

Aikin had come into Court without even a memorandum, and he could not remember whether or not he made his report to the State's Attorney of Baltimore from such memoranda as he may have taken. He had contradicted, in his testimony, his reports to Mr. Knott. Mr. Thomas here handed the two reports of Prof. Aikin to the jury, and called their attention to his writing of the word "brownish." In October he wrote that the color of the contents of General Ketchum's stomach was "greenish," and in December he swore that it was "brownish." He had then tried to make the jury believe that it was a chemical error. He wrote that a precipitate he had obtained was "yellowish," and then he swore that it was "brownish." Every time Mr. Steele, in his ingenious cross-examination, asked him about colors, he each time gave a different one, and finally confessed that all he knew about it was that it was not "black." Mr. Thomas then reviewed much of Professor Aikin's testimony, claimed that it was all involved in contradictions, and that no possible importance could be attached to his analysis. His test was faulty in the very beginning, because he had not gotten rid of the organic matter, and he could not himself attach any importance to the color of the first precipitate he obtained. He did not get any of the characteristic results of antimony. If antimony had been present, he ought to have obtained all the characteristic results. He never got anything more than a white cloud from his first test, and that white cloud was never allowed to settle. In his report to Mr. Knott he stated that he had obtained a result which was a chemical impossibility. Mr. Thomas here read from Professor Aikin's report to Mr. Knott, and called the attention of the jury to the errors. Mr. Thomas, in commenting upon Professor Aikin's testimony, said the Attorney General must have felt sorely the desperate exigencies of the case to have aspersed the character of such a gentleman as he knew the experts for the defence to be. If Prof. McCulloch had wished to mislead the jury he would not have made any experiment before the jury; the facts of the experiments sustained him. Without meaning to say anything unkind of Professor Tonry, he would say that the temptation offered him was too great to be offered to any man who was believed to be above suspicion. He had been afforded an opportunity of making a world-wide reputation by discovering antimony in General K.'s remains. The prayer, "Lead us not in temptation," which the Saviour of the world taught us, was a wise one, for but few of us can resist temptation. The temptation offered Professor Tonry was too great for him, and that fact alone should make the jury regard his testimony with extreme caution.

Mr. Thomas then reviewed much of Prof. Tonry's testimony, and quoted from Orfila and Berzilius, as to the importance of the production of the metal. The master rule of legal evidence was, that the best evidence must be always produced, and this rule was particularly applicable to a case of circumstantial evidence. When a thing could have been done, and was not done, it justified the jury

in believing that nothing could have been gained by the attempt. Mr. Thomas said he proposed to refer to the medical proof in determining whether or not the corpus delicti existed. He then read from Willis on Circumstantial Evidence, marginal page 200, as to the necessity for proof of the corpus delicti. First, there should be proof of the fact of death and, secondly, of the specific cause of death. The law imposed no obligation to explain suspicious circumstances until these facts were proved beyond a reasonable doubt. Mr. Thomas here read from 39 California Reports, People vs. Phips, as to the necessity for proof of every material fact. The defence might exclude all their medical testimony, and, relying upon the medical testimony for the State, yet say to the jury that General K. did not die from tartar emetic poisoning, for not one of the medical witnesses for the State had ventured the opinion that he died from that medicine. The jury was justified in believing that if he did not die from tartar emetic he died from strychnine, and if he died from strychnine then there had been no more proof that Mrs. Wharton administered it than that any lady in the Court House administered it. No witness for the State had said that General K. died from poisoning, and the State had failed to come up to that requirement of law which demanded proof of the specific cause of death. The defence had produced nine witnesses who said he had died from natural causes, and the State had produced only eleven who said he died from unnatural causes. The defence might rest the case there and rely upon the rules of law, and it did not matter whether he died from cerebro spinal meningitis or not, for the State must show that he died from tartar emetic poisoning. Mr. Thomas then commented on the symptoms in General Ketchum's case, and called attention particularly to the fact that instead of the muscles being relaxed as in tartar emetic poisoning, they were rigid. Dr. Warren had ably described the prominent features of cerebro spinal meningitis, and here Mr. Thomas called the attention of the jury to the opisthotonus and pleurosthotonos in General Ketchum's case. Another characteristic symptom was hyperesthesia, and what was the shiver which passed over General Ketchum from head to foot when Dr. Williams touched him but an evidence of the presence of hyperesthesia?

Mr. Thomas then remarked upon other prominent symptoms in General Ketchum's case, and commented on them and read from several medical authorities in support of his views. The State, he said, had tried to prove that cerebro spinal meningitis was not an epidemic in Baltimore last year when the defence had never alleged it. Dr. Warren had only testified that there was only an epidemic tendency, and the State's witnesses in part and the witnesses for the defence had sustained him. Here Mr. Thomas referred, at some length, to the testimony on that subject, and claimed that eight physicians had seen twenty-eight cases, and there were yet three hundred and fifty physicians in Baltimore who had not testified. The defence had traced the disease to nearly every part of Bal-