

NEW-JERSEY COURT OF ERRORS AND APPEALS,

In the Last Resort in all Causes as Heretofore.

THE STATE vs. SILAS COOK,

IN ERROR, ON INDICTMENT FOR RAPE.

THE Writ of Error in this case is in the usual form, and was returnable to the Term of March, 1854.

The Record is as follows:—

State of New-Jersey, Middlesex County, to wit: Be it remembered, that at a session of the Court of Oyer and Terminer and General Jail Delivery, held at New-Brunswick, in and for the said County of Middlesex, on Tuesday the tenth day of May, in the year of our Lord one thousand eight hundred and fifty-three, (it being the second Tuesday of May in the year aforesaid) before the Honorable Daniel Haines, Esquire, Justice of the Supreme Court of Judicature of the State of New-Jersey, and Peter P. Runyon, Abraham P. Provost, and David F. Randolph, Esquires, and others, their fellows, Judges of the Inferior Court of Common Pleas in and for the said County of Middlesex, constituted a Court of Oyer and Terminer and General Jail Delivery in and for the said County according to

the form of the statute in that case made and provided by the oath of David Dunn, John Culver, Samuel Gordon, John Reid, Jephtha Cheeseman, Ephraim V. Addis, David Clark, Matthew L. Egerton, Charles Abraham, Alexander Redmond, Abraham Voorhees, Jirah I. Bulkley, Elias Ross, Phineas Kent, Albert R. Speer, Henry S. Lupardus, Obadiah Clark, Timothy Wood, John Arnold, Lewis Golding, Thompson Edgar, Charles C. Hoff, and Benjamin B. Miller—good and law-
 20 ful men of the County of Middlesex, being then and there empanneled, sworn, and charged diligently to enquire on behalf of the State of New-Jersey, and for the body of the County of Middlesex, it is presented in manner and form following, to wit :

Middlesex County, ss : The Grand Inquest for the State of New-Jersey, and for the body of the County of Middlesex, upon their oath, present, that Silas Cook, late of the township of Woodbridge, in the County of Middlesex, on the twenty-second day of February, in the year of our Lord eighteen hundred and
 30 fifty-three, with force and arms, at the township aforesaid in the county aforesaid and within the jurisdiction of this Court in, and upon one Ann Eliza Potter, in the peace of God and of this State then and there being, violently and feloniously did make and assault, and her the said Ann Eliza Potter then and there forcibly and against her will feloniously did ravish and carnally know, contrary to the form of the statute in such case made and provided, against the peace of this state, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further present that the said Silas Cook on the day
 40 and year aforesaid, at the township aforesaid, in the county aforesaid, within the jurisdiction aforesaid, with force and arms in and upon the said Ann Eliza Potter, in the peace of God and of this state then and there being, did make an assault, and her the said Ann Eliza Potter did beat, wound and ill treat, with intent her the said Ann Eliza Potter then and there feloniously to ravish and carnally to know, and other wrongs and injuries to the said Ann Eliza Potter then and there did to the great damage of the said Ann Eliza Potter, contrary to
 50 the form of the statute in such case made and provided, against the peace of this state, the government and dignity of the same.

And afterwards, to wit, at the same session of the said Court of Oyer and Terminer and General Jail Delivery, on Friday the thirteenth day of May, in the year of our Lord one thousand eight hundred and fifty-three, before the Justice and Judges aforesaid, here cometh the said Silas Cook in his own proper person, and having heard the said Indictment read, and forth-

with being demanded of and concerning the premises in the said Indictment above specified and charged upon him how he will acquit himself thereof, he saith he is not guilty thereof in manner and form as he above stands charged, and concerning thereof he puts himself upon the country, and the State of New-Jersey, by George A. Vroom, Esquire, who prosecutes for the State in this behalf, doeth the like. 60

Therefore, let a Jury thereupon come before the Justice and Judges aforesaid, at New-Brunswick aforesaid, at this same session of the Court of Oyer and Terminer and General Jail Delivery aforesaid, on Thursday now next ensuing, being the nineteenth day of May instant, by whom the truth of the matter may be better known, and who have no affinity to the said Silas Cook, to reinquire upon their oaths if the said Silas Cook be guilty of the premises aforesaid or not, because as well the said George A. Vroom, Esquire, who prosecutes for the State in this behalf, as the said Silas Cook, have put themselves upon the said Jury, and the same day is given to the said George A. Vroom, Esquire, who prosecutes for the State in this behalf, as to the said Silas Cook. 70

