

of the camp he then applied for a posse comitatus not to exceed, as his own letter shows, 300 men; his request was granted, and he left this city with 150 men, which force, he states, might have been increased by the addition of 100 or 150 more. Do his actions up to this time not show that he proceeded only within the pale of his authority? No man on this jury can say, unless blinded by prejudice, that Burton acted in any other than the most honorable manner. After the arrival at Camp Burton, he sent Judson Stoddard with a proclamation to request a surrender, and he left about 7 o'clock; this proclamation was received about 8 o'clock. Then I submit that Burton and his posse could not arrive at the Morrisite fort before half past 9. No reply having been received to this summons, the cannon was first fired at 10 o'clock. This was two hours after the proclamation had been received, and it was then fired that those in the fort might know he was in earnest and that they were required to submit. The language of this summons is explicit—cannot be misunderstood; he gives them 30 minutes to answer, when he is not required to give them 30 seconds; in addition, he gives them upwards of an hour; then the gun was sighted, and, at Gen. Burton's orders, was fired clear over the fort; the second shot, fired under the same orders, fell into the fort after striking plowed ground, a log house, and then, almost spent, fell into the bowery; Col. Burton immediately dispatched Major Egan and Major Cunningham to surround the fort, in taking which positions they encountered heavy firing, and then the fire was returned from the posse; it is natural that these men in the fort should be mistaken as to the time, frightened as they were and filled with terror. Mr. Bowman and Mr. Oakason testify that the arms were in the possession of Klemgard; if this was true, and the men immediately proceeded to his arsenal to get their arms, it would scarcely be possible that not a single man should be even wounded if the firing from the posse was then going on; Mr. Thomas Jenkins, a respectable and well-known citizen, testifies that he was near General Burton, and heard him with much agitation say, "Good God, is it possible that these poor people are going to compel me to use force of arms?" The testimony of Mr. Brown is that he was pursuing a man where he could have killed him, and was perhaps about to do so, when he received positive orders "do not kill the man." Mr. Croxall's testimony on the third day, at the time of the surrender, shows that Gen. Burton stated "I am grateful that this trouble has been terminated with so little bloodshed." Here you have the last words of Gen. Burton before his entry into the fort; Mrs. Cook's testimony is also interesting, that she went into the fort at Gen. Burton's permission, to seek and bring out those who were willing to surrender; Mr. Jones, by a revelation, was permitted to escape, and upon the waving of a white flag, the firing in an instant ceased and he and his companion walked unharmed into Burton's posse. Now we have come to the end of the second act, and no intelligent man can say that up to this point Burton had not acted with the greatest moderation and with the utmost regard for the preservation of human life.

The white flag at this time was brought out and upon its appearance, Gen. Burton, accompanied by his aid-de-camp and bugler, enters the fort followed by the twelve men behind the rolling battery, six armed and six unarmed. Afterwards he sends back Mr. Golding to order in a platoon of ten more men, which is done; Gen. Burton proceeds to the Morrisite crowd; some one asks "what do you want?" he replies "when I came here I had a writ for the arrest of five men, but now I think it my duty to take all the men prisoners who have borne arms;" some one then asked permission for Morris to speak to his people; this was granted on condition that he should be brief and not excite the people to further hostilities; Warner's testimony bears out Gen. Burton's statement in regard to this; then Morris said "all who are willing to follow me, come on." This is testified to by all the witnesses; these words are sworn to by near twenty witnesses as having been uttered by Jos. Morris; there was a simultaneous response and cries of "aye,

