

Trial of Sylvanus M. Spencer for the Murder of Captain Frazier.

UNITED STATES CIRCUIT COURT—Dxo. 19.

Before Hon. Judge Ingorsoll.

The trial of Sylvanus M. Spencer for the murder of Captain Frazier, on board the ship *Sea Witch*, when about 1,200 miles south and eastward of Rio, was commenced in this Court yesterday.

The murder was committed between 3 and 4 o'clock on the morning of Sunday, the 5th of June, the Captain being asleep in his cabin. The weapon with which the murder was effected, was supposed to be an iron marlin-spike, from the character of the wound inflicted. The Captain was discovered insensible soon after the time when the prisoner, whose watch it was, is alleged to have inflicted the injuries which produced his death. The wounded man continued insensible up to 12 o'clock on Sunday, when he died.

Ex-Judge Beebe appeared on behalf of the friends of the deceased, in conjunction with the prosecuting officers of the Government.

Messrs. Fullerton and Duning defended the prisoner.

After the Jury had been impaneled, Mr. Duning rose and moved that the witnesses in this case be taken out of Court whilst the opening statement was being made on the part of the Government, and that none of them be allowed to be present when the evidence should be given but the person on the stand.

The District-Attorney did not consider that he was bound to insist on their presence under these circumstances, this being a case of life and death.

The Court thought the request a reasonable one.

The witnesses were accordingly removed to the adjoining court-room.

The Assistant District-Attorney opened the case on the part of the Government.

Joseph P. Borolasci sworn: I am a physician; was surgeon on board the *Sea Witch*; sailed on board her from this port on the 25th April; Capt. Frazier was in command; Mr. Spencer was First Mate; there were twenty-three men beside the officers; we were bound to Hong-Kong, and from there to Swantong for coolies, and thence to Panama; we had no cargo; the ship had been in this business before; on the 5th of June, between midnight and morning, I saw Capt. Frazier lying in his berth in his state-room, on his right side, with his face towards the starboard side; I had seen him on the night before, some time between half past nine and ten o'clock, and during the evening before that time; I saw him at tea at six o'clock; Captain Frazier, Mr. Spencer, and myself were at the table; some high words were used by the Captain to Mr. Spencer; among other things, I recollect the Captain said to him that he was neither an officer, a seaman, nor a navigator; and that the reputation he got of him from Crawford & Ward was that he was a liar and could not be believed; he also told him that he was a coward; that he must have heavers to knock men down with at the wheels; these are heavers (hard wooden pins about eighteen inches long and two inches in diameter at the middle, tapering towards the ends;) the Captain told him that he could not use his fist, but must take a belaying pin to knock Mr. Clark (the second officer) down; Spencer made no reply at that time, nor afterwards, that I heard; early in the conversation, when speaking of taking the double altitude, Mr. Spencer said very few seamen who left in ships from New-York could work that out; Capt. Frazier made no further remarks to my knowledge; he said he had now a poorer opinion of Capt. Osgood than he had before; Spencer sailed with Osgood; I saw the Captain during the evening; he was well; when I saw him between half-past nine and ten o'clock he was sitting at his table in the cabin, writing; before that conversation, Spencer and the Captain did not agree; they did not agree from the time the ship had left. [Objected to.]

Q.—How did they act towards each other? A.—Not as captain and first mate should.

Q.—What facts occurred between them? He (the Captain) almost declined to give orders through the first mate, and gave them through the second mate.

Mr. Fullerton objected.

