

street; one adult lived in Howard street near the Depot, one in Green street, and also one in Hill street; the case stated in the hypothetical statement has the appearance of a semi-fulminant case, terminating in a fulminant; I would say, from the hypothetical statement, that the disease commenced on Monday or Tuesday, and fulminated on Wednesday; these hypothetical cases are very difficult to determine; in England cerebro spinal meningitis was first called "Death by the Grace of God;" suppression of the urine is a characteristic symptom; some authors consider it a cause, others an effect; Dr. Stille has compiled an admirable book, but unless he has seen the cases he cites I have no confidence in his statements about them; I say his book is a mere compilation of statistics; in those cases he has seen and reported, I have confidence in his opinion; I agree with Dr. Stille in his general history of the disease, but I do not agree with him as regards the fulminant form; the headache is present as long as sensation lasts, and that may come and go, but when the disease becomes so violent as to paralyze, the patient does not feel the headache; paralysis does not always appear in its semi-fulminant form; in the fulminant form it generally sets in at an early stage; hyperesthesia of the skin and anesthesia of the eye may exist at the same time; yellow jessamine may have also paralyzed the ball of the eye of Fred. Hinner; he did not feel my finger-nail on his eye-ball; the hyperesthesia of the skin would not make the eyes more than usually sensitive to light.

To Mr. Syester—I have never observed a case of the fulminant or semi-fulminant form which was not attended with suppression of urine; there may be a retention of the urine and no suppression; I ascertained by the use of the catheter that there was a suppression of urine in my cases; after the pneumogastric nerve is paralyzed the patient cannot vomit, and a speedy death follows.

Mr. Syester here asked the witness if he had expressed the opinion that General K. had died from cholera morbus; and Mr. Hagner objected.

After some brief and desultory discussion, Dr. Balzell continued—I have never expressed an opinion that General K. died from any disease but cerebro spinal meningitis, but I at one time thought that the incipient stages were those of cholera morbus; the condition of paralysis is one likely to occur in the fulminant form of cerebro spinal meningitis.

Mr. Steele here read from page 1015 of Aitken, as to the proper nomenclature of cerebro spinal meningitis, and its difference from typhus fever; and Dr. Balzell agreed with that author's opinion.

Mr. Steele further read from page 1013 of the same author; and the witness agreed with the opinions there expressed as to the epidemic character of the disease.

The desired legal authorities having been brought into Court and the medical and chemical authorities being put under the table for the time being, Mr. Revell commenced the argument of the legal question involved in the interrogatory propounded to Miss Potts by Mr. Thomas. He contended that the jury was the only proper tribunal for the decision of the

question of the capability or incapability of the accused to commit murder, and to allow the witness to give her opinion would be to change her into a juror. He believed that the testimony sought to be introduced was against the law, and the reasons upon which the law was founded.

In support of his view of the question involved, Mr. Revell quoted from 1st Greenleaf, sections 54 and 55; Wharton on Homicide, pages 244 and 245; and 1st Phillip, page 763.

Mr. Revell said he had authority to show how far the inquiry as to character should go, and in none of them could be found a precedent for the question asked of Miss Potts.

Mr. Hagner said the counsel for the defence had raised the question because they believed it to be supported by law and precedent. It was settled in the books that a witness could be asked if he would believe an accused party on his oath, and the question before the Court was analogous. The witness was not being asked as to the question of guilt or innocence, but only from her knowledge of the reputation of the accused she believed Mrs. Wharton capable of committing murder.

Mr. Hagner here referred to 1st Taylor, 325, note A. If it was true, as contended by the State's Attorney, that the question was an innovation, he still believed that the Court would be warranted in admitting it. In 29th Md. the Court of Appeals had turned down Greenleaf and his supporters and set a precedent.

Mr. Hagner here referred to the trial of Alexander Davidson, reported in 31st State Trials, page 187, who was charged with peculation.

Mr. Hagner next referred to 10 Cox, Queen vs. Rout, pages 33 and 34; 5th Cox, page 284 (reversed by the decision in 10th Cox), and Wills, on Circumstantial Evidence, page 131, margin, 153 of the top—as to the correct mode of inquiry into character.

Mr. Thomas said that the authorities quoted by the State sustained only the point that general, and not particular traits of character, could be inquired into. If the counsel for the defence had asked questions only as to the general reputation and character of the accused, they would have been shown to have been so high that any lady in Maryland society might feel proud of such a record; but the defence had chosen to limit themselves to questions of character involving only the probability or improbability of the capability of Mrs. Wharton to commit the crime with which she was charged. The province of the jury was not invaded by the question, but the question was only designed to guide and enlighten them in making up their final decision of her capability or incapability to commit the murder charged against her.

Mr. Thomas here referred to No. 29 Md., page 198, Knight vs. House.

Mr. Steele said the objection to the question had been put upon two grounds: First, that it was unsupported by authorities, and, secondly, that it was an innovation. The defence had cited the decision of Lord Ellenborough, and he did not suppose that his decision of a question would be considered an