aye," "hear, hear," "amen;" after this movement firing took place; both these gentlemen, Burton and Stoddard, fired their pistols; the important question is if Burton aimed his pistol deliberately and intentionally at and shot down that woman, Bella Bowman; the prosecution introduced ten witnesses who saw the shooting, of these ten four do not pretend to have seen Burton aim or shoot at Mrs. Bowman; Bowman states that he was about 12 feet southeast from the arms; two of our witnesses place him in two different points; whichever position he occupied, he says he saw Burton shooting at Morris, yet he did not see his own wife shot nor heard the words which it is said she uttered; Mrs. Anderson saw the shooting of Jos. Morris and ran away, but she saw Mrs. Bowman and Mrs. Swanee lying dead; Mrs. Eliason testifies to this same effect; Mrs. Emily Just testifies that the man on a dark horse shot Morris and Mrs. Bowman; all the witnesses state that Judson Stoddard rode a noted black horse, and that Mr. Burton rode a bright sorrel horse; she states that two men dragged her away, and these men were Stoddard and Burton, and she pointed out Gen. Burton as one of the men who was pulling her along; she could not identify Burton as one of the men on horseback; Bowman also states that he saw Gen. Burton on foot; every other witness says that Burton and Stoddard never dismounted in that fort, and it is not likely that they did; I do not wish to accuse her of wilful perjury; but it is evident that her childish imagination has been so strengthened and brooded over for seventeen long years, that it has finally come to be considered as actual fact.

Now we come to Mr. Dan Camomile's statement, that the whole posse went in and were in line four or five deep; that Mrs. Bowman approached and called Burton a "damned, blood-thirsty dog;" no other witness says Mrs. Bowman made use of the word "damned;" I believe Camomile lied, and he is the only witness I think, who has deliberately perjured himself; he swears that Captain McMaster was killed; Mr. McMaster himself testifies that he was not in the fort, and says that he did not see the shooting, and thinks he did not even hear it; that when he arrived in the fort the shooting was over; no man would even hang a dog on the testimony of such a wretch as Camomile has proved himself to be. We have the testimony of Jacob Johnson, aged at that time 14 years, who testified that after Morris was shot, and was close to Burton, Mrs. Bowman came up, and touching his bridle reins, calling Burton a "blood-thirsty wretch," and he shot her dead; Mr. David Williams says that Morris was a rod away, and that Mrs. Bowman fell, so that Morris was between her and Gen. Burton; these two testimonies are conflicting, and if one is received, the other must be refused.

At this point a recess was taken until 1.30 p.m.

1.30 p.m.

JUDGE TILFORD

Resumed his argument and said: We now have another witness introduced who testified as to the transaction. Mr. Hewitt gives an entirely different version from the others. If he tells the truth the others are widely mistaken. He said Burton cried "Give up! give up! give up!" and fired immediately, shooting three times at Morris, and crying, "Where is your prophet now!" and Mrs. Swanee was shot afterwards, and then Mrs. Bowman came and was killed. Here we have the fifth or sixth version of the witnesses for the prosecution, all of them varying in important particulars. Camomile swore that he belonged to the infantry, was one of the twenty-five who volunteered to take the house, and was placed in the west. Romney testified that he made a call for twenty-five volunteers and he would naturally look for them in his own company. If this man was one of the 25 who responded to the call of Romney, it follows as naturally as one human event follows another that he belonged to that company; but if he did not belong to Romney's command he must have been under McMaster, as these were the only two commanders on the west of the fort, and he said he was situated there. He then read from Camomile's testimony, in which he says he was

excused from making the charge on the house; also relative to the entrance of the troops and other positions when they formed in line before the shooting took place, and also swears where he saw Romney, McMaster and Rees. You will remember that McMaster and Romney positively stated that they were not in the fort at the time the firing occurred. As he is proven false in one material particular, he cannot be trusted in another. Camomile swore with equal certainty that the horsemen came in from the south, while every other witness testified that they entered from the west.

Mrs. Cordon did not see the shooting. She swears that the first woman shot was a Danish woman, who had a baby in her arms, and this testimony conflicts with the theory of the prosecution that Mrs. Bowman was the first of the two women killed. Does not the story of Mrs. Cordon, that she went there when the bridges had been swept away, and every difficulty to be encountered, strike you as being rather improbable, and as she gives no evidence regarding the killing of Mrs. Bowman, I deem it unworthy of further notice. Thus you have here the evidence on which the prosecution expected to make out their case, while we have fourteen or fifteen witnesses giving you an entirely different version of the affair.

