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WHY TWO CONNECTICUT YANKEES WENT SOUTH

By SAMUEL H. FISHER

General Edmund Kirby Smith was an outstanding figure in the War between the States, particularly in its closing years when he was in command of the Trans-Mississippi Department. He was Florida-born and his native State was proud to place his statue in the Capitol at Washington.

But his antecedents were of Connecticut. His father, Joseph Lee Smith, and his grandfather, Ephraim Kirby, were men of mark in the town of Litchfield in that State. The reasons for their leaving their northern homes form a story which may be of interest.

The town of Litchfield is small but, at one time, it was the fourth town in population in Connecticut. Its golden age-its halcyon days-were during the closing years of the eighteenth century and the beginning of the nineteenth, when it played an important part in state and even in national affairs. There lived Oliver Wolcott, senior, a Signer of the Declaration of Independence and the governor of the State, and his brilliant son, Oliver Wolcott, junior, who succeeded Alexander Hamilton as Secretary of the Treasury in Washington's cabinet; also Andrew Adams, Chief Justice of the State Supreme Court, and Uriah Tracy, one of the first United States Senators.

But it was not so much for its political influence that Litchfield was known, as for its famous Law

NOTE-This paper was read at the annual meeting of the Florida Historical Society on January 24, 1939.

School, which was conducted for embryonic lawyers by a Princeton graduate of the unique name of Tapping Reeve.¹ His students came from all parts of the then United States, from South as well as North. At least seventy young men took the long journey from Georgia, and forty-five more from South Carolina, to be under the instruction of Judge Tapping Reeve and his associate, James Gould. Altogether, in the fifty-odd years during which the School flourished, more than one thousand students attended its lectures.

Perhaps it was only a coincidence that there existed here also one of the first institutions in the country for the education of women. The Litchfield Female Academy outlasted the Law School, and it is estimated that nearly three thousand young women received their education in this pioneer school.² The juxtaposition of these two schools in the same town was a happy circumstance, and many romances and marriages resulted between amorous young law students and the pretty young ladies of the Academy.

While politics, education, and even literature were being stressed, shrewd merchants of the town were doing a thriving business in exchange, in land speculation, and even in foreign trade, for the good ship, *Trident*, of the Litchfield-China Trading Company sailed to and from the Orient, to bring back desirable imports in exchange for Yankee notions and pillar dollars.³

At the close of the Revolutionary War, a young man of simple antecedents and a rough training, came home to settle in this community. The son of

1. S. H. Fisher, *The Litchfield Law School*, 1933.

2. E. N. Vanderpoel, *Chronicles of a Pioneer School*, 1903.

3. A. C. White, *History of the Town of Litchfield*, 1920, p. 137.

a farmer, Ephraim Kirby, when a boy of nineteen, on the news of the Battle of Lexington, had hastened to Boston to do his part in the impending struggle. He participated in the Battle of Bunker Hill, and, from that time to the end of the War in 1783, was in the thick of the fighting.⁴ In New Jersey and Pennsylvania, he marched and starved and fought, and it was said that he carried on his person the scars of thirteen wounds.⁵

The country at peace, he returned to Litchfield to study law. The legal profession had become a popular one, with the new problems of self-government and the many adjustments that had to be made from the English common law. Kirby's mentor was Reynold Marvin, the last King's Attorney for the County. The Marvin home was an inspiration to Kirby, not only in his law studies, but in other ways, for he fell in love with the daughter of the house, Ruth Marvin, and married her in 1784.

A man of force and persistence, Kirby at once became a marked figure at the bar. Yale recognized his ability by conferring on him the honorary degree of Master of Arts in 1787. He prepared and published, in 1789, the first collection of law reports printed in this country,⁶ and a volume of Kirby's Reports will still be found on the shelves of most Connecticut practitioners. He was one of the organizers of the Connecticut Society of the Cincinnati, and an active member of St. Paul's Masonic Lodge.

