



# City of San Bernardino Historical and Pioneer Society P.O. Box 875, San Bernardino, CA 92402

## LIBRARY NEWS MAY 2010

By Richard D. Thompson, Librarian

### SHERIFF ELI M. SMITH: FEARLESS BUT FLAWED PART TWO OF TWO By Richard D. Thompson

#### THE CONSTRUCTION OF JAIL CELLS AND PURCHASE OF A NEW COURT HOUSE

Early in 1860 the San Bernardino County Board of Supervisors determined that jail cells should be built and placed in the court house, which was the only building the county owned at that time. The structure was a two-story adobe, used by the Mormons as their “Council House,” and when they went back to Utah in 1857, the county attained possession of the building.<sup>37</sup> The supervisors let a contract for \$2,000 to Los Angeles blacksmith Robert Carsley to build two cells, which were delivered to San Bernardino, installed on the lower floor of the adobe, and on August 4, 1860, the work was approved.<sup>38</sup>

The Los Angeles *Star* pointed out that the county’s debt was \$20,168.<sup>39</sup> The deficit included the \$2,000 for the new jail cells. This debt had ballooned from the small surplus in the treasury left by the Mormons when they departed the area. Perhaps some of the money had been ill spent, but judging from the number of dangerous outlaws rounded up by Sheriff Smith, at least the cells were a good investment, especially when one considers that San Bernardino had a circuit court judge who came to town only periodically, and the suspected felons had to be housed sometimes for months while waiting for him to arrive.



Actual jail cell used by Sheriff Smith, now located at the San Bernardino City Historical and Pioneer Society’s Heritage House. Bottom center is a picture of the Council/Court House.

Those who saw the cells said they were very secure and that no one would ever break out of them. People still say that when they see the jail cell at the Historical and Pioneer Society’s Heritage House

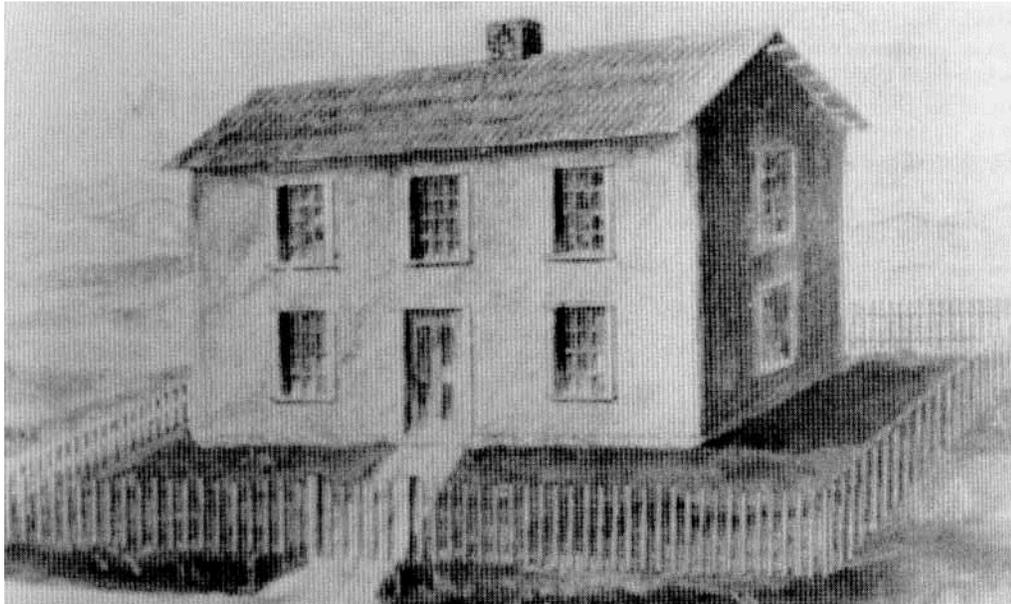
<sup>37</sup> Brown, Jr., John and James Boyd. *History of San Bernardino and Riverside Counties*, The Western Historical Association, Chicago, II, p 46.

<sup>38</sup> Minutes Book A, San Bernardino County Board of Supervisors, p 82.

