

ed they were surrendering; as soon as the white flag came down, Burton called to the troops to stop firing; there was no firing when the white flag came out; Burton's party went in five or ten minutes after the white flag went back; I could not see them stack their arms; heard they did so; I saw Burton, Golding and Croxall go in, and another horseman whom I did not know, an oldish man; next I saw 12 or 15 armed men following Burton, perhaps a minute or so after Burton had passed; they were the only men I saw pass up the lane; I heard Burton call on the men; Golding came back and ordered more men after the first went; there were not over ten men; all had gone up before the firing; about five or ten minutes after they had passed, the shooting took place. Ross went up and ordered us to stay in the house; the door was open when the men passed; did not go out of the house till after the firing was over; after Golding passed back they had about time to get to the school-house before the firing commenced; when the firing commenced we ran up as fast as we could. Others were running up; some of the arms were stacked, some lying on the ground; the men were between the arms and the Morrisites; the line was irregular; the men had their guns in their arms; think they were cocked; perhaps there were 15 men standing in the line; I did not see the horsemen; I stood on the north side of the school-house where they were guarding prisoners; there were not many standing there; the guards were standing eight or ten feet from them; we were ordered to stand guard by Mr. Lewis; we took charge of the prisoners; there were not over 20; there might have been one or two men guarding them when we got there; pretty nearly all the men were in front of the stacked arms; saw some persons scattered all along the east end; I was a little back and could not see what was going on in a south-easterly direction. Did not see Burton till after they had quieted down.

WM. A. M'MASTER, SEN.

Live in this city. Lived here in 1862. I was with Burton's posse that went to the Morrisite camp in 1862. I was captain of fifty militia men. My company was not full on that occasion. My company left from the city. Expected that D. Camomile was in my company, but cannot swear to it, it seems to me he was with it. (Witness was here shown a map of the place.) There was a mud wall there. On Sunday I was in the west rather to the north of the fort with my men. I was north of the lane leading into the village. A portion of my men were with me. I was in that position all day. Did not see a white flag sent out, but I heard of it. Did not see Burton and party go into the fort, but heard of it. When Burton and his men rode past I was in this dry ditch. Cannot say that I heard the firing at the school-house. I went in the fort with my men after the surrender. I placed my men in the northeast corner of the school-house. Burton's men stood north of the school-house when I went in, running east and west. I placed my men to the right, and I was to the extreme right of my men. I took in about twenty or twenty-five of my men. I saw men going in before me; I was about the last that went in. The Morrisites, I believe, were drawn in a line near the south entrance of the fort. Heard that Banks and Morris were shot, but did not see them. No shooting took place after that. I did not see Burton. About half an hour later we were ordered to take the prisoners to camp. Did not hear shooting after that. Don't remember that Camomile came in with me, but my impression is that he stood at my left. I did not see Morris' body.

Cross-examination—Had nothing to do with the artillery. I remained in ambush during the entire fight. I remember a cannon being fired on the bench the first day before we left. Did not leave immediately after. Perhaps an hour or an hour and a half later. We were ordered not to fire. I don't swear that Camomile was in my company, but it seems that he was with me.

AMMOND GREEN

Was then sworn—Live in West Weber. In 1862 I lived there. I was one of Burton's posse. I was there during the three days. Was in the fort at the final surrender. I saw the white flag on Sunday. I

