

Trial of Gen. R. T. Burton.

WEDNESDAY, Feb. 26, 9.30 a.m.

ROBERT T. BURTON

The defendant in this trial was sworn: In 1862 was deputy territorial marshal; immediately before the service of the writs I served on the plains, under the Government, protecting the mail line from Indians; soon after my return I was ordered to serve certain writs, the same, according to my recollection as were put in evidence day before yesterday. (The writs were examined by the witness, who identified them.) The writ of *habeas corpus* for the bodies of three persons was addressed to Joseph Morris and three others; I think the writs were delivered to me either by the clerk or Judge of the District Court; had information from officers who had been there that the people were unruly. I heard from Lot Smith about the resistance of the camp to him; also heard something to the same effect from Mr. Stoddard; Judge Kinney also seemed conversant with the actions of the people; the first time I was called upon to serve these writs I declined; the Judge sent a second time and somewhat insisted on my going, and I then requested a posse, thinking if an overwhelming force appeared the writs would be served and complied with without bloodshed; a letter was written by me to the Governor, asking for a posse, which force was granted me, to the number of about 250 men, from this and Davis counties; we encamped first four miles this side of Morris fort, on the 12th day of June, 1862; I think the whole force was there; we had one skeleton company of riflemen, some infantry and a detachment of artillery, with two cannons—the black gun, (a six-pounder) and a brass howitzer; not positive whether the force was conveyed in wagons or on foot; they went on foot from our camp to the fort; had a few cavalry; about 7 o'clock on the morning of the 13th I sent Major Egan, Judson L. Stoddard and some others with a letter to the leaders of the Morrisites, (which letter was identified by the witness;) it was about half-past eight o'clock when my force arrived opposite the camp, I met Stoddard a little before I arrived near the fort, and heard how he had disposed of the communication and that he had received no reply; I was under the impression that the people in the fort received the letter about 8 o'clock; after some delay, waiting for a reply, I sent down two men with a white flag close to the fort, having a bugle sounded also, but received no reply; at 10 o'clock, no communication having been received, I ordered Major Ladd to fire over the fort two shots; the first shot was fired at 10 o'clock in the morning on the 13th day of June, and struck on the other side of the fort; the second struck the plowed ground between us and the fort, and from there went into the fort; I thought by firing over the fort they would be induced to surrender. I think I then sent a flag down, the firing from our camp having ceased; I heard their martial music, and the first firing of small arms came from the fort, this perhaps being 20 minutes after the first cannon shot; I then thought they were determined not to surrender, and ordered Major Egan to go around the fort on one side and Major Andrew Cunningham on the other, both detachments being encountered by a heavy fire before they got into position; the river was very high, and I supposed that would prevent the escape of the prisoners on the north side; think where we encamped over night I gave some little instruction to my men, saying particularly that no prisoners should be allowed to escape, but that bloodshed should be avoided, and telling them to act more on the defensive; several of the camp came out and surrendered on the first day, from whom I understood that no general surrender was contemplated, and that no force would be permitted to come near the fort; Ross was ordered to get a position as near an old wall or fence as possible, where a pretty good breastwork was afforded; in taking this position they encountered heavy firing, and one man of our posse, Jared Smith, was killed; our forces kept their positions during the day; Majors Egan and Cunningham are now dead; on the evening of the first day I communicated with Governor Fuller, and perhaps also with Judge Kinney; Governor Fuller's reply I have in my possession.

