

MURDER ON THE HIGH SEAS.

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

UNITED STATES CIRCUIT COURT.

Before Hon. Judge Ingersoll.

FRIDAY, Dec. 21, 1855.

This trial was resumed to-day, at 10 A. M., pursuant to adjournment.

Several new witnesses were examined, and others were recalled and cross-examined, after which

Mr. McKeon read in evidence the statement of Spencer before the Consul in Rio.

Examination of witnesses taken on board the American ship Sea Witch, in the port of Rio de Janeiro, commencing on the 18th day of June, 1855, before me, the undersigned, Consul of the United States, and relating to the alleged murder of G. W. Frazier, late Captain of said ship:

Sylvanus M. Spencer, being first duly sworn, declares and says to questions propounded him by the Consul, as follows: Says that he is a native of New-York, and now in his thirty-sixth year, and is by profession a seaman; that he shipped on board of the ship *Sea Witch* on the 2d of April, 1855, as her first officer, in the port of New-York, she being then commanded by Captain G. W. Frazier; proceeded on a voyage on board the ship towards Hong Kong, on the 18th of April, 1855; he states that, as the first officer, he kept the log of the ship, and which log book, marked now by him "Sylvanus M. Spencer," is exhibited to the Consul; this log book contains a true account of everything that occurred during the voyage, so far as witness made a note of it; on the evening of the 4th of June, 1855, at tea, and shortly after six o'clock, Captain Frazier used some ungentlemanly remarks towards me, at least I considered them so, to which I made no reply; witness was on the dog watch from six until eight o'clock; John Clark, the second officer, had the watch from eight until twelve o'clock; witness took charge of the watch from twelve until four o'clock; he has no recollection of having seen Captain Frazier from eight o'clock until four o'clock, on the night of the 5th, according to nautical time; indeed, he is positive that he did not see him; at four o'clock witness went into the cabin to call the Captain at the end of his watch; passed through the cabin, in which there was a dim light; went to the Captain's state-room and found no light burning there; witness called the Captain, received no answer; repeated the call, when I seemed to hear short, hard breathing; throwed open the pantry door and there got a light, which enabled me to look into the Captain's room, and there I saw a sight which I shall never forget; kind of lost my sight, and in an instant was at the doctor's room called him, and went in together into the Captain's room; found we needed assistance, and called the steward and carpenter; the Captain was lying on his right side, with his face to the starboard of the ship, sleeping in a starboard state-room, and of course his face was from us; we had considerable difficulty in turning him over to look at the wounds; he kept saying at intervals "Let me alone, belay that, belay that—put your siezing closer down!" we finally got him over, when, in spite of us, he got out of the berth to urinate; we tried to coax him to stay in the berth, and let us dress the wounds; I stayed by him until the doctor got his head bandaged up; the weather then became foul and bad, and my presence on deck was required; I saw him several times at intervals, and the carpenter was always with him spunging his mouth, but he expired about twelve o'clock, or shortly afterwards, on the same day; does not recollect whether there was a moon or not; recollect that there were dark, heavy clouds passing; was once during my watch, from twelve to four o'clock, in the pantry, but did not see the Captain; he went into the pantry to get something to eat; was there at another time during the same watch to light a cigar, but did not see or hear anything of the captain then; heard some one cough in the cabin; went to get something to eat about one o'clock, and after eating, or shortly after eating, lighted my cigar and went on deck; saw the door of the pantry next the captain's state-room open about three or four inches; the doors of the pantry are sliding doors; the larboard side of the ship, from twelve to four o'clock, was the weather side of the ship; knows of no dispute between the captain and any one during the voyage; he does know of difficulties having occurred; some of them I recollect; he had one with William Binney; he had another with a man whom we call Charlie; he had another with a man whom we call the blacksmith; he had another with a man named Gould; he has heard that the captain had another difficulty with a man whom we call Joe, and who is in my watch; this man's name is Joseph Venable; I do not know of my own knowledge of this last difficulty; does not know of his own knowledge of any threat made by any one against Captain Frazier.

At this point the witness complained that he was not well, and immediately his further examination was postponed until to-morrow, at half-past nine o'clock.

