

HISTORICAL COMMITTEE

*presents*

# COL. ALBERT JENNINGS FOUNTAIN: Prosecutor of the Cattle Rustler

*by Howard W. Henry*

One of the colorful and exciting attorneys who helped to establish law and order in southern New Mexico was Col. Albert Jennings Fountain of La Mesilla.

Born October 3, 1838, in New York City and christened Albert, his father, Solomon Jennings, reportedly was a captain of a merchant vessel. His mother was a de la Fontaine, originally from Paris.

Fountain said of his boyhood that he received his education in New York and won a scholarship to Columbia College, where he was head of his classes. Because of failing health he was sent with five other students and a tutor on a tour around the world, around 1857-58. They went to Europe, Egypt, Israel and Italy, and when it was time to return to New York, they instead headed for Calcutta.

## THE FAR EAST TO THE SOUTHWEST

Just before Fountain left home on this tour, his father wrote that he and his ship were somewhere in the Orient, food was running low, and he was in dire trouble. That was the final word heard from him. Fountain wanted to find what had happened to his father, and it is reported that this is why he made the side trip to Calcutta. To protect himself, he began using his mother's name also and apparently liked that arrangement so well that from then on he was known as Albert Jennings Fountain.

The group went ashore in Calcutta and decided to explore Africa. They were stopped somewhere on their journey in Africa and returned to Calcutta where they boarded a schooner for Hong Kong. Misfortune again befell them and, too late, they found they were mixed up with a crew of smugglers. They were arrested by the Chinese and jailed in Canton. There they stayed until freed with the help of the United States counsel general. The most reliable information shows that Fountain's next stop was San Francisco, arriving in 1859 at the age of 20.

He started his career there as a reporter for the *Sacramento Union* newspaper. The newspaper sent him to South America in 1860 on a reporting assignment, and he was in trouble almost immediately. His own account says he was arrested and condemned to be shot. But he soon found an ally who aided in his escape. Disguised as a woman, he boarded a steamship for San Francisco.

He then read law in the office of N. Greene Curtis in San Francisco and had just been admitted to the bar when the Civil War began. A Union group, the California Column, was organized, and when it left for the Rio Grande, Corporal Albert Fountain was among its troops. They fought Cochise in a two-day battle at Apache Pass, and by the time they reached New Mexico, Fountain was a first sergeant. March 1, 1863, he was commissioned a second lieutenant.

Fountain soon decided that he had found the Southwest a very desirable area in which to live and call his home in this new territory. On October 27, 1862, he took as his wife Mariana Perez de Ovante, a beautiful 14-year-old whom he met when her brother, who was in his

command, took Albert home with him one day. She was shy and reserved, so much so that after their marriage he would, when in town, pick out several dresses at the merchant's and send them to her so she could make her selection without having to go to town. But with their 12 children to care for, she may have had a hard time making time to go into town.

Fountain was discharged in 1865, having been wounded in Arizona, and was sent to El Paso to recuperate. He became involved in Texas politics very quickly and before long had joined the forces of Benito Juarez in Mexico, organizing the Juarista artillery and attaining the rank of full colonel. He was then involved in several skirmishes, including the battle of Chihuahua.

At the conclusion of that activity he returned to El Paso in 1868 and found his party split, supporters gone, rivals strong, and his eventual indictment in the U. S. District Court on 18 separate counts. Long legal battles ended in his exoneration, but his life in El Paso resulted in fights and even gun battles where he was again twice wounded. He was eventually convinced that his life was worth little in Texas, and in 1875 he moved his family to La Mesilla, New Mexico, near Las Cruces, and started a new life.

## PROSECUTOR OF THE CATTLE RUSTLER

Fountain established a good practice in New Mexico and became a successful lawyer, preferring to take the side of the underdog, the defeated, the oppressed. He was a champion of the poor and liked to do battle with outside land-grabbers and politicians. He was named Assistant United States Attorney in 1889 by President Benjamin Harrison.

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He also took to fighting the gangs of desperados that had moved into the southern territory and became a prosecutor of the cattle rustler. He spent a good deal of his time and effort in prosecuting these men, and by 1894 he had cleaned up the Socorro area. The Southeastern New Mexico Stock Growers' Association declared he had sent fifteen men to prison that year.

He became a special prosecutor for the Stock Growers' Association and that was the call that sent him north one cold February day in 1896 to Tularosa. He and his friends knew he was in jeopardy because of his relentless prosecution of the rustlers, and that was a determining factor in taking along his young son, Henry. It was thought that no harm could befall him while he had such a young boy along side him. He spent several days in Tularosa successfully prosecuting a case and while on his return trip to La Mesilla, he and Henry disappeared without a trace.

A mail carrier had met him on the trail earlier and verified that Fountain was headed for home. The carrier had seen horsemen several miles distant, as had Fountain, but never met up with them. It is supposed that these riders trailed along behind Fountain and his son until they had an opportunity to overpower and kill both the father and son. The horses returned home, and much later the buggy was found abandoned with some personal items still in it. Most of the papers, his rifle, dagger, lap robe and an Indian blanket were gone.

The famous sheriff Pat Garrett was pressured back into service and took on the job of special detective attempting to solve the mystery. Rewards were posted eventually amounting to around \$20,000, but even this large sum was not enticement enough for someone to come forward with information to solve the crime. There were several suspects and several trials held in an attempt to convict, but nothing was ever proven, and the

unsolved death of Col. Albert Jennings Fountain closed out the nineteenth century. ■

*Howard W. Henry was a court reporter in New Mexico for some 40 years, serving in the Sixth Judicial District at Deming for six years and the United States Federal Court in Albuquerque for 17 years. He also maintained a freelance practice during that time, retiring in January 1992. He serves as a member of the State Bar Historical Committee.*

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