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were selected to take this house; after Mr. Jones, I think Mr. Lewis went first; Mr. Jones went alone; I did not know all the 25 men; most all the men in the house followed the horsemen into the fort; do not know how many officers served on the west side; do not know Cunningham; I was subject to Lewis' orders; I do not know how many were under his command.

Re-direct—Had been in the country about seven months; came from Indiana, and originally from England; Mr. Lewis, a neighbor of mine, called upon me with a paper to get me to serve in this posse; was not a member of the organization, and objected to going.

By a juror: Saw the man running who was shot; I did not see him fall; I saw him at the time he was shot; he was running at the time, and fell where he was shot; the house was about 14 by 16 or 18; the logs ran horizontally, and the chinking was out between them.

MR. ABRAHAM TAYLOR

Was sworn: Live in this city; was in the Morrisite camp when Burton's posse came there; I was in there at the time of the surrender; I went to where the Morrisites were congregating; Gen. Burton passed on the north side of the school-house; he did not pass the east end; when I saw Gen. Burton could not say how many were there. I saw them; I went back to the east side of the school-house before the firing; there I could see them better, and should say there were two or three hundred; the Burton posse stood between us and our arms.

No cross-examination.

LUTHER A. BURNHAM

Was sworn: Remember the Morrisite trouble; I was there, belonged to the posse; I was on the west side of the fort; was not in the fort until after the surrender; I was about 250 yards west from the school-house; I saw firing at the school-house; I would say there was not less than 100 of our men in there; I had four men left with me to watch the camp; I was on rising ground so that I could overlook the camp.

Cross-examination: I was on ground perhaps 50 feet above the behind this little hill on which I stood; we had six prisoners in our guard house which was about a quarter of a mile back of our camp; I stood about 100 yards from our camp; I believe the distance was greater to Morris' fort, from our camp than to the guard house. This bluff where I stood was in the west lane; between me and Morris' fort there was a piece of low land; it was about 300 yards from the mud wall to our camp; from this wall I think it was about 10 rods to the school-house; I feel very sure it was not half a mile from our camp to the Morrisite fort; I was to keep guard over the camp equipage; I got the privilege of going on to this bluff for a short time; I saw the men start to go in, they were not in regular military style, but kind of mixed up. Roscoe Call went with me to this bluff.

The defence stated that they desired to recall this witness for further cross-examination after recess, so at 2 o'clock he will again be called.

MONDAY, March 3, 2 30 p.m.

L. S. BURNHAM

Was recalled for further cross-examination—At the time the men went into the Morrisite camp I think I was in the lane running west. I was on the elevation. I think I remained there. Made the observation from that point.

The prosecution here rested, and

WM. BROWN

Was recalled for the defense—I am familiar with the general surface immediately west of the Morrisite camp. Have lived about two and a half miles from there, and have been there frequently. I know where Burton's camp was in 1862. It was about half a mile west of the mud wall. It was not on a line from the lane running west. There is no point in the lane that is not lower than the camp. There is no point 200 yards or more west of the camp, and in the lane, from which the camp could be seen. Might have seen the camp by climbing the tree. The view would have been obstructed by low grounds and willows.

Cross-examination—The low grounds and willows are in the

lane up to the fort wall. A man cannot stand at the west end and see up the lane. Within fifty yards of the fort the view is obstructed. Can look up the lane to the fort, but can't see in the fort.

Re-direct—The track is straight in the lane. The clear road is about wide enough for wagons to pass. There is no point 200 or more yards distant where a person could stand and see so as to count any considerable number of men in the fort.

Both sides here rested, and the argument for the prosecution was commenced by

ASSISTANT DISTRICT ATTORNEY BEATTY.