At which day, to wit, on Thursday the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-three, at the same session of the said Court of Oyer and Terminer and General Jail Delivery, before the Justice and Judges aforesaid, at New-Brunswick aforesaid, here cometh, as well the said George A. Vroom, Esquire, who prosecutes for the State in this behalf, as the said Silas Cook, in his own proper person, and the Jurors of the Jury by Jaquis V. Gordon, Sheriff of the said county of Middlesex, to this matter empaneled and returned, to wit, Peter S. Parsels, John V. H. Van Cleef, David F. Campbell, William Boylan, Ira C. Voorhees, Jeremiah Whitenack, Joseph Danbury, Jarvis Bloodgood, Samuel Dally, John T. Jenkins, Ebenezer Drury and Thomas F. Randolph, being called, come; who being chosen, tried and sworn to speak the truth of and concerning the premises in the Indictment aforesaid, above specified, do say upon their oaths that the said Silas Cook is guilty of the premises in the said Indictment, on him above charged, in manner and form as in and by the Indictment aforesaid, is within alleged against him. 80

Whereupon, all and singular the premises being seen, and by the Court here fully understood, it is considered by the Court here that the said Silas Cook be convicted of the offence in the said Indictment charged; and it is further adjudged by the Court here that the said Silas Cook, for the offence afore- 100

said, do pay a fine of one thousand dollars to the State of New-Jersey, and the fees of prosecution; and the said Silas Cook here in Court is committed to the Sheriff of the said county of Middlesex, safely to be kept until the fine aforesaid and the costs of prosecution are paid, or until he be discharged by due course of law.

DANIEL HAINES. [L.s.]

The Bills of Exceptions, sealed by the Court below, are as follows:—

Middlesex County Court of Oyer and Terminer and General Jail Delivery of the Term of May, in the year eighteen hundred and fifty-three.

THE STATE, vs. SILAS COOK,

ON INDICTMENT FOR RAPE.

The above Indictment coming on to be tried before the Honorable Daniel Haines, an Associate Justice of the Supreme Court of the State of New-Jersey, and Peter P. Runyon, Alanson Newton, and others their fellows, Judges of the Inferior Court of Common Pleas of the said county of Middlesex, holding a Court of Oyer and Terminer and General Jail Delivery in and for the said county of Middlesex, on the nineteenth day of May, in the year aforesaid, at New-Brunswick, in the County aforesaid, on the Indictment and pleadings (*pro ut* the same), and the Jury summoned and returned for the said term being called, Saxton M. Tice, William Gingler and William G. Dunham, three of the said Jurors, when called to be sworn were severally challenged, peremptorily and without cause, by George A. Vroom, Esquire, Attorney for the State, which said challenges on the part of the State the defendant, by his counsel, objected to; but the said objections were overruled by the Court, and the challenges were permitted to prevail, and the said Jurors were not allowed to take their seats on the said Jury, although no cause or reason was assigned on the part of the State for such challenge: to which opinion and decision of the Court the defendant, by his counsel, excepted, and prayed that his bill of exceptions might be sealed, and it is sealed accordingly.

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DANIEL HAINES, [L.s.]
 PETER P. RUNYON, [L.s.]
 DAVID F. RANDOLPH. [L.s.]