(The application for a posse was read, also Gov. Fuller's letter to Gen. Wells, authorizing him to give witness a sufficient posse. Gov. Fuller's reply to witness's letter was also read. It stated particularly that the persons named in the writs were to be secured and brought to court. All these letters were placed in evidence.) I received his reply the following day; in my letter to the governor as far as I remember, I alluded to the resistance I met, also the death of one of my men, and gave a statement of my proceedings thus far; I sent my letter by courier; on the 14th I also received an additional gun, some ammunition and supplies; on the morning of the 14th at 4 o'clock in the morning the firing from the fort commenced; my men did not reply much during the day; there was a heavy rain and they kept close to their entrenchments; in one or two instances signals, as a cap or hat just raised above the breast works, were put up to attract the fire of the Morrisites and I saw they were closely on the watch, firing being immediately directed to these signals; on Saturday a number of persons came to my camp from the fort, among them, women and children; Mrs. Cook went from our headquarters into the camp, trying to induce some of her friends to come to us, and be protected, and all the prisoners who did come to our camp were well provided for; one Sunday they again commenced firing; on this day I paid more attention to the surrounding of the camp, and was in different positions myself, accompanied by a bugler; the firing from the camp on my men who were unprotected was very galling; we improvised a kind of rolling breastwork, took three wheels and filled in the spokes with willows and then rolled them along the ground; this was a good protection to my men and seemed to have a good effect upon the Morrisites—perhaps they thought it was about to explode, at any rate it was very useful; at one time the command of Major Egan was in so dangerous a position that I ordered him to fall back as the fire from the rifle pits was very sharp and destructive; his detachment numbered perhaps 100 men, and were on the east side of the fort; serving in the position of courier and aids to me I remember Joseph A. Young, also Mr. Golding and a young man named Streeter; this moving battery when it approached quite close, became unmanageable, either that it was improperly balanced, or from some other cause; later in the day I determined to make a charge upon a house, ordering 15 to 25 men under Lieut. Jas. Lewis to this duty; this attack was very rapid and was successful, one of the number, however, being killed; this was between five and six o'clock; at 7 o'clock p. m., the white flag was brought out, the bearer coming within speaking distance of me; and immediately all firing ceased; I strictly ordered my men to withhold their fire whenever they saw any sign of surrender from the fort or whenever any man unarmed appeared; a man named Brown carried the flag; and I told him an unconditional surrender was required—the stacking of the arms and the surrender of the men bearing arms; he perhaps might not have authority to accept these conditions and returned; when I saw they had complied with my terms and were stacking their arms, I sent word to Major Egan to stop firing; we were desirous to get the business all done that night, and I immediately started in, accompanied by Messrs. Stoddard, Croxall and Golding, all of us on horseback; I told the men behind the moving battery to follow me; there were 12 men there, 6 armed and 6 unarmed, the latter who moved the battery; I sent Mr. Golding back to bring ten more; I passed the schoolhouse, came between the stacked arms and the people, we four horsemen being all together; did not see any women in front of the Morrisite body of people; the men in the group were unarmed, a few of the arms being stacked, but the greater part lying on the ground; I considered the surrender entirely genuine; I restricted the number of men who accompanied me, to save unpleasantness, as I feared a collision; I imperfectly saw that the schoolhouse was fortified inside and that there were arms there; do not remember who spoke first, though I think it was Parsons; did not know Morris; slightly knew Cook, Banks and Parsons; I think the first question was to me, "what