Those were the days of land speculation, and Kirby embarked in land ventures in New York and Ohio,⁷ and in Wyandot County of the latter is a little town called Kirby.

4. *Dictionary of American Biography*, Vol. X, p. 423.

5. Kilbourn, p. 170.

6. E. Kirby, *Reports of Cases*, 1789

7. *D. of A. B.*, Vol. X, p. 423.

But these land transactions did not always prove profitable, and, on October 15, 1800, there appeared in the *Litchfield Monitor*, this rather significant notice :

TO THE PUBLIC:

Being tired with the practice of the Law, I retired from it a few years past, when my business had acquired an extension which afforded a handsome emolument, and a permanency which defied the assaults of insidious rivals. I retired with a determination never to return again to a profession always unpleasant to me, and which, from a natural competition, frequently provoked bitter animosities and violent foes. Some recent occurrences in the County, and the solicitations of many of my friends, have induced me to go back to my professional occupation.

This was signed by Ephraim Kirby.

Later, in 1802, he is said to have lost his entire fortune in a Virginia land venture, which, according to one account, was due to a dishonest agent.

In the meantime, Kirby had become involved in politics. In 1791 he was elected to the lower house of the General Assembly and served in fourteen semi-annual sessions of that body. As the years went on, he was a leader among the local followers of Thomas Jefferson, and became a power in the Democratic or Republican party. These terms—Democrat and Republican—were, at that time, interchangeable, however antagonistic they may be to-day. Party spirit ran high. The French Revolution was vividly before the minds of the people of this new republic. The more conservative element, or Federalists, looked with horror on its excesses and decried the tendencies toward universal suffrage. On the other hand, the Jeffersonians adopted many of the tenets of the French Jacobins, and favored States' rights against the theory of centralized power advocated by Alexander Hamilton.

This divergence in views was particularly intense in Connecticut, for the people of that State were still living under the old Charter of Charles the Second.

The Congregational Church was still the established Church, and tithes were collected for its ministers. The suffrage was limited and the control of the affairs of the State was in the hands of a few-aristocratic families. Thus, Ursula Wolcott of Litchfield could boast that her father, brother, husband, son and nephew were all Governors of the State,⁸ and the two Jonathan Trumbulls, father and son, held the office of chief executive for nearly twenty-seven years.

The Democrats or Republicans clamored for a state constitution which would contain many liberalizing provisions, including the separation of Church and State, and the broadening of the suffrage. The controversy almost assumed the proportions of religious warfare, for the Congregational pulpits thundered their denunciations against the attempt to disenfranchise the Church, and those of other denominations, who did not attend the Congregational meeting houses, resented this mixing of religion and politics.⁹ Into this maelstrom of intense partisan feeling, Kirby plunged with his usual vigor and directness.

It happened that the leading citizens of Litchfield were ardent Federalists, and bitterly resented the growing popularity of Thomas Jefferson and his followers. If any proof of this attitude is necessary, let me cite two significant instances. Judge Tapping Reeve, the head of the Law School, prophesied that if Jefferson were elected, within a couple of years the streets of our cities would be running with blood, and the aged Congregational minister, Judah Champion, prayed for a double portion of grace for

8. P. K. Kilbourne, *Sketches & Chronicles of the Town of Litchfield*, 1859, p. 144.

9. M. Louise Greene, *The Development of Religious Liberty in Connecticut*, p. 415 et seq.

Jefferson, and then added unctuously: "For, Lord, thou knowest he needs it!"¹⁰

It was but natural that those entertaining such intense hostility to Jeffersonianism should resent men like Kirby who adhered to such nefarious views, yet stood high in the estimation of the people. Senator Uriah Tracy, a leader of the Federalists in the upper house of the Congress, regarded Kirby's election to the Legislature as a disgrace to the town. "All the solid respectable part of the town, without preconcert or intrigue, voted against him," he wrote, but he was elected "by the aid of every tag-rag who could be mustered."¹¹

In the summer of 1799, an opportunity arose for the Federalist group to put Kirby in his place. He was the first major of the 17th regiment of militia-Litchfield's own regiment-but Uriah Tracy was brigadier general of the sixth brigade of which the 17th regiment was a part.

