gained the confidence of his fellow citizens. This trust was first demonstrated when he—together with Thomas Hart, Thomas Burke [11], and Francis Nash [12]—was chosen to represent Orange County in the Provincial Congress [4] that met in New Bern in April 1775. The county again appointed him as a delegate to the Third Provincial Congress that met in Hillsborough in August. During that session, Kinchen and Thomas Person [13] of Granville were named to represent the newly created Hillsborough District in the Provincial Council, as near an executive head as the province boasted. He served on the Council in 1775 and 1776. In March of the latter year, carrying out a recommendation of the Continental Congress [14], the Council chose Kinchen and Abner Nash [15] as North Carolina's committee to confer in Charleston with similar representatives from South Carolina and Georgia "upon weighty and important matters relative to the defence and security of these colonies."

In the Fourth Provincial Congress [16] meeting in Halifax in April 1776, Kinchen headed the delegation which included General John Butler [17], Nathaniel Rochester [18], Thomas Burke, and James Saunders. It was in this body that Kinchen's Whig reliability was most strongly manifested: he was made a member of the committee responsible for setting the agenda of the Congress, the committee on ways and means, the committee to issue paper money, and the committee to procure guns and bayonets. Most significantly, he was appointed to a special committee to consider "the usurpations and violences attempted and committed by the King and Parliament of Britain against America, and the further measures to be taken for frustrating them, and for the better defence of the province." The other members of this committee were Cornelius Harnett [19], Allen Jones [20], Thomas Burke, Abner Nash, Thomas Person, and Thomas Jones. In reporting this action of the Congress a century later, William L. Saunders [21] wrote: "The committee was an exceptionally strong one, every member of it having a notable record, unless it be Mr. Kinchen, of Orange, about whom not much is now known, save that he was a lawyer and lived in Hillsborough. The fact, however, that he was put upon that committee is strong proof that he was a strong man, for it was a committee upon which there was no room for mere figure heads." Four days after their appointment, these seven men presented for adoption the resolution that empowered North Carolina's delegation in the Continental Congress "to concur with the delegates of the other colonies in declaring Independency," a resolution that was adopted unanimously. Echoing Saunders, Stephen B. Weeks [22] wrote that "the very fact that the officers of that Congress thought enough of Kinchen to put him into such good company is perhaps the very best possible proof of his ability and sufficiency."

The election to choose delegates from Orange for the Fourth Provincial Congress scheduled for 1777 was a spirited one; its results demonstrated that John Kinchen, who was not selected, held less radical views than the successful candidates. Early in 1777, however, in an attempt to alleviate problems that had arisen from the breakdown in the court system,

Governor Richard Caswell [23] directed Kinchen and John Penn [24] of Granville to sit as judges of the special Court of Oyer and Terminer [25] called for the Hillsborough District. When he received the commission, Kinchen wrote Penn that he "could not by any means reconcile [himself], acting in so important a department without a co-adjutor . . . especially as the criminal laws of this State are now rendered extremely vague & uncertain." This was a conservative and lawyerly position; hence it is surprising that Penn responded with "a very faint" excuse, yet giving Kinchen "to understand that he would sit in conjunction with [him]." When Penn failed to appear at the time set for the court to open, Kinchen declined to sit alone. Fearing that this action might be misrepresented, he wrote to Governor Caswell: "[I]t is with real concern, I inform your Excellency, that together with Mr. Penn's inflexible obstinancy, & my diffidence from consciousness of my inexperience & want of abilities to discharge the very important & arduous duty of a Judge, there was no Court." The Hillsborough lawyer, Francis Nash, considered Kinchen to be Penn's superior as an attorney, but he interpreted this incident as evidence that Kinchen was "very modest and self-distrustful in public affairs."

Modest he may have been, but this characteristic did not deter the citizens of Orange from electing Kinchen to represent them in the state senate of 1779. In that post he played a conservative role, introducing a bill to set up an academy in Hillsborough [26] and two bills dealing with problems posed by the institution of slavery, one designed to prevent the theft of slaves and another to provide for the sale of slaves who had been freed illegally.

In October 1779, when the General Assembly was called on to choose two persons to fill positions in North Carolina's delegation to the Continental Congress, John Kinchen was one of the six nominees. His failure to be elected on that occasion was the first in a series of similar defeats extending over the next few years. Notwithstanding, he was named to the important Board of Auditors created to try to bring order out of the financial chaos in which the new state found itself. In recognition of his efforts to obtain an academy for his constituents, Kinchen was named a trustee of Science Hall, the resulting institution. In 1781, for reasons not disclosed in the records, he resigned from the Board of Auditors, only to be nominated almost immediately for the Council of State [27], a post to which he was not elected.

One of the most publicized trials of North Carolina's Revolutionary period occurred in March 1782. Three prominent Tories [28]—Colonel Samuel Bryan [29], Lieutenant Colonel John Hampton, and Captain Nicholas White—had been arrested and were tried in Salisbury. The able Alfred Moore [30] was the prosecutor; the defendants were represented by an equally eminent team of lawyers: William R. Davie [31], Richard Henderson [32], John Penn [24], and John Kinchen. Theirs was an unpopular assignment, for public sentiment ran strongly for conviction. Despite their efforts, their clients were convicted and sentenced to die. Davie, Henderson, and Kinchen sent Governor Thomas Burke the record of the trial and petitioned for clemency, stating that they felt that executing these soldiers would be a reflection on the state. Burke concurred, pardoned the men, and exchanged them for American officers in British hands. It was now apparent that John Kinchen, although clearly a patriot, had aligned himself with the conservative camp.

