

for a little tartar emetic for Mrs. Wharton; the clerk asked me if Mrs. Wharton wished it for her breast; and I told him she did; he then said something in an undertone to a boy, and after awhile gave it to me; Mrs. Chubb here folded a piece of paper, measuring about 2½ inches square, and said the paper containing the tartar emetic was about that size. Continuing, she said:

I returned and Mrs. Wharton and several ladies were at the supper-table; I put General Ketchum's medicine on the mantel, and said audibly, "here is General Ketchum's medicine," I laid the tartar emetic on the mantel, also; that night, after we had gone up stairs together, I saw Mrs. Wharton shaking the little package over a mustard plaster, and I saw her throw the paper in a slop-jar; I was lying on the bed and could see her distinctly; I also saw her apply the plaster; she was standing at the washstand when she silted the tartar emetic on the plaster; the gas light was burning rather dimly, but I could see her well; I remember the occurrence of nothing else during the evening: Mrs. Wharton and I occupied together the back room, on the second-story; General Ketchum occupied the third-story front room; Mrs. Wharton did not retire any night; she was up off and on all Saturday, Sunday and Monday nights; I saw the servant taking General Ketchum a cup of tea and a slice of toast on Monday, but I saw nothing else taken to him: Susan Jacobs was taking it to him; Mrs. Wharton asked me, since I purchased the tartar emetic and after her arrest, if I could identify the person from whom I had bought the tartar emetic; I told her I could, and she said it was important that I should have my mind clear on that subject, and not confuse one purchase with the other; she impressed upon me the importance of my being able to identify the person from whom I had made the purchases. Mr. Revell—"Was anything said about another purchase?" Mr. Steele objected; the cross-examination was going, he thought, too far, when the issue was one of life or death, and Judge Miller said he thought the cross-examination becoming too general. Mr. Revell said he merely desired to have the mind of the witness refreshed. Some desultory discussion followed, and the witness continued:

We both felt assured that but one purchase was made, and Mrs. Wharton said that as I was a stranger in the store, and several other purchasers were present at the time I was there, it was particularly necessary that I should be able to identify the person who gave it to me; I did not have any conversation with Mrs. Wharton on any other subject; the conversation took place in her own house a day or two after her arrest; I think she was arrested on Monday evening; I went to Baltimore, by invitation of Mrs. Wharton, to see her before she went to Europe, but the conversation about the tartar emetic did not occur at that time; when I reached Baltimore I found her in her house; I don't remember any other conversation about the tartar emetic; I don't think any one was present at the time of the conversation; I did not see Mrs. Wharton out of her house on the Monday previous to the death of General Ketchum, except in the afternoon, when she went with me and returned with me.

Mr. Revell, having written out an interrogatory, proposed to read it to the court, and know whether or not the court would rule it out as one going too far as a leading question.

Mr. Hagner objected, and Mr. Steele further objected in some strenuous remarks.

The written question was then passed by Mr. Revell to Mr. Thomas, who sat nearest to him.

Mr. Syester said the State only desired to recall to the recollection of the witness what had escaped her. The court considered the question for several minutes, and Judge Miller announced the decision of the bench substantially as follows:

The rules that govern the asking of legal questions have been in a great degree modified, and it has been left almost entirely in the discretion of the court. The object was to get at the whole truth, and the discretion of the court was governed by the circumstances in each case. The court did not conceive that there could be any objection in asking the question, considering the manner and character of the witness on the stand.

Mr. Revell then asked the written question: "Did Mrs. Wharton or did she not make any statement to you to the effect that she had bought tartar emetic on the Monday preceding the death of General Ketchum?"

Mrs. Chubb promptly replied: "She made no remark about it as far as I can remember, except that she never bought any tartar emetic."

The witness was next asked by Mr. Syester if she remembered having any conversation with General Ketchum on his way to Baltimore as to his object in going to Baltimore.

Mr. Hagner said quickly, "We object," and Mr. Syester said to Mrs. Chubb, "Don't answer that question yet."

The court asked Mr. Syester to state how he intended to follow up the question.

Mr. Thomas begged leave to suggest that it would be better for Mr. Syester to make his statement only to the bench, so as to avoid any prejudice, if there be possibly any prejudice, which might arise in a discussion of the question before the jury.

Mr. Syester said the same question of law involved in the question he had propounded would come up in a subsequent stage of the case, and he was willing that the question should be waived for the present if the counsel for the defence would consent that the witness should at another time be recalled to testify on the point raised.

Judge Miller said it made no difference with the court at what time the question was argued.

Mr. Syester then stated to the court that the State proposed to show by the witness that Gen. Ketchum went to Mrs. Wharton's to collect money which she owed him, and that he took with him the note of Mrs. Wharton for \$2,600, and the State would further show that Mrs. Wharton's note was alone missing from the list of General Ketchum's assets as made up by him. The counsel for the State had laid no ambushes and proposed to conduct the case according to the strict rules of evidence. Mr. Steele said the counsel for the defence imputed no improper motive, but desired to confine the examination to such questions as were strictly legal.

Judge Miller said that the court understood that the State desired to show that General Ketchum was going to Baltimore to collect money. Mr. Steele said the defence objected, and Mr. Thomas proceeded to state the legal grounds of their objection. If the evidence was admissible at all, it was only admissible as a part of the *res gestae*. Every declaration accompanying every act was admissible in evidence, and only when declar-