do you require?" I took the writ for contempt out of my pocket, perhaps did not read it; stated that I considered it my duty to take as prisoners all who had borne arms; it seems to me that some one inquired what was to be done with them, I replying that it was for the law to determine, I did not know; some one asked the privilege for Morris to speak to the people; I gave permission, saying that he was to be brief and caution the people to be quiet; Morris stepped out about two paces, raised his hands and said in a very loud voice, "All who are willing to follow me through life and death, come on;" there was an almost universal response to his words, some calling "to arms," others "aye, aye;" the movement was towards me; I loudly called "halt" two or three times to Morris; I moved my horse a little, Morris still facing me; seeing the imminent danger of myself and companions I said to my men, "stop the prisoners." I discharged my revolver twice at Mr. Morris, then wheeled right around, and saw my men with their guns cocked and the Morrisites rushing for their arms; when I again turned around I saw the Morrisites had stopped; Morris had fallen and Banks was close to the schoolhouse; upon this my men came running in from all directions; Major Egan's men from the outside of the fort commenced firing; I raised myself up in my stirrups and called out in a loud voice, "stop firing;" did not see any women when I fired at Morris, and shot only at him, two times I think; no woman addressed me nor did I see one; every shot I fired was aimed at Mr. Morris; I did not dismount during the whole evening, was all the time on horseback; four men were detailed to separate the corpses from the people who were hanging to the bodies; I directed the women to be collected at a flag which was in the fort; do not know Mr. Bowman; never was told by a man that his wife was killed; never took hold of a person in the fort, neither a woman nor a man; I spoke to one Margaret Guthrie whom I had previously well known, and told her to speak to the women and try to calm them. I heard she was married to a man named Cook; she did so and it seemed with good effect; Morris seemed to be attempting to reach the schoolhouse which was the strongest point in the fort; I then considered the surrender a sham and looked upon the moment as one of the most imminent peril; Lieutenant Lewis is dead; gave orders during the three days' fighting that the schoolhouse should not be fired at, as I considered there the women and children would be collected; I should think that Morris was from eight to twelve feet from me when I shot him; when he fell he was near the schoolhouse. Saw no women lying there; all the shots that were fired did not I think occupy more than five seconds; I had a navy revolver which would carry six shots; when I entered the fort there were two or three shots in it, for while Lieutenant Lewis was attacking the house I discharged three or four shots to divert the attention of the enemy to another point and also ordered my men to do so; I took 140 male prisoners; brought only 94 to Salt Lake City, the others being wounded or innocent of any resistance or participation in the trouble; there were 84 guns, 20 or 25 pistols, about the same number of sabres, and also the same number of bayonets; my men reported that arms were found in the schoolhouse; about two-thirds of all the arms were loaded, and were discharged, I think, the next morning in my camp before being sent to this city; Banks was not killed outright, but died about two o'clock in the morning; sent the bodies to Salt Lake City by Albert Dewey; we, with the posse, arrived here Tuesday evening the 17th. The prisoners were brought into court at that time, some were liberated on their own recognizances, others were kept in custody on the charge of murder. (The record of the court was read showing these proceedings; a number being tried for resisting officers and they were convicted; then follows the trial of a number of persons who were convicted of murder in the second degree, imprisonment being ordered in various terms from 10 to 15 years; these offenders were all pardoned by Gov. Harding soon after.) I do not think any person seized my horse's bridle; was a witness on these trials, and gave in substance exactly the same testimony as I

give now; I do not remember the testimony of the Morrisites at that time implicating me in the murder of these women; I have since resided in Salt Lake City; received another communication from the Governor before my return; I communicated I think with the Governor on the evening of the 15th; my second letter narrated the events which had occurred at and previous to the surrender. (The reply of Governor Fuller was read, congratulating Col. Burton on his success and the few casualties which happened to his men.)

Court took a recess until half past one.

1.30 p.m.

GENERAL BURTON

Again took the stand. The color of the horse I rode was a bright bay. Think Croxall's was a sorrel. Stoddard rode a black pacing-horse. Mr. Stoddard was about five feet and eleven or eleven and a half inches high. A spare built man, had a little heavier beard than mine. My beard was short, and shaved a little at the sides of my face. My upper lip was not shaved but cut short. Stoddard was a light-complexioned man, rather inclined to be lighter than myself. I think I hardly ever took the name of the Deity in vain in my life.

Cross-examination—I lost two men in the fight. One at the end of the lane, and one at the door of the house, shortly before the surrender. Only one slightly wounded. It was near where the first artillery was placed. The ball was, I think, a spent ball, that went through his hat and wounded his scalp. I was sometimes under fire myself. The cannon were not used all the time, the ammunition being imperfect, and we had not much ammunition. The powder was put up in flannel cartridges. They were perhaps three inches long. The long gun carried a six pound ball. My force was obtained from the territorial militia. Upton's infantry tactics and Cook's cavalry tactics were used. We were then using about 50 men in a company. There were captains of ten men. We used Upton's tactics for companies but for drills. The artillery came from the same source. The men were inexperienced. Don't know where the cannon came from. Think the United States furnished the brass howitzer.

To jurors—All my men were supposed to be armed except the teamsters. There were 250 all told; 150 from Salt Lake, and 100 from Davis County. The men behind the wall on the west could not reach these stacked arms with their fire, it being too far away, and there being obstructions. The arms might have been reached with long range guns by a portion of my posse, the distance from the arms to the wall being about thirty rods. Could hardly form an estimate of how many arms there were stacked when I came in the fort. Others were carrying their arms in. We subsequently obtained from ten to fifteen stands from the schoolhouse. I noticed a great many women and children in the fort, about the southeast of the school-house, when I went in. I still think the surrender was a sham. My opinion is that neither Morris nor Banks intended to surrender, but a part prevailed on them to make the surrender. Have no other reason for this than the words spoken, and the attempt to regain the arms. Think the leaders intended a sham. Arms were taken from the schoolhouse after the surrender.

