

Mr. Hagner, by consent of the Court, said the letter of Dr. C. A. Finley, late Surgeon General of the United States army, and now a resident of Philadelphia, was to the effect that Mrs. Wharton's reputation was unexceptionably good for the qualities of amiability, humanity and gentleness. General Heth's letter was also to the effect that Mrs. Wharton's reputation was unexceptionably good for gentleness, kindness and humanity. General Heth wrote that he had known her since 1849, and that he was at one time an officer in the old army and under her husband's command.

At this point, Mr. Steele said: Our case is now closed.

Mr. Syester said the counsel for the State now desired a few minutes for consultation, and the request was granted. An informal recess was taken, and after more than half an hour Messrs. Revell and Syester returned.

Prof. N. R. Smith was then called, and testified—I reside in Baltimore, and have resided there 43 or 44 years; I practice medicine and surgery, and have been most of that time connected with the University of Maryland; I have practiced medicine 52 years; I have also been a professor in Vermont, Pennsylvania and Kentucky; my office is at the corner of Saratoga street and College alley; I have still a very large practice, and was not absent from Baltimore for more than a day at a time during last summer; I have often encountered the sporadic form of cerebro spinal meningitis, especially in children; to my knowledge it has not, during the past year, as an epidemic, prevailed in Baltimore; I mean the epidemic form of the disease; my practice embraces the entire limits of Baltimore city, and I am often called in consultation in every part of the city.

Mr. Syester said he now proposed to read to Prof. Smith the hypothetical statement of the defence and the accompanying interrogatory, and Mr. Steele objected.

Mr. Syester said the defence had offered testimony to prove that cerebro spinal meningitis was the single cause of Gen. K.'s death, and the State now desired to rebut that evidence.

Mr. Thomas said the rule was clear that the State was required to exhaust the burden of its proof in the opening of its case. He then read from 1st Greenleaf, sec. 469 (A); also, secs. 74 and 81 of the same work; 1st Starkie, marginal page, 425; 1st Taylor on Evidence, secs. 358 and 359; Rex vs. Simpson, 2d Carrington and Paine, page 414; Rex vs. Hildredge, 5th Carrington and Paine, page 299; Regina vs. Powell, 1st Carrington and Marshman, page 500; and Brown vs. B. Murray, Ryan and Moody, page 254, in support of his opinion.

Those authorities, he said, established that it was the duty of the plaintiff, in making out that portion of the case which the burden of proof imposed, to exhaust all the evidence necessary to sustain that burden of proof. The very element of the case at bar was, that General Ketchum did not die from natural causes, and unless the prosecution made that out they had, of course, failed to make out their case. If the State had a right to introduce new evidence on that point of the

case, upon what point then were they precluded from offering new testimony? It was incumbent upon the State to prove, upon every hypothesis, that General Ketchum had died through the instrumentality of the defendant. Were the witnesses for the defence the first to express the opinion that General Ketchum had died from cerebro spinal meningitis? The Court would remember that Professor Donaldson, in his elaborate testimony, had given the opinion that General Ketchum had not died from cerebro spinal meningitis, and the State had thus first introduced it into the case. The testimony offered now by the State was not on any new point brought out by the defence, and was therefore not admissible.

Mr. Revell said the State's officers were not disposed to controvert the general principles and practices of the law. The State exhausted its testimony, and reserved only the right to rebut. Professor Donaldson had said that the case, presented in the hypothetical statement of the State, has some resemblance to cerebro spinal meningitis, but had not said so upon the testimony of Drs. Williams, Chew or Miles. If the Court would examine the hypothetical statement of the defence it would discover that it contained statements not brought out by the State's testimony, and such as had never been brought to the attention of Drs. Williams, Chew, Miles, or any of the medical witnesses for the State. Mr. Revell next read the hypothetical statement of the defence as published in the GAZETTE, and called the attention of the Court, as he proceeded, to what he considered "new matter." The witnesses for the defence had predicated their opinions upon the array of new facts found in the hypothetical statement. The State was testing the accuracy of those witnesses, one of whom (Dr. McClurg) had gone so far as to say that even if tartar emetic had been found in General Ketchum's stomach he would attribute his death to apoplexy from congestion. When new facts were brought into the case, the general rule of law did not bind the State. Who had brought out the statement that hyperesthesia existed? Dr. Warren had first brought forward such a theory, based upon the single fact that a shiver passed over General Ketchum when he was touched. The defence had been jumping and leaping from inferences to theories, and it was the undoubted right of the State to rebut such false data as had been placed before the jury. Mr. Revell further argued the question earnestly and ably, and said he believed authority, reason and right supported the offer and purpose of the State.

Mr. Syester said he admitted that the State was bound to exhaust all its affirmative evidence, and he did not think the State was now trespassing upon any rule of law binding the State in that particular. The defence had distinctly evolved new matter, and that not in the way of general or special denial. Mr. Syester then read from the 469th section of 1st Greenleaf, touching the question before the Court. The State had not, he said, called Dr. Smith to make good what the State had offered, but to rebut the new matter brought out by