The military was to play a prominent part in the festivities of Independence Day, as the Fourth of July was then called. There was to be a procession preceding the flights of oratory which featured such occasions. This military service was voluntary, and the officers of the regiment who attended a meeting on arrangements asked Major Kirby to act as commanding officer of the parade, but the committee in charge of the celebration, of which Tracy and another intense Federalist, John Allen, the representatives in Congress, were members, objected to his having any share in commanding a voluntary parade intended to commemorate and honor our national independence. They even went so far as to

10. E. D. Mansfield, *Personal Memories*, 1879, p. 115; also White, p. 163.

11. R. J. Purcell, *Connecticut in Transition*, 1918, p. 231.

vote that if Kirby adhered to the plan of acting as officer of the day, the military part of the parade should be abandoned, because they claimed that Major Kirby was hostile to the government of the United States.¹²

A compromise was finally effected so that the parade could take place, but naturally Kirby was greatly incensed and he was not one to take an insult meekly. In the next issue of the *Monitor*,¹³ he poured forth his wrath-called the action an insult to him and every officer of the regiment. He insisted that he was in no wise hostile to the government, but only to "some rascals who had crept into office under its protection." While the town, he wrote, was delightfully situated by nature, and possessed in an eminent degree the means of happiness, it had always been distracted by parties. It had drawn together adventurers in pursuit of fortune who elbowed, crowded and jostled against each other. They were a club which he denominated the Jockey Club or Junto. "The greatest falsehoods," he added, "acquire the stamp of truth after having passed the lips of this august body."¹⁴

In particular, a certain clergyman, the Reverend Amos Chase, came under Kirby's wrath. This minister was exceedingly well liked by the women for, when he lost his young wife, he preached a very beautiful sermon "On Female Excellence" which became immensely popular.

But Chase was a strong partisan who apparently used his pulpit as a forum for setting forth his political tenets. Of him, Kirby wrote: "I have spoken lightly of this clerical gentleman. I confess I have

12. *Monitor*, July 17, 1799.

13. *Do.*, July 24, 1799.

14. *Do.*, Aug. 14, 1799.

always been of the opinion that any clergyman who will so far forget the holy function of his office as to profane the sacred desk by political harangues, and will spend days and weeks with the people of his charge in electioneering visits, instead of administering to them spiritual comfort and advice, cannot be very respectable !“¹⁵

Such statements could not pass unchallenged by the Federalists. John Allen characterized Kirby's attack on the politically-minded Amos Chase as planting “thorns under his dying pillow,” thus dampening “down his gray hair with sorrow to the grave.”¹⁶

Kirby returned to the attack, and the war of words went on with vigor until the editor of the local news-sheet cried a halt. The paper was overwhelmed with vituperative letters, the editor lamented, and then announced : “Should any after communications be presented, a supplement will be issued and this must be paid for. Justice to our customers requires this, and the printer's scanty profits will reconcile his claim to compensation.”¹⁷

Instead of injuring Kirby's standing, the row apparently added luster to his reputation. In the town meeting in September, larger numbers of voters attended, and Kirby was again re-elected to the General Assembly. In the following years, he was nominated for the lieutenant governorship on the Democratic ticket, but failed of election. He twice ran for governor and once for senator.¹⁸

On the election of Jefferson to the Presidency, he was appointed supervisor of the national revenue

15. *Monitor*, August 14, 1799.

