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TRIAL

OF

CHARLES WAKELY,

FOR A

RAPE

ON

MRS. REBECCA FAY,

WIFE TO DOCTOR CYRUS FAY, PHYSICIAN;

BEFORE

THE COURT OF GENERAL SESSIONS OF THE PEACE

FOR THE CITY AND COUNTY OF NEW-

YORK, FOR THE FEBRUARY

TERM, 1810.

TAKEN BY A STENOGRAPHER, BY PERMISSION OF THE COURT.

NEW-YORK:

PRINTED AND PUBLISHED BY M'CARTY & WHITE,

NO. 46 FAIR-STREET.

1810.

District of New-York, ss.

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“ TRIAL of CHARLES WAKELY for a RAPE on Mrs. REBECCA FAY, wife to Doctor Cyrus Fay, Physician ; before the Court of General Sessions of the Peace for the City and County of New-York, for the February Term, 1810—Taken by a Stenographer, by permission of the Court.”—

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TRIAL

OF

CHARLES WAKELY,

*Before the Court of Quarter Sessions of the City and County
of New, York, for the February Term, 1810,*

FOR A

R A P E

COMMITTED ON THE BODY OF

MRS. REBECCA FAY,

THE WIFE OF DOCTOR CYRUS FAY, PHYSICIAN.

Saturday, the 17th of February, 1810.

THE Court opened at the usual hour, and the prisoner being brought to the bar, he pleaded *Not Guilty* to the charge.

The Court consisted of the following gentlemen:

The Hon. PIERRE C. VAN WYCK, Recorder,

CHARLES DICKENSON, Esq. and } Aldermen.
J. I. ROOSEVELT, Esq.

After challenging several jurors, the following gentlemen were empannelled to try the interesting cause, viz.

*Abraham Knapp;
John Gilmour,
John Boyles,
Robert M. Steele,
William Wilkinson,
Benjamin Winthrop,*

*Thomas Knox,
Jonas Minburn,
James Hallet, junior,
Benjamin Huntington,
John H. Williams, and
Henry Hedley.*

After order had been restored, which, from the immense concourse of people, it was difficult to maintain, Mr. Riker, the Attorney-General, rose, and opened the cause in behalf of the people. His speech was to the following effect:—

Gentlemen of the Jury:

This is one of the most important causes that ever came before a court of Justice. The charge against the prisoner at the Bar, is one of the most heinous, in the sight of both God and man. The crime to be proved against him, is a *Rape*, a violation by brutal force, of the chastity of a married woman. To satisfy his brutal lust, he has involved a once happy family in misery, and planted thorns in the bosom of a virtuous wife, and an affectionate husband. The laws of our country very properly rank this offence in the highest grade of criminal actions, and if guilt be proved against the culprit, the law sentences him to a just and severe punishment.

Gentlemen—I shall in the course of this trial prove, as I trust, to your satisfaction, the perpetration of this most barbarous and brutal crime, by the prisoner at the bar—I shall prove that it was committed under very aggravated circumstances, and then leave you to be the arbiters of the fate of the parties, from the evidence produced. I understand that the counsel for the prisoner rely for a defence, on invalidating the testimony of the female on whom this offence was committed, and along therewith involving the reputation of the husband in the general wreck of infamy and ruin. Let them beware, for we are prepared to meet them on that ground, and to prove that there has been prepared a deep, dark, and detestable plot, to ward off the blow from the head of the guilty, and permit it to fall on that of the innocent with accumulated force. The agents of this nefarious scheme, in the course of this trial, shall be exposed in all their naked deformity, and the mask shall be torn from the cadaverous front of vice; for we are fully fortified by most respectable and unimpeachable testimony, to repel any calumnies which may be alledged against the character of the suffering victim of brutal lust. Without further preface, I shall therefore proceed to the examination of the first witness.

Mrs. Fay was then sworn.

Question, by Mr. Riker—You are the person on whom the prisoner at the bar committed a rape?

A. Yes.

Q. Relate the circumstances fully to the court and jury.

A. On the evening of the 5th of December last, Charles Wakely, who was then a boarder in the house, came into the sitting room, which was the front room on the second floor, about 11 o'clock in the evening. My husband was called out on professional business, and we were left alone. He lighted his candle at mine and proposed going to bed—

I said, I should not, until my husband's return, as I did not wish to leave the street door unfastened. He then extinguished his candle, and again set down by the fire—when I arose and crossed the room toward the piano forte: he jumped up and grasped hold of me; I resisted his rudeness, and loudly called on him to desist, to which he paid no attention. He then put his right hand under my left arm, and clenched my right behind me, and carried me towards the door, which was then open, and which he shut with his foot. I endeavoured to cry out murder; but he pressed my mouth so hard against his breast that I could not be heard. He then forced me against a dining table which stood in one side of the room, and accomplished his detestable purpose of ravishing me. After forcing me, I told him that Mr. Fay should be informed of the affair, and would shoot him for it. He swore he did not care for a thousand like him, and if I revealed what happened he would be revenged; on which he lighted his candle, left the room, and retired to his chamber.