He stated that the mass of testimony was before him in an undigested form, which, by the aid of the defense, had been almost increased to a history. Yet from among their mass of verbiage, a picture appears painted with human blood. It was, however, evident that Mrs. Bowman had been killed; and in reviewing this mass of testimony, he hardly knew where to begin. Before going right into the matter, he desired to allude to a portion of the testimony which he thought very unnecessary. The defense endeavored to show up the bad acts of the Morrisites, and he desired to call the attention of the jury to the fact that these people were dissenters from the prevailing faith here, and that, at that date, it was almost impossible to leave the church without being harrassed. Hanson was the first witness to show the bad acts of these people. He was a man who had played the part of spy on the acts of this inoffensive and I might say innocent people. There was a Mr. Unsworth, who had also shown up the bad acts of these people. He then adverted to the serving of the writs in camp, and to the statements that the people around were said to be frightened. They could not leave without going ten or fifteen miles out of their way, but they did not consider the danger so great that they would go that distance to prevent harm. Then came George Peay, the man who had a most murderous assault made upon him by two of the Morrisites, but then forgets himself and finally says he went very seldom after the assault upon him. The testimony relative to the service of writs was reviewed, and Mr. Beatty called attention to the alleged danger in the service of these writs, but in so doing, no one was shown to be hurt. Then comes that wonderful man, Billy Jones, who recounts his wonderful and improbable story—a very cunning and brave man who tells a most unlikely story. The very worst thing said against the Morrisites by any of the witnesses was that they lived in common, which was only a thing the other church in this Territory had since tried to do. His friend Judge Sutherland had helped to develop the revelations of those people. I believe that reports had been circulated among the Morrisites that they were wicked and that General Burton and his posse went there entertaining these ideas, and I believe they went with the same feelings of bigotry and fanaticism that animated the Morrisites, and that in going with feelings against them they were unable to do right to that peculiar people. He then reverted to the assertion of Judge Sutherland, who had taken him to task as one of the prosecution for not showing the whole case. He had not looked at the law, but he would venture the assertion that they could not be required to do any other than they did. The question had been asked why the trial had not been had seventeen years ago. The answer was that under the existing circumstances at the time the judge knew that a fair trial was impossible, and such a question was simply preposterous. As regards the trial of the Morrisites for murder, when that part of the testimony was introduced my indignation almost got the better of me. The judge who passed the sentence should have had the ermine torn from his shoulder and a tiger skin placed in its stead. The infamous injustice thus done the poor Morrisites had to be righted by the incoming governor. I do not believe that Gen. Burton was free from fanaticism, as he had been a member of a church for many years. I mean no disrespect to Gen. Burton, or to anyone, but, as I stated, I cannot help

thinking the troops went there with such feelings of opposition as were almost equal to fanaticism. The evidence of the defence indicates the precautions taken by Gen. Burton against harming anyone, and shows that it was two hours after the proclamation for a surrender had been sent in before the cannon was fired. On this there was a contradiction, and I must believe, from circumstances, that their testimony is wrong. The witnesses stated that the Morrisites marched around the fort with a band after receiving the note to surrender in thirty minutes on pain of being fired upon, while our witnesses corroborate in the assertion that the bugle immediately blew for a meeting, and I leave it to you, gentlemen, (the jury) as to which testimony is the most material. The testimony of the defence goes to show that the bowery could be seen, yet the defendant was so careless as to have his guns improperly sighted and he still claimed to be desirous of sparing life. I believe before the people had time to consider that note, the cannon ball was fired into the bowery. If the defendant wished to prevent blood he should have sent men into the camp with the white flag; it could have been done then, for no one had ever been harmed in going there before. The testimony conflicted as to which party began the firing with small arms, but as some of the witnesses even on the side of the defence had agreed with the assertions of the witnesses for the prosecution, the inference was that the firing had commenced at once; that no disposition was shown to spare life, and that the firing was heavy and in earnest. Don't imagine that this firing was done to frighten the people into a surrender. Persons do not act that way when they go to make a capture or when they are on a three day's campaign. As an evidence of the animus of those in the posse, I call your attention to the refusal of Burton's party to allow the man Bowman to see his dead wife. He thought it simply horrible: even barbarians would not have refused it, and this poor man never saw his wife again.

