

the same were herein repeated at large, Witness LOUIS B. HENKEL, being called on behalf of the defense, being first sworn, says:

DR. LOUIS B. HENKEL, JR., a witness of lawful age, being produced on behalf of the defense and duly sworn, testified as follows:

#### DIRECT EXAMINATION.

Q. (By Mr. Brady): What is your name? A. Louis B. Henkel, Jr., Annapolis, Maryland.

Q. What is your profession? A. I am a physician and surgeon.

Q. Where do you reside? A. No. 6 Murray street, Annapolis, Maryland.

Q. Where do you practice? A. In Annapolis and Anne Arundel County.

Q. How long have you been a practicing physician? A. Since May, 1903.

Q. From what school did you graduate? A. From the University of Maryland, Baltimore, Maryland.

Q. What experience have you had as a practicing physician? A. The general practice of medicine and surgery as a physician would have practicing in a town of the size of Annapolis.

Q. Have you had much experience in obstetrics?

(The witness paused for a few moments.)

Q. Do you understand the questions? A. Yes, sir; and I am thinking how to answer it.

Q. Can't you answer it? A. Is it a question of yes or no?

Q. Yes, sir? A. Yes, sir.

Q. State what your experience has been? A. I should say that since I have been practicing I have observed a thousand cases of obstetrics.

Q. During that experience have you had an opportunity to observe women during their pregnancy suffering from a poison that is caused by their being pregnant? A. I have.

Q. What is the most dangerous condition that a woman can suffer from during her pregnancy?

(Mr. Green): I object to the question.

(Mr. Brady): I think that I have qualified him enough to answer that question.

Q. Have you ever had any experience in eclampsia?

(Mr. Green): I object to the question.

(The Court): Ask him if he has ever had any experience in cases where there was eclampsia.

(The Witness): I have.

Q. In how many cases have you treated women with eclampsia? A. In the fourteen years, I should say at least thirty-five or forty.

Q. Have you attended any lately? A. I can recall one case of very prominent people, people I know and I can mention their name if you desire. I can recall one case recently.

Q. Doctor, from your knowledge of eclampsia, can you tell us what are the governing permonitory symptoms of eclampsia?

(Mr. Green): I object to the question.

(The Court): It is difficult for the Court to decide these questions, unless I know what your offer is, what you want to prove.

(Mr. Brady): We want to prove that Mrs. Brandon could have died from eclampsia, from what has been stated here, she

could have died from eclampsia convulsions. I want to test his knowledge as to eclampsia, and I want to question him as to where he got his knowledge; and then I want to ask him the direct question.

(The Court): What you want to prove is that she might have died from this poisoned condition?

(Mr. Brady): I want to ask him about the autopsy, whether of his own knowledge that the examination at the autopsy were complete, whether Dr. Carr in his statement yesterday was correct, and whether or not from all the evidence brought out here bearing on the death of Mrs. Brandon whether she died of convulsions due to eclampsia.

(The Court): What is your objection, Mr. Green?

(Mr. Green): We don't think that the Doctor, from his testimony, is an autopsy expert. He says that he has done general surgery work, but we do not know the extent of his surgery work and experience. We also do not know the extent of his experience with the disease that my brother has intimated. We must know about this experience, as according to the table here, it is a disease about which the highest medical authorities in the world know very little; and it is so stated in this book. People like Dr. Osler and Dr. Williams and the authorities of the medical world know very little about it. Dr. Williams says that little or nothing is known about this disease, and yet we have here a man like Dr. Henkel, without any further testimony as to his experience and his knowledge of this disease, a man with only the opportunities usual in the general practice of medicine in small communities, attempting to go on the stand as an expert on one of the most intricate diseases known to medical science. The doctor has not testified that he performed an autopsy upon this woman, or that he was present when an autopsy was performed, or that he ever saw this lady when she was living. He wants to testify without having made an autopsy. We do not know whether he has ever had any special training in any branches of medicine. From his own statement, he has had the usual experience of a practicing physician in a town of ten thousand people, yet my brother wants to make him an expert and get his opinion upon what has been testified to here as the result of and what was found in the autopsies. I don't think that the doctor is qualified, under the

circumstances, as far as he has been qualified, to give us an opinion or express his belief. I don't think that he has shown any expert knowledge of the subject upon which my brother wishes to question him.

(Mr. Brady): If I have a correct recollection of his testimony, I think he is qualified as an expert. He says that he has had experience in about one thousand cases of obstetrics, and in those he has noticed thirty five or forty cases of eclampsia.

