

one word to you with reference to this great, solemn and awful responsibility which devolves upon you in this most important trial.

But, your Honors and gentlemen of the jury, while it is your duty, on the one hand, to interpose a barrier of protection against wrong and injustice, yet it is equally your solemn and sacred duty to protect the injured honor of the State, and by your verdict to uphold and maintain the best government and the dignity of the laws of the State.

This solemn and momentous duty is yours—a duty as solemn as the grave, as momentous as life. Gentlemen of the jury, the indictment you have heard read in this case was found by the Grand Jury of Baltimore city, as you are aware, and the case was removed to this jurisdiction under the high prerogative and constitutional right of the accused, upon suggestion and affidavit to the Court that she could not in that jurisdiction have a fair and impartial trial. The case then comes before you, gentlemen of the jury, as if it had occurred within the jurisdiction of this Court. I may, gentlemen, upon the threshold, state to you that this indictment, which has already taken so much of your attention and time, contains four counts, which I will simplify by informing you of their substance. The first count in the indictment charges death from the administration, on the 28th of June, 1871, of tartar emetic with yellow jasmine; the second count, death from the administration, on the 28th of June, 1871, of a poison, unknown to the jurors, with yellow jasmine; the third count, death from the administration, on 24th of June, 1871, of tartar emetic with lemonade; on the 26th day of June, 1871, tartar emetic with tea, and on the 28th of June, 1871, tartar emetic with yellow jasmine. The fourth count charges on the 24th of June the administration of poison unknown with lemonade; on the 26th of June, 1871, poison unknown with tea, and on the 26th of June, 1871, poison unknown, with yellow jasmine. Such, gentlemen, are the charges in this indictment, which the State is called upon to sustain in whole or in part, it being competent for you to find a verdict for the State upon satisfactory proof of the allegations contained in any one of these counts. The law of the case, gentlemen of the jury, which I propose to put you in possession of, is short and simple. By the 137th section of the Code of Maryland, chapter 30, it is enacted "that all murder which shall be perpetrated by means of poison, or laying in wait, or by any kind of willful, deliberate and premeditated malice, shall be murder in the first degree.

The question of law, then, which will arise in this case are simply these: First, whether it was a case of murder; second, whether if murder, it was by poison. The question of fact is, who administered that poison; who occasioned that death? Now, murder is defined to be—I read from Wharton on Homicide—"where a person of sound memory and discretion unlawfully kills any reasonable creature in the peace of the Commonwealth, and with malice, premeditation or with forethought, expressed or implied." It is, in other words, the unlawful killing of another with malice aforethought, expressed or implied. But, you discover, the gist is in this an ingredient that malice is the gist of the inquiry, and if there is malice in the case then it is a case of murder, and it is for you to inquire in your prosecutions for murder whether it be a case of murder in the first or second degrees, because the statutes of the State make it murder in the first degree—if you find it was a murder. If you find the ingredient of malice in this act, then, gentlemen of the jury, it is a case of murder, and being murder, if you find that this murder was occasioned by poisoning, it was murder in the first degree. That is the question, gentlemen. What is the issue between the State of Maryland and the accused in this case?

It is a question of murder in the first degree—it is a question of liberty or death. Gentlemen of the jury, the law, as I have endeavored succinctly to lay it down, is the only law on which the State will rely in this case, and after having made this brief exposition of it I will introduce to your attention the main facts and salient points upon which the State relies when it shall come before you to ask at your hands a verdict of guilty. We expect to show, gentlemen of the jury, that the deceased, General Ketchum, and Major Harry W. Wharton, the husband of the accused, were formerly connected with the old Sixth Regiment, United States Infantry, and that their relations were of an intimate character and existed up to the time of Major Wharton's death, which occurred some years since; that after the death of Major Wharton, the husband of the accused, the intimacy existing between the families was

continued up to the time of this sad tragic occurrence, and this intimacy led to business relations, business transactions between the accused and General Ketchum; that two years before the death of General Ketchum, at the instance of the accused, he loaned to Mrs. Wharton a sum of money amounting to some \$2,600, having parted, at her solicitation, with some bonds which he had held, and this money was loaned at the rate of 10 per cent. per annum. We expect to show that this amount was secured by note of Mrs. Wharton, for that amount; that interest was paid from time to time upon that sum, which would have annually amounted to \$260, and that the agreement between them was that it should be paid in semi-annual installments. We expect to show you that several of these semi-annual installments of interest were paid, and that the last payment which was made was on the 25th of January, 1871. We expect to show you also, gentlemen of the jury, by satisfactory and competent testimony, that this indebtedness had not been discharged up to the death of the lamented Ketchum. We, on the other hand, will show and establish clearly to your minds that an entry, and not only the existence of an entry, but that a knowledge of such entry was brought home to the accused in this case; that there was an entry made that the next installment of interest would be due—principal and interest would be due—on the 17th of July, 1871. We expect to show you, gentlemen of the jury, incontrovertibly, that at that time this sum of money was due Gen. Ketchum; we expect to show you further, and it will come up in evidence, either brought out by the State or as part of the res gestæ, that when Mrs. Wharton's attention was called to this matter, when the books were presented to her which contained the evidence, beyond a doubt, that the apology which she made, denying the indebtedness, was that the mind of General Ketchum was blurred; that it had ceased to perform its functions; that memory was at fault; that she had notice, from time to time of this fact, and assigned as a reason for the discharge not having been entered on his book, that in conversation with him and in intercourse she had had with him, he could not keep the thread of his discourse. We will show to you that, notwithstanding this declaration, stated as an excuse, why this entry had not been upon the books, that the mind of General Ketchum was as strong and active as it ever was during the whole period of his life. We shall further show to you, as I think, by evidence that we think will be admissible and competent, that on the 16th or 17th of June, 1871, although Mrs. Wharton claimed that this note had been paid partially on the 17th of July, 1870, and the remainder on the 17th of January, 1871, she went to Washington, by agreement with General Ketchum, for the purpose of arranging about this very note, and assigned to him, as a reason for her inability, that her bankers had disappointed her. We expect to show you, gentlemen of the jury, further, that on the occasion of General Ketchum's visit to Baltimore city to Mrs. Wharton's on the 24th of June, 1871, that he left the city of Washington in the full enjoyment of perfect health; that he reached Baltimore on the afternoon of Saturday, in company with Mrs. Chubb, a mutual friend of Mrs. Wharton and General Ketchum; that he went to Baltimore for the purpose of collecting this amount for the purpose of furnishing a house which he had recently purchased in Washington, and to take leave of Mrs. Wharton, who then contemplated taking the European trip.

We expect to show that he arrived in that city in the full enjoyment of health; that after he reached the house of Mrs. Wharton he went down town and came back, after having purchased some tobacco, and that he took tea at the house of Mrs. Wharton; that Mrs. Wharton presided over the tea table that evening a certain length of time, and left the General and Mrs. Chubb at the table; that after a certain time he retired to his room; that during that night he was taken very sick.

We expect to show you that this sickness continued with changing symptoms from that time to the time of his death, which occurred on Wednesday, about 3 o'clock in the afternoon.

I shall not attempt to detail to you, gentlemen, the various symptoms with which General Ketchum was affected on that occasion. The medical testimony which will be introduced to you on the stand on the part of the State will fully disclose the character of the disease under which he suffered, and the symptoms provoked by that disease, whatever it may have been, whether from natural causes or from other than natural causes.

We expect to show you that during that time Mrs.