

the defence. In this case there were no pleadings, and it would have been just as competent for Mrs. Wharton to have proved that she was not in Baltimore on the days of General Ketchum's sickness as to have proved that General Ketchum died from natural causes. The plea of insanity could have been brought in, so great was the latitude allowed to the defence, but it could not be said that if such had been the plea the State was bound to have anticipated it, and could not have gone into an investigation. The State had not, in its testimony, attempted to exclude a natural cause, but the defence had not contented itself with meeting the State upon its own grounds, but had brought forward new facts and made a new record to go to the jury. Were the hands and lips of the State of Maryland to be closed under such circumstances? The State desired to respond to the new matter brought out by the witness Susan, and such as the State could not have anticipated. Mr. Syester then read from 1st Starkie, page 423, in support of his views at this point. Could it be possible, he inquired, that the State was to be concluded because Prof. Donaldson had said cerebro spinal meningitis might have had "a local habitation and a name" in General Ketchum's case? Mr. Syester next referred to the case of Rex vs. Simpson, 2 Carrington and Paine; also to 5th Carrington and Paine, Rex vs. Hildredge, page 299. Mr. Syester further said cerebro spinal meningitis was a disease which he had never heard of before he came into this court room, and to say that the State should have anticipated it would have been to attribute to its officers a degree of prescience and omniscience which he could not claim. Mr. Syester next referred to the case of Regnia vs. Powell, 1 Carrington and Marshman, page 500, and closed his remarks by saying that he submitted the question to the Court with perfect confidence.

Mr. Steele said he had been struck with the fact that the State's Attorney had not cited a single case bearing upon the question before the Court. He believed it to be an effort to lead the Court astray from the ancient paths which the Courts of Maryland had so long trodden. The Attorney General had referred to two points which he considered supported his view, and had named, first—that of an alibi. The object of the testimony was to bolster up what the State was bound to prove originally, namely, that General K. did not die from natural causes. The plea of insanity was an independent plea, and the State was not bound to anticipate it. Mr. Steele next read from 3d Greenleaf, section 194, to show what was incumbent upon the State to prove. The State had no right under the guise of cross-examination to offer cumulative evidence, but was bound to exhaust its testimony, and he begged the Court to pause ere they admitted such evidence as was now offered. It was the entering wedge, and the reputation of this Court was enough to make it a precedent, and no man could tell where it would lead. The State had gone so far as to call experts to prove that General K. did not die from natural causes, and had called a number of witnesses to negative the idea that he died from natural causes.

Prof. Donaldson was one of the most learned gentlemen the State had called, and he had negatived specially and particularly cerebro spinal meningitis. The State had assumed to negative the idea of death from natural causes, and he submitted that the rules of rebuttal evidence did not countenance the evidence offered.

Mr. Steele then said: I beseech your Honors to pause and look well at the English authorities! Say if it has ever been done in this State before! say if it has ever before in this State been offered to be done!

Mr. Steele, in further arguing the question referred to Rex vs. Hildredge, 5th Carrington, page 299, also to Phillips, as to the strict observance of the rule of law involved, in his view of the question.

The arguments of Messrs. Thomas, Revell, Syester and Steele were heard with great attention by the Court, and evidently with much interest by the spectators. The jury seemed to anticipate the decision of the Court with much anxiety, and Mrs. Wharton appeared more disturbed than at any previous time. Miss Nellie Wharton was absent during the arguments. After a considerable time had been occupied in consultation, and reference made to Greenleaf, section 469 A., the Chief Judge announced the decision of the Court substantially as follows.

I suppose there is no Court in the State in which the rules of rebuttal evidence have been more strictly enforced than in this Court, and we will not now depart a hair's breadth from that course. The Court has always observed the rules of the common law. The Chief Judge then, at some length, reviewed the testimony bearing upon the question before the Court. A new hypothetical statement had, he said, been presented, and was a new point opened by the defence. The Court was clearly of the opinion that the State could reply to it. The Court was of the opinion that the witness could be asked his opinion on the hypothetical statement, but the question of death from poison was closed.

Prof. Smith then testified in answer to Mr. Revell—I have read the hypothetical statement of the defence; according to the best of my judgment the party therein described died from non-natural causes; I am not acquainted by personal observation with the epidemic form of cerebro spinal meningitis; it has not been epidemic in Baltimore since I have lived there; by epidemic I mean widespread among the people, and by endemic, confined to jails, hospitals, alleys and the low places of a city; I remember that when I was a student of medicine it was called spotted-fever in New England; I think the patient described in the hypothetical statement did not die from cerebro spinal meningitis.

To Mr. Steele—I have seen cases of cerebro spinal meningitis in Baltimore within the past year, but not of the epidemic form; it is not uncommon, but always prevails, to a certain extent, that is, I meet with four or five cases during a year, but generally among children. I never heard a word of cerebro spinal meningitis existing in Baltimore, even in the endemic form, until this trial commenced; it may be endemic in dif-