(Mr. Green): According to this medical authority in 10,717 observed cases, there were only 81 cases of eclampsia.

(Mr. Brady): If my memory serves me correctly, a man can testify as an expert even though he has had only theoretical knowledge of the matter, and he has had no practical experience in regard to it, in regard to the subject in question. If he knows and can swear to it, that is all that is required of him. Would your Honor indicate to us what would be necessary to qualify a man to testify in a case of this character?

(The Court): Gentlemen, we have reached a point in the case where we have got to have some kind of an understanding. Suppose you had Dr. Williams here as an expert. Suppose Dr. Williams had not been in the Court room and had not heard one word of the testimony: and, as soon as he reached the room, he was put upon the stand. What would you have to do? You would have to frame a hypothetical question, and you would have to include in that question every single sentence that has fallen from the lips of the members of the profession here, and after you had framed the question the Court had required you to frame, what question would you ask Dr. Williams?

(Mr. Brady): Whether or not the person in question died of eclamptic convulsions or not.

(The Court): No, whether or not, after hearing all of this testimony that had been produced, she could possibly have had eclampsia. What is there in this case to base a hypothetical question upon. Is there a scintilla of evidence in this case, up to this time, that she had eclampsia? Well, we will not go into that now.

(Mr. Brady): I was only going to ask, from the knowledge of the two physicians that I have brought here on behalf of the defense as experts, whether or not the autopsies made by the physicians who have testified to them were complete enough to determine whether or not Mrs. Brandon was suffering from eclampsia. One of the physicians testified for the State that she was not suffering from eclampsia. Dr. Joyce stated positively that she was not suffering from eclampsia and I don't know whether Dr. Hopkins said it or not. I remember the testimony of Dr. Carr, especially several questions asked him about his opportunities to observe autopsies and his knowledge of eclampsia. He made a certain statement which I tried to bring out on cross-examination, which showed, or rather I should say failed to show conclusively to my humble mind that the Doctor was correct. I feel that he was mistaken about the uremia or did not understand me when I asked him about eclampsia.

That has gone to the jury. I asked Dr. Carr the specific question whether or not Mrs. Brandon might not have had one of these convulsions twenty-five or thirty feet away from where she was found on the bed, whether she could have had one of these eclampsiac convulsions, fallen to her knees, and have caused these marks that were there, whether she could not have dragged herself up and not know what she was suffering from; and, after the lapse of five minutes or more, might she not have another one, then another one; and Dr. Carr said no that they were a long while apart. I think I also asked him the question whether she might not have had one of these convulsions, fallen and hurt her head as it was hurt and died without recovering consciousness; and he said that she might have had one convulsion after another until death intervened. That is the way I understand it went to the jury. I want to ask Dr. Henkel whether or not that is a correct statement.

(The Court): Do you propose to offer that she might have been suffering from this trouble, is that your offer?

(Mr. Grason): No, sir.

(The Court): Do you propose to show by this witness that the cause of death in this case was eclampsia, is that your offer?

(Mr. Grason): No, sir; that is not our offer.

(The Court): Do you wish to use this witness as an expert on this disease, and to show that her death might have been caused by this trouble?

(Mr. Grason): We are not bound to establish the cause of her death. The State could not convict this man or anyone else unless they established beyond a reasonable doubt that the deceased died in the manner set out in the indictment. Any evidence that the State produces throwing light upon the cause of death is admissible. If we can produce evidence here showing that this woman was diseased and suffering from a certain specific disease; and, if we can show what is the result that follows or flows from that disease, I think we are entitled to show it. I think that we can show that the deceased might have died from this disease. I submit to your Honor that it is sufficient to go to the jury; that she could have died from some other cause, show a reasonable doubt, raise a reasonable doubt as to whether or not this woman died from violence. As I said the State must prove the cause of death, and the State here sets up violence as the cause of death. Now then we offer to prove by this doctor that from the condition of her body and from the conditions of the different organs of her body, as detailed on the stand, this woman may have had eclampsia. Then we want to show how eclampsia affects a woman; and whether or not this woman could have died from eclampsia. We wish to raise a reasonable doubt in the minds of the jury. After the jury hears this evidence, there may be some reasonable doubt in their minds as to the cause of death.

(The Court): The objection is sustained.

(Mr. Brady): As I understand your Honor, the objection is sustained because the witness was not properly qualified?