16. Do., September 11, 1799.

17. Do., September 25, 1799.

18. Purcell, pp. 238 and 247-8.

for the State. This recognition of his worth was irritating to his political opponents and, on several occasions, as in the one just described, he was rather humiliated by his Federalist antagonists. He became discouraged also over his financial troubles, so he was glad to accept an appointment in July 1803 from President Jefferson as commissioner of the Spanish boundary along the southeastern line of the newly-acquired Louisiana Territory. He left for the south and had hardly begun his hearings at Fort Stoddart in the Mississippi Territory when he was taken ill and died at the age of forty-seven.¹⁹ His former neighbors were eager to do him honor now that he no longer menaced their political ambitions. His memory is still cherished in the town of his birth, and his legal accomplishments are spoken of with pride. His former home is pointed out to visitors, and the notes for his volume of reported cases are a treasured relic in the vault of the Historical Society.

* * * *

About the beginning of the nineteenth century, there stepped upon the stage a new actor. Joseph Lee Smith came to Litchfield in 1800 to study at the Law School, and decided to settle there.²⁰ Perhaps one of the inducements which drew him to the town was the presence there of Frances, the eldest daughter of Ephraim Kirby, whom he later married. His political views coincided with those of his father-in-law, and he threw himself into the heated conflict with vigor and ability.

In the national election of 1804, Connecticut was one of the two States which cast their electoral votes

19. *D. of A. B.*, Vol. X, p. 423.

20. Kilbourn, p. 290 - Catalogue of the Litchfield Law School, 1828.

against Jefferson, and the President's followers in the State felt that active measures must be taken to bring this commonwealth into the Democratic-Republican column. To succeed in any such endeavor, the strong Federalist junto in Litchfield had to be broken up. Hence, a brilliant young editor, named Selleck Osborn, was induced to set up a Democratic newspaper establishment to combat the Federalist propaganda of the *Monitor*, the only paper then in this field. Osborn went about his task by sharpening his quill and exercising his keen, vituperative wit. He at once dubbed the staid leaders of the community with uncomplimentary nicknames, and, in his paper, *The Witness*, printed rather seamy stories and innuendoes about a number of them. A single illustration will suffice to show how trying to the peaceful and aristocratic atmosphere of the town his methods must have been. Colonel Benjamin Tallmadge, a Revolutionary officer with a distinguished record, who had become an important factor in the political, as well as the business, world, was one of the pillars of the local Church. Osborn printed a reference to him which was far from complimentary, and defended his charge on the ground that it had been confessed in a moment of heart-rending contrition.²¹

Such "blows below the belt"- to use a hackneyed phrase-irked the Federalists and they at once took vigorous measures to stop them. Osborn was attacked physically by Tallmadge's son and, a little later, was brought before the local court on a rather flimsy charge of libelling another Litchfield worthy, Squire Julius Deming. The Justice and jury were all Federalists, and although Osborn was ably defended by young Joseph Smith, it was without suc-

21. *The Witness*, November 6 and 13, 1805.

cess, and the editor was required to furnish a bond to observe the peace or, as he expressed it, to edit his paper in accordance with the wishes of the Federalist junta. This he refused to do and consequently was lodged in the local gaol until such time as he should prove less recalcitrant.²²

The Democrats immediately seized upon Osborn's incarceration as a party issue. The young editor was held up as a political martyr, and the story of his tribulations was broadcast in the newspapers as far south as Charleston.²³ A committee, of which Smith was a leading spirit, demanded the right to visit him in his cell and issued weekly bulletins, telling of his unhappy surroundings and reporting on the state of his health under his confinement.²⁴ Protests and indignation meetings were held in a number of places, in and out of the State,²⁵ and finally it was decided to stage a monster demonstration, when a long procession of sympathizers was to pass before the gaol and all the marchers were to raise their hats in salute to the unfortunate prisoner within.²⁶ This was to be followed by a gathering in the meeting house, where speeches were to be delivered, and finally a banquet was to be spread on the green, at which would occur the interminable list of toasts customary to that day.

The affair went off as scheduled, except that two episodes slightly marred the success of the occasion. An itinerant showman, with an eye to profit, brought an elephant to town for exhibition, described as a "rare, exotic beast," and some of the Federalists, led by Senator Tracy, took advantage of its pres-

22. *Witness*, April 16, and September 17, 1806.