After my husband's return home, perceiving me depressed in spirits, he insisted on knowing what had happened. After much solicitation, I at last told him Wakely was a villian. He insisted on particulars, which I reluctantly related. In a gust of passion he went into the bed room and brought in a pistol, and perceiving it was not primed, went down stairs to prime it, uttering execrations against my ravisher, and swearing he would take his life. On his return I met him on the stairs, and insisted on his desisting from the commission of an act of murder, and begged him for his own, his wife and children's sake, to lay aside such a horrid thought. He then came again into the sitting room, and said if I would faithfully adhere to his directions that he would not attempt to commit murder. To this I complied. He then directed me to behave to Wakely as if nothing had happened, and gave me strict charge not to reveal it to any human being, in order that we might on some future occasion have an opportunity to have some testimony from his own confession, which might be successfully brought before a court of justice, to all which I as far as in my power, faithfully complied.

After my husband became more calm, he examined my wounds, and bathed them with laudanum—my right arm

was hurt—the skin was rubbed off one of my knees; my thigh was much bruised, and I was severely hurt in my private parts, by his using his hand, and applying it there, besides applying something else in my ravishment.

About one in the morning I retired to my bed—and was able, for two days afterwards, to be up and about the house; but the third day, an inflammation had commenced which confined me to bed for about six weeks. During the first fortnight of my illness, Wakely, who still lodged in the house, sometimes came to the bed chamber door to enquire after my health, but I could not bear his sight, and hardly could endure to answer him—but the commands of my husband made it my duty to do so.

Cross examined by Peter Jay Munro.

Q. You say this rape was committed in your own house; were there no other persons therein at the time?

A. Yes, the servant boy about 11 years old, and my son, a child of 4 years of age, were in bed.

Q. Where was their bed chamber?

A. In the back garret room, in the floor above the parlour.

Q. Had the parlour shutters or curtains?

A. It has inside shutters only, which were closed.

Q. While the act was committing, did you not call for help?

A. I called murder several times, but he pressed me so closely to his breast that I could not be heard.

Q. Do any persons occupy the houses on each side of yours?

A. Yes, a portrait painter lives on one side, and there is a brick building on the other, in which a family resides.

Q. You say he grasped one of your arms—did you not resist with the other?

A. I could not, it was over his shoulder.

Q. Did he lay you on the table?

A. No, he forced me back against it, and my head was against the wall.

Q. Did he raise your clothes before he placed you in this position?

A. Yes—when he caught me on the floor, he raised my cloaths, and unbuttoned his own; while he carried me toward the door and shut it with his foot: he kept my

cloaths up by pressing them between us ; and then forced me back against the side of the table.

Q. Did his feet stand on the floor ? A. Yes.

Q. Was yours suspended in the air ? A. I do not know.

Q. Did Wakely unbutton the waistband of his breeches ?

A. No ; only the fore-flap.

Q. Does he wear suspenders ? A. I cannot tell.

Q. Does he wear high small clothes, according to the present fashion ?

A. Such as other men of fashion wear.

Q. What hurt your knee ?

A. The buttons on the knees of his breeches rubbed off the skin.

Q. What bruised your thigh ?

A. His pressing severely against me ; he also hurt my hips against the table.

Q. You say your secret parts were torn, what was the cause of that. Such a thing could not arise from a sexual connexion ?

A. He applied his hand, and injured me severely in my resistance ; but I cannot fully describe it.

Q. After the commission of the pretended rape, how long did Wakely remain in the room ?

A. Not above one or two minutes.

Q. Did you say you would discover the transaction to your husband ?

A. I did, and he said that he did not care for a thousand like him, and if I dared to do so, he would be revenged.

Q. Did you say you would make your husband shoot him ?

A. I did say so, at the moment.

Q. Did you see Wakely the next morning ?

A. He came to my chamber door and enquired for me.

Q. Did you hold any conversation with him at any time afterwards, previous to his arrest.

A. No, I could not bear to speak to him, and never saw him ; except at the door of the chamber.

Q. Was you acquainted with him, previous to his becoming a boarder in your house ?

A. Slightly ; my husband had business with him, and he sometimes came to the house.

Q. Did you see him no where else, except at your own house ?

A. I do not recollect.

Q. Did you not advise him to leave Mrs. Dougherty's, and come and lodge with you?

A. No, never.

Q. After Wakely became your boarder, did your husband tell you that he was diseased, and under his care.

A. He intimated as much.

Q. What was his complaint, was it not the venereal disorder?

A. I understood it was.

Q. In the course of your six week's sickness, did your confinement arise from that complaint?

A. I do not know, I am ignorant as to the nature of the disorder—I am no physician.

Q. Did your physicians ever tell you that you had the venereal?

A. They never did.

Q. And Wakely never conversed freely with you in your bed chamber, during your illness?

A. No: when he saw the nurse, he always quitted it abruptly, and only came to the door.

Q. What evening was the rape committed?

A. On Tuesday evening, the 5th of December.

Q. Did you immediately procure a nurse?

A. I had no nurse until the Saturday following; she left me on Monday, and another black wench was obtained on the following Wednesday.