(The Court): Yes, sir.

Q. Doctor, you heard the testimony of Dr. Joyce, Dr. Hopkins and Dr. Carr, did you not? A. I did.

Q. Who made the autopsies on the body of the late Mrs. Brandon. I think that Dr. Carr, Dr. Hopkins and Dr. Joyce made the statement, when the questions were asked as to what caused her death, that she died from the wound in her head, strangulation and shock. I will now ask you, Doctor, from the

evidence adduced in this case, could she have died from any other cause?

(This question was objected to by Mr. Green, the objection was sustained, and Mr. Brady noted an exception.)

To which ruling of the Court the traverser by his counsel excepted and prays the Court to sign and seal this his Fiftieth Bill of Exceptions, which is accordingly done this

(Exception refused.)

F. I. D.

#### TRAVERSER'S FIFTY-FIRST BILL OF EXCEPTIONS.

After the occurrence of the matter set out in the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty-eighth, forty-ninth and fiftieth bill of exceptions, all of which is hereby made a part hereof as fully as if the same were herein repeated at large, Witness DR. HENKEL, JR., continuing, says:

(Mr. Brady): Was the reason that the objection to that question was sustained because the Doctor is not properly qualified?

(The Court): That is one reason.

Q. Doctor, where did you graduate from? A. From the University of Maryland.

Q. Doctor, have you ever performed or assisted in the performance of autopsies? A. A number; yes, sir.

Q. How many, Doctor? A. I should say that I assisted in or witnessed at least two or three dozen, and I saw them performed while I was going to school at the University of Maryland.

Q. Have you ever been present at or assisted at an autopsy where it has been determined that the subject was suffering from eclampsia? If you have, Doctor, say yes? A. Yes, sir.

Q. Where? A. At the University of Maryland Hospital.

Q. When? A. Within the last two years.

Q. Who performed the autopsy? A. I do not recall who was the pathologist. It was a patient of mine with eclampsia.

Q. In determining that she died with eclampsia, what organs of the woman were examined, Doctor? A. They first removed the upper part of the skull with a circular incision, then they took the table of the skull off, and removed the brain. I was present and assisted. The brain was sent to the laboratory and microscopic sections were made of it. There was a surface examination for hemorrhage. The melineal arteries or branch of the neck was opened from here down (indicating), the skin from the upper part of the anterior chest was opened down to the front of the hip, or pubic point. An incision was made, the skin separated over the intestines. Then an examination was made of the kidneys, heart, lungs and liver. I had sections made of the kidneys and liver, and they were sent to the laboratory for examination. The urine had been examined before the patient reached the autopsy table. Of course, a record was kept of this, of the autopsy, as I understand it.

Q. What did you find, Doctor? A. That a lesion had formed. I did not examine the heart, kidneys or liver.

(The Court): And you are telling the result as told to you?

A. Yes, sir.

(The Court): Then I will have to sustain the objection for the State.

(Mr. Brady): I will note an exception.

Q. Doctor, you say that you have had several or a number of patients suffering from eclampsia? A. I have.



Q. I will now ask you this question, Doctor. How could you tell from their condition that they were suffering from eclampsia?

Q. (Mr. Hartman): Were autopsies performed on any of them? A. No, sir.

(Mr. Greene objected to this question, the objection was sustained, and Mr. Brady noted an exception.)

(No cross-examination.)

(Examination concluded.)

To which ruling of the Court the traverser by his counsel excepted and prays the Court to sign and seal this his Fifty-first Bill of Exceptions, which is accordingly done this  
(Exception refused.)

F. I. D.

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W. D. K. LEE, a witness of lawful age, being produced on behalf of the defense, having been previously sworn in this case, testified as follows:

#### DIRECT EXAMINATION.

Q. (By Mr. Brady): What is back of the Brandon property. I think this is the Brandon home? (Mr. Brady used a diagram in asking these questions.) A. Yes, sir; a wall is run back to that point.

Q. This is the fence line, I suppose? A. Yes, sir; that is the back fence line.

Q. This is the Brandon home? A. Yes, sir.

Q. This fence line is the back fence? A. Yes, sir.

Q. Tell us what is back of there? A. A large open lot containing from one-half to three-quarters of an acre of ground, which runs to Vansant street from Acton lane. It runs down into a corner and comes down from Vansant street to the back of the Brandon home. In the summer it has the usual high weeds on it. It has grown up with weeds right up to that fence.