Q.—Was there any other quarrel that you saw between them before that quarrel at the tea-table? A.—I was not present at any other quarrel between them; I next saw the captain about four o'clock in the morning in bed. [The witness here described on a diagram of the cabin of the *Sea-Witch*, the relative positions of the officers' berths, the state-room, steward's-room, &c.] There was always a light on the port side of the steward's pantry to throw a light on the watch; it was one that could be put on the side of the vessel or on a stand; there was another that hung from the centre of a beam down over the centre of the table; there was a light at the binnacle which showed down in the after cabin; and another in the Captain's state-room; there was no light in the after cabin but that; before the Captain retired there was a candle in the after cabin which was put out when he withdrew; all the rest were kept burning; the weather at this time was rather pleasant; I slept with my door open, and, to the best of my knowledge, the Captain did; I would not say what was the latitude and longitude; we reached Rio Janeiro in thirteen days after; I believe the calculation made that morning was that we were one thousand three hundred miles south and east of Rio; I went to bed between half-past nine and ten; I did not see Captain Frazier till four o'clock in the morning; the second mate called me at midnight, to know if I had my watch; the watch was run down, and he did not know whether it was twelve o'clock or not; at that time the lights, to the best of my knowledge, were burning; there was nothing unusual about them; I could not swear that the watch was changed then; the last I saw of Spencer that night was at the tea-table; I heard no unusual noise during the night; I slept as soundly as usual, and was not awakened till awakened by the second officer at twelve o'clock; I fell asleep after that, and was awakened by Mr. Spencer who called me about four o'clock; it was his watch from midnight till four o'clock; it was not day-light when he came to me; he had the lamp in his hand that belonged to the steward's pantry; he told me to get up for God's sake, for he believed the Captain was murdered; I asked him, What? and he repeated it again; I got up and went to the Captain's state-room; Mr. Spencer went with me; there I found Captain Frazier; there was no light in the Captain's state-room except that which Mr. Spencer had in his hand; there was no other light in the state-room to my knowledge; I found Captain Frazier lying on his right side, in his berth in his state-room, with his face towards the right side of the vessel, with his right hand on the right side of his head; the top of the coverlet, the pillows, the tops, sides and edge of the berth were covered with blood; he was breathing heavily—stertorously; I saw no marks on his left side; Spencer stood inside the doorway; I entered the door first; when I entered he was outside holding the lights; he came inside and stood about the centre, just where the figure 17 is, (on the diagram;) the Captain's head was towards the stern of the vessel; I tried to turn him over, but could not; I then turned round to Spencer, and he asked me, as I turned, if I wanted assistance; I told him to call the carpenter; he went out and the carpenter came in, and we turned the body over; I then examined, to see where the blood came from; I found that he was bleeding from the nose, the mouth, and the right ear; the whole right side of his face was very much swollen and discolored, and his right eye swollen so very much as to be shut up; I sponged the blood off his face, and found that he had a gash on the forehead, extending down the forehead over the right eye, and from an inch to an inch and a quarter in length; I next discovered a circular depression over the right temple—a compound contused wound—and I could hear, when putting my fingers on it, the grating of the edges of the bone with the palpitation; there was another wound on the posterior part of the right side of his head, which was a flesh wound down to the bone; these were separate and distinct wounds; there was a fracture of the skull in the other two places; the back wound only extended to the bone; the Captain died at twelve o'clock on the same day from the effects of these wounds and the loss of blood; they were not such wounds as a man could inflict on himself; any one of them would incapacitate a man from inflicting the second; they could be done by other instruments on board the vessel; it could have been produced by an iron belaying pin; that wound could not have been made with that—a set of brass knuckles—from the loss of blood and the peculiar coagulation of the blood, and the saturation of the pillows, the wounds could not have been inflicted within an hour previous to my first seeing him; he was not able to speak when I first saw him; he was insensible, breathing heavily, and lying perfectly quiet; the carpenter and myself raised him up; Mr. Spencer did not touch him to my knowledge; he did not remain over a few seconds—not more than a minute in the room; he went to call the cook to get the water, and did not enter the room again till the Captain died; after I discovered the condition of the Captain I went to my room, leaving the carpenter with him, and brought back my instruments, bandages, lint, &c., and began to clean and bind up the head; the Captain attempted once to get up; the only sign of rationality I saw was his attempting to get up about eight o'clock; the carpenter kept him down; he stated distinctly that he wanted to urinate; Mr. Spencer asked me about him several times; he asked me if there was any chance of his recovery, and if he did recover whether he would retain his senses; he asked me how long I thought he would live; I answered him; that is the substance of his remarks; he wondered who could have done the murder; I suppose it was some twenty minutes or half an hour from the time I saw the captain at four o'clock that he uttered a word; he then gave some orders about a rope that had been carried away the day before; and said something about stanchelling; he muttered merely; the Captain, when he wanted to get up, said, "I must get up;" he said distinctly he wanted to urinate; I was in the room when he got up; he stood up twenty seconds or so, leaning on the carpenter; he was nearly able to stand alone; when he got back to

