

VII. Capt. Lewis D. Joy, Eleventh Kansas Volunteers, is appointed assistant provost-marshal for Leavenworth County, Kansas.

By order of Brigadier-General Ewing :

JOHN WILLIAMS,
Captain and Assistant Adjutant-General.

LEAVENWORTH, KANS., July 20, 1863.

D. R. ANTHONY,

Mayor, Leavenworth City, Kans. :

DEAR SIR : I am in receipt of your letter of yesterday, and take pleasure in answering your inquiry. Leavenworth, which is the center of trade for the Missouri Valley, is from that fact the market for a large part of the stock stolen on the border, and the resort of many of the thieves and robbers infesting. Often when a successful expedition for plunder is made into Missouri or the interior of Kansas, the robbers seek here a place of concealment for themselves and a ready market for their stock, which they could not as surely find in other less populous and flourishing towns of Kansas or Western Missouri.

To arrest and punish by military authority those who commit these depredations in that part of my district in which the civil power is inefficient, is clearly my duty, and also to arrest for such punishment residents of this district who are engaged in committing acts of robbery in the District of Northern Missouri. It is more immediately my duty than that of yourself, or any other civil officer in Kansas, for I may punish for such offenses committed in Missouri, while the civil authorities here cannot, for want of jurisdiction.

In the discharge of this duty, I have employed detectives, with orders to make arrests of thieves and seizures of stolen property in this county. I have been informed, on authority I regard as reliable, that one of these officers was recently ordered by you, as mayor, to turn over to your policemen some horses stolen in Missouri, and seized here by him, including one horse the property of the Government; and on his refusal to do so, you arrested him for breach of the peace, and released him only on condition that he thenceforth should cease to take stolen stock, even though it belonged to the Government, until after the question as to title had been determined by the courts; and that you arrested and fined \$20 for vagrancy a man who aided that detective, and who is not a vagrant, when it is well understood that the arrest was solely in punishment for aiding the detective in seizing the stock; and that you gave to another of my detectives orders as to arrests here similar to orders given in the mayor's court, as above stated, and that one of these officers was sued in an action of replevin, by a claimant of the United States horse, above referred to. At the hearing of which action, on the 18th instant, you appeared as counsel for plaintiff, or as *amicus curiæ*, and judgment was rendered for \$50 against this officer for executing my orders. I have no personal knowledge of the truth of all or any part of these statements, but am informed that they will be proved, if you wish the proof. But whether these statements be true or not, as to your interference as mayor to interrupt the execution of my orders, I am well satisfied that many of the holders of and dealers in stolen stock in this city have intended to resort to the courts to retake property seized under military orders, and involve in litigation officers seizing it; thus greatly embarrassing, if not preventing, the execution of my orders for such arrests and seizures here.

To enable me to prevent this interference, and not, as you seem to suppose, to preserve the peace of the city, I have declared martial law

in Leavenworth County. The city is peaceful and orderly, but the border is distracted, and property there insecure; and I must have the robbers with their plunder followed into and arrested in the peaceful city, if I am to restore quiet and security to the border. I will not abate or surrender my military jurisdiction, which extends to both arrests and punishments, in favor of a civil jurisdiction extending only to arrests; nor allow any town in my district to become a city of refuge within whose precincts the pirates of the border may escape the swift process of martial law. I will carefully leave the State, county, and city authorities free and uninterrupted in the execution of the laws and ordinances, except so far as in such execution they materially interfere with the discharge of my duties as district commander; and will promptly revoke the proclamation of martial law whenever the necessity for it is no longer apparent to me.

I am, very respectfully, your obedient servant,

THOMAS EWING, JR.,
Brigadier-General.

LEAVENWORTH, KANS., *July 22, 1863.*

Brig. Gen. THOMAS EWING, Jr.:

SIR: Yours of the 20th instant, in answer to mine of the 17th and 20th instant, is received. You say "Leavenworth is the center of trade for the Missouri Valley," which is true. You say it is your duty

to arrest, for punishment, residents of this district who are engaged in committing acts of robbery in the District of Northern Missouri. It is more immediately my duty than that of yourself or any other judicial or ministerial officer in Kansas, for I may punish for such offenses committed in Missouri, while the civil authorities here cannot, for want of jurisdiction.

You have practiced law in Kansas for six years, and ought to know the statutes of our State. I refer you to section 274, chapter 33, on crimes and punishments, page 340 of the Compiled Laws of Kansas, to wit:

SEC. 274. Every person who shall steal, or obtain by robbery, the property of another in any other Territory or State or country, and shall bring the same into this State, may be convicted and punished for larceny in the same manner as if such property had been feloniously stolen or taken within this State.

If this statute has been overlooked by you, holding the position you have, you ought, at least, to have known the common law. I refer you to Wharton's Criminal Law, section 1817:

In Massachusetts this doctrine has been held, and convictions for larcenies in other States, where the property stolen has been brought within her limits, have repeatedly taken place. The Connecticut court of errors, in an opinion which received the unanimous assent of the judges, asserted, at an early period, the same doctrine. A similar conclusion was reached in North Carolina and Maryland, though not without much argument, and also in Ohio. In Vermont the supreme court has gone further, and, transcending the common law limits, has held that when goods were stolen in Canada and brought into that State, the larceny was complete.