was at the rolling breastwork, near the slough. First saw the flag coming from the east. I came down the lane near the end, I think. I didn't know who brought it, but the man stopped and talked with General Burton. The man went back, and General Burton moved in, telling those behind the breastwork to follow him. There were ten or twelve men there, but am not positive. Half were supposed to be armed, the other half unarmed. We went in just as we were. We followed Burton right in. I was one of the number. I knew Burton and Stoddard, but never knew the others, a young man and old one. We followed on the north side of the school-house, to the east end, about even with the southeast end of the school-house, about 15 feet east. Three or four stood between me and the houses, and two or three up near the arms. The horsemen rode around and halted southeast of the southeast corner of the school-house, about fifteen feet south of me. There was a large crowd of Morrisites, who stood south of Burton, in a kind of circle. Stoddard was on the south side of Burton, and the old man on the north side, a little behind, and the young man on the south side of him, a little behind the two. I think that is the position. I was in the rear of them. The horsemen stood with their heads toward the school-house. Burton faced the Morrisites. The first I heard was a man in the crowd asking Burton what he wanted. He pulled out a paper and read the names of persons for whom he had warrants—Morris, Banks and Klemm and others were named in it, and he said he felt it his duty to take all persons who had been in arms against the law. A man asked the privilege for the prophet to speak to his people. Burton said yes, if he would be brief and speak in the interest of peace. Morris stepped out, raised up his hands and said: "All who will follow me in life and death, come on!" He spoke in a loud voice. There was a general response, and he started away. The people said "Aye" and "To arms." I thought that if they had intended to surrender they had changed their minds, and that the rush was to get the arms. Morris started as though he would go towards the arms. Burton hallooed "Halt! Halt! Stop the prisoners!" The shooting commenced. I saw two shots fired. Burton fired one and Stoddard one. Heard other shooting. Burton shot at Morris, who was about ten feet away. Did not look to see if this shot took effect. I turned around as quick as I could. I saw four persons lying on the ground. Think there were eight shots fired. Don't think it took six seconds. Heard no other firing after that. I only saw two shots fired, but heard the others. When Mr. Burton fired, his horse jumped and reared around, and I then turned and saw the four persons lying on the ground. Should not think it was four seconds before I saw the persons had fallen. No one spoke to Burton before he fired. I was in a condition to know, being only ten or fifteen feet away. I saw where the bodies lay. Banks lay very near the door-step, a woman by him. Morris lay just east from the door and a woman southeast of him. Heard she was called Bowman. She was not very tall. Was light complexioned and fresh face. About 25 years old. The other woman was short and heavier. Dark and older, I should judge. After we reached the school-house, I think eight or ten other men came in just about the time of the shooting. I was armed. About fifteen of our party were in sight when the firing took place, there might have been a few more, perhaps less. They were scattered around, some at the arms, some where I stood. Wm Brown was around on the south side. I saw Burton after the firing all the time. He was mounted all the time. When I heard Morris call, and saw the response, I thought I wanted to be out of there.

Cross examination—Did not know how I could get out if I wanted. I thought if they got their guns they would have hindered me from going. I did not want to get out and did not think of getting out at the time. Have thought I could not have got out if they had got their arms. I did not have time to think much. They were after their arms. I thought they would get their arms if we did not stop them. I felt there was a good deal of danger. They had not all given up

their arms. Some of the Morrisites were bringing their arms as we came in. All that I saw had put their arms in the pile. Do not think those we saw bringing their arms had time to put them in the stack. Could not say that there was more than one coming, with arms. Others were coming, but I do not know that they had arms. At the time of the rush I never thought, but some of them had arms. Burton's party were facing the school-house when the firing took place. Stoddard was on Burton's left side. Golding on the other side, and the other man behind him. Golding was a little behind, his horse's head a little ahead of Burton's horse's tail. Croxall was behind Stoddard on the south side of Golding. The Morrisites were south of Burton's. Morris stepped out of the centre of the Morrisites south of the school-house. As he was making for the arms he was told to "halt" twice, but he did not stop, and he then started to the southwest of the schoolhouse. Don't know that his back was to Burton's party. Did not see Morris again till he had fallen. At the moment he started I don't think he was facing Burton. Burton was looking northwest. Morris started towards the arms, and when he was stopped he turned west, and then I turned to look at Burton and the shooting took place. I saw Burton shooting, but did not look to see what he was shooting at till Burton's horse wheeled around. Morris was stopped. Cannot tell how the men stopped him. Cannot say how many men were near the arms, about three or four, I believe, the rest were in other places. I did not see a woman killed. Did not see a woman near Morris, I saw men. I did not know them nor Morris. Morris was walking very fast, I think he was walking erect with his hands up. There was quite a crowd gathered. He had a clear space when he was going north. The woman that lay near Morris was not very tall, about medium height. The stouter woman was the one that laid next to Banks. Think she was also a little taller. Her hair was dark-brown, the other woman's hair was light or yellow. Did not see children in their arms. Did not go to see them till after the shooting was over. Never examined Morris' wound. Never saw it. Saw blood on the face of the woman next him. Did not notice how the women lay.