bed he fell into a comatose state, and remained so till he died; on the morning of that day the Captain died Mr. Spencer and I had several conversations; he wanted to know whether we should go to the Cape of Good Hope; Mr. Spencer wanted to go to the Cape; he said it would be breaking up the voyage to go to Rio—that the Cape of Good Hope was in the way, and that we had better put in there; I objected, and said we would rather go into Rio; Mr. Spencer replied that the house would blame him for breaking the charter if he put back; I told him I would take that responsibility upon myself, and bear him free of all blame from the house; he then said perhaps Captain Frazier might possibly recover, and he would blame him; we finally decided upon putting back to Rio; he had the command; we put back for Rio and arrived there on the 16th of June; between the time of the murder and the time we reached Rio there was no investigation into the murder to my knowledge; the mate (Mr. Spencer) did not wish to let the sailors know that the Captain was murdered; he bid me tell them that the Captain died from hemorrhage; after the Captain died the body was washed and laid out, during the afternoon, by the cook and steward, and next morning the carpenter made a box, and, as he had requested, the body was covered with whisky belonging to Mr. Spencer, and was lowered down into the hold; that was done in pursuance of a promise I had made the Captain a day or two after we left New-York, that if he should die or anything happen to him before we got back I was to bring his body home and bury it by the side of his wife in Greenwood Cemetery; Frazier was a man of about forty years, very muscular and athletic; he was a very strict disciplinarian; I never saw a sailor inside that cabin unless he was ordered there; I never saw one there in the night; I believe the Captain was a wakoful man, but I do not know that from my own knowledge; on the first call he generally awoke; the officers generally came down the stairs on the larboard side; none but the Captain and myself went down the stairs nearest his berth; the starboard pantry door was always kept closed, to prevent the smell of the food from reaching his room; the other was left open; we reached Rio on a Saturday, the 16th, and were boarded by a boat from the United States brig *Bainbridge*; Mr. Spencer told Mr. Babcock, the midshipman in charge of the boat, to tell the Captain in command of the brig *Bainbridge*, that the Captain of the ship had been murdered; this, I suppose, was between ten and eleven in the morning; on the afternoon we were boarded by the officers and the physicians of port; we were then boarded by Captain Rowan, of the brig *Bainbridge*, Mr. Scott, the American Consul, and a Brazilian officer, with about twenty soldiers; a partial investigation was had; an order was sent for double irons, which were brought, and all the men of the *Sea-Witch* were double-ironed; except Mr. Clark, Mr. Spencer and myself; the steward and cook were also let out of irons because they had to attend to the ship; that was on Sunday night; on Monday, Captain Rowan, Mr. Scott, the surgeon of the *Bainbridge*, the surgeon of the port, and several American captains, with a file of marines off the brig to relieve the Brazilian soldiers, came on board; Captain Rowan then ordered the body of Captain Frazier to be brought up, and all the men were placed around it; they were all requested to stand there; the post mortem examination was conducted by the two surgeons and myself—I being there to state the facts; from that examination my opinion of the wounds was the same as when I first saw the Captain on the morning of the 5th; Mr. Spencer at that examination was standing a part of the time at the head of the body; he assisted in holding the head and laid the block under it; I heard him say nothing; that afternoon the Consul commenced the examination of witnesses, when it was stopped at the request of Mr. Spencer, who said he was not well; it was postponed till next morning; the examination was begun with Mr. Spencer, (file of papers produced;) that is very like his hand-writing—(hand-writing of signature to Mr. Spencer's statement;) I have seen Mr. Spencer write; I believe that to be his signature; I believe every man on board was examined; Mr. Spencer himself was examined; that (book produced) is the log-book kept by Mr. Spencer; and that (another book) is Mr. Spencer's private log-book; I saw Capt. Laing go into Mr. Spencer's state-room on that morning in Rio; he came out with the key of the state-room and of Mr. Spencer's trunk; he took the keys of all our trunks; I saw him unlock that room on the next day, Tuesday.

Q.—Did you see him bring anything out? A.—I did.

Q.—What was it?

Mr. Fullerton objected. It had to be proved who had put those things there.

The Court thought that this was inadmissible.

Ex-Judge Beebe said they offered to show that Captain Lang went into this room without anything and brought back these marlin-spikes and heavers, and that Mr. Spencer admitted himself, under his own handwriting, that he had these things in his possession.

The Court thought the fact as to Captain Laing's finding these things was worth nothing now.

The witness (in continuation) proved the handwriting of Mr. Spencer in the signatures in the log-book.

Some conversation ensued as to the advisability of continuing, this evening, the direct examination of the witness until it should be terminated; but eventually it was decided that the Court should adjourn until Thursday morning at 10 o'clock. Adjourned accordingly.

