

innovation upon the common law. The question of character could not be brought down, and the real matter reached unless the witness was asked the question propounded. In his opinion, upon principle and upon authority, the question was a proper one.

Mr. Syester said the question asked was conceded to be in the face and teeth of the Court before which it was raised. He believed there was but little doubt that it was contrary to the decisions of every Circuit Court of Maryland. The same question had been raised last spring in the Circuit Court for Frederick county, in the great trial of Harry Crawford Black for the murder of Colonel W. W. McKaig, but was overruled by the Court with but little hesitation. No Circuit Court of Maryland, as far as he knew, had ever allowed the introduction of such testimony. He knew of no authorities or rules of law which suffered the opinion of a person to go to a jury except in the instances laid down in the books, and those instances are: 1st, where the identity of a person or handwriting are involved; 2d, where questions involving subjects not known to the common experiences of life, as science, &c.; 3d, the opinions of subscribing witnesses to wills.

Mr. Syester further said the decision in 29th Md. presented no antagonism to the opinions expressed by Mr. Revell. No well considered case had been produced upon which the defence could rest their foundation for the question, and even the elementary books were in opposition to it. The defence relied on a single case in 31st State Trials. From that case, and that alone, Wills had gathered his text as pa. 131. But in that case no objection was raised. No point—no argument. It was not a well considered case. It is true Lord Ellenborough allowed such question, but at the same time it is to be noted that he also asked the question whether the witness thought the accused capable of committing a fraud. Would any Court in Maryland allow that proof? If it were competent for the defence to rely on such evidence, of course the State in reply could do the same. And we would be confronted by the alarming spectacle of the State striking down the liberties and lives of its people, not by the judgment of a jury, but by the opinions which passion, prejudice and unmerited opprobrium had engendered in a community.

At the conclusion of Mr. Syester's argument Judge Hammond requested Mr. Thomas to read the question again, and Mr. Thomas complied with the request.

After a consultation of about a minute the Chief Judge said the Court was clearly of the opinion that the question could not be asked. The question was certainly an innovation upon the practice in Maryland, and the Court could not adopt it in the case at bar.

Benjamin B. Hughes was next called, and testified—I live at Bridgeport, Montgomery county, Pa.; I have known Mrs. Wharton since she was three or four years old; I lived within half a mile of her father's house; I have seen much of her since 1849; I knew her before her marriage; no one's character in the community stood higher than Mrs. Wharton's particularly for amiability and kindness; her

general reputation was remarkable, and was spoken of by the neighbors generally; I don't remember to have seen her after 1849 until I saw her here.

To Mr. Revell—At that time I lived about a half mile from her; she was married in 1841; she was generally more kind and more charitable than the other neighbors; very few in the neighborhood stood as high as she did.

Wm. H. Holstein next testified—I have resided in Montgomery county, Pennsylvania, all my life; I lived two miles northwest from the residence of her father; I have known her for thirty-five years; her reputation was good, very good, for amiability, humanity and gentleness; I have known her from the time she left St. Mary's Hall, Burlington, New Jersey, where she finished her education.

To Mr. Syester—Mrs. Wharton left my neighborhood soon after her marriage, thirty-one years ago; five or six years after her marriage she returned and lived there some two or three years; she was then at her father's house; she came and went during the five or six years; she repeatedly returned, but not to make a permanent stay.

Colonel James Wallace was next called, and testified—I am a lawyer at Cambridge, Md.; I have lived there since 1840; I became acquainted with Mrs. Wharton in September, 1861, and I have known her from that time to the present; her husband was sent to the Eastern Shore of Maryland, in command of the Second Delaware Regiment; she camped with him, and lodged in the same tent; I was in company with him; I saw her almost daily; she was there until November, 1861; I saw her afterwards at Drummondtown, Va., under similar circumstances; she was there during the winters of '61-'62; her general reputation for kindness and amiability was equal to that of any lady of whom I have ever known or heard; this opinion was held by people on both sides of the controversy then in the country.

Mr. Syester objected to this last answer, and after some brief remarks from Mr. Thomas, the Court decided that her general reputation among all classes could be testified to.

Colonel Wallace said her reputation was general, and was not confined to the army.

General George H. Steuart next testified—I reside in Baltimore, and was formerly in the United States army; I knew Mrs. Wharton fifteen years ago; her general reputation for amiability, humanity and gentleness was unexceptionable; I knew her first at Fort Kearney; I have known her in Baltimore for a little over five years.

General Richard C. Drum next testified—I am a Colonel and Assistant Adjutant General of the army; I am stationed at present in Philadelphia; I have known Mrs. Wharton since 1851; I met her at Fort Kearney; I was her guest four or five days; I was then only temporarily at that post; I met her again at Fort Kearney in 1855, and again at Fort Leavenworth in 1856 or '57; I have not met her since; her general reputation for amiability, gentleness and humanity was unexceptionably good.

To Mr. Syester—In 1851 my proper station was at Governor's Island, and I took out recruits to Fort Kearney; I heard her