Ann Eliza Potter, being duly sworn on the part of the State, on her oath said : I reside at Rahway, in the county of Middlesex. I was twenty-three years of age last Spring. I was married last fourth of July. Previous to that time I had resided in the City of New-York. Had been married before to Mr. Teibout. Had had one child, but have none now. Had been a widow three years. I have known Dr. Cook since August. He had been my physician. The last time he visited me was the 22d of February last. I had been sick in New-York, and had been under the care of a doctor there until the last of January. I had been taken with flowing. After I returned to Rahway I did not get very smart. My husband asked if he should send for the doctor? I answered no, and said I would stop at Mrs. Clark's and tell the doctor, who was visiting them, to stop. At about 7 o'clock in the evening, I went to Mrs. Clark's and found the doctor there. I asked him to call and see me. He said he would call the next day, and I went away. The doctor came between three and four o'clock in the afternoon. My husband was at the shop, and there was no one in the house. The doctor came into the room : I sat in a low rocking-chair with high back and no arms. The seat was low. He sat down by me, and asked how I did. I told him I was better. He asked some questions about my disease. He said I had been sick in New-York : that Mrs. Clark told him so. He asked how I was taken? I told him it was flowing. He asked what the doctor said in New-York? I told him he said it was miscarriage. He put his hand on my clothes, and said the ladies wore so many clothes that he could not tell. He then said he would like to put his hand under my dress on my bowels, and did so. Before this he had given me some pills to take. He then told me to stand up a little. I did so. He said I was hardly full enough to be any thing the matter. He asked me if I had falling of the womb, and if I had not distress in the back? I told him yes. He said I would have falling of the womb, if I had it not then. I then sat down on my chair. As I sat down, he told me to sit on the edge of it. I did so : and as I sat down he fell upon his knees. He then hoisted my dress up on my lap. I then spoke, and said I would not have such work. He said hush, I only want to see. He then put his arm around me and drew me further on the chair, and pressed his head against my breast, and in my struggle to get away his person touched me. I tried to push him away with my hand ; but he pushed me back until the chair was pushed against the wall ; he put his arm around me and his head against my breast, and I then felt that he had connection with me. He did not rise from his knees

190 until he had accomplished his purpose. I don't remember anything after that until he raised on his feet and kissed me. He went to get his hat. I told him he ought to be ashamed of himself. He said hush, hush : say nothing about it ; take the medicine I left, and I will call again to-morrow.

My husband came home about half-past five o'clock. I was sitting by the stove, crying. I told him all about it. I told it to Mrs. Clark that evening at my house. I told her every thing except the extent to which he went ; told her he had insulted me. I saw Dr. Cook again on Thursday evening, the 24th of February, at our house, in the presence of my husband and Mrs. Clark. He came in and sat down by my husband, who lay on some chairs. He said, I want to know what misunderstanding there is between us? My husband raised up and asked the doctor if I had given him any cause to act as he had done? He said I did not, and was willing to put it in writing or take his oath of it. He then told my husband if he would get some ink, he had pen and paper, he would write it down in black and white. He was willing to satisfy him in any way. He said we were all liable to error. He then wrote it down. He also wrote another paper, which he wanted my husband to sign ; but he refused to sign it, but wanted the other one. Mrs. Clark said to the doctor, give him the paper, and I will see that it is settled. He did so.—
The paper is as follows, viz :—

“I hereby certify that Mrs. John Potter has not been guilty of any improper conduct, either in thought, word or deed, so far as I have any knowledge or belief. February 24, 1853.”

The other paper is as follows, viz :—

220 “This is to certify that the misunderstanding between the undersigned is explained and settled to the entire satisfaction of all parties. February 24, 1853.”

My husband said, before that he thought the doctor was a gentleman, but now he thought he was a rascal. The doctor said, if he could see him a few moments at his office he could make him believe he was still a gentleman. The doctor said that Mrs. Clark could keep the papers, that every thing was settled. He then left, and I have not seen him since.

The witness being further examined on the part of the State, by Mr. Parker, said : I was born and brought up in New-York, and always lived there until last July. In answer to
230 the question whether Dr. Cook had connection with her in the

same manner as her husband had? the witness answered yes, I think that he had.

