

witness had not arrived, and court took a recess till 1:30 p.m.

In the afternoon a part of Mr. Daniels' testimony was read to the jury.

#### MR. DANIELS

was recalled, and stated that he was on the same side of the street as the Salt Lake House, a little to the south, at the time of the shooting; did not see Hickman and Luce coming down the street; saw Hickman across the street with his revolver; did not see Luce at all; did not see Hickman on the east side of the street at all, nor did I hear him say "Git!" to the man who shot; there were five soldiers with Sergeant Pike.

Mr. Peters said the witness he had sent for did not know of the facts it was supposed she would testify to, and he therefore would not call her, but would close the case for the prosecution.

#### WM. ALMA WILLIAMS

was recalled for cross-examination. In reply to Mr. Brown, he said—I was on the opposite side of the street from the hotel at the time of the shooting. I know Hickman and Luce; did not see either of them; if they had done as testified to I would have seen them; did not see Luce on the streets that day; I saw seven or eight soldiers with Pike; there may have been ten; I did not see Howard Spencer to recognize him; Stringham was not there that I saw.

#### MR. HEATH

was recalled—I did not see Bill Hickman immediately after the shooting; saw him on the west sidewalk a few minutes after; did not see Jace Luce at all; Hickman had a revolver in each hand when I saw him.

#### THE DEFENSE.

Mr. Brown made the statement on behalf of the defense. He said, we shall endeavor to add to what you have heard, the rest of the facts that you may have the whole truth before you, upon which to find a verdict. We expect to show to you that the defendant did not commit any crime. We will give the whole history of the case. At the time of this occurrence the defendant was a young man about 21, and of a very peaceable character and loving and kind disposition. In March, 1859, he was herding cattle in Rush Valley. Pike ordered him to take them away and Spencer said he would, but wanted to wait till morning. Pike struck at him with a musket. The blow was from behind, and caught Spencer on the right side of the head. He saw it and attempted to ward it off, seizing a pitchfork for that purpose. Had he not partially warded off the blow he would have been killed. As it was, his skull was crushed in and his brains oozed out. He was rendered unconscious, and was brought to this city. The surgeon had to take out part of his skull and brain, and he was rendered partially insane. His whole nature seemed changed. During the time the wound was healing, he was subject to fits of frenzy. Able physicians will testify that for any act com-

mitted when he met the cause of his injury he would not be responsible. We will show that any act of the kind stated was not the act of Howard Spencer, but of an insane man.

We shall show, we think, that there was no connection between Mr. Spencer and Bill Hickman, Jace Luce and others. We will show that that story is a fabrication. As to the extreme length of time that has elapsed since the killing, Mr. Hiles said that the reason for failure to prosecute was that the defendant fled from the Territory. We shall show to you that during that time his whereabouts were well known. The matter was brought to the attention of the grand jury, who ignored the case because a prosecution was not justifiable. Mr. Spencer has always been ready to meet the charge, but it was not prosecuted because there was no case against him.

#### MR. PICKARD

was called and testified—After I passed Sergeant Pike I did not meet Bill Hickman, Jace Luce, Steve Taylor and George Stringham. If they had been there I would have seen them.

To Mr. Peters—If they had been there I would have seen them and remembered it; I was about three rods north of the alley at the time of the shooting.

#### CLAUDIUS V. SPENCER

was called as the first witness for the defense. He testified—I have lived in this Territory since September, 1847; I have known the defendant since he was a babe; in the spring of 1859 I was herding cattle in Rush Valley; Howard Spencer was employed to go to Rush Valley to watch the cattle; this was three or four days before he was injured; a party of soldiers had been marauding the herd ground for about two weeks previous to our sending Howard out, and had shot our cattle; this was in March, 1859.

#### GEORGE REEDER

testified—I reside at Brigham City; came to Utah in 1853; was employed by Mr. Daniel Spencer in 1858; in March, 1859, I was in Rush Valley, at a ranch belonging to Daniel Spencer, Jacob Gates, J. C. Little and Erastus Snow; saw Sergeant Pike there, on the opposite side of the spring where we camped; he was there with a company of soldiers; about the middle of March, I think, we left, because the soldiers ordered us off; my brother, Elijah Seamons and others were there with me.

#### ELIJAH SEAMONS

testified—I have known Howard Spencer since 1854; knew Sergeant Pike; saw both of them in Rush Valley; know Howard Spencer was hurt there; he came to the ranch about an hour before sundown to help take care of the stock; after supper a soldier came and told us to vacate the house by 8 a.m. next day; Mr. Spencer said it would be done, and the lieutenant went back; Spencer and I went out and began to

feed the stock; Sergeant Pike came up with five or six men, and ordered us to drive out the stock; Spencer said he would not till morning, as it was too dark; we went on feeding cattle; I heard a step and turned; saw Pike with his musket uplifted; Spencer tried to ward off the blow with a hay fork, but the blow struck by Pike knocked Spencer down; I caught Spencer and Pike told me to leave him alone or he would serve me the same; Pike then ordered his men to turn Spencer's head down the hill, so he could bleed; a little while after they took him to the soldiers' camp, and put him on a blanket; he was unconscious; his back was toward Pike when the latter struck at him, but he had partly turned when he received the blow which crushed his skull; at the tent to which Spencer was carried, they put him on a blanket on the ground, and threw another blanket over him; he was then carried back to my house, and I sent for the army doctor at Camp Floyd; he came and said a piece of skull was on the brain, and he took it out; Spencer was unconscious till about midnight; he then aroused a moment or two and again became unconscious; about noon next day the conveyance came to carry him to Salt Lake; the pitchfork handle was broken in three pieces by Sergeant Pike's blow.

To Mr. Hiles—Spencer could not recognize anyone when he became conscious; he was carried away in a light wagon, and when he was shaken badly would call out; he was just turning around when Pike struck him with the musket.

#### MRS. MARGARET SPENCER

testified—I have lived in Utah forty years; have known Howard Spencer that long; went to live in his mother's family; he was about twenty when he was hurt; in March, 1859, I was living at the Point of the Mountain, on the road from Salt Lake to Rush Valley; about the middle of March he stayed at our house one night, on the way to Rush Valley; the next time I saw him was when he was brought back hurt; he was out of his mind; the right side of his head was crushed in; he begged some one to shoot him; the party with him arrived in the middle of the night, and continued the journey next day; before then he was a very good, temperate and kind boy; he was cheerful and good tempered; before the injury he was not excitable; afterward there was a change in his conduct, and he became very gloomy and had tempered; he was not the same person at all in his conduct; his whole nature seemed changed; for the next year or two he did not have his right mind, but has gradually grown better since then; during the month of August, 1859, he was not of sound mind.

#### DR. W. F. ANDERSON

was the next witness. He testified—I have lived in Salt Lake thirty-two years, and have known the defendant during that time; I was