23. *Courier*, Charleston, S. C., September 15, 1806.

24. *Witness*, July 16, 1806.

25. *Do.*, August 6, 1806.

26. *Do.*, August 13, 1806.

ence to set up a counter-attraction, and thus disturb the solemnity of the occasion. This was probably the first time an elephant was used to confound Democratic aspirations!

The second episode was more serious. Shortly before the exercises in the meeting house were due to commence, the former minister, Judah Champion, whose prayer I have quoted, and his successor, Dan Huntington, started to enter the Church. Both were ardent Federalists, and their presence was not welcomed. Young Joseph Smith, who was to be one of the orators, accosted the two clergymen and suggested the impropriety of their entering, and they withdrew. Later, two very different versions of the occurrence were spread throughout the town. The two ministers claimed that Smith seized the elder clergyman in a rough and discourteous manner, and forced him from the church.²⁷ Smith and his friends denied this and insisted that the entire interview was conducted in a most courteous manner, and that the only difficulty was that the clergymen attempted to enter the church too early. The local papers printed accusations and counter-accusations.²⁸ The Champion version in the Federalist paper stated that the aged minister wept with shame at the affront, while Osborn's Democratic paper printed a scathing denunciation of the old minister, who, it suggested, in his few declining years, should have been seeking his peace with Heaven rather than aiding a base attempt to destroy the character of one who never did him injury.²⁹ Osborn claimed that the

27. *Monitor*, August 13, 1806.

28. Stories of the Festival of August sixth, from the Federalist and Democratic points of view, are found in the *Monitor* and *Witness* of August 13, 20, 27, and so forth, as well as in other papers published in Connecticut.

29. *Witness*, September 10, 1806.

whole episode was manufactured by the Federalists as the "cardinal lie for September, 1806."

In perusing the old files of these papers, and reading the affidavits and counter-affidavits printed on the subject, it is hard to determine just what were the actual facts, but it seems surprising that any such picayune happenings could have stirred up such a pothor. However, in those days feeling ran high, and the pros and cons of Joseph Smith's alleged attack on old Judah Champion were mooted throughout the State.

Shortly afterwards the young lawyer was arraigned before the Superior Court for certain words and sentiments said to have been uttered by him in his address at the meeting. These "false, malicious, scandalous and defamatory words," to use the legal verbiage of the formal information, consisted of an attack on the courts of the State, presided over by Federalist judges. "The courts of justice have regarded the face of man in judgment," the young lawyer had exclaimed, and then added that "Osborn is imprisoned for publishing that of a Federal justice which is true of every Federal justice in the State."

The result of the trial was never in doubt, for the stage had been well set, and Smith was fined two hundred and fifty dollars, with costs of one hundred and twenty-three dollars added. The clerk adds to the record this significant sentence: "The delinquent was delivered to the custody of the Sheriff of the County."³⁰ Three hundred and seventy-three dollars was a large sum in those days, particularly for a struggling young attorney and, if not paid, Smith had the chance of joining his client Osborn

30. Kilbourn, p. 147.

in the crude old gaol that the town boasted, and which had done its duty, years before, in confining British prisoners during the Revolution.

Smith tried in vain to regain his practice. Unfortunately, he found the feeling engendered by the political controversy too great to combat, so he secured a commission in the Army, ultimately rising to the rank of major. In 1818, he resigned and went south and finally settled in Florida. Here he served the courts as a distinguished judge for many years, but this part of his story belongs to others by whom it can be much better told.

Thus Litchfield proved its air unhealthy for the two Democratic or Republican propagandists, and hence two Connecticut Yankees went South! Hence, one of their descendants, Edmund Kirby Smith, happened to be born in Florida, and the Confederacy secured a brilliant officer in the War between the States.

* * * *

When one reads of the intense partisanship of that earlier generation, and thinks how its prejudices seem strangely bitter and unwarranted to our eyes to-day, it is apt to make one wonder how our descendants will view some of the controversies of our day. Will they also smile at our intensities—who knows!