And being cross-examined on the part of the defendant, she says: The windows and doors of the house were not fastened; one of the shutters was closed, the other window had a shade up. The doctor was at my house about twenty minutes. During the occurrence I did not make any noise or outcry. I did not attempt to strike or scratch him, or pull his hair. I struggled all the time, until the chair was pushed against the wall. I tried to push him away. I was very much overcome and frightened by the way he was acting. When I felt his person touch me I seemed entirely overcome, and my tongue grew stiff in my mouth. The distance the doctor pushed my chair was between six and eight feet. When the doctor came to see me on the 22d, I was sick and weak and had been flowing extensively. All I said when he got up was that he ought to be ashamed of himself, and that I was ashamed of him. I did not tell Mrs. Clark that the doctor did not have connection with me; but that he only tried. I did not tell her that I had not been exposed. I did not tell her that the doctor asked my consent before he made the examination. I did not hear any threat made by my husband. I did not hear him say any thing about money. I did not say that my husband had said he thought he had married a virtuous woman. I did not tell Mrs. Clark that I would say any thing my husband wanted me to. After the interview with the doctor on the 24th, my husband did not say now I have got the doctor where I want him. He did not say that the paper was worth ten thousand dollars to him. Never heard him say that the doctor had no witness, no money and no friends.

John Potter being duly sworn, on the part of the State, said: I am the husband of Ann Eliza Potter. On the 22d of February last, I went home at half-past five o'clock in the afternoon. I found my wife crying. She told me Dr. Cook had insulted her; that he had committed a rape on her. On Thursday following, the doctor was at my house again. Mrs. Clark had told me he would be there. I was lying down when he came. He said, what is the misunderstanding between us? I rose up, and said all I want to know is, has my wife been guilty of any misconduct or given you any encouragement to act as you did? He said no: he was willing to swear to it before he left the house. He was willing to write a statement to that effect, and make oath to it. He said he had pen and paper in his pocket, and if I would get ink he would write it.

I got the ink, and he sat down and began to write. He wrote the two papers; signed the one, and wanted me to sign the other and put them in Mrs. Clark's hands. I refused. I told him I thought he was a gentleman; now I believed him to be a damned scoundrel. He said if I would give him a few minutes at his office, he would satisfy me he was as much of a gentleman as ever. He said there were some things necessary, between a doctor and his patient, that seemed to be improper to persons— I stopped him by asking if such hellish proceedings as he perpetrated there on Friday were necessary and proper? I can't tell whether he made any answer. Some time after this, I called at the doctor's office to see what he had to say. He then asked me what he was charged with? I told him with committing a rape on my wife. He said Mrs. Clark did not tell him so; or my wife did not tell Mrs. Clark so; I can't say which. He then went into the back room and got a book with plates in it, which he showed me, and a paper which he said contained a statement of the facts he was going to swear to; and he read it to me. I told him it did not alter my opinion. The rocking-chair is about thirteen inches high. Being cross-examined, he said, I never said the paper he signed was worth \$10,000 to me. I was much excited at the doctor when he read the paper. It was one or two pages or more, can't say it began "a statement." The paper shown me looks like the one he read, but there is nothing about it by which I can identify it. I can't pretend to say what he read, I was too much excited. I believe he denied any improper conduct in my house.

The counsel for the defendant here requested the witness to read over the paper to himself, and state whether its contents were not precisely the same as those read to him by Doctor Cook. To this suggestion and request the state, by G. A. Vroom, Esquire, its attorney, objected. The Court sustained the objection, and refused to let the witness read the paper and answer the question as requested, but decided that the counsel for the defendant might use the paper as a memorandum, the same as any other paper, to which opinion and decision the defendant by his counsel excepted and prayed that his bill of exceptions might be sealed by the Court and it is sealed accordingly.

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He further said the chair had rockers, but no arms. I did not say the doctor had a good many enemies and but few friends.

The State by its attorney having rested the case, the defendant offered as a witness, *Jeremiah Tunison*, who being duly sworn, on his oath, saith, I made a diagram of the house of John Potter, the last witness, (*pro ut* the same.) The house stands on Poplar-street, immediately on the street. On the east side is a dwelling-house, separated from the house of Potter by a vacant space twenty-seven feet wide, and by looking diagonally across this lot from Poplar-street, one can see through the window a person sitting in the room described by Mrs. Potter. I tried the experiment, and by entering the alley on that side of the house from Poplar-street, one would be brought immediately by the window, into which he could easily look. On the rear of the the house, and some thirty-four feet from it runs the railroad. From this track persons can also see into the window on that side of the house, and into the room in question. This track is much used by persons traveling on foot. I think there is as much passing and repassing along the streets in the immediate vicinity of this house as in any other place in Rahway, unless it be in Main-street. On the west is a dwelling-house eight feet distant.

