

the Court." To the Court—"We offer to show by Mr. Van Ness that he lay sick in Mrs. Wharton's house on the Saturday, Sunday, Monday and Tuesday preceding General K.'s death, and on the day he died; that his symptoms were the same with those of General K., and that tartar emetic was found in the vessels in use at Mr. Van Ness' sickness; and that Mrs. Wharton knew of the deadly character of the medicine; all this took place in the same house and at the same time at which it has been shown General K. lay sick and died."

Mr. Hagner said the question was not one of relevancy, but of admissibility. The rule would be clearly on the rules of common justice, to exclude such evidence; if one evil act could be brought in, fifty could be brought in. The Constitution of the United States and of Maryland guaranteed that a person should not be tried twice for the same offence, but it would be trying a person twice with a vengeance to bring in such testimony as was now offered.

Mr. Hagner proceeded to argue the question involved, and quoted from *Rex vs. Oddy*, 1 Hills Reports, 316; 15 N. H., *State vs. Kennard*; 18 Ohio, 222, old series; 8 Cox, *Queen vs. Winslow*; 27 Law Journal, p. 214; 4 Foster and Finlason, *Queen vs. Garner*, 346; 1st Lee, 574; 2d Cushing, p. 590; 5 Grattan, *Wharton*, 635, 824 and 640; 3 Greenleaf, sec. 19; 20 Alabama, and other appropriate authorities.

Mr. Thomas followed, arguing that the evidence was inadmissible on general principles. The alleged crimes were not so connected as to admit of the introduction into the trial for the poisoning of General Ketchum of the evidence in the case of Mr. Van Ness. If both had partaken of the same food, and had been made sick, that fact would be most pertinent to the issue; but the State had admitted that Mr. Van Ness lay sick in Mrs. Wharton's house before General Ketchum arrived. A common motive had not been alleged, and it was not even offered to prove any motive for the alleged poisoning of Mr. Van Ness. The defence was not resisting the evidence from fear of the effect on the trial of the Van Ness case, but because it could only prejudice the minds of the jury now trying the graver charge, that of the murder of General Ketchum. What propriety could there be in this jury trying the question of the poisoning of Mr. Van Ness? It makes no difference that Mr. Van Ness' case is now pending in this Court.

Mr. Thomas quoted in his argument from Wharton's Criminal Law, sections 635 and 640, note, end; *Rex vs. Thomas Smith*, 2d Carrington and Paine, p. 295, and other authorities, and said, in conclusion, that in his opinion the evidence was clearly inadmissible even upon general principles of the law.

Mr. Revell said the circumstantial evidence was, after all, but presumptive evidence, and it was competent to make out, link by link, a perfect connection of circumstances. It had been shown that tartar emetic had been found in Mrs. Wharton's possession, and Marshal Frey had shown, by her admissions to him, that she had tartar emetic in her possession three times on Monday, June 25. Lord Ellenborough says: "It crimes do so in-

termix, the Court must go through the details." Mr. Revell read from Wills on Circumstantial Evidence, page 63, premeditated crime must be preceded not only by impelling motives but by the possession of the means. Wilson, Circumstantial Evidence, page 179. It is clearly established that it is not necessary to prove the corpus delicti by direct evidence; 1st Greenleaf, sec. 108; Roscoe on Criminal Evidence, 5th American edition, page 87; Wharton on Crime, sec. 649. When the acts form one transaction the evidence is admissible; 5th Carrington & Paine, 155, *Rex vs. Salisbury*—this seems to overrule *Rex vs. Smith*, in 2d C. & P.; 1st Archibald's Criminal Practice and Pleadings, page 120; 1st Lee Reports, page 576; 8th Cox, page 455; 4th Foster and Finlason, *Regina vs. Garner*, and *Regina vs. Harris*; 27 Law Journal, *Rex vs. Garey*, and 2d Cox, *Queen vs. Bayley*, page 311.

In conclusion, Mr. Revell said:

"The testimony of Mr. Van Ness is important and admissible, and it should go to the jury to unfold and reveal to them all the circumstances connected with this terribly dark transaction."

Attorney General Syester followed for the State, and said that if it was competent to prove that in Mrs. Wharton's house the deadly means of crime had been found, it was competent to prove it, by Mr. Van Ness, who was there languishing. He did not understand that the evidence was objected to because it was relevant to another case. It was, however, contended that the mere fact of the pendency of another indictment cut the State out from the evidence relevant to both. Mr. Syester then quoted at some length from 1st Lee, *State vs. Walker*; 5th Carrington & Paine, claiming that the case quoted from 2d Carrington & Paine had been met and overruled; Lewwyn's Crown cases, p. 103, *Jas. Kirwood's case*, decided in 1830; note 3 and section 322, Taylor's Law of Evidence, Lord Denman's decisions referred to there; Wharton on Homicide, p. 324, and numerous other authorities.

Mr. Syester spoke with his usual earnestness and ability, and was listened to by the Court and audience with profound attention. Upon the conclusion of his argument the Chief Judge asked Mr. Steele if his health would permit him to further argue the question to-day, so that the Court might render its decision to-morrow morning upon reassembling. Mr. Steele said his health was too feeble to proceed further to-day, and that in consequence of his ill-health he had to go to bed in the afternoons.

The Chief Judge then adjourned the Court until to-morrow at 10 A. M., when Mr. Steele will close for the defence.

It is anticipated that the effort of Mr. Steele, to-morrow, will be a most able one, and in every way worthy of his high reputation.

The Chief Judge again ordered the Sheriff to-day not to take the jury out of the Court room until the audience had departed, and it seemed the anxious desire of the Court to keep the jury from even the slightest improper influence. Geo. M. Gill, Esq., of Baltimore, having