I ask you first to take into consideration the number of witnesses on either side, and afterwards the character of the witnesses. The prosecution introduced three witnesses who were children at the time of the affair—Johnson 14, Mrs. Anderson 13, and Mrs. Just 13 years of age. Then poor, old, imbecile man Bowman, now in his dotage. Next comes the timid Williams, who fled for his own safety; then we have Mrs. Cordon, who came there for no earthly purpose; and finally you have the testimony of two lunatics, who, if the laws of the Territory were enforced, would be behind the bars of a mad house. Then again, these people were and still are Morrisites. They must necessarily, if they are human, entertain feelings of revenge against those who have killed their friends. Then turn to our witnesses. Did we call in men who loaf around the streets, frequent saloons or the haunts of dissipation? No! our witnesses were men, whose judgments are matured; of business capacity, and if these men come here and testify before God and their fellows you must of necessity adopt the evidence of the defense, unless you are biased.

While all our witnesses vary in some unimportant particulars, they agree that not more than thirty were in the fort at the time of the firing. Of the twenty-two of the posse who are accounted for as being present at that time six were unarmed. Doubtless there were men who came out of curiosity, but the highest number given by any of our witnesses was thirty; while, on the contrary, Camomile states positively there were 600 present. Johnson, the witness of the prosecution says, 300 or 400 or 500, were present, and Williams takes a very great latitude in his estimate. The men actually in command state that there were not over thirty men. We are met in rebuttal by the statements of Ashman that 100 men were present at the time of the shooting, when he swore in the direct examination that he did not know when the shooting took place. How does this compare with the assertion of Camomile that there were 500 or 600? Then comes Mr. Burnham, who says he stood on an elevation and saw 200 men in the fort. Mr. Brown, a gentleman, who lives in that neighborhood, confronts this assertion by the declaration that it is a physical impossibility to see into the fort from where Burnham testified he stood.

About 7 o'clock on Sunday afternoon the white flag appears, Burton goes in, then comes the cry of Morris and the response, substantially uncontradicted. The question, then, is, did a rush take place in the direction of the arms? The movement is admitted, but the prosecution claims that Morris moved southwesterly. What motive could have led Morris in that direction? But where is the body of Morris lying after he is found dead? A rod only from the school-house. We claim that he moved in the direction of the arms, and the body being found from twelve to sixteen feet from the school-house speaks; trumpet-tongued, in favor

of our theory. The conclusion is irresistible that he moved toward Burton and then to the school-house, and not in the southwesterly direction, as the prosecution would claim. It also appeared that two-thirds of the guns were loaded, and not a particle of testimony has been offered to rebut this evidence, though the prosecution had from Saturday night till Monday morning to reflect over the matter. All the testimony goes to show the unanimity of the responses, indicating the willingness of the people to follow Morris wherever he would lead. The highest estimate of the arms stacked, places the number at fifty or sixty, and the number captured at over ninety; While some had stacked their arms, others were coming with their arms, and still others unarmed.

Something has been said about the men, women and children being together, while our testimony shows that the men were nearer the arms than the children and women. Does it not look consistent that the men after stacking their arms, would fall back a short distance, while their families would be further away? But we take it that it matters not whether there were five or 500 men present at the time. Burton had ordered but twenty-two, and from his position he could not see whether the troops sent for through Golding had arrived or not. Being a cautious man he would naturally turn his eye on every prominent object, and looking toward the school-house he saw the glimmer of a weapon through the open door. Col. Burton knew not how many troops had come into the fort. He was not in a situation to see how many men were there. According to immediate appearances his own life and the lives of his attendants were in imminent peril. He cried "Halt!" "Halt!" "Stop the prisoners!" but there was no cessation of the movement. Hedrew his pistol and fired. Had he acted otherwise he would have been unworthy of his position and the authority he represented. No matter if the guns were not loaded, Colonel Burton could not have known that such was the case. In support of the argument that the men were not armed, Michigan decision was read: "Supposing that a man came up to you, pointing a pistol at you, and you struck him down or shot him, and it afterward appeared that the weapon was not loaded, could any law of God or man hold you responsible for judging from appearances. Apply this golden rule then to the defendant and the present case. When you retire to your room you will doubtless consider the testimony in the order that I have given it to you; but you may also consider it in connection with the issues. The indictment charges that he wilfully and unlawfully killed Mrs. Bowman, but if it appears to you that she was killed by accident, then by your oaths you are compelled to find a verdict of acquittal for the defendant. We demand his acquittal as due to the welfare of the Territory, the security of life, and the enforcement of right; we demand it as due to the court whose mandates placed him in the very peril that compelled the homicide; we demand it as due to the law whose process he was executing when resistance was offered; we demand it as due to humanity, whose noblest impulses are outraged by the prosecution of one whose only offense consisted in discharging his duty.