Q. Pray had you not a supper party at your house in the course of that week?

A. Not that I know of.

Q. Pray recollect, was not Mr. Longworth, Mr. Tooker, and others, spending the evening at your house after this affair happened?

A. On the Friday evening afterwards, I recollect to have heard men's voices in the parlour.

Q. Did you hear no music?

A. Yes, the bed-chamber door was left open, and I heard a tune played on the piano.

Q. Who played?

A. Martin Tooker.

Q. Do you recollect of Wakely coming into the room, and assisting the boy to cook a supper?

A. Wakely was in the room, giving directions about cooking.

Q. Did you see him? A. I do not recollect.

Q. Has your bed curtains?

A. Yes, but they were undrawn in front, which stands towards the fire-place.

Q. Then you could not help seeing Wakely by your bed side. Did you converse with him?

A. I do not recollect.

Q. Did you partake of part of that supper?

A. No, I did not.

Q. Did you drink any thing that evening?

A. My husband brought me in a glass of wine, which I drank.

Q. Did you know that the same wine was purchased by your ravisher?

A. No, I did not.

Q. Or that the supper was provided at his expence?

A. I did not know that it was.

Q. Did Wakely ever take any improper liberties with you on former occasions?

A. No; only once before he came behind me and kissed me, when there was another gentleman in the room—when I resented it, he said, pardon me, madam, I am done forever.

Q. Did he ever attend you to the Theatre and pay for a ticket?

A. He never gave me a ticket, but I have been in his company at the Theatre along with Mrs. Pintard and Miss Magau.

Q. The evening that you state that the prisoner abused you, did he flatter you and kiss you?

A. When he first came into the room with my husband, he complimented me on my musical talents, for I had been singing and playing on the piano while they were below; but as it was unusual for him to flatter, I thought him a little tipsey. But after my husband went out, he said and did nothing, except stand up by the fire and look at me with great earnestness—at which I was a little confused, and arose to reach a book, which was lying on the piano, when he seized me and used me in the most brutal manner, which I before described.

Q. Pray, madam, excuse the question I am about to put—I wish not to offend your delicacy, but my duty makes it necessary—Have you had connexion with any man since the first of November last except with your husband?

A. No, with none, except with Wakely, and that only on the fatal night he forced me.

Q. With no man, except your husband, since the first of May last?

A. No, I have not.

Q. With none since your marriage?

A. No, indeed, never have.

Q. Do you know a Mr. Sinclair?

A. Yes, I am slightly acquainted with him.

Q. Have you not frequently sent for him?

A. Sometimes—he taught music to my husband and myself, and when we had a leisure hour we were happy to be instructed.

Q. Did you ever visit the Theatre in his company, or accept of tickets from him?

A. I never accepted a ticket as a present from him, although I may have been in his company at the Theatre.

Q. Do you know a Mr. M'Guire?

A. I know very little of him.

Q. Who were your physicians?

A. Drs. Hammersley and Turk.

Q. Were they called in previous to Wakely's commitment to prison?

A. Dr. Turk called in as a friend, in the absence of my husband, one morning, shortly after my confinement, and asked what was my complaint; he felt my stomach which was swelled, but I do not know whether he prescribed, but he and Dr. Hammersley were not formally called in until after Wakely was imprisoned.

Q. How long did Wakely resort your house, after the pretended injury?

A. He was taken there, I understand, and sent to prison about a fortnight afterwards. It was said he was going away to Virginia the day following.

Q. Was that on a civil suit, and was the damages laid at 10,000 dollars?

A. I afterwards understood from my husband that it was:

Q. Did you ever conceal any person under your bed, or in your room, in order to intrap Wakely, and hear his confession to you.

A. We proposed it, but it was never accomplished.

Q. Did you ever undergo an examination from any of your prescribing physicians.

A. No, from no one but my husband ; it was our wish to conceal the cause of my complaint as much as it was possible.

Q. What was your complaint?

A. A suppression of urine.

Dr. Fay was next sworn,

After which, the Attorney-General requested him to give a distinct relation of the facts which had come to his knowledge. His evidence was of the following tenor :

On the evening of the 5th of December last, the prisoner, who had boarded in my house for about two months, was in the shop below, and having shut up, went up stairs into the dining room, where Mrs. Fay had been amusing herself with her music ; she was more than usually cheerful, and after I had sat a short time with them by the fire, I recollected that I had a family visit to perform that evening ; therefore I left them, when near eleven o'clock in the evening. I remained absent about an hour : on my return I perceived a wonderful change in the appearance of my wife ; instead of cheerfulness, gloom and silent grief seemed to be preying on her spirits ; I asked the reason ; she declined answering. Alarmed at the change, I entreated, I implored, to be made acquainted with the mysterious cause—when she burst into tears and exclaimed, the villain Wakely, he has murdered—he has ruined me forever. I then, with indescribable sensations of horror, was made acquainted with the circumstances of the rape which had been committed on the partner of my bosom—threatened an instant and a dreadful revenge. I hastened to my chamber and brought in a pistol, which I kept there for defence. Returning to the light in the sitting