June 19, 1855.—The examination of Sylvanus M. Spencer was resumed—Being asked if he suspected any one with having murdered Captain Frazier, he answered that he did suspect four of the crew of the ship, and being asked to name them, he replied that a man called Charles, another named William Binney, another named John Gould, and the fourth named Joseph Venable are those whom he suspects, and added, I remember another, who is known on board of the ship as blacksmith, and those are all of whom he has any suspicion; the witness was then asked to state the reasons for his suspicions, and proceeded to say—as to Charles, my reasons for suspecting him are these—the night previous to the murder the captain punished him for not giving me immediately a reply to a question I asked him; I was not present at the time; I only heard the blows and some words; Charles is much in company with William Binney, John Gould and Joseph Venable; since the death of Captain Frazier his looks are much changed; he has a haggard expression of countenance, which I never noticed before the occurrence; as to William Binney, he has been punished by the captain and myself several times, for various offences, and has been heard to use violent language as to the captain and myself; I cannot vouch for the language; those who heard it will give it to you; Mr. Macrae heard it, and reported it to me; since the death of Captain Frazier I have found it necessary to punish Binney for breaking open and stealing from his shipmate's chest; this was charged against him, and, being a suspicious character, I put him in irons; as to John Gould, I suspect him because of his association and connection with the others; I mean Binney, Charles and Venable; I suspect Joseph Venable because of the marked change in his countenance since the death of Capt. Frazier—a change that was remarked by Doctor Brolasky and the second mate, the carpenter and Mr. Macrae; and he is much with Binney, Gould and Charles. I suspect the man called Blacksmith; do not exactly know his name, for the following reasons: As far as I can judge, he is out of his mind; I had frequently punished him by tying his hands over his head to one of the beams, for various offences; Captain Frazier has also done the same, but not lately for the poor wretch has been the subject of our regret, and no notice has been taken of him of late; but it has of on occurred to me that it was all affected; and these are my reasons for suspecting either of those men with having been instrumental in the murder of Captain Frazier; I have no suspicion of any one else; there is a circumstance that has occurred to me within the last twenty-four hours; I will now proceed to relate it.

Note.—Witness here took up a book, on one page of which he has, by the request of the counsel, written "Sylvanus M. Spencer," and which is referred to as being a book of his own, and then read from it as follows: "Mr. Clarke, the second mate, has conducted himself very mysteriously to me the last twenty-four hours, scarcely speaking, and not even returning common civilities. Yesterday afternoon, while I was under examination, he injured his hand so that it bled considerably. I understood it was done getting out a cask of bread. He, however, went to my room, took out one of the marling spikes, of which I have a number, and showed it to some one or more, making some remarks, the nature of which has excited my suspicions and brought to my recollection a circumstance that occurred about a fortnight after leaving New-York; on which occasion he did not obey my orders promptly, and made some very impertinent remarks to me; for which I struck him over the head with a wooden belaying pin much harder than I intended, and even knocked him down, and then sent him to his room; on this occasion he swore he would have my life before I reached Hong Kong. Of this circumstance and threat I have not thought until the present moment, and think it may portend some evil design. Eight o'clock A. M., Tuesday, 19th of June." Being asked how this memorandum, prepared since his examination, stopped at half-past two o'clock yesterday, bears upon the inquiry as to who killed Captain Frazier, he observed, it bears thus: shows a design of which I had not the least suspicion, and an evident wish to fasten something tangible even on myself, to escape any inquiry; and that was the idea when I penned this, thinking that a person that could not thus, could be guilty of something more; and I never had any suspicion of him until then, and trusted him with everything about the ship except my own life.

Note.—Here the witness was admonished that he might be mistaken in charging Clarke, the second mate, with going to his room and taking out any marling spike therefrom, or showing any marling spike to any one. Proceeded to say: I did not see it; but I heard such remarks as satisfied me it was done. The witness being asked who was his watch on the night when the captain was killed, answered, Mr. Macrae was in my watch, and also William Binney, Joseph Venable, the man Charles, Blacksmith, Thomas Connolly, Henry, Davis, William, Emanuel and Antonio and Lewis; of these Antonio and Emanuel were at the helm. No regular watch was kept in the pantry; it was visited occasionally during the night, and he believed Mr. Macrae came down to ascertain the hour; and furthermore the said deponent saith not.

SYLVANUS M. SPENCER.