Court adjourned till Saturday morning at 9.30 a.m.

SATURDAY, March 1, 9.30 a.m.

M. B. CHILDS

Was first sworn; in 1862 lived in Riverdale about two miles and a half from Morris' fort; was a member of Burton's posse; was in the fort the evening of the third day; I heard the conversation between Gen. Burton and Morris; I stood at the southeast corner of the school-house; pointed out the relative positions of the horsemen and the Morrisites; Gen. Burton called for Jos. Morris; I did not see the latter until he was near Gen. Burton, who said he had a writ for Morris, Banks, Parsons and others; said he also wanted the surrender of all who had borne arms; some one asked for Jos. Morris to speak, permission being granted if he would be brief and not excite the people to further hostilities; he said "All who are willing to follow me, do so;" he started north I think and a general rush of the Morrisite crowd followed; I then started in company with Mr. Brown to get on the school-house steps to see what took place; Brown was ahead of me; we met a man coming out of the school-house; Mr. Brown took a gun away from him; and while I was stepping up to the highest step the shooting commenced; I saw Gen. Burton shoot, and Judson Stoddard shoot, and others, who I do not know; Gen. Burton shot at Jos. Morris; I saw them very distinctly; Gen. Burton shot, I think, twice, and Stoddard perhaps three; I think Gen. Burton shot Jos. Morris, who staggered in the act of falling, and I saw him no more I think until the trouble was over; there were others very close behind him; I do not remember whether they were men or women; the shooting was very rapid, six or seven shots, occupying I guess about four seconds; Burton was from 16 to 20 feet away from Morris; heard Burton tell him to stop, or halt; this was before I got on the door-step; Gen. Burton was within my view until the firing ceased; no woman approached near him; he remained on horse-

back during the time he was in the fort; I helped construct and move the rolling breastwork; I saw a party make a rush toward the log house near west lane; the battery was constructed of three wheels connected by a pole and the spokes filled in with willows; this battery became broken near the slough; I helped roll the battery and had no gun.

Cross-examination: I went in with the first party who followed Burton; I did not notice how many went in; there was no one guarding the arms when I went in; there was nothing to prevent the Morrisites from getting the arms; when this rush was made I think there were six men guarding the arms, though I do not recollect exactly; I thought the Morrisites were making a rush toward the arms, but I have no distinct recollection at that instant of seeing any men guarding the arms; there might have been 25 men there for all I know; Burton faced the east I think, a little north of east, at the time of the shooting; Stoddard stood on Gen. Burton's left from where I stood; the horsemen were mostly headed in the same direction; I would not think they were exactly abreast; there were four or five men on horseback, I knew only General Burton and Stoddard; Stoddard rode a larger horse than Burton; the two who did the shooting had pistols; did not notice that all the horsemen had pistols; one, a young man, had a bugle; I should think there were as many as five men horseback; am not positive about the direction they faced; about the first I heard, Gen. Burton said he had a writ for the arrest of certain persons; Morris was more than half way from the crowd to Burton; General Burton said he had a writ, and also that he required the surrender of all who had taken arms against him; after permission was granted and he said for his people to follow him, he turned partly around and started towards the Morrisites; (placed spots on the chart about where the Morrisites and the arms stood;) I am positive that Morris turned a little around to speak to his people, but whether he turned northeast or what direction I can't say; when the Morrisites started toward the arms, Morris did also; to do this he must have turned his direction a little; in a direction about 25 feet northeast of where he stood talking to Burton, he fell; men, women and children made a general rush toward the arms; in response to Joseph Morris, they said "aye" or something like that and started forward; General Burton called "halt" about twice I think; he fired almost immediately; Morris I think was not close to any other Morrisites; they made a rush towards him and towards the arms; my recollection is that there were some few close to Morris, but whether they were men, women or children I could not say; did not examine where he was hit or any of the other bodies; he was stooping a little I think when he was falling; the Morrisite crowd perhaps proceeded about a rod and a half towards the arms.