Deborah Clark, a witness sworn on the part of the defendant, said, I live in Rahway, and have resided there for the last twenty years. I live near the house of John Potter. When I stand in my back door, I can see into their front door. He is my nephew. I am his father's sister. On Monday evening, the twenty-first, the defendant, Dr. Cook, was at my house. He came to see my sister who was unwell. Mrs. Potter came there and told the doctor that she wanted him to call and see her. He promised to call the next day. On the evening of the next day John Potter came into my house, and seemed somewhat excited. After he left I went over to his house. Mrs. Potter told me that the doctor had been there and insulted her. I asked her in what way. She said he sat down by her and felt of her over her clothes. I asked her if he asked her consent to do it. She said he did. That he then examined her under her clothes. I asked her if he asked her consent to do so. She said that he did. That he got down on one knee when he made the examination, and the first thing she knew he had it all out of his trowsers. I asked her if she had seen any thing, and she said no, that she had only felt it. I asked her what she said to him. She said she told him to go along. She said he got up and gave her some medicine and told her to take it, and he would call and see her again the next day. I asked her if he had accomplished his purpose. She said he had not

that he had only tried. This she repeated several times. I asked her why she did not take the poker and break his head, and bid him never to darken her door again. She said she did not think of it. She laughed about it and said she had to laugh every time she thought of it. She said her husband was angry, and had said that he thought he had married a virtuous woman. That she had told him that it was no more than other women did, and that they were exposed but that she was not. John Potter came in and said that if the doctor did not explain the matter or make it satisfactory he should not have the pleasure of living long. Seeing that John was excited, and fearing he might do some imprudent act, I called on the doctor the next morning to advise him not to go to Potter's the next day. He had just got dressed. I asked him what he had been doing down town? He asked where down town? I told him at John Potter's. That John's wife said he had insulted her. He seemed willing to go there immediately, but I can only judge of his willingness from what he said. I advised him not to go that day, for John might do him a private injury and kill him in his passion, and he did not go. I saw Potter and his wife the next day, Wednesday, and on Thursday I saw them again. John seemed worse and had spasms. His wife said that if the doctor did not come there, and clear her of all blame, she did not know what would become of her. I gave John some brandy and told him to be quiet and I would go and get the doctor to come there. He agreed to do so and I then went to see the doctor and he agreed to go there that evening at six o'clock. About six o'clock the doctor came there. He came in and said to John, Mrs. Clark says you want to see me. Mrs. Potter said yes, John, tell the doctor what you want him to say. John told the doctor that all he wanted of him was to clear his wife of all blame. The doctor said that he could do so, as he had never seen any thing amiss in her. He said he could generally satisfy any reasonable man, and he supposed he was one. He offered to put it in writing or to swear to it. John said that would satisfy him. The doctor then wrote the two papers and signed the one, and asked John to sign the other, and that I could hold it. John refused to sign the paper, and went up to the doctor as if he would snatch the paper. I told the doctor to give it to him, and I would see that it was all settled. The doctor then said, Mr. Potter are you now satisfied? He answered, I am. He then turned to Mrs. Potter and asked her if she was satisfied. She answered that she was. The doctor then handed him the paper and took his hat and left the room. There was nothing said about liability to error; nothing said about hellish proceedings, and nothing said about

rape. They did not on that occasion charge the doctor with any impropriety. After the doctor had gone, John Potter said damn him, I knew what I was about, I was not going to sign that paper; I have now got the doctor where I wanted him; this paper is worth \$10,000 to me. His wife said, why John, the doctor has done and said all that you wanted him to, and if you are not satisfied, why did you say so? He said the doctor had no witness; his wife said, why, Aunt Debby is here. I saw them again the next day, John seemed more comfortable. I saw him again on Monday. Saturday morning, at ten o'clock, he asked me when the cars left? he was going to Newark. When he went home, I followed him, and asked him if he was going to do anything more about that muss. He said he could not give it up so. I talked to him not to go as long as it did any good. I saw him again on Monday morning. He said he had the doctor where he wanted him. He said the doctor had no witness, no money, and no friends, and a good many enemies; but he said he would go and see him, and if he would settle any way right he would drop it. I went over to get them to give it up. I told Mrs. Potter that she would have to be exposed, and I too. She said John told her she would only have to go before twelve men, that they were all married men, and the doors would be fastened. She said she would say or do anything that John wanted her to. 420

