

statement, which he would show was correct, but one witness for the State had ventured to say that the symptoms were those of a case of poisoning. Mr. Hagner then referred to the removal of the case from Baltimore, which had been alluded to, and said when a fictitious cry was raised against a prisoner, it was a right held upon the Constitution to move the case, so that a fair trial might be had. Mr. Hagner then read from Bentham's *Treaties on Evidence* as to the question of character, and said the law presumed the good character of the prisoner. The defence challenged the State to bring any man, woman or child who would say ought against Mrs. Wharton's fair name, and none had been produced and could not have been produced. Mr. Hagner then commented on the extent of power confided to the jury, and the fact that the law presumed the innocence of the prisoner, which was to her an armor of power, and could not be pierced except by arrows of strength. In Maryland there was no appeal in criminal matters; but the smallest Court case could be taken to the Court of Appeals. Mr. Hagner here read from the case of *Corner vs. Pendleton*, being the case of suit brought against gamblers, who had seduced into gambling a young man in the employ of a business firm, and at some length Mr. Hagner referred to its bearing upon the case at the bar. There was another fact to which he would refer, and that was, that the jury had seen the daughter of the prisoner clinging to her mother. Poet and painter had vied in painting the virtues of that Roman maiden who fed her imprisoned father from her own bosom. It was this girl who the jury would bury in a common grave with her mother, chaining them, as galley slaves, in a common death.

Mr. Hagner next read from 31st *Indiana Reports* a case in point. The jury must require the same proof, as it was in the power of the Judge, after they had returned a verdict of guilty, to order one of them to take a deadly weapon and instantly execute the prisoner, and he would inquire of them what manner of proof they would require before any one of them could lay his hand on his heart and be prepared to do the deed. The illustration was in point, for the Sheriff could not execute unless the jury agreed. Mr. Hagner next referred to the case of *Madeleine Smith*, and read at some length as to the necessity for the most positive proof. The jury must have the most convincing proof of the administration of poison, before they could convict, and the evidence must be satisfactory, complete and distinct. The books were filled with instances in which persons were convicted on circumstantial evidence, and in after years it was proved that the persons were guiltless. Mr. Hagner cited the case of *Jacob* when he saw the bloody coat of *Joseph*, and also the case of *St. Paul*, when he was cast upon a desert island, and a viper, coming from the fire, fastened upon his hand, as illustrating the error of human inferences and presumptions of guilt. Mr. Hagner, in further illustrating this point, inquired of the jury how many men they would require to swear that the *Grand Duke Alexis*, who re-

cently visited *Annapolis*, had picked the pocket of one of their fellow-citizens, before they would believe him guilty. Mr. Hagner read from *Wills on Circumstantial Evidence* page 184, as to the great necessity for the most convincing proof and the effect of the non-production or suppression of evidence. He then read from *Archibald's Criminal Practice*, 4th *Howard*, and other authorities, bearing upon the necessity for absolute proof of the commission of crime. Mr. Hagner in pursuing this branch of his subject quoted from the Bible the requirements of the Mosaic law. From first to last in this case the principal facts relied upon were each proven by only one witness. *General K.* died of a sudden and violent disease, but it was alleged that he died by Mrs. Wharton's hand. The proofs the State relied on were, first, the moral circumstances, and secondly, on the medical circumstances. He thought he could demonstrate to the jury that it would be their duty, as it would their pleasure, to render a verdict of acquittal. Mr. Hagner here read from *Wills on Circumstantial Evidence*, page 63.

The motive asserted was that Mrs. Wharton wished to cover up her indebtedness to *Gen. Ketchum* and to secrete \$4,000 from his estate, but nothing but conversations had been brought to sustain the theory. Mrs. *Cottman* had come in as unexpectedly as if she had come down from the clouds, and had shown how the matter stood. *Young Ketchum* had sworn that his father had told him on the 23d of June that he wanted the money to pay for his house, and it had been shown that he paid for the house on the 13th of June. It was a matter of particular importance that Mrs. Wharton took no receipt; such things were frequently done, even by men. Mr. Hagner now quoted from a decision of the Court of Appeals of Maryland, sustaining his point that such things were not unusual. *General Ketchum* had been said to be very exact in all his business habits, even setting down a cent given to a blind negro, yet he had paid the money (\$11,000) for his house to an unauthorized party, and taken no receipt. Mr. Hagner here came to the testimony of *General Brice*, and contended that his testimony did not sustain the State's theory as to motive. Could Mrs. Wharton have been such a fool as to go to *Washington* and demand \$4,000 unless she had a legitimate claim? He would venture to say that it was no unusual thing for intimate friends to confide in each other as Mrs. Wharton had in this matter confided in *General Ketchum*. *General Ketchum* went to Mrs. Wharton's house to tell her good-bye, and not to collect her indebtedness.

Mr. Hagner next referred to the symptoms of *General Ketchum's* sickness, and contended that there was no proof that Mrs. Wharton had tartar emetic in her house until Monday. Mr. Hagner now read from page 282, of the report of the trial of *Madeleine Smith*, noting the character of the testimony there referred to. He then dwelt upon the testimony as to the purchases, and contended that he could demonstrate that but one purchase of tartar emetic was made for or by Mrs. Wharton. *Kleinschmidt* was a for-