By a juror—Morris was going northeast when Burton called him to stop; he did not stop; was going when he was shot.

THOS. MARSHALL

was next sworn; know Gen. Burton and have known him since 1866; I consider his character has been good.

Cross examination—Was not up at the Morrisite camp.

E. D. HOGE

was sworn; am acquainted with Gen. Burton, have known him for upwards of 13 years; his general character has been good.

JUDGE Z. SNOW

Was sworn; have been acquainted with him since 1852 and familiarly; his reputation as to being a law abiding citizen has been good.

A. MINER

Was sworn; know Gen. Burton; have known him since 1854; his general reputation has been, both in an official and private capacity, good.

THEODORE MCKEAN

Was sworn: Accompanied Gen. Burton's posse in 1862 as deputy marshal and adjutant; kept a memorandum of some of the events; was on the bluff when the cannon was fired; kept a memorandum of the times; the first gun was fired about 10 o'clock; 140 male prisoners were

first taken, but some were afterwards released; some of the arms captured were found loaded.

Cross-examination: Found some powder and some balls; made no memorandum of the ammunition brought in; it was sold I think; I kept no account of its sale; did not see the arms turned over to anybody; did not count the guns, so do not know that my memorandum is correct.

N. GROESBECK

Knew Gen. Burton; knew him since the fall of 1856; I knew his reputation to be good.

JUDGE SUTHERLAND

stated that many other witnesses giving this same testimony, could be produced, but that their evidence would merely be accumulative.

JUDGE VAN ZILE

Stated that he desired to introduce rebutting testimony, and an adjournment was therefore taken until Monday morning at 9.30 o'clock.

MONDAY, March 3, 9.30 a.m.

The defense desired to introduce evidence to the effect that Mr. H. W. Lawrence, Territorial Marshal, was absent from the Territory at the time of the service of these writs, but this fact was conceded by the prosecution. The prosecution then proceeded to call witness for rebuttal, and

JAS. ASHMAN

Was first sworn: Live in this city; remember the Morrisite trouble in June, 1862; was at the Morrisite camp as a member of Gen. Burton's posse; was in the infantry; was there during the three days.

Q.—"How many men did you have there?"

This was objected to by the defense and Judge Tilford stated the objections; that it was not a subject of rebuttal; all these facts were testified to before by Camomile and others; to show the number of the posse was a very important point of the case and as it was not introduced in the opening of the case it cannot now be brought forth.

Mr. J. H. Beatty for the prosecution stated the case for his side and read a statute on the subject; stated that we, the prosecution, did not make this point a particular one, but the defense have done so and we should therefore be allowed to introduce rebutting evidence upon this point.

The point was further argued by Judge Tilford, and the objection was overruled. To this the defense excepted.

The examination was resumed: Should judge there were 500 men at least, perhaps 600; I was on the west side of the fort; witness pointed out on the map where he was stationed. The witness was asked in regard to a charge on a log house and this question was objected to by the defense and was argued by Judges Tilford and Sutherland; Judge Van Zile replied for the prosecution, and the objection was overruled.

Witness resumed; remember the charge upon the house, was one of those who made the charge; the house was about 60 to 70 yards from the end of the lane; heard no conversation between the flagman and anybody; next saw the flag going back into the fort; I saw several men run, one was shot, from the house northeast of the house where we were; he was running toward the bowery when he was shot; the first I saw, about 25 to 50 men passed into the fort; afterwards the horsemen came along, then we came out of the log house and followed them; the lane was full of men running in; I did not hear the shooting; I was on the north side of the school-house; when I got there there were fully 100 men there; I was there within a few seconds of the horsemen; there were four horsemen; there were fully 100 men there and they were drawn in a line between the arms and the Morrisites; I went around on the east side and have a slight recollection of hearing shooting; I saw the horses jumping and saw a man and woman lying dead; at the north end I saw a large crowd of excited Morrisites; stayed there from one to two minutes.

Cross-examination—I should suppose there were at least five hundred men there in the posse; do not know how many companies or how many captains were there; I was in Mr. Lewis' company; I think he was a lieutenant; 25 men

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