<sup>39</sup> Los Angeles *Star*, September 29, 1860.

site. Nevertheless, about the time that Smith took office it was reported that a prisoner by the name of William Bevert “broke” the jail.<sup>40</sup>

Meanwhile, the county’s one public structure was in a deplorable condition. The March 2, 1861, issue of the *Los Angeles Star* quoted a story from the *San Bernardino Herald* and added some acerbic comments. “In noticing the condition of the Court House of San Bernardino county,” the *Star* reporter wrote, “the *Herald* says that ‘the Board of Supervisors made arrangements to have the tottering walls secured, the roof propped up and scoured.’ Now, in our county, it is not only necessary to have a roof under which to dispense justice, but also walls, to avert the blasts of the storms which sometimes, regardless of the condition of our public buildings, sweep furiously upon us. We would suggest to the Board of Supervisors of San Bernardino county to make arrangements to have ‘the tottering walls removed,’ but others substituted. Such an order will certainly be necessary before that comfort and convenience so necessary to a proper administration of justice can be obtained.”



Early sketch of the Mormon Council House, used for several years as the county court house

The walls may have been “tottering,” but it was seven months before the supervisors were stirred to action. Two new adobe walls were built, a wooden roof constructed, and interior changes made to the Sheriff’s Office. The \$600 for this maintenance project was taken out of the jail fund.<sup>41</sup> However, it would have been better had the Supervisors waited a few months more, because in January a huge storm hit the Southland and the adobe walls of many of the town’s structures practically melted, including the county court house. This storm caused much damage in the greater San Bernardino area and wiped out the nearby village of Agua Mansa. Sheriff Smith reported conditions to District Judge Benjamin Hayes, who was on his way to town, and described how the flood waters of City and Warm Creeks came very suddenly, and “in billows fifty feet high.”<sup>42</sup>

The search was on for a court house replacement and in July the private residence of merchant Charles Glaser was purchased and converted to public use. The newspaper was impressed, remarking that “not a city in the State could boast of a more delightful family residence than that owned by Mr. Glasier [sic].”<sup>43</sup>

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<sup>40</sup> *Los Angeles Star*, October 5, 1861.

<sup>41</sup> Minutes Book A, San Bernardino County Board of Supervisors, October 21, 1861, p 162.

<sup>42</sup> Hayes, *op cit* (in Part One), p 267.

<sup>43</sup> *Los Angeles Star*, July 12, 1862.

A reporter for the San Francisco *Daily Evening Bulletin* happened through town in July of 1862, just at the time the Glaser house was purchased, and he wrote about the structure and the county's finances, stating that he "should not consider San Bernardino a prosperous county if the value of its scrip, depreciated to 35 cents on the dollar, is to be taken as a criterion. What this may be owing to I am unable to say; certain it is they have very little to show in the way of public property or improvements for any indebtedness that may have been incurred. A Court House has lately been purchased for the sum of \$2,000, being one of the adobe houses built by a former Mormon resident [Glaser was Jewish, not Mormon], which, with a skeleton of a jail, is I believe the only property owned by the county. This is, however, a spacious edifice and in a good state of preservation—more than can be said of most of this class of buildings here. It has, moreover, a couple of acres of land attached to it, covered with vines, peach and other trees loaded with fruit."<sup>44</sup>

The unidentified reporter then gives a description of the old court house; however, what he describes is not the Council House but instead an adjacent residence originally built by a high official of the Mormon Church who left in 1857.<sup>45</sup> The correspondent uses some provocative terms in his depiction, opining that the "former Court House, and present jail, whatever may have been its pristine estate, exhibits just now a most forlorn and ludicrous appearance. It is also a large, adobe building, put up at an early day by a well-to-do magnate in the Mormon church, who having four concubines, arranged the interior of the edifice with reference to these family relations —with a separate suite of apartments being assigned to each of these handmaids of pleasure, while a dormitory for common use was prepared on top of the building. After the libidinous proprietor had left for Salt Lake, the establishment was bought by the county, and continued to be used as a hall of Justice until the storms of last winter, washing away the adobe part of the edifice, left it perched upon the few timbers placed in the mud for its support; and on this roost it remains, completely gutted, and threatening to fall upon the great boiler-like cell that occupies one corner and crush its unfortunate inmates."