THE SPRAGUE MURDER TRIAL.

SECOND DAY.

A Rich Debate in Court—Is the Evidence of a Mistress Admissible?

COURT OF GENERAL SESSIONS.

Before Hon. Recorder Smith.

The trial of Samuel Sprague for the murder of Margaret Furtig was continued in this Court yesterday. The case is one of considerable interest, and the Court-room was crowded throughout the day. The proceedings were opened by Mr. H. L. Clinton, in the examination of witnesses for the defence, and, as will be seen from our report, a warm debate interrupted the progress of the testimony.

Charles J. Nordquist examined by Mr. Clinton—I am a physician; I was called to attend Mrs. Furtig, about two hours after she was wounded, at the house No. 260 Delancey-street; I attended her for six weeks, until she was removed to the hospital; I attended her daily; at first there was some prospect of her recovery; later I had little hope of her; the medicines I prescribed were given to her very irregularly; I had great difficulty in getting her husband to give her any medicine; I left my instructions with her husband; Furtig told me he was going to make \$5,000 or \$3,000—I forgot which—out of the case; he was going to make it by suing Mr. Sprague's father; he said so after his wife was dead; I told him not to do it, but I said that Mr. Sprague would undoubtedly recompense him for the loss of his wife; I never said he might get \$250 to leave the country; he said a friend or a lawyer, I forget which, told him he could make a large sum of money, out of the prisoner's father; I took the bullet from the wound in the woman's body; I and Dr. Underhill took it out; the Captain of the Thirteenth Ward Police was present; I think he has the ball; the ball did not fall out as the witness Furtig said yesterday; it had to be extracted by forceps, from a depth of at least two inches.

By District-Attorney—I do not know whether it was a ball or slug; it was quite flattened; I do not think there was more than one ball fired into the woman; I did not see her clothes; the flesh was not much burned; I should judge the pistol must have been held within within two feet of her breast; the conversation between me and Furtig, relating to the money he expected to make, took place on the day the Coroner's Inquest was held; the prisoner's father came every day to inquire about the woman; I told him he was going to be sued; I often talked with him about it; I had conversation with Furtig on the subject of the money before the woman died.

By Mr. Clinton—Furtig began to speak about suing Mr. Sprague's father about three or four weeks after his wife was shot; Sprague's father never authorized me to offer any sum whatever; the medicines began to be irregularly administered about two weeks after she was shot.

The District-Attorney urged that the rule of law was well defined, which rendered it impossible for a defendant to show that the party died, partly through the effects of unskillful treatment, or even of criminal maltreatment, if the wound which he inflicted contributed to the death of said party.

The Court agreed with the District-Attorney.

Examination resumed—I once ordered some medicine for Furtig's wife, and Furtig refused to get it; Mrs. Hauf, a woman attending her, said she would get it, if she had to pay for it herself; I ordered port wine and porter, to strengthen her, but she did not get it; once or twice her husband gave her some buttermilk; I expect she would have been better if the medicines had been regularly administered; I remonstrated with Furtig, and insisted that his wife should be sent to the hospital, where she would be better attended to; the room in which she lay was immediately under the roof, and was very hot in the Summer; Sprague's father furnished some money for the woman's medicines; Furtig gave as a reason for not buying the medicines, that he was too poor; Sprague's father once gave me \$5 to give to Furtig for medicine and necessaries for his wife, which she did not get.

John G. Cooper, examined by Mr. Clinton—I am a locksmith by trade; I have known the prisoner for ten years; he was always a peaceable man, to my knowledge; he was remarkable for his peaceableness; he was "very strong" in his sobriety; I mean he was "very straight" in temperance.

By District-Attorney—I do not know why he left his father; I heard he got married; I have not heard of a difficulty between him and his father; he has not worked with me within the last three years; he is a locksmith; I have known him to work at painting within the last three years.

By Mr. Schaffer—He was married, I believe, about four years ago; I only know it by rumor.

Charles Hicks, examined by Mr. Clinton—I live at No. 202 Second-street; I am a black and pump maker; I have known the prisoner twelve or fifteen years; I have not been in the same shop with him; I have seen him about a dozen times a year; I lived in the neighborhood with him four years ago; I never heard anything against his character; I never heard that he was violent or disorderly; I never saw him drink anything in his life; he was strictly temperate, as far as I know; he was very abstemious; his obstinateness was a subject of remark.