the killing. I don't think Hiles believed himself what he said. He simply thought his word would have an effect upon you. Thirty years have elapsed without prosecution, and the question arises as to whether Pike attempted himself to shoot the man who shot him. The case has been delayed so that that fact could not be proven.

It has been urged that he was in the custody of the law. The evidence has been shown that he was in command of his troops, or so many as a sergeant can command. Was he unarmed? He had on his belt for carrying his knife and revolver. His knife was there; one man says his revolver was, and another says it was not. In all probability he drew his revolver, and dropped it when he was shot, so that he did not have it on when he was carried upstairs. My brother Hiles speaks of the solemnity of Pike's dying declaration. I say that Leonard Phillips manufactured that dying statement out of whole cloth. He is contradicted by the only two other witnesses present. This might have been shown had the trial been held thirty years ago; but because there was no case against the defendant, he was not prosecuted. If Mr. Peters should claim that the courts then would not mete out justice, he gives a justification for the killing of Pike.

The prosecution says that the plea of insanity admits the killing. I say it does not. We put in issue every statement of the indictment. There is evidence that Spencer killed Pike; there is just as strong evidence that he did not. If he did, it is clearly the evidence that it was while he was insane.

As to the insanity, we proved that beyond a doubt. Mr. Hiles says the physicians' testimony should have little weight. That may do for his own witnesses, not for ours, who are the leading medical men of this city. Mr. Hiles admitted their long experience and competency, and what kind of a face has he to state now that what they say is of little consequence! I say their testimony is of great weight and importance. They say that a man injured as Spencer was would remain insane for a time, or even for life. And we know it as a fact that a man thus affected would develop insanity on each occasion of unusual excitement. It is claimed that his running away was proof conclusive that he was insane. We all know that an insane man is as liable to run as a sane man. I apprehend that the court will charge you that if you have a reasonable doubt as to the sanity of this defendant, you must acquit. We have shown you beyond any doubt that he was not in a sound state of mind. We have shown you that his entire nature was changed. If he was sane and it was shown that he killed Pike, the verdict should only be manslaughter. But he was insane, and on that we demand a verdict of acquittal. We demand of you, gentlemen of the jury, that you sustain the majesty of the law. There is no excuse for this prosecution. It was well known to the public at the time Pike was killed that Spencer was not in a frame of mind to be responsible, even if he did it, therefore they did not prosecute him. With these facts we ask and expect a verdict of not guilty.

MR. PETERS

made the closing argument. He said the charge was for a serious offense—murder in the first degree. There has been considerable criticism because the prosecution was instituted at so late a day. I have no excuse to make. If murder was committed thirty years ago, and the criminal escaped, it is time justice was meted out. If he is wrongfully accused the people should know that he is innocent. I think the history of this Territory from 1847 to 1882 is an answer for the delay. The prosecution assumed in this case to prove every element of murder, and we believe we have done it. It is idle for counsel to claim that we have not proved that the death of Pike was caused by the defendant Spencer. They say the defendant was insane; I think he made a very sane request at noon, when he asked that Mr. Brown close the argument for the defense.

I say, gentlemen of the jury, that we have proved every element in the case. We have shown the death of Sergeant Pike. We have shown also, I think, that he died from injuries received at the hands of the defendant. We say that it is immaterial whether or not Pike inflicted an injury on Spencer. It can not be claimed that because of that injury, Spencer had a right to kill him. No man has a right to take the law into his own hands. No one but an insane man will urge such a proposition in earnest. There may be an excuse for my brothers Rawlins and Young. I think Rawlins himself was insane at some times in his argument.

I say I don't care whether Pike was justified or not in the affair in Rush Valley. But it is not unreasonable to conclude that the killing of Pike was in revenge for that injury. Spencer was full of vengeance, and when Pike was brought in to submit to the civil authorities, the defendant was on the look out to gratify his revenge. The testimony of Steve Taylor shows that the defendant was determined to take the law into his own hands.

Mr. Peters continued his argument at some length in the above strain, and on his concluding Judge Judd read the following

CHARGE TO THE JURY:

Gentlemen of the Jury: The court has observed with gratification the patient manner in which you have conducted yourselves pending this trial; and now that the case is about to be submitted to you for final decision, I bespeak that calm, considerate and manly investigation, upon your part, that the importance of the case requires.

Before proceeding to instruct you with reference to the principles of the law which shall guide you in your decision, it is proper that I should, as preliminary to the charge, state some matters which, if properly attended to, will be of advantage to you in your further investigation.

You are the exclusive judges of the credibility of the witnesses and of the weight of the testimony, and of the ultimate facts of the case. If I shall state the facts of the case, it will only be for the purpose of declaring the law, as I understand it, that is applicable to such facts. If I should misstate the facts, or if any statement I may make of the facts are not in accordance with your understanding of the facts, then I direct that you follow your own finding, and not mine.

The defendant is upon trial before you upon an indictment which charges, in substance, that about the 11th day of August, 1859, in the county of Salt Lake, he made an assault upon Sergeant Pike, unlawfully, willfully, purposely, feloniously and deliberately, and of premeditated malice aforethought did then and there inflict, by means of a gunshot wound upon the body of said Pike a mortal wound, of which the said Pike died. Wherefore, as the indictment charges, the defendant, at the time and place aforesaid, did commit the crime of murder in the first degree.

To this indictment, the defendant pleads not guilty, and thus the issue is formed that you are empaneled and sworn to try.

The law presumes every man to be innocent until the contrary is established by competent proof beyond a reasonable doubt as to the guilt of the defendant. And if, in your investigation of this cause, you should have any reasonable doubt as to the guilt of the defendant of any offense, he must be acquitted; or, if there be a reasonable doubt as to whether he guilty of a higher or lower degree of crime, he must be acquitted of the higher and convicted of the lower degree; or, if there be a reasonable doubt as to the existence of any material element which goes to make up the offense charged, then he is entitled to the benefit of the doubt, and must be acquitted.

Before the defendant can be convicted, the proof must exclude every other reasonable hypothesis than that of his guilt; in other words the proof must be of that character that it shall satisfy your minds beyond a reasonable doubt that there is no other reasonable hypothesis which arises out of the proof than that of the guilt of the defendant.

What is meant, gentlemen, by a reasonable doubt is often better understood than expressed; but, to make a long story short, I should say, it is a reasonable and not an unreasonable doubt. It is a doubt that arises out of the testimony. After having considered all the facts, and their relation one to the other—and when I say *all* the facts, I mean all the proof that has gone to you from all the witnesses alike, and then the relationship of the whole body of the proof to the offense charged—if then you are not able to say you feel an abiding conviction of this or that result, then there is a reasonable doubt, and the defendant is entitled