**Residence of Mormon Church official, which was purchased by Dr. O. M. Wozencraft in 1863**

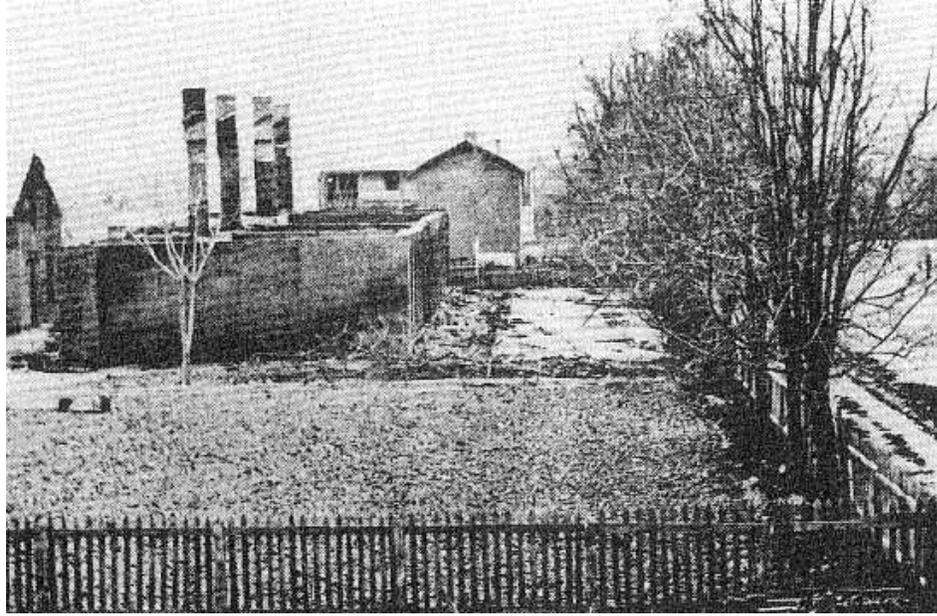
This reporter was sharp, and I believe he deliberately misrepresented which structure actually housed the jail. The theme of his article was about various elements of San Bernardino's criminal justice system, which probably was not of much interest to his San Francisco audience, and in order to liven up his story, he substituted the Mormon magnate's home for the Council House so that he could poke fun at the polygamous

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<sup>44</sup> San Francisco *Daily Evening Bulletin*, July 14, 1862, as transcribed by historian Arda M. Haenszel.

<sup>45</sup> There is ample evidence that the Mormons' Council House was used as a court house and jail. In addition to the previously cited Brown and Boyd, p 46, see Ingersoll, L. A., *Ingersoll's Century Annals of San Bernardino County, 1769-1904*, Los Angeles, CA 1904. A drawing and brief history of the Council House is given on page 143.

official. The residence, purchased by Dr. O. M. Wozencraft in 1863, continued to be used until it was destroyed by fire in 1865.<sup>46</sup> The Council House was unstable after the 1862 storm and eventually torn down in 1868.



**The remains of the Wozencraft residence after the fire in 1865.  
Behind it is the Council House, which was rendered unsafe by the 1862 storm.**

The correspondent then provides information about the inmates currently in the county jail, which consisted of “four white men and one Indian. Two of the whites are incarcerated on a charge of burglary and two of murder. The Indian is the one who aided in killing Dickey, and as he has confessed to the crime, talking freely about it as if it were some trifling matter, he will probably have his trial at the next term of Court, commencing on Monday, when he will be convicted and soon after executed. The other two Indians, mentioned in my last letter as having been committed to jail with this one, have since been liberated, they having been confined, not for taking any part in the murder, but to prevent their giving notice to their brother (the chief who did take a part) of the intentions of the whites. This chief having since been killed by the party who went in pursuit of him, there was no longer a necessity for retaining these two in limbo, and hence their discharge.”

The cells, or iron cages, came to be seen as excessively primitive, even at the time, and when a new jail was built in 1867, the *Guardian* editor spoke up on behalf of humanity.<sup>47</sup> “This building will be completed” he wrote, “and ready to be turned over to the authorities today. It is a most substantial structure. The walls are built of the stone from Slover Mountain, a kind of coarse marble. The interior is partitioned into three apartments. The large room is 15 feet square, well ventilated and sufficiently light. The cells we entirely disapprove of—and recommend that those horrible iron chests be removed. They are a disgrace to the civilization of the age. In one of them is a nuisance not fit to be alluded to. Let a stone wall be run up and two cells with stone walls be substituted for this iron cage, which might be suitable to chain a hyena in, but not for the confinement of a human being.”

## **MONOTONY AND QUIET, SUMMER OF ‘62**

The difference between the summer of 1861 and that of 1862 is most striking. In 1861 scarcely a week went by when the newspaper was not filled with accounts of robbery, stealing and mayhem throughout

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<sup>46</sup> Rice, L. J. *Tightening a Noose to Acquire a Title*, Security Title Insurance and Guarantee Company, San Bernardino, CA, 1938, p 8.