After ten years in Orange County, Kinchen decided to return to his native Halifax. Although the precise date of his (probable) marriage to Mary Martin, the daughter of James Martin of that county, is unknown, the age of their son, Henry Martin, suggests that it took place in the mid-1770s. Census records indicate that Mary Martin Kinchen died not many years after the birth of their son. This change in Kinchen's domestic life may have accounted for his leaving Hillsborough; but another possibility is that his growing conservatism undermined his political popularity in Orange. Whatever the reason, in 1780 Kinchen reopened his law practice in Halifax; he seems also to have begun to develop mercantile interests in the Roanoke valley. In October of that year he stood as godfather at Elk Marsh, the Benjamin McCulloch plantation near Halifax, for twin children of the owner. Not long afterwards Kinchen was married a second time to a person whose name is unknown, who by 1790 had become the mother of two sons, both of whom died shortly after the census of 1790 was taken. Soon their daughter, Peggy, was born.

Having left the scene of his initial prominence, Kinchen seems to have been lost track of by North Carolina historians, yet his change of address had little effect on the confidence in which he was held by the General Assembly. In 1782 he was nominated by the lower house, along with Alfred Moore [30], his opponent in the Tory trial, for the post of attorney general of the state. In light of the popularity of the cause Moore advocated in Salisbury, it is not surprising that he, not Kinchen, was elected. Two years later, when nominated a third time for delegate to the Continental Congress, Kinchen was again defeated. Precisely the same action recurred in 1785. His conservatism did not make him a popular candidate. It was not until 1787 that he was again chosen for a governmental post; together with Whitmel Hill [33], Charles Johnston, and the radical Willie Jones [34], Kinchen was elected to the Council of State. In 1788 he was reelected for a term to begin in 1789, but on 8 April of that year he wrote from Halifax to Governor Samuel Johnston [35]: "My ill state of health continuing without the least abatement, I am reduced to the necessity of trying a Change of Climate, in the course of the Spring or early in the Summer, and of course cannot have it in my power to attend to the duties of a Member of the Council."

The wasting illness from which Kinchen suffered—probably tuberculosis—did not prevent him from riding the court circuit from Halifax to Edenton [36] to Hillsborough and Salisbury, possibly as far west as Morganton. He continued his interest in public affairs, acquired a copy of the North Carolina constitutional debates when they were published in 1788, and bought his friend James Iredell [37]'s revision of the statutes applicable in North Carolina when it appeared in 1791—an indication of his intention to maintain an active practice.

In 1791, two years after resigning from the Council of State, Kinchen moved his residence from Halifax to a plantation on the northern side of the Tar River several miles northwest of Louisburg in the new county of Franklin. (It was ironic that the land Kinchen bought had not long before belonged to John Penn.) The "Change of Climate" he hoped to find in the higher ground near the Granville-Franklin border did not stem the course of Kinchen's illness, and he died in the early months of 1794.

The will that Kinchen drew for himself and signed on 23 Apr. 1793 merits study. It shows that he left a pregnant wife and two minor children, Henry Martin by his first wife and Peggy by his second. After naming James Lyne of Granville, a connection of the first Mrs. Kinchen, as guardian for his son, Kinchen urged that the boy "be educated in the best manner his Circumstances will admit and above all things brought up most rigidly to whatever business or profession his Capabilities or inclination may lead to or point out." Like the books listed in Kinchen's inventory, this testamentary injunction is valuable evidence of the man's philosophy and personality. In choosing executors to serve with his wife, Kinchen drew on his friends at the bar—William R. Davie and Blake Baker, Jr. [38] (soon to become attorney general)—as well as new friends in Franklin, Dr. Richard Fenner [39], John Thomas, and Francis Taylor.

Henry Martin Kinchen was enrolled in the first class of the new University of North Carolina [40], and on 3 June 1795 he became a member of the debating group from which sprang the well-known Dialectic and Philanthropic societies. By early 1808 the second Mrs. John Kinchen and her daughter Peggy had died, nor had the child unborn in 1793 survived. Thus, Henry Martin Kinchen was his father's sole heir, but the young man's career was cut short by illness. Now of age, he sold all of his father's Franklin lands and died soon thereafter, unmarried, in the summer of 1808. The fact that John Kinchen had no descendants to keep his name alive no doubt contributed to the general lack of information about him that has plagued historians.

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Wills and Deeds of Franklin, Halifax, Northampton, and Orange Counties (North Carolina State Archives, Raleigh).

Additional Resources:

CSR Documents by Kinchen, John, ca. 1745-1794. William Saunders, ed., *The Colonial Records of North Carolina, vol.* 1 (Raleigh, N.C.: P. M. Hale, Printer to the State, 1886), pp. 159-160. Documenting the American South. University Library, The University of North Carolina at Chapel Hill, 2007. https://docsouth.unc.edu/csr/index.html/document/csr01-0061 [46] (accessed December 23, 2013).

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