He then turned to the culminating features of the siege, and the most natural inference as to what Burton would do after the surrender—to take his men in the fort or not to? He thought a man showing the caution General Burton had previously displayed, would have taken in a sufficient number of his men to prevent any further collision. But Gen. Burton had gone in there without fear of danger, yet he had seen the glimmer of a gun on the west side of the school-house door. We claim, as the most likely thing for men to do under the circumstances, was for them all to rush in promiscuously, which they did. There could have been no intention of conspiracy to slaughter the posse under the guise of a surrender, as claimed by the defense, because there had been no time to form such a conspiracy, and the Morrisites would not have allowed the women and children to mix with the men, had such been the determination. A most remarkable thing was the sameness of the testimony of the witnesses for the defense. I never saw anything like the unanimity and precision of their recital of an event that had transpired so long ago, giving their testimony in almost the same words. I have never seen such well-trained witnesses, and this goes to show me that the story has been told them, or they have read it in the papers recently.

These witnesses have all testified that there were from ten to twenty of Burton's men present at the time of the firing, with one exception, who stated that there were about 40 present. Our witnesses testified that there were a great many of the posse present, and that they formed in lines three or four deep, and numbered about 200. Some of our witnesses have not testified particularly to the number, because a more important scene then that was being transacted in the immediate neighborhood of Morris, but they testified to these armed men being between them and their arms. The testimony of Taylor, Burnham and Ashman, the latter a person who had never been a Morrisite, showed that there were fully 100 men at the school-house at the time of the firing. An attempt had been made to break down the testimony of Burnham, by Brown, but it did not amount to anything, because Burnham was

not positive as to his distance from the fort, and his assertions, notwithstanding Brown's testimony to the contrary, could still be reconciled. The witnesses for the defence had stated some very improbable things, many of which appeared to lack truth, and if they spoke falsely in one case, their testimony in the whole must be doubted. The conversation that took place between Burton and the flag-bearer was reported to have been heard by those in the house, which, owing to the distance, is a most improbable story. He referred at length to the testimony of Jones, whom he denominated a flour thief and a brave man, and endeavored to show the utter improbability of a portion of his testimony. Brown had rushed to the south door of the school-house and taken a gun from a man who had grabbed the gun that Burton saw at the west side of the school-house door, and another man had rushed up just after Brown had seized this gun, all of which took place before the firing. There was evidently a mistake here, as the men, according to the testimony, were disarmed before the shooting took place, and was therefore too soon and highly improbable. As their testimony is unnatural and inconsistent in these and other respects, you must presume that they are also astray regarding the number of men present at the time of shooting, particularly as this is contradicted by a number of our reliable witnesses; and if there were, as there appears to have been, between 200 and 300 of the posse in the camp at the time of the firing, General Burton was not justified in the course which he pursued.

As to the shooting itself, there are direct contradictions, and he asked which class of witnesses were to be looked upon as the more reliable. Is it not more probable that those in the Morrisite crowd should be better able to hear and see what had taken place than those of the posse who stood some distance away? I believe that Morris stepped out deliberately to speak, as our witnesses and some of theirs have testified, because I believe his intention was simply to learn the feelings of his people at a moment when he expected his end had obtained the aim, he merely endeavored to test their faith in him, and not attempting the impossible thing to regain their arms; nor could General Burton have entertained that idea. Our witnesses testified that Morris stepped away from the arms and that his people followed him in that direction. Hanson first stated that when Morris advanced he turned in a southwesterly direction, but on coming into court the next morning he desired to correct that statement because his friends had called his attention to it, and he then insisted that Morris turned towards the arms.

Mrs. Cordon says that she saw the smoke of the pistol which was pointed in the direction of Morris, and that afterwards a woman ran to Morris with an exclamation, and that upon running to her, Mrs. Cordon found her shot. While attempting to get this Danish woman away, she heard another shot and learned that Mrs. Bowman had been killed. The defence had tried to prove that the woman by Morris was Mrs. Bowman, but from the statement of Mrs. Cordon it must be concluded that the second woman killed was Mrs. Bowman; and it is necessarily evident that Mrs. Bowman rushed up and called Burton a bloodthirsty wretch or villain, and that he shot her. Though I do not think that General Burton would coolly kill a woman, I think that laboring under great excitement, as he then did, a woman applying those offensive epithets to him, and having just shot Morris, he would in the excitement of the moment have turned and killed her.

