case; but I have concluded to give it to you as the law of the case with the qualification which I shall now state. That if a sufficient time had elapsed between the time of the meeting between Pike and the defendant in Rush Valley and the shooting in Salt Lake City, for the passion to cool, then the law would not attribute the killing to heat of passion, and it would not be manslaughter.

Of course, gentlemen of the jury, you are to bear in mind that the facts must show that the defendant, Howard O. Spencer, in the county of Salt Lake, at the time before the finding of this indictment, killed the person mentioned in the indictment as Sergeant Pike, before you can convict him of any offense. If the proof shall fail to satisfy you of the truth of these facts, you need go no further in your investigation, but return a verdict of not guilty. But if the proof shall satisfy you that the defendant, Howard O. Spencer, in the county of Salt Lake, in the Territory of Utah, and at a time before the finding of the indictment in this case, did inflict upon the body of said Pike a mortal wound, whereby he died, then you will proceed to make the investigation as to his guilt according to the law that I have above given in charge to you.

But, gentlemen of the jury, the defendant, by his counsel, says that he is not guilty of murder in the first degree, nor in the second degree, nor manslaughter, voluntary or involuntary; but that whatever he did was done in necessary self-defense. It therefore become my duty to state to you the law upon the subject of self-defense.

Every man, gentlemen of the jury, has the right to defend himself with any means his power, no matter what the means may be, against the assault of another, when such assault shall put his life in danger or cause great bodily harm. I therefore instruct you that if at the time—not before or afterwards—but if at the time the defendant fired the pistol and killed Pike he was in danger of his life or of great bodily harm from Pike, or if he was surrounded by a set of circumstances which led him to believe, and he did honestly believe that he was in danger of his life, or of great bodily harm, and acting under that honest belief, fired and killed Pike, then there is no guilt, and your verdict must be not guilty. A man, gentleman, has a right to fight, if necessary to his self-defense, not only when actually in danger, but if the circumstances and surroundings are such as, at the time the shot was fired, to make it appear to him, and it did appear to him, the defenda t, and he honestly believed from the appearances that he was in danger of death or great bodily harm, he had the right to fire and slay his assailant. So, after all, gentlemen, it comes back to the exact condition of things surrounding the parties at the time the fatal shot was fired; for, no matter what may have passed before the shooting between the parties, or what may have occurred between them before the shooting, there must have been at the time the shot was fired some overt act on the part of the deceased towards the defendant, which put him in danger of his life or great bodily harm, or which led him to believe, and he did believe, put him in danger of his life or great bodily harm.

Of course, gentlemen of the jury, you understand that if, at the time the fatal shot was fired, there was no overt act on the part of the deceased towards him, which would constitute sufficient grounds for him to believe that his life was in danger, or that his person was in danger of great bodily harm, there would be in law no justification for his act. And in this connection I may say to you, that the law is that if the defendant sought Pike for the purpose of provoking or bringing on a difficulty, and under such circumstances slew him, then there would be no self-defense in the matter whatever.

But, gentlemen of the jury, the plea of insanity is interposed by the defendant; that is to say, his counsel allege that at the time he slew Pike he did not possess a sufficient capacity and reason to enable him to distinguish between right and wrong as to the particular act he was then doing; that he did not have a knowledge and consciousness that the act he was doing was wrong and criminal, and that it would subject him to punishment. In other words (to put it short), they all agree that he was an insane man, and that whatever he did was the product of a diseased and insane mind. I might say to you, gentlemen, upon this subject, that it is seldom if ever a person can be found who is not subject to some peculiarity or obliquity of intellect, and who may be, according to abstract principles, classed among some of the almost infinite forms of partial insanity. But this doctrine is altogether too refined to be applied in the practical administration of criminal justice. We must have some standard more practical in its character. The law presumes that all persons possess a sound memory and discretion, and holds them responsible for their criminal acts; and this phrase, "sound memory and discretion," must be understood in its practical and not in the abstract sense. Lunatics and infants are incapable of committing crime, unless in such cases they manifest a consciousness of doing wrong, and of course a discretion of discernment between good and evil. A man is not to be excused from responsibility if he has capacity and reason sufficient to distinguish between right and wrong as to the particular act he is doing—a knowledge and conscious ness as to the particular act he is then doing—a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible, he must have sufficient power and memory to recollect the relation which he stands to others, and in which others stand to him, that the act he is doing is contrary to the plainest dictates of right, injurious to others, and a violation of the dictates of duty. On the contrary, although he may be laboring under partial insanity, if he still understands the nature and character of his act, and its consequences, if he has a knowledge that it is wrong and criminal, and a mental power sufficient to apply that knowledge to his own case, and to know that if he does the act he will do wrong and receive punishment, partial insanity is not sufficient to exempt him from responsibility for criminal acts. So that, if it is proven to your satisfaction that the mind of the accused was diseased and in an unsound state, by reason of wound or wounds he may have received, or by reason of any other cause, the question will be whether the disease existed to so high a degree that for the time being it overwhelmed the reason, conscience and judgment, and whether the person committing the homicide acted from an irresistible and uncontrollable impulse. If so it is not the act of a voluntary agent, but the involuntary act of the body without the concurrence of the mind directing it. That question may be safely stated to you thus: Was the accused a free agent in forming the purpose to kill Sergeant Pike? Was he at the time the act was committed capable of judging whether that act was right or wrong? and did he know at the time that it was an offense against the laws of God and man? If you say nay, he is insane; if yea, and you find the killing to have been purposely done, in the manner and form as I have heretofore charged you, he is guilty.

In trying this question you will keep in mind that the law presumes every person of the age of 14 years to be of sufficient capacity to form the purpose, to deliberate and premeditate upon the acts which malice, anger, hatred, revenge, or other evil disposition might impel him to perpetrate. To defeat this legal presumption, which means the defense of insanity, at the threshold, the mental alienation relied upon by the accused must be affirmatively established by positive or circumstantial proof, or, the proof of insanity must be of such a character as to raise a reasonable doubt of his sanity. You must be satisfied from the evidence that the perverted condition of the faculties of the mind, indicated in the main question, and which I have already stated as excusing from crime, did exist at the time the defendant fired the shot and killed Pike. It is not sufficient if the proof barely shows that such a state of mind was possible. The proof must show that such a state of mind existed, or it must be of such a character as to leave a well founded doubt in your minds of its existence. The proof must be such as to overrule the presumption of sanity. It must satisfy you that he was not sane, or it must be of a character, as I have before stated, to raise a well founded doubt of his sanity. It would be unsafe to let loose upon society offenders upon mere theory, hypothesis or conjecture. The rule that would produce such a result would endanger a community by giving the means of escape from criminal justice, which