The witness being cross-examined by the State, said: When I first called at the doctor's, it was quite early, seven o'clock in the morning, the doctor was not up, but got up. I told him what it was that Mrs. Potter said he had done to insult her. What I told him was the same as I have already mentioned in my evidence. I went so early because I wanted to. I asked him how he came to insult her in that way. I was a little bit angry. I told him I thought he could get older people if he wanted them than she was, and he ought to be a father to her, instead of acting in that way. I told him how she said he acted. 440

And the witness being again examined in chief, was asked what the doctor said in reply to the complaint she made against him, and when she told him what Mrs. Potter charged him with; but to this question and the answer thereto, the State by its Counsel objected, and the Court having sustained the objection, the question and answer were overruled by the Court. To which opinion and decision of the Court, the Defendant, by his Counsel, excepted and prayed a bill of exceptions, and it is sealed accordingly. 450

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David S. Craig, a witness, being duly sworn on the part of the defendant said : I reside in Rahway, and am a practising physician, and am in the seventy-seventh year of my age. I know the defendant, he has lived some ten years in Rahway, and has his share of the practice of the place as a physician. I have heard the evidence of Mrs. Potter. The examination made of her by the defendant, as described by her, was perfectly proper. I saw nothing amiss in it ; such examinations are very common, and often absolutely necessary. I heard all the evidence of Mrs. Potter, the prosecutrix, as to the manner of committing the rape upon her. The witness was then asked the following question, viz : from your knowledge of the human system and of the human frame, as a physician and surgeon, could a rape have been committed in the mode and manner described by Mrs. Potter, the prosecutrix ? To the putting of this question, the State, by its Counsel, objected, and the objection being sustained by the Court, the question was overruled and not allowed to be put ; to which opinion and decision of the Court, the defendant, by his Counsel, excepted and prayed a bill of exceptions, and it is sealed accordingly.

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PETER P. RUNYON, [L.S.]

DAVID F. RANDOLPH. [L.S.]

Whereupon the following question was asked of the witness, viz : From your knowledge of the female mind, and the female system, would a woman placed in the situation testified to by Mrs. Potter, be most likely to swoon and lose her consciousness, or be nerved with more than usual strength and power of resistance ? To the putting of which question, the State, by its Counsel, objected. And the Court having sustained the said objection, overruled the said question, and refused to allow it to be put. To which opinion and decision of the Court, the defendant, by his Counsel, excepted and prayed a bill of exceptions, and it is sealed accordingly.

DANIEL HAINES, [L.S.]

PETER P. RUNYON, [L.S.]

DAVID F. RANDOLPH. [L.S.]

It is agreed that the foregoing is a true state of the case, and of the exceptions taken in the trial of the above indictment.

GEORGE A. VROOM,
Attorney for the State.

JOHN VAN DYKE,
Attorney for Defendant.

The following are the errors assigned by the plaintiff:— 500

New-Jersey Court of Errors and Appeals, in the last resort in all causes as heretofore.

SILAS COOK vs. THE STATE,

IN ERROR ON INDICTMENT FOR RAPE.

New-Jersey, ss: And now at this day to wit, on the twentieth day of April, in the year of our Lord eighteen hundred and fifty-four, before the Judges of the Court of Errors and Appeals, in the last resort in all causes as heretofore, comes the said Silas Cook by Thomas H. Shafer, his Attorney, and says: that in the record and proceedings aforesaid, and also in the rendition of judgment aforesaid, there is manifest error in this, to wit: that the indictment aforesaid, and the matters therein contained, are not sufficient in law for the said State to have and maintain the aforesaid judgment against him, the said Silas Cook; therefore, in that there is manifest error. 510

And also, there is error in this, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, was given for the State, against the said Silas Cook, when by the law of the land the said judgment ought to have been given for the said Silas Cook, against the said State, therefore, in this there is manifest error. 520

And also, there is error in this, that by the record aforesaid, it appears that the verdict rendered by the Jury on the indictment aforesaid, is repugnant, irresponsible, inconsistent, general and illegal, therefore, in this there is manifest error.