<sup>47</sup> San Bernardino *Guardian*, June 1, 1867.

the countryside. In July 1862 all was quiet. The San Bernardino correspondent wrote a letter to the *Star* which began, “In the monotony and quiet of this border county, not much of a local character is transpiring....”<sup>48</sup>

It was about this time that the reporter for the San Francisco *Daily Evening Bulletin* had made his visit to San Bernardino. While there he interviewed Sheriff Smith, who, the reporter states, “seems an efficient officer, and is certainly a good Union man. [He] tells me that he has to depend for a support entirely on the fees he receives from the State for transporting convicts to San Quentin, so little does he actually realize from the county. These fees, however, are large, the distance he has to travel being great and the number of State prisoners twice that of any other county in California; population being considered. The number of convictions that take place here for horse theft is incredible. The prevalence of this species of larceny is said to be owing to the fact that the Mormons at Salt Lake, having a deadly enmity against this community, encourage these depredations by purchasing the stolen stock and protecting the thieves. As many as twenty convictions, mostly for this offense, are said to have been made in this county within a single half year.”



**San Quentin State Prison – 1874**  
**Smith received payment from the state for transporting convicts to the prison, located up north in Marin County**

### **THE FATEFUL DAY – NOVEMBER 17, 1862**

John Rains’ biographer, Esther Boulton Black, in her book *Rancho Cucamonga and Doña Merced*, wrote a chapter covering the murder of Rains on November 17, 1862.<sup>49</sup> “The Fateful Day,” she called it, meaning fateful for Rains, but it also was ill-fated for many others involved in the saga: his widow Doña Merced eventually lost the Cucamonga ranch; foreman George Dyche lost all of his capital; Elijah K. Dunlap, employee and associate of Rains, became involved in years of litigation; Ramon Carillo, thought by some to be Merced’s lover, was himself ambushed and killed; Manuel Cerradel was lynched, and an untold host of supporters were affected financially, socially, and politically. November 17th was also a fateful day for Sheriff Smith.

<sup>48</sup> Los Angeles *Star*, July 26, 1862.

<sup>49</sup> Black, *op cit* (in Part One), pp 69-82.

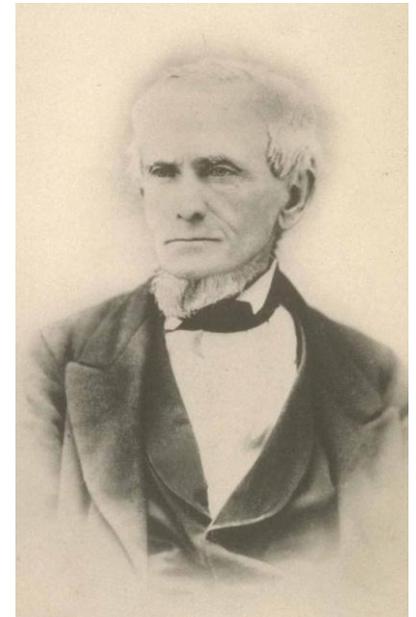
Part of the duties of the sheriff in those days was to act as ex-officio tax collector, who was to collect the county's income and turn it over to the county treasurer. He also auctioned off property on the court house steps as directed by the court. The importance of the job of sheriff was such that a would-be office holder had to post a bond in the amount of \$10,000 to insure he made good on his fiduciary responsibilities. This amount was beyond the means of most elected sheriffs, perhaps all, and the custom was that certain leading figures in the community would step in and agree to stand for a portion of the bond. So it was that Smith had the backing of a dozen men, including former Supervisors Edwin H. Thomas and Louis Robidoux, and other distinguished citizens such as Edward Daley and Horace Frink. The bonds were "executed and sealed with their seals" on September 26, 1861, a few days before Smith was sworn in.



**John Rains**  
His murderer remains unknown

Normally the bond would have been for the entire two-year term of office, but in August 1862, E. H. Thomas withdrew as surety. This action released the other sureties, and all but Rubidoux withdrew. A new bond was issued and Robidoux accepted responsibility for \$3,500, and newcomers John Rains and Elijah K. Dunlap, an employee of Rains, agreed to stand for \$5,000 and \$1,500 respectively. When Rains was killed a new bond, a third one, was required. On December 5, 1862, the supervisors ordered that Sheriff Smith file a new bond and gave him ten days to do it.<sup>50</sup> When he did not comply, Smith was discharged and J. A. Moore was appointed to take his place.<sup>51</sup>

