

were you might consider the proposition of mitigation, but when he comes here with such a bold, open defense as he has, I do not see how you can come to any other conclusion than that he connived at the death of Pike and carried it out; that he is guilty of a wicked and premeditated killing, and we ask you to so find.

J. L. RAWLINS

followed in behalf of the defense. The offense charged against the defendant is that of wilful murder; that it was committed thirty years ago, and that the victim was Sergeant Pike. The prosecution claims that the offense is unrelieved by any respectable feature. The learned counsel says we assume three distinct defenses—first, that the defendant did not kill Pike, that if he did it was in self-defense, and third that he was insane. This is not so, and the burden is upon the government. The defendant is not bound to prove his innocence, but the government must prove his guilt. The prosecution has utterly failed to make out one of the elements charged by them. They must not only prove that Pike was wounded, but that the wound was fatal. In the dilemma in which counsel finds himself he assumes some very antagonistic positions. Counsel attempts to justify the dastard who struck down the helpless boy in the corral. And if he can do that what shall we say of the man who shot the deceased when he was surrounded by his armed friends? I say that counsel did not argue his case from the evidence adduced from the witnesses, and has endeavored to mislead the jury by his statements that they were not allowed to show that Pike was justified in his attack upon Spencer, intimating that he had much information on that subject that he was not allowed to bring out. The statement that Pike, when he crashed in the skull of the defendant, was in the strict line of his duty is not sustained, but rather does it show the true character of the brutal Pike. This is a nice statement for a man to make who is now prosecuting the defendant after a lapse of so many years. He jumps at the conclusion that Pike was in the custody of officers; that Spencer connived with others in bringing about Pike's death; that the theory is corroborated by other evidence. And even here he misquotes the evidence given by Taylor on the subject of the defendant not meeting Pike. What Green thought is not in evidence. It only shows that Taylor, knowing the condition in which the defendant was, was afraid that if he did meet Pike trouble would ensue. They knew that Pike was in town, and that Spencer was liable to meet him. Why? Because they knew that trouble would be the most natural thing in the world if Spencer met the dastard and the brute who had injured him. I say that even if Spencer did meet and shoot down the dastard, under the circumstances he did no more than anyone who understood the human heart would expect a man to do,

even though he were not in the irresponsible condition that we say he was.

Hiles says the conspiracy is conclusively proved by the testimony of Cushing and Phillips. Cushing is the gentleman who alleges he saw Hickman, Stringam, Luce and Spencer appear in his back yard, indulge in a few seconds' conversation and exchange pistols. He said that "each one of them brought out a pistol and examined it." If each one had a pistol, why should Stringam have handed over his to him? Why did they want that? Because the man Stringam is charged as a co-defendant. And before this poor old man came into court he is made to testify that Stringam gave Spencer a pistol, and that Spencer killed Pike in order to have some proof of Stringam's guilt. If Spencer should be convicted. Now, mark just what kind of a witness this is. He saw them, watched them, and yet he could not give one word of the conversation that passed between them. How the old man did work up a most formidable procession! First, he saw Howard Spencer flourishing a pistol, then follows Bill Hickman, then George Stringam, then Jace Luce, all crying out, "I'll drop him; keep back!" It would not have surprised me—indeed it would have been the most natural thing in the world—for him to have rung in half a dozen of the other outlaws who at that time infested this section.

You can put what version you like upon the testimony of Cushing, but I say it is strange that he is the only one in the gang who saw the sights that he saw, who heard the sounds that he heard. Pickard was there, Daniels was there, Herron, Brown, Heath and others were on the spot and they saw no such spectacle as was described by Cushing. Can you believe for a moment that those parties were there and that those transactions took place? How he ever conceived that these transactions took place, I do not pretend to say. Put what construction you may upon his motives, you must come to the conclusion that he has deliberately and wilfully falsified. When he said they came there and conversed, and he didn't hear a word, do you believe him? Don't you think, also, that he did not tell you the truth when he said that he had kept these secrets locked in his breast for thirty long and weary years? And this is the evidence upon which the prosecution seeks to convict the defendant upon trial for his life! Out of the mouths of the witnesses for the prosecution we have proven that Cushing either did not tell the truth or that Pickard and the others who were present are perjurers and falsifiers. I do not say but that there might not have been helping hands who aided the defendant to get away from the soldiers, but I do say there is not a scintilla of evidence to prove that any conspiracy existed between the defendant and the fellows named.

Mr. Rawlins then turned his attention to Leonard Phillips. He, too, was eager to help out the con-

spiracy, and he does it in every way he can. And yet out of the mouths of their own witnesses they prove that Phillips is a liar, or that Taylor is. Fortunately, however, other evidence corroborates Taylor and does not corroborate Phillips. In some States there is a law that makes a man who testifies falsely on the witness stand in a murder case guilty of perjury, which is punishable with death—such is the law in California and Idaho, and if Leonard Phillips had his deserts that is what he would have. And this is the kind of men whom the prosecution produce to deprive the defendant of his life!

At this point Judge Judd announced that the court would adjourn till 9:30 a.m. next day.

Next morning Mr. Rawlins continued his argument. He said: Mr. Hiles stated that Hickman got a horse and wagon and helped the defendant out of town. There is no evidence to that effect. Mr. Hiles doubtless thought it necessary, I suppose, to bolster up his case. As to the testimony of Leonard Phillips and Henry Cushing, they doubtless attempted to concoct a story that would fit. But in this they failed. Phillips says Hickman shouted "Git!" Cushing says that Hickman, instead of aiding the defendant, shouted "I'll drop him!" and covered him with his revolver. Phillips declares positively that there were only two soldiers; all the other witnesses declare there were five. If Hickman had done as Phillips says, he would have shown a connection with the man who shot, but all the other witnesses say he appeared, at least, to be in pursuit. It is apparent from Phillips' own statement that he testified falsely. He makes of himself the leading character. When the doctor could not find the bullet, according to Phillips, he found it for him. Why, if that testimony was true, the ball passed up outside of the ribs, and it was the bungling doctor who inflicted the fatal wound while probing for the bullet. But it is not true that Phillips did as he says; he simply told you what was untrue. He says parties were there, when it is shown they were not, and his whole story should be thrown out as unworthy of belief. As to Cushing, he said he was subpoenaed by the prosecution; but his name was not on the subpoenas. There was one name, Boor; this was Cushing brought in under a mask by the prosecution, to deprive the defendant of the opportunity to meet his statements. He said Jason Luce was there but the other witnesses say he was not. The prosecution had summoned Wm. and M. H. Luce, but kept them out of the way, lest we should get out of them the fact that Jason Luce was not there. They feared that these men would testify that Luce was out on the mail route, with the pony express, 500 miles from here. Cushing says Howard Spencer was with Hickman, Luce and Stringam at eleven a.m. of the day of the shooting. George B. Spencer says he was with him from ten to twelve that day and