

called to attend Howard Spencer in 1858; he was suffering with a wound on the side of his head; his skull was crushed in and he was in a state of coma; his head was very much swollen; there was a little brainy substance oozing from the wound at that time; there was a pressure of the bone on the brain; we removed the dressing and raised a portion of the bone that was pressing on the brain; in about ten hours after the pressure was removed he manifested some signs of intelligence; a few days after I first saw him we removed a portion of the bone that we had raised; in two months after there was quite a mass of bone in a state of decay and he was placed under chloroform, and three large pieces of bone removed; the pieces were from an inch to one and a half inches long and one-half inch wide; the bone removed would be at least three inches in length. The effect of such a blow upon the head would be very uncertain; it might render one an insane man and it might not injure him mentally at all; he was really in a very critical condition; he was under my charge from the 26th of March until the latter part of June; I saw him after that several times; his condition was not at all good; I thought that it was not as good as it should be; I did not think his mental condition was sound; I saw great evidences of a change in his mental condition; he was not the same man at all; under any excitement after such an injury to the head one would be very apt to show symptoms of insanity. The presumption would be that, under the circumstances, the spirit of revenge would take possession of a man, and incite him to do deeds that he would not do in a state of mental equilibrium; I think the meeting of the man who had produced the injury would have a very bad effect upon the defendant; I do not think he would be able at all to control himself; under such circumstances he would hardly be able to tell right from wrong.

To Mr. Hiles—The bone was forced into the brain for at least a quarter of an inch, enough to fracture all the membranes and cause some of the brain matter to exude.

To Mr. Young—The bandage, I think, had been removed the last time I saw him in June.

#### MRS. MARTHA SPENCER

testified—I have known Howard Spencer about forty years; he is my stepson; before his injuries he was always kind and gentle; after his injuries there was a decided difference in his conduct and manner; he was cross, irritable and unmanageable.

To Mr. Peters—It was because of his domineering conduct that he left my house at my request.

#### DR. BENEDICT

testified—I have been a practicing physician and surgeon since 1864; under the circumstances detailed in the injury of Spencer, I should say that the defendant was of unsound mind, and without mental ability to control his actions; I should not consider that he was a sane man; such injuries as he received can

hardly be inflicted without impairing the mind, and the effect would be felt the balance of his natural life. His mental condition would be very much weakened and partly destroyed; his ability to distinguish right from wrong would be lessened; any excitement under such a condition would render him irresponsible for his action.

#### DR. HAMILTON

was called, and corroborated Dr. Benedict's testimony as to the effect of an injury such as Spencer had received. He did not think that any man who had received such injuries could possibly be held responsible; less injury has had the effect of producing insanity; I do not think that under such conditions he would be able to distinguish right from wrong, or in a condition at times to understand the nature of the act he was about to perpetrate.

To Mr. Hiles—One of the fundamental conditions of insanity is want of memory; there is a vast amount of cunning exhibited by insane persons, and sometimes they manage very well.

#### DR. J. S. RICHARDS

gave testimony to the same effect as that of Drs. Benedict and Hamilton. Such injuries as had been received by the defendant would develop unsound mind; it would be almost impossible for a man to be responsible for his acts under such circumstances; he received injuries that cannot be repaired; I have examined the extent of the indication of the injuries received by the defendant; insanity is certainly a disease.

To Mr. Hiles—It would be impossible to say what degree of unsoundness of mind constitutes insanity; I have met people whose minds were unsound, who yet performed the ordinary duties of life; insane people do not, usually, go around their business like sane people; the fact that a man planned the death of another, laid in wait for him and killed him, and then ran away at the bidding of a friend, might be either the act of a sane man or an insane man; an insane person can adopt means to ends, in obtaining a given end, but it is not the rule.

#### DR. BASCOM

testified that insanity or inability to control one's actions may be produced by injuries to the skull. From such injuries as the defendant must have received, I should expect almost any effect upon the mind.

To Mr. Hiles—It need not necessarily produce insanity, but there must be a disease.

Mr. Sheeks stated that the defense had intended to bring Dr. Pike from Provo, to give some expert testimony, but Judge Judd decided that enough of that kind of evidence had already been adduced, and court adjourned till next morning at 9:30.

The trial was resumed next morning, May 9, by the calling of

#### GEORGE B. SPENCER,

who testified—I am the defendant's brother; I went to Rush Valley to bring him to Salt Lake; he was almost dead; his head was hurt in the

place where the scar is; he was unconscious; he remained in that state several days; we traveled all night to get to him, and it took about a day to get back; after he was brought to the city his condition was very low, after he recovered his whole nature seemed changed; he became irritable and brusque; it was a year before he could work, though he was around within that time; his actions were more strange for the first two years than subsequently; he never fully recovered; I saw him every day from June till August, 1859; he was in a weak condition, but would walk around; his disposition was changed; he was more affected sometimes than others; remember the day that Sergeant Pike was shot; I was with Howard at my stepmother's up to about noon; he ate dinner and left the house; I took my dinner after him, and it was during that time that the shooting occurred; I had been up town that morning with Howard; I was anxious to see the man who struck my brother; that morning we did not see Bill Hickman; we were not in the rear of Cushing's shoe shop that forenoon; Howard and I were up town for not more than an hour; we were together all of the time; we came home to dinner, for years after August, 1859, Howard lived in the Fourth Ward, this city; he was not out of the Territory for years, as claimed; with the exception of the time that he enlisted in the army, under Lot Smith, he lived publicly in this city and Territory; his enlistment was to protect the mail route; in 1874 he went to the southern part of the Territory to live.

To Mr. Hiles—My brother ate dinner the day of the shooting; it was about midday; we went up town about 10 a.m.; I could not say whether he went up before me or not; he may have done so; I was anxious to see Pike, whom I learned was in town; Howard did not speak of the affair; he seldom referred to it; do not know whether I saw John Y. Green that day; did not see Steve Taylor; I do not remember who told me Pike was in town; Howard did no work for about a year after he was hurt; on the day of the shooting he was able to walk about; he was not in good physical condition; he could probably run, but not very fast; he could not have ridden a horse very far; I wanted to see Pike, because I felt that I could take up the quarrel; I did not want to engage in a quarrel, but wanted to see Pike; Howard was in government service to protect the mail from Indians; he was regularly enlisted; he has married since he was hurt and now has a family; he engaged in farming, so far as I know; I did not see my brother for a few days after the shooting; he was then at Mrs. Spencer's, about four miles south of the city; that was not on the Church farm, but near by, on my cousin's farm.

#### ORLANDO F. HERRON

testified—I was in Salt Lake at the time of the shooting of Sergeant Pike; I saw the shooting; I was staying at Robinson's, back in the