JUDGE VAN ZILE

then commenced the concluding argument for the prosecution. He congratulated the jury upon the drawing to a close of his important trial, and also all others, and said he would be glad if the argument he was about to make had not to be made. We come to you to speak against the better impulses of your nature, and ask of you a verdict that will convict one of your fellow-beings of a heinous crime. The witnesses have come and gone, and you have noted the important points in the matter; my part in the case will soon be concluded as is that of the counsel on the opposite side. The judge will charge you with the case and then the responsibility of deciding whether the defendant is guilty or not will soon fall upon your shoulders. It is a duty that you owe your own consciences and God that you try it fairly. You have taken an oath to try this case by the law, so far as evidence is adduced, and not by the clamor of a crowd or the desire of a

city or a majority of the people in it. The picture I have to paint may not appear beautiful to you, and upon the margins there may be bloodshed, and in the centre there may come up a terrible picture. But it comes not from my own heart. We are not to blame for that which was done in the Morrisite camp. The defendant here only is to be held to account. While I would prefer to paint a picture of beauty I must show up this case as it has appeared for the evidence; and you must decide by the law and by the evidence. Nowhere does it say you shall try it by the law and by the testimony. Testimony is that which proceeds from the lips of a witness, and may be false, evidence is always truth, you have sworn to decide this case. It may be that one witness may tell you the truth and 100 may testify to the contrary, you must believe that one, and if old Bowman, as the defense has chosen to denominate him, tells the truth, old Bowman's story must be taken even if eighteen other witnesses have sworn to the contrary. I wish to state here that I have no harsh words for General Burton; in his heart may beat impulses for humanity as strong as in any man.

In 1862 there were on the bank of the Weber a band of persons who called themselves Morrisites; whether they were fanatics or not is none of my business, and I think is none of yours. I say my friends on the other side have no business to call them fanatics. In calling people fanatics, we should be very careful lest we all be accused of the same thing. These individuals were on the banks of the Weber. We are not advised particularly as to where they came from, but it was brought out in the evidence that many of them came from Mormons. They were under one Joseph Morris, whom they called a prophet, and they followed him implicitly. This is none of our business. They have a right to follow him. You cannot find a single case where these people went out of their own camp to do anything unlawful. For some reason there were a great many executions sent into that camp, but for what reason I cannot say. The prosecution tries to believe there was a thought in the minds of the Morrisites that led them to fear there was to be another Mountain Meadow massacre. I think the day that Burton went into that camp, every man, woman and child expected to be killed. Only five years before, the tale of the terrible Mountain Meadow massacre had been spread throughout the land, and they had heard of it, and they thought that unless they regained their arms they would be killed. I say that you cannot call them bad men. They had lived there years before the great army of ninety-one had been formed, and you cannot find a case where they expected to have to use these arms, because they thought the enemy would be stricken down three miles before reaching the camp. But my friend Telford says they were bad men because they lived in common. I do not see anything bad in that. They had a right to do so if they chose. Another church in this territory tried the same thing, and it was nobody's business. Had not they the right to live that way? Was there any law in the Territory prohibiting it? Is there any evidence in the case that they ever went out and took flour without paying for it 100cts. on the dollar? I hurl it back in the teeth of these witnesses that these people were bad and a terror to the country; nor has a single instance been shown that they took a particle of grain improperly or that they sent out marauding companies. The witnesses who swore they were a terror to the country, took that word from counsel's lips, and I remember it well.

Hanson had sworn they told him he would not reap his crops, but that they should possess them. They did not say so, but that Christ should come, and the world be thrown into a spiritual sphere, not that this great army of 91 would go out and devastate the whole earth. It seems to have been necessary for the defense to prove that these Morrisites were bad men. I think they believed that when Christ should come and the wicked be destroyed they should occupy the land; but, gentlemen, you can read that in a pretty old book. Admit that they are fanatics, think they had dreams, and all that had been argued on the part of the defense,