When Moore took office it became clear that the county tax money supposedly collected by Smith did not exist. The amount in question was "1,319 dollars and some cents."<sup>52</sup> Legal action ensued, with the board ordering that the "district attorney be authorized & required to bring suit on the official bonds of Eli M. Smith, ex Sheriff of San Bernardino County, for such sums as he may find on examination to be due on any or all of said bonds respectively for taxes & licenses collected by said Eli M. Smith as such Sheriff & Tax Collector & which he has not paid over to the Treasury, & for which said Sheriff is defaulter & that a copy of this order be served on the District Attorney by the Clerk of the Board. —R. S. Carlisle, Chair"<sup>53</sup> The order was signed by Robert Carlisle, Rains' brother-in-law, and thought by some to be the murderer. Many others were suspect, too (the line was long).



**Judge Benjamin Hayes**

A bench warrant for the crime of embezzlement was issued for Smith's arrest on February 4, 1863. Just when he was arrested or how long he was incarcerated is not known, but it looks like he may have spent time in his own jail. He submitted a two-page request for release, dated February 21, 1863, which begins, "The petition of Eli M. Smith respectfully shows to your Hon. Benj. Hayes First District Judge that he is imprisoned and restrained of his liberty by the Sheriff of the County of San Bernardino in the Court House at the City of San

<sup>50</sup> Minutes Book A, San Bernardino County Board of Supervisors, p 200.

<sup>51</sup> *Ibid*, p 202.

<sup>52</sup> Los Angeles Star, February 21, 1863.

<sup>53</sup> Minutes Book A, San Bernardino County Board of Supervisors, p 203.

Bernardino.”<sup>54</sup> The petition states he is restrained at the court house, which could mean he was being held in jail, “ironed-up” at the court house, or being held in some sort of gentlemen’s agreement (house arrest). The latter is very unlikely, as the records are clear that county officials were enraged and wanted the money back straightaway.

Smith was guilty, of course, but the wheels of justice ground a bit slower for his white-collar crime than they did for the horse thefts. On July 18, 1863, Judge Hayes issued a series of findings, among them was one stating that there was a default, and others naming the codefendants and the amount each owed, which included interest at ten percent per annum plus the cost of the suit. A penalty for Smith was not in the court case papers. The emphasis by the court, though, was always on the return of the money and once that was done, interest in the case faded. Perhaps it was thought Smith had already atoned for his crime through his incarceration, loss of job, and public humiliation.



San Bernardino in Sheriff Smith’s day

## THE PLOT TO MURDER DOÑA MERCED

Horace Bell, himself a former Los Angeles Ranger, wrote a number of stories which later were published as an anthology entitled, *On the Old West Coast*.<sup>55</sup> He recounts a story, supposedly told by his friend William Rubottom, about a plot to kill John Rains’ wife, Merced. The so-called “plot” involves Eli Smith, George Dyche and several others. According to Bell, Rubottom told him this tale about a group of men who came into his tavern and began planning a lynching:

...there’s been a lot of killing here while you were away. A rich ranchero at Cucamonga was killed last year and his wife was accused of complicity in the murder. Excitement ran high and blood flowed among the various factions.

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<sup>54</sup> The People v Smith et al, San Bernardino Case No. 86. Eli Smith’s bondsmen also were charged. Smith’s bonds have been kept and are filed with the case. The original documents are located at the San Bernardino County Archives. Smith was obviously a defendant in the case, but so were all of the bondsmen. The two sets of bondsmen were tried separately, and when they paid their portion of the bond, the charges against them were dismissed. Many did so quickly, but E. K. Dunlap pursued the case for years, appealing it when it when the decision was against him.

<sup>55</sup> Bell, Horace. *On the Old West Coast*, William Morrow and Co., New York, 1930, pp 103-04.

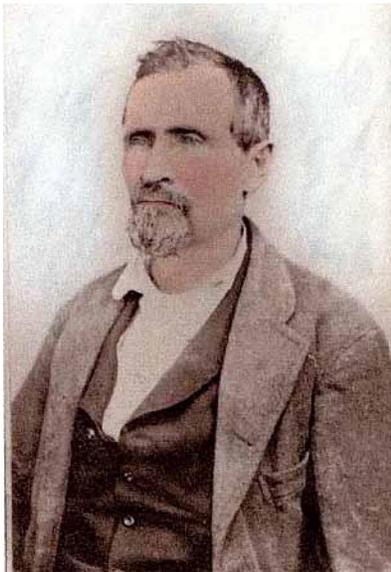
I was keeping a roadside tavern over there then. The suspected wife was still living in the Cucamonga home and there were a good many threats made against her so that the air was buzzing with things that might happen any time. One afternoon Eli Smith dropped into my place; in a little while George Dyches [sic] came in, then another and another, all of whom I recognized as personal friends of the dead ranchero. About a dozen of them all armed to the teeth. They ordered supper. I listened around until I gathered that they had assembled for the purpose of hanging the suspected widow.

