

Mr. Syester said that, as a matter of course, the State proposed to connect Mrs. Wharton with the poison found in the milk punch.

The defence objected to the introduction of the testimony, and Mr. Hagner proceeded to argue the question at considerable length, and was listened to by the bench with great attention, both the counsel and court evidently earnestly appreciating the importance of the testimony sought to be introduced by the State.

Mr. Hagner quoted from the following authorities: Wharton Crim. Law, §§824, 640, notes 635-631; 15 New Hampshire, 169, State vs. Kenton; 18 Ohio (old), 222, Com. vs. Barton; 8 Cox's C. C., 411, Reg. vs. Holt; 8 Cox C. C., 397, Reg. vs. Winslow; 1 Leigh, 575, Walker's case; 2 Cush, 590, Com. vs. Wilson; 5 Gutter, 696, Cole vs. Com.; 3 Greef, on Ev., §19; 1 Hill, 316, Carey vs. Hotelery; 12 Eng. Com. Law, 295, R. vs. Smith.

Mr. Thomas followed Mr. Hagner, and quoted:

One presumption cannot be founded on another. McAleer vs. McMurray, 58 Penna., 126-135; Douglass vs. Mitchell, 35 Penna., 446; Potter vs. Ferguson, 18 N. H., 528; 1 Starkie's Evidence, 757.

Even in indictment for forgery, when a previous uttering of forged paper is offered to prove guilty knowledge, it is inadmissible unless proven by positive, not circumstantial, evidence. Rex vs. Milford, 1 Reese & Ryer, 244.

Upon the conclusion of Mr. Thomas argument Judge Miller said the mind of the court was clear on the point raised.

Mr. Steele said he desired to submit other authorities, but would, of course, defer to the wish of the bench.

The Chief Judge said he thought it would be consuming time unnecessarily, and announced the decision of the bench substantially as follows:

Mrs. Hutton has proved that a dose of medicine or mixture was given to General Ketchum about 1 o'clock on Wednesday, and that he died at 3 P. M. that day. It is certainly competent for the State to prove that tartar emetic was in Mrs. Wharton's possession on that day.

Mr. Steele begged leave to remind the bench that the question, as presented, was general in its character, and not specific, and was proceeding to address the court in support of his view of the legal bearing of the question, when Judge Hammond, interrupting, said he did not understand that the State proposed to show that Mr. Van Ness partook of the milk punch, but that tartar emetic had been discovered in a certain tumbler of milk punch in Mrs. Wharton's house. He thought it was competent for the State to prove that Mrs. Wharton had had an opportunity to use tartar emetic from the fact that it was in her house, and that she, as the lady of the house, had it under her control.

Mrs. Hutton, who during the argument had left the witness stand and taken a seat near the counsel for the State, was now recalled.

Mr. Revell said to her, "Be good enough to state all that occurred in reference to the kettle of milk you gave to a servant, and what you know of the milk punch."

Mrs. Hutton continued—Dr. Chew ordered a milk punch for my brother.

Mr. Hagner—"We object."

Mr. Revell—"Please state where the milk came from."

Mrs. Hutton—I brought it from my house on Wednesday, the 23rd of June, and gave it to a servant to take to a refrigerator down stairs; assisted Mrs. Van Ness in preparing the milk punch; took a tumbler from the sideboard, and Mrs. Van Ness objected to a tumbler and proposed a wine glass; some one proposed a double punch: am not sure who it was; Mrs. Van Ness prepared the punch and placed half on the sideboard in a wine glass, and the other half in a tumbler, in a small nursery refrigerator in the dining room; that was the last I saw of it.

Mr. Revell said he proposed to ask Mrs. Hutton if the punch in the wine glass had any bad effect when it was drunk by somebody.

Mr. Hagner—"We will admit that it had no pernicious effect," and to this Mr. Revell agreed.

Mrs. Hutton continued—I know nothing of what became of the tumbler, except that I saw it in the third story between 12 and half-past 12 o'clock; Mrs. Loney had it; there was a sediment in the bottom of the tumbler; nothing but a conversation occurred; saw Mrs. Loney place the tumbler in her pocket; Mrs. Loney is my sister. To the court—It was a small tumbler. Continuing—I am the sister of Mr. Van Ness; while I was gathering the General's clothes Mr. Crawford Neilson and a colored woman were present; the General's clothes were placed in a bag—a coat and a pair of pants were all; could not find the vest, and have never seen it; Mrs. Wharton said it was in her closet or wardrobe; the General had a carpet travelling bag, Mr. Crawford Neilson gave her the key to the bag, and I, after packing his clothes, gave the key to Mrs. Wharton; Mrs. Wharton assigned no reason for the vest being in her closet or wardrobe.

Mr. Syester said the witness was now in the hands of the defence.

Cross-examined by Mr. Steele—The nursery refrigerator stood upon the hearth in the dining room; the door of the dining room is near to the front door of the house; the front door was opened frequently, as a good many persons were coming in and out; somebody was generally in the passage to prevent the ringing of the bell; a door led from the dining room into a passage leading to the kitchen; the nursery refrigerator looked like an oblong tin kettle, it was not locked, but was closed with a tin cover setting on the top; the glass containing half of the punch was placed in the refrigerator; Mrs. Loney came up stairs with the tumbler between 12 and half-past 12, and it was then I went into a room to to which I was directed by Mrs. Wharton and had a conversation with Mrs. Loney; gathered up the General's clothes, and Mr. Neilson put them in the bag, and I handed them to him; didn't see the first punch given to Mr. Van Ness, but left the room before it was administered; more than two hours intervened before I saw the tumbler which, as I have said, Mrs. Loney brought up stairs at the time I had the conversation with her; Dr. Williams came to see General Ketchum about 10 o'clock that morning; that is, at least, the first time I know of; he prescribed for Gen. Ketchum, but was there an hour before he administered anything to him; he ordered ice to be put to his head; he directed me to give the Gen-