

neither Luce, Stringam nor Hickman were seen by him.

I will say, we have been able to derive no assistance from our client. The prosecution have not proved that he was the man who fired the fatal shot. If he was there at all, he cannot tell of it. From the time of his terrible injury by Pike for two or three years his mind is a total blank. His memory contains not a trace of the occurrences that followed, nor of Sergeant Pike. Of course, Pike said it was Spencer who shot him. It was likely he would come to that conclusion from the fact that it was Spencer whom he had injured. But the evidence of the witnesses for the prosecution cause a grave doubt, even from their standpoint, of Spencer being the man. Men who were nearest to the scene, and who knew Spencer well, did not recognize him as the man who fired. If these men could not recognize him in broad daylight, do you suppose that Pike, who had seen Spencer but once, and that about dark, when he brained him with his musket, would recognize him? It is highly improbable. Is it not more likely that, instead of Pike saying that it was Howard Spencer who shot him, that he merely expressed a belief to that effect, based upon the knowledge that Spencer was the man he had wronged?

The character of the injury inflicted by Pike on Spencer, and the consequences on the defendant, were then discussed at length by Mr. Rawlins, who stated that Pike had afterwards met with but retributive justice for his brutal deed. The evidence is clear that, at the time Pike was shot, if Spencer did it, he was not in a state of mind to be responsible for his actions.

The torture he endured for the months following the terrible scene in March, at Rush Valley, no human tongue can tell. Can we wonder that when he saw the brute, Pike, that he had an impulse to inflict upon him merited punishment? Under such circumstances, would not the wound be felt afresh? And would you say that, if a sane man had followed and slain the one who had inflicted such a terrible injury, he was not justified? What of it, if a hundred desperadoes aided him to escape? Was the provocation lessened by that, even if it were true? It is stated that Pike tried to draw a weapon. Is it not probable that, when he saw the face of the man whom he had so brutally stricken down, he endeavored to draw a weapon to protect himself from the retributive justice that he saw was to come? The act of slaying Pike was not that of a coward. It was not the act of a sane man to go there, to a man in the midst of armed friends, and call him out and shoot him. Bill Hickman would not have dared to engage in such a plan. None but an insane individual would have attempted such a desperate deed.

Mr. Rawlins began to refer to events in the early history of the Territory, when the court checked him. Mr. Rawlins replied that Mr. Hiles, of the prosecution, had been

granted considerable latitude in this regard. The speaker, however, conformed to the ruling of the court, and closed his argument by asking the jury to acquit the defendant, because that was his just due. He declared that there was no excuse or palliation for this prosecution.

LE GRAND-YOUNG

followed. He said it was a rule of law that the prosecution should prove its case. The gentlemen engaged for the government had left no stone unturned to do this, but had not been able to do so. It had been characteristic of some of the witnesses for the prosecution that they were apparently anxious to have inflicted upon some one the penalty of death. Mr. Young then reviewed the evidence in the case. When Cushing's testimony was reached, it was branded as false. For instance, his testimony about Bill Hickman standing in the rear of Cushing's shoe shop, and examining his pistols, while two men in plain view were watching him, was too improbable for belief. Hickman, desperado as he was, was not such a fool as that, and no one who knew him would ever believe anything like that about him. Hickman never engaged publicly in a homicide. He never took such risks of being shot, as it was said he did on this occasion, by Cushing and Phillips. But all the other evidence contradicts the statements of these two witnesses, who evidently testified to all they saw themselves, and a great deal that they heard others say they saw, but which never actually occurred.

Mr. Young then reviewed the affair at Rush Valley, when Spencer properly refused to obey the orders of Sergeant Pike, and the latter struck him with a musket. It had been said that Pike was under arrest. But who were his custodians? His own underlings. He was an armed prisoner, in the custody of men under his own command. What a satire on the law to say that he was in the hands of the law! Is it any wonder that the people said justice would not be done? Would it be strange if Spencer was fired by the torture of his wound, and in his demented condition grew frenzied and brought retributive justice to the boastful sergeant who had committed the cowardly assault. Usually villains have some soft spot, but this dog did not even have that. The cowardly wretch had Spencer thrown on the damp ground, until a more humane officer ordered a change. And then when Pike was brought in he was permitted to go on parade with his subordinates, an armed man, flaunting in the face of his victim the position he was in, and boastful of what he had done. Would not a sane man have become uncontrollable under such circumstances? In those days men carried pistols because the law did not afford them protection—

Judge Judd—Stop that, Brother Young. Keep inside of the evidence.

Mr. Young—I am. I was referring to the condition of those times.

Judge Judd—Do you say the revolver was above the law?

Mr. Young—In those times and under those circumstances, yes. It—

Judge Judd—Well, you can stop. That cannot be allowed in court.

Mr. Young—All right, sir; then I will have to refrain.

Mr. Young then took his seat, and the court took a recess till 1:30 p. m.

MR. BROWN

addressed the jury in the afternoon. He began by explaining the elements of murder, in its various degrees, as defined by the law. He called attention to the fact that murder must be premeditated and malicious. The offense of manslaughter was killing upon provocation, which must be judged of by the circumstances. The nature of the provocation must be considered in saying what would be a proper time for the cooling down of a reasonable man. In this case we see that Pike, in violation of the permission granted by his superior officer to Spencer to stay till morning, followed Spencer to the corral in Rush Valley, and without provocation struck him down. Mr. Hiles has said that he was not allowed to prove anything to the contrary. His statement is untrue, and I am surprised that he should make it. He doubtless thought it would have great weight with you, but he was mistaken. We have it as an undisputed fact that Pike's assault on Spencer was unjustifiable. Was that assault provocation enough to take life in return? I say it was; and sane or insane, you and I would have killed the man who assaulted us in that way, if we had the opportunity. I do not say it was right. The law says it is wrong. It would be manslaughter. If Howard Spencer had been sane, and had killed Pike in the manner claimed, it would have been manslaughter under the law. We should take into consideration the times and circumstances, not as justification, but in explanation of the impulses of human nature. But even to make manslaughter of this, they must prove premeditation and sanity.

The other side has very adroitly endeavored to prove a conspiracy, and they have rung the changes on Bill Hickman's name. They try to make something out of the stories that have been told of that notorious character. Take the facts of this case, there is nothing to connect him with it, even if Cushing and Phillips had told the truth, which they did not do, for they are contradicted by all the other witnesses, for both sides.

If a party to a suit secretes evidence, it causes a suspicion. The secreting by the prosecution of material facts is a cause for suspicion in this case. Their silence during 30 years is suspicious. It means that they wanted the witnesses for the defense out of the way. Now, Mr. Hiles says it was because Spencer was absent. That we have shown was manifestly untrue. But that was no excuse for not finding an indictment, which was not done till the 30th year after