I made up my mind that it wouldn't happen. I'd seen enough of lynching in my time, and when it came to stringing up a woman without a trial, I wouldn't stand it in my neighborhood. So I set to planning. Lige and Jim were at the tavern with me. I told Lige what was up and for him and Jim to arm and conceal themselves in a room adjoining the dining room and await orders.

I served the men at the long supper table myself, then when they all had their heads well down into their plates I returned, stood at the head of the table and said: "Now, gentlemen, don't make a move or I'll shoot." They all looked up with their mouths full of food and saw me standing there with a double-barreled shotgun at ready. "I know what you're here for," I continued, "and permit me to say that no man nor set of men can murder a woman while I'm around. Ho! Lige," I called, "come on in." Lige entered and stood at the foot of the table with his shotgun at ready. Then I called Jim in and ordered him to go round and disarm each rascal. Those fellows were too astonished and ashamed to offer any resistance. The victory was ours and we sent 'em away without their guns.

Afterward I sent out word that they could call at my place, one at a time, and get their weapons back. They did and none of 'em held it against me, I guess. After thinking it over they were glad they'd had their minds changed.

Now that story is just too good to avoid reprinting, even if one does not believe it to be true, which I do not. Esther Boulton Black also reprinted the entire story, and she bought it hook, line and sinker, just as did Helen Beattie in *Heritage of the Valley*.<sup>56</sup>



**William Rubottom**

I myself am of the opinion that Rubottom, wanting to seem the hero, embellished the facts, if indeed any of the story is true. Parts of his tale are simply implausible. For instance, how many persons plotting a murder would join with a dozen men at a public house and lay out the plot before the eyes and ears of others? And why would they propose killing Doña Merced by lynching, a most improbable act? I do not believe that Eli Smith plotted to kill Merced. He may have been an embezzler, but that is a long way from being a murderer, or even a would-be murderer.

It could be that some friends of John Rains did meet at Rubottom's tavern to discuss the situation at the Cucamonga ranch, and how to get Doña Merced, who was still considered to be rich, to pay money due them. George Dyche, Rains' foreman, was owed money from the ranch, and perhaps the others were, too. It is very likely some of them had lent money to Rains, who, although the richest man in the county, had become overextended financially. He had mortgaged his properties and owed money to many of the merchants in Los Angeles; however, he expected at any time to receive \$15,000 for cattle he had sold to the

<sup>56</sup> Black, *op cit* (in Part One), p 78.

Beattie, George and Helen. *Heritage of the Valley*, San Pascual Press, Pasadena, CA, 1939, p 166.

U.S. government. That money would have ended his financial crunch, but unfortunately it did not arrive before his death.

As for Eli Smith, it is possible the funds he embezzled went to Rains. There is no evidence thus far as to what Smith did with the tax money. No reason for his embezzlement has been found in the public records at the County Archives or in the available newspapers, but if Rains could help out his friend on the bond problem, Smith might have lent him the county's tax funds until the \$15,000 arrived, which was expected momentarily.

If Smith and the others actually did meet at Rubottom's, then here's my scenario of what might have happened: the dozen or so men are seated at a table eating their meals and having a heated discussion of what to do about Doña Merced, when someone says, grabbing some more bread from the table, "That cussed woman, we oughta hang 'er."



**William Rubottom's roadside tavern and stage stop – 1867**

### **WHAT BECAME OF ELI SMITH?**

Smith disappeared from the local records in the summer of 1863, with the exception of one public document. As mentioned before, one of the jobs of the sheriff in those days was to auction off property on the court house steps when ordered to do so by the court. In 1866, the heirs of William Wolfskill asked ex-sheriff Smith to testify that he had sold to Wolfskill certain property in the County of San Bernardino.<sup>57</sup> Smith complied, in writing, and the document he prepared was attested to by T. F. A. Connelly, a notary for the County of Kern. During the 1860s Kern County experienced a mining boom, and Smith probably went back to hunting for gold in the anonymity of the mining camps.

### **Saving The Past For The Future Since 1888**

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<sup>57</sup> San Bernardino County Recorder's Office, Deed Book G, pp 381-384.