I think our witnesses are not contradicted in any important matters, and I ask you to reflect upon the prominent and important facts testified to by them, and you will see that the whole theory harmonizes. With an appeal to the jury to find a just verdict, and stating that he had hoped General Burton would have proven himself innocent of the charge against him, Mr. Beatty concluded his argument.

TUESDAY, March 4, 9 30 a.m.

Judge Sutherland presented to the court the instructions to the jury which the defense wished to have brought to their notice, after which

JUDGE TILFORD

Proceeded with his argument: Seventeen years ago, ninety-four men were taken prisoners from a fortified camp, after a desperate resistance of three days, and brought to this city, charged not only with riot and resisting officers, but with the shedding of blood; the officer charged with the arrest of these men is the defendant in this trial; some of these prisoners, convicted of murder and sentenced as murderers, are now brought forward as witnesses and lauded by the attorney on the other side as heroes or pitied as martyrs, and the defendant, then an honored officer of this court is now brought to trial at the peril of his life for murder: no other crime but murder can be prosecuted after four years have elapsed since its commission; but notwithstanding this case has been allowed to sleep so long and now been brought up, we, of this defense, have confidence in you gentlemen (the jury) that in your verdict you will throw aside all prejudice and present an impartial, unbiassed finding; until the defendant is proved guilty he is always to be considered innocent, (and the able gentleman read authorities to prove that the burden of proof is with the prosecution.)

He then proceeded to marshal the evidence before the jury in a regular and systematic order: The first scene in this drama is in the year 1861, when we see drawn a picture of the Morrisite camp, and we are led to inquire what were their habits, what their reputation; there lived one Joseph Morris, a fanatic, followed by a deluded people, a religious sect, and he on one occasion was crowned with seven stars with his rod in one hand and the sword in the other; according to the statement of his own followers he was the incarnated spirit of Moses and was also the seventh angel; in their procession he was followed by John Banks on his black horse carrying the scale of justice; then followed Richard Cook on a red horse, significant color, carrying the sword of vengeance, and the last figure in the group was one Klemgard on a pale horse, representing we suppose, death on a pale horse; Jos. Morris was expected, like Christ, to rise again after the bullets entered into his body. These people toiled not neither did they spin, nor they did not cultivate the soil; when a man entered the community his stores were used in common, and as long as they lasted the whole organization feasted upon it; to show you their regard for law and order I refer you to the testimony of Mr. Thompson and Mr. Brown, deputy sheriffs of Weber County, who were resisted and even driven out; Mr. Paey's testimony, never contradicted, is conclusive of the fact of their resistance to Mr. Lot Smith; then we refer you to the testimony of Mr. Wm. Jones and his two companions confined in their dungeon manacled and chained, and they were even doomed to death, which execution was only deferred until the prophetic heart of Jos. Morris should fix the solemn day; the speaker spoke in high praise of the character and patriotism of Mr. H. W. Lawrence, who was then Territorial Marshal, and said that we cannot do else than believe his selection of Mr. Burton as deputy marshal to serve writs was in the highest degree appropriate; Mr. Stoddard's affidavit on his treatment is before you; he and his associates were confronted by Banks and a number of armed men; he asked permission to read the writ and was refused, then he threw a copy of it on the ground and this was burned; Mr. Stoddard left, not, however, until he was told that if he ever appeared there again he would never leave the fort alive; then we have the sworn affidavit of Philo Allen charging the Morrisite leaders with unlawfully detaining Jones and Jensen; previous to this time Gearson had, it seems, escaped, and this is found to be correct by the testimony of Jones himself.

The defendant at the time these writs were made out first appears upon the stage; Mr. Lawrence was not here, and the defendant not willing but after a strong reluctance was called upon to execute them; he was the deputy, and was compelled under the most severe punishment if he refused, to carry out the direction of the court; only after urgent solicitation from the Governor and Judge Kinney did he accept the position; knowing the fortifications and defenses