Mr. McKeon then read the book from which we make the subjoined extract as a specimen, *verbatim et literalim*:

"Oh, how shall I describe my feelings; this morning at 4 o'clock A. M. found the Captain wounded to death, not quite dead, but incapable, and evidently dying; the doctor gives no hopes, still I kept the ship to her course, hoping for some partial recovery of sensibility, to consult his last wishes,

and, if possible, get some clue to the detection of the murderer or murderers.

"Oh it is a horrid to think that such a deed could be perpetrated and no vestige of the assen other than the deed. At daylight looked carefully around, no spot or anything that could enable one to say that it was done with this that or the other, or who was the Fowl assen." "6 o'clock & 30 Doctor thinks the Capt. may linger a few days before he expires, and possibly recover his senses for a short time. Continued to bear away for the port of Rio Jenerio, and done so. Latter part of this day strong breezes and heavy squall with rain, shortened sail, arm'd ourselves with all possible precaution."

"10 o'clock—Doctor gives up all hopes; at noon informs me the Captain is dying. Oh this is horrid. I had hoped for some partial recovery of sensibility." "30 minutes past merid.—The Captain expired; set the cook and steward to wash and lay him out and enjoined silence upon the fouls aft." "4 o'clock P. M., June 16, N. Time—Mustered the crew and informed them simply that the Captain was dead and that I was keeping the ship for Rio Janeiro; saw no expression of countenance that looked confused or that should give any clue to the detection of the assen."

"Carpenter to work making a coffin. I have the Aldermann's whiskey below which the doctor thinks is sufficient to preserve the Jodie. This I wish to do by all means (as being an express wish of him some time ago in case he should die.)"

"Also that upon my arrival at Rio Janeiro (and God only knows whether I shall or no) the crew may be confronted with the corps and there in the presence of unbiased and unnerved observers some clue be discovered to the detection of the murderers. O my dear friend think of the horror of my position. indeed I find Language inadequate to express it, or to convey an idea of the horror of this foul deed. A man evidently sleeping struck senseless at a blow and that blow repeated to make assurance doubly sure again and again."

"About noon got the coffin ready."

"3 o'clock P M entered the corps and covered it with Liquor not having quit enof added a becke of water which in the opinion of the ship surgeon is sufficient to preserve the corps. 5 o'clock mustered all hands and lowered the coffin the lower hole. Again I cast a scrutinising glance on every countenance but every thing is blank and I dont seem to possess my natural penetration."

"Oh Edward sailors will be sailors for while we were pitching the cover of the coffin on deck, I went forward, and there was four of the rogues playing cards; and when we lowered the corps in the hole one of the sailors began to shout eva for which I upraided him and I understand he has since wept."

"Night fall of the 6th. Civil time. Cabin. Oh you have never been to sea and can form no idea of the solemnity of the scene. But such a calm as this surpasses everything of its kind that ever fell to my lot to behold; only think of us anxious to reach Port for our own safety as well as the vessel, and other innocent lives on board, for how far the intention goes towards the murder of every one aft God only knows; and may be the destruction of the vessel by fire and other means and awful thought I cannot endure it the murderer may be in our midst,—some one not suspected."

"Everything almost belonging to the late Capt. Fraser I have had put under lock and key in the stateroom, for I've not time to make an inventory there of, which I propose to do upon my arrival at Rio Janeiro, and have then packed up and sent to his bereaved family."

"The Doctor tells me that the crew thinks the Captain killed himself; Poor fellows, let them think so. But I, who have seen the corps, both before and after death, can have no such opinion; if I could, it would be a great relief to my mind. Daylight once more, Thank Providence, and everything as usual."

"Monday, 18 June, 1855 20 before eleven o'clock. The consul came, on board accompanied by the Captain of the Brigg *Brainbridge* and several other gentlemen captains of vessels and two physicians and ordered the corps got up from below which was done; made a post mortem examination of the head of our late Captain and established the fact of his murder; for the wounds in the opinion of the medical men must have been inflicted by some person or persons; it was quite evident that two instruments must have been used as there was the Head or Skull broken or completely stove in—and one wound evidently done with a sharp instrument."