And the said Silas Cook, by his Attorney aforesaid, further in fact saith, that at the said Court of Oyer and Terminer and General Jail Delivery, held at New-Brunswick aforesaid, on the trial of the issues aforesaid, on the record aforesaid, certain exceptions on the behalf of the said Silas Cook, by his Counsel, were taken and made to the opinion of the said Court, then and there pronounced and declared, by which opinion the said Court declared, pronounced, and decided, that the said George A. Vroom, Esquire, who prosecuted for the said State, might peremptorily challenge, and utterly reject, without any cause assigned, three of the Jurors out of the panel of forty-eight, summoned and returned by the Sheriff of the said county, to try the indictment aforesaid. Which said exceptions, in a certain bill of exceptions, were then and there written down, and the said Justice and Judges aforesaid, did then and there put their seals to the aforesaid bill, according to the form of the statute in such case made and provided, and the said Silas Cook, by his Attorney 530 540

007 aforesaid, brings here into Court before the Judges aforesaid, the
 008 bill of exceptions aforesaid, with the seals of the said Justice
 and Judges aforesaid, put and affixed to the said bill, therefore,
 the said Silas Cook, by his Attorney aforesaid, saith, that in the
 record, proceedings, trial, and judgment aforesaid, there is man-
 ifest error.

And the said Silas Cook, by his Attorney aforesaid, further in
 550 fact saith, that at the Court aforesaid, held at New-Brunswick
 aforesaid, on the trial of the issue aforesaid, on the record aforesaid,
 certain other exceptions, on the behalf of the said Silas Cook,
 by his Counsel, were taken and made to the opinion of the said
 Court, then and there pronounced and declared, by which opinion
 the said Court declared, pronounced and decided, that John Pot-
 012 ter, a witness, then and there sworn on the part of the State, and
 then and there being cross-examined on the part of the said
 Silas Cook, upon the issues aforesaid, should not read over to
 himself a certain paper then and there shown him, and answer
 560 whether its contents were not the same precisely as the paper
 read to him by the said Silas Cook, on an occasion then and
 there referred to by the said John Potter, in his evidence afore-
 said; which said last mentioned exceptions, in a certain other
 bill of exceptions, were then and there written down, and the
 said Justice and Judges aforesaid, did then and there put
 020 their seals to the said last mentioned bill of exceptions, accord-
 ing to the form of the statute in such case made and provided ;
 and the said Silas Cook, by his Attorney aforesaid, brings here
 into Court, before the Judges aforesaid, the bill of exceptions
 570 last mentioned aforesaid, with the seals of the said Justice and
 Judges aforesaid, put and affixed to the said last mentioned
 bill. Therefore, the said Silas Cook, by his Attorney aforesaid,
 saith, that in the record, proceedings, trial and judgment last
 aforesaid, there is manifest error.

And the said Silas Cook, by his Attorney aforesaid, further
 025 in fact saith, that at the Court aforesaid, held at New-Brunswick
 aforesaid, on the trial of the issue aforesaid, on the record
 aforesaid, certain other exceptions on the behalf of the said
 Silas Cook, by his Counsel, were then taken and made to the
 580 opinion of the said Court, then and there pronounced and de-
 clared, by which opinion the said Court declared, pronounced,
 and decided, that Deborah Clark, a witness then and there sworn
 on the part of the said Silas Cook, and then and there being ex-
 amined on the trial aforesaid, on the issue aforesaid, should not be
 asked the question, what the said Silas Cook said in reply to
 030 the complaint, she, the said witness made against him, the
 said Silas. And that she, the said Deborah, witness as afore-
 said, should not be asked the question, what the said Silas