Re-direct—Regarding the belief that it was a sham, I have had more reason to think of the matter since than I had at that time, believe so now.

To jurors—Recent developments have confirmed me in that opinion. These have been made partly in conversations with my witnesses.

ROBERT GOLDING

Then took the stand.—Live in this city. Lived here in 1862. From the 12th to the 16th of June, 1862, was not here. About that time I went with Burton and his posse, and remained at the Morrisite camp during the fight with the Morrisite people. On Sunday I was at the camp on the south side of the place till evening. When I went with Burton to the west side it was getting late. Messrs. Croxall and Stoddard went with us. We went on horseback. When we got there we found a party of the posse building a rolling battery just outside of the wall. They got it finished shortly

after we got there, and started in with it. When they got in a little way I noticed a man coming towards us with a white flag. He asked Burton what he wanted, and he was told an unconditional surrender; and Burton told him that he wanted them to stack their arms to the left of the school-house, and the people were to stand on the other side. After we returned we saw people coming from all directions, who began stacking their arms. After some were stacked we rode in. When we got in a little way I was ordered to go back and order ten men to come in and take charge of the arms. I went and gave the order. Ross cut off a squad of men. I went ahead of the men. I arrived just as Burton did. Burton passed around the school-house, and the people were formed in a kind of half moon to the south and southeast of the school-house. There was a large crowd of Morrisite people there. The first thing I heard was from a man named Parsons, who stood to Burton's left. He asked what Burton wanted, and Burton said he first wanted certain men, but stated also that he then wanted every man there. Morris was allowed to speak to the people if he would be brief and not say anything of a treasonable nature. Morris, who was to the right of Burton, stepped out in advance of the people, raised up his hands and said, "Brethren and sisters, all that are willing to follow me unto life or death, follow." They raised a shout and followed. I thought the response was general. We were all facing the people, Stoddard to the right of Burton. Burton ordered Morris to halt three or four times, after which he said, "Stop him, boys," and then the shooting commenced. Think there were five shots fired, very quick in succession. The two first were fired so close as almost to sound like one. Stoddard and Burton shot these shots; one of the shots killed the woman; Mrs. Bowman was right behind Morris, and the bullet came through his clothing and struck her in the neck; she had a baby in her arms. I was eight or ten feet north of them; there was nothing to obstruct my sight; I was four or five feet from Burton, and Stoddard was next him; they were not ten feet north of the woman and Morris at the time; the woman dropped instantly and died very shortly after; three shots were fired at Morris; after that he fell; supposed all the shots were fired at him; Morris fell a few feet north of Mrs. Bowman, he moving right on all the time; I also saw Banks lying wounded after the matter had ended; he was 10 or 15 feet nearer the school-house than Morris. The shooting did not occupy over a few seconds; as soon as Morris fell everything stopped; think Burton fired two or three shots; after Morris fell he then ordered the men to separate from the women and children, and they were marched up to camp; the first thing that he did after Morris fell, he wheeled his horse around, raised up in his stirrup, and called to his men outside, who had commenced firing, to cease. His horse became very restive, raising on his hind feet and lunging toward the east. She never spoke to Burton. No woman spoke. Think I should have noticed if a woman had. No woman during that time came toward Burton to take hold of his bridle rein. Think his weapon was a navy revolver. Just previous to coming into the fort he fired two or three shots out of it. I was with him, he had no opportunity to reload his pistol. I was acting as commissary and quartermaster. I was generally with Mr. Burton. I was sometimes an aid. Obeyed orders which he made at different times. Made no examination of the body of the woman afterwards. I saw the blood come out of her neck. She lay with a child in her arms, and I asked a Morrisite to take the child out of her arms. Don't remember how many male prisoners were taken, about 150 I should think, but cannot tell. They were taken to the camp and afterwards marched to the city. Can't tell how many arms were taken. Should think one-third of them were loaded. Saw the boys carry ten or twelve arms out of the school-house after the affair was over. Burton did not dismount till he got back to camp. Told me to go to camp and fix up some provisions for the women and children, and I did so. We left together. Have known Mr. Burton over twenty years, intimately, and never heard him swear in my life.