The next witness for the prosecution was

Dr. James H. Chilton, who proved, first, that he got no indication of blood on the marlin spike; second, that he examined the pantaloons carefully, found several spots which had the appearance of blood, cut them out, subjected them to a test, and found no indications of blood, but pitch; third, that he examined the spots on the hat, and found that they were nothing but red paint; and fourth, that he detected two spots which were blood on the bosom of the shirt.

Zephar Piersall was the last witness for the prosecution.

The witness was cross-examined at some length by Mr. Fullerton. His replies at first gave some indications of prevarication, but eventually he explained himself without testifying to any new fact of importance.

Mr. McKeon—That is our case.

THE DEFENCE.

Mr. Fullerton rose and said that the defence had no formal opening to make, and little or no evidence to offer, the other witnesses on board of the vessel at the time of the murder, being either discharged in Rio Janeiro, or sent on the *Sea Witch*. Some questions, however, would be put to the Doctor and Steward. He was desirous the defence should not be called upon to sum up to-night.

The Court seemed to think that the case should be closed to-night.

A recess of fifteen minutes occurred.

When the Court resumed, the doctor was again called, but could not be found.

Edward Madison, the steward, was then recalled.

He did not recollect the morning when the ship was in the bay of the difficulty between the captain and Mr. Spencer; did not know of any such difficulty; he remembered the morning when the ship was towed out, and heard no conversation between them at the breakfast table; if there had been any he would have heard it; I was attending the table.

To Judge Beebe—We had the food in the galley, and went backwards and forwards to get it.

To Mr. Dunning—The food was laid on the breakfast table before they sat down; there was no quarrel that ever I knew of when the vessel was in the Horseshoe.

To Judge Beebe—During the time they were eating I used to be in the pantry.

To Mr. Dunning—The pantry is adjoining the room; I could have heard what they said often in the pantry.

To Mr. Beebe—There was no other place I went except at dinner time, when I went to the galley to get the dessert; after we left the Horseshoe we used to have warm cakes, and went for them at breakfast; I do not know that I was anywhere at breakfast that morning but in the pantry.

Doctor Brolasky was again called, but did not answer.

The Court asked the defence to state what they proposed to prove by him, and perhaps it might be agreed to.

Mr. Dunning said that he proposed to show by the Doctor that no quarrel took place at the breakfast table that morning in the Horseshoe.

The District-Attorney said the Doctor testified before the Commissioner that that quarrel took place after breakfast.

John W. Clark, the second officer, was recalled—he could not tell how many more shirts there were in this bag; there were more than one; all Spencer's dirty clothes were in it.

To Judge Beebe—This was the only shirt on which I saw any blood.

A conversation took place between the Counsel as to the fact whether Spencer himself did not close the Captain's window on the morning of the 5th of June, after the deceased man was discovered in the condition to which the witnesses testified.

The Doctor not being present to prove this, however, the matter was dropped.

The Counsel for the prisoner having now closed their testimony,

Mr. Fullerton proceeded to sum up the case in behalf of the prisoner.

Mr. McKeon, the District-Attorney, addressed the Jury on the part of the Government.

The learned Judge delivered a lucid charge, which, on the whole, appeared to incline to the belief that the facts adduced on the evidence were consistent with the innocence of the prisoner.

The Jury then retired, and at 10 o'clock P. M. had not agreed.

The Court then adjourned.

THE SPRAGUE MURDER TRIAL.

The Jury, of Course, Cannot Agree.

FOURTH DAY.

COURT OF GENERAL SESSIONS.

Before Hon. Recorder Smith.

The Court met at 10½ o'clock this morning, and the Jury having been polled, the Recorder proceeded to deliver his charge. The Court-room was crowded with spectators, considerable interest being manifested by the public in the result of the trial.

The Recorder then charged the Jury.

At the conclusion of the Charge, Mr. Clinton rose and made numerous exceptions, which we have not space to insert. Quite a sharp cross-fire was kept up between that gentleman and the Recorder, much to the interest of the on-lookers and auditors. The Jury went out at 12 o'clock. Sundry small cases came up for trial during the afternoon. At 4½ o'clock they returned into Court, and, of course, stated that they could not agree. (Juries never agree now-a-days.) They wished to know what constituted the different degrees of manslaughter, but did not think there was any possibility of their agreeing, even if informed.

The District Attorney said that in view that the case had been four days on trial, and that this was the fifth murder case within a few weeks in the Court of Oyer and Terminer, and this Court, i