Cook said in reply, when she told him the said Silas Cook, what Mrs. Potter, the prosecutrix in the said indictment charged him with. Which said last mentioned exceptions, in a certain other bill of exceptions, were then and there written down, and the said Justice and Judges aforesaid, did then and there put their seals to the aforesaid bill of exceptions last mentioned, according to the statute in such case made and provided. And the said Silas Cook, by his Attorney aforesaid, brings here into Court before the Judges aforesaid, the bill of exceptions aforesaid last mentioned, with the seals of the said Justice and Judges aforesaid, put and affixed to the said bill. Therefore, the said Silas Cook, by his Attorney aforesaid, saith, that in the record, proceedings, trial and judgment last aforesaid, there is manifest error. 590

And the said Silas Cook, by his Attorney aforesaid, further in fact saith, that at the Court aforesaid, held at New-Brunswick aforesaid, on the trial of the issue aforesaid, on the record aforesaid, certain other exceptions on the part of the said Silas Cook, by his Counsel aforesaid, were taken and made to the opinion of the said Court, then and there pronounced and declared, by which opinion the said Court pronounced, declared, and decided, that David S. Craig, a physician and surgeon, and a witness, then and there sworn on the part of the said Silas Cook, and being then under examination on the trial of the issue aforesaid, should not be asked the question whether in his opinion as a physician and surgeon, a rape could have been committed in the mode and manner described by Mrs. Potter, the prosecutrix in the said indictment. Which said last mentioned exceptions, were in a certain other bill of exceptions, then and there written down, and the said Justice and Judges aforesaid, did then and there put their seals to the said last mentioned bill of exceptions, according to the form of the statute in such case made and provided. And the said Silas Cook, by his Attorney aforesaid, brings here into Court before the Judges aforesaid, the said last mentioned bill of exceptions, with the seals of the said Justice and Judges aforesaid, put and affixed to the said last mentioned bill. Therefore, the said Silas Cook, by his Attorney aforesaid, saith, that in the record, proceedings, trial and judgment last aforesaid, there is manifest error. 600

And the said Silas Cook, by his Attorney aforesaid, further in fact saith, that at the Court aforesaid, held at New-Brunswick aforesaid, on the trial of the issue aforesaid, on the record aforesaid, certain other exceptions on the behalf of the said Silas Cook, by his Counsel, were then and there taken and made to the opinion of the said Court, then and there pronounced and declared, by which opinion the said Court then and there pro- 610 620 630

002 nounced, declared and decided that David S. Craig, a physician
 and surgeon, and a witness, then and there sworn on the part
 of the said Silas Cook, and being then and there under exam-
 ination on the trial of the issue aforesaid, should not be asked
 the question, whether in his opinion as a physician and surgeon,
 640 and from his knowledge of the female mind and the female sys-
 tem, a woman placed in the situation testified to by Mrs. Potter,
 the said prosecutrix, would be most likely to swoon and lose
 her consciousness, or be nerved with more than usual strength
 and power of resistance? which said last mentioned exception
 in a certain other bill of exceptions, were then and there written
 003 down, and the said Justice and Judges aforesaid did then and
 there put their seals to the said last mentioned bill of exceptions,
 according to the form of the statute in such case made and pro-
 vided; and the said Silas Cook, by his Attorney aforesaid,
 650 brings here into Court, before the Judges aforesaid, the said
 last mentioned bill of exceptions, with the seals of the said
 Justice and Judges aforesaid put and affixed to the said last
 mentioned bill; therefore, the said Silas Cook, by his Attorney
 aforesaid, saith, that in the record, proceedings, trial and judg-
 ment last aforesaid, there is manifest error.

010 And also, there is error in this, that by the record, proceed-
 ings, evidence, trial and judgment aforesaid, it appears that the
 said Silas Cook was not guilty of the crime charged against him
 in the said indictment, and on which the said conviction and
 660 judgment were founded, therefore there is manifest error in this.

And also, there is manifest error in this, that by the record,
 evidence, proceedings, trial and judgment, it appears that the
 said conviction and judgment are in divers other respects
 erroneous, illegal and void; therefore, in this there is manifest
 error.

THOS. H. SHAFER,

Attorney of Plaintiff in error.

020 *New-Jersey, ss:* Silas Cook puts in his place, Thomas H.
 Shafer, his Attorney, against the State, to prosecute his writ of
 670 Error, &c.