I have always ruled that my court had jurisdiction in all such cases, and the ruling has been approved by all respectable attorneys. I did not order your detective to turn over the horses to my police. I wrote him a simple request to do so, informing your detective that the party from whom he had taken the horses was innocent, and that the horses were not stolen, which has since proved to be the fact, as you yourself ordered, through George Kingsley, one of your detectives, and J. G. Losee, another of your detectives, the release of Burr Reed, the colored

man, and charged with being the thief, and your officer released him. I suppose this was done because you were satisfied he was innocent. And now permit me to ask, why was the man who claimed the horses, and who was charged by all your detectives as being the thief who stole the horses, discharged and the horses retained by your detectives? It is my rule to arrest and punish the criminals rather than seek merely to obtain the possession of the stolen property. Again, your detective took these horses from Reed many days before he was arrested, and no one of them intimated an arrest until Reed was put on the witness stand to testify against the detective who took the horses. After he was sworn, and before he had given his testimony, one of your detectives, in a blustering manner, grabbed the poor negro by the collar and told him he arrested him for the thief. A large number of your detectives were in the court at the time, armed with revolvers, which they took special pains to exhibit. This trial was before A. Brown, esq., justice of the peace in the city, and a simple case of replevin. You may approve the action of your detectives; I do not, nor do our citizens. Why was not this man Reed arrested before? Why so shamefully insult a court of justice?

If I did (which I did not) "arrest and fine \$20 for vagrancy a man who aided that detective, and who is not a vagrant," is it sufficient cause for you to declare martial law? You say:

The city is peaceful and orderly enough, but the border is distracted, and property along it insecure, and I must have the robbers and their plunder followed into and arrested in the peaceful city if I am to restore quiet and security to the border. I will not abate or surrender my military jurisdiction, which extends to both arrests and punishments, in favor of a civil jurisdiction, extending only to arrests.

I have quoted the law for you, showing that I have "jurisdiction" for both "arrests" and "punishments." When you say you will not "abate or surrender your military jurisdiction to the civil," I would refer you to Orders, No. 63, of your commanding general:

Martial law has been declared in certain portions of this department. This does not, however, suspend the functions of the civil governments of the loyal States. It is the duty of all officers of such loyal civil governments to execute the State laws, as far as possible, in the same manner as if no United States troops were present; and it is the duty of the military authorities of the United States to abstain from interference with the civil officers, and to protect them from violence, if need be, in the discharge of their duties. Any resistance to or interference with civil officers while in the discharge of their legitimate duties, by officers or soldiers, is a crime which merits and will receive the severest punishments.

I have been mayor of this city since April 8, and since that time not fifty dollars' worth of property has been stolen without the property being recovered and the thief punished. You have had your detectives here one month, and not one criminal has been punished by you, so far as I can learn. I have a strong police force, granted to be the best ever appointed. They arrest all parties guilty of the crimes you name, and, if guilty, the criminals are punished. Our city and county were never so peaceful and orderly as at this time. Your detectives have had full sway here, and so had the detectives of General Blunt before you came, and yet this is the only case in which they have been interfered with, and I assure you this one would not had I not been assured he was guilty of using his office for the purpose of swindling poor runaway slaves out of their horses.

In Atchison County a vigilance committee has to enforce the laws. Why not proclaim martial law there? In Johnson County, Kansas, loyal citizens are being murdered almost every week by bushwhackers from Missouri. Why not send the two companies of soldiers stationed

here to enforce martial law in Johnson County, to protect the lives of our brothers? I will add, that all the matters discussed in your letter were talked over by us on the day martial law was declared, when you expressed yourself satisfied with my policy, although you did not wish to embody my policy in your orders. I left you with the understanding that all detectives were to be withdrawn from the city, except George Kingsley. I offered you the aid of the whole police force to enforce your orders, and to my surprise you declared martial law the same day without consulting me. I do not claim that you ought to consult me, but I do claim that you ought rather to have consulted me than the parties you did. I feel that you did not talk to me in that frank, candid manner which my position demanded. I was grossly deceived as to the tenor of our conversation. I thought we agreed exactly, and so stated to our citizens after leaving you.

I think your order has materially injured our city. Our citizens are almost unanimously opposed to it. I have to say that our people prefer to have their rights to property settled by a jury of our citizens, rather than by the best detectives or provost-marshal you can appoint. I need hardly say our city is the most loyal in the United States. The civil law is strong enough to enforce conscription laws and all. In New York a mob of 30,000 rebels break into an arsenal, arm themselves, and kill United States soldiers, and martial law is not proclaimed. You declare martial law here to prevent trial by jury. Is not this a fair statement of the case? Will you revoke your order?

I am, dear sir, most respectfully, your obedient servant,
D. R. ANTHONY,
Mayor.

HEADQUARTERS DISTRICT OF THE FRONTIER,
Fort Scott, Kans., July 22, 1863.

Lieut. Col. C. W. MARSH,
Assistant Adjutant-General, Saint Louis, Mo.:

Cooper retreated in the direction of Fort Smith, where are Steele and Cabell, with heavy re-enforcements in men and artillery.

Colonel Moonlight says:

General Blunt is quite sick; has been in the saddle forty-eight hours; was sick at starting, and is now prostrate. I fear he is going to be very sick.

The general says:

If I had more troops, I should be in Fort Smith in twenty-four hours, and get in between the enemy and their supplies, which all come from Texas. As it is, I fear it will be impossible to cut their supplies off.

I think the importance of moving re-enforcements in his direction is great.

Respectfully,

H. Z. CURTIS,
Major and Assistant Adjutant-General.

WAR DEPARTMENT,
Adjutant-General's Office, Washington, D. C., July 23, 1863.

Maj. Gen. JOHN M. SCHOFIELD,
Comdg. Department of the Missouri, Saint Louis, Mo.:

SIR: The communication of Maj. L. C. Easton, quartermaster, under date of June 18, 1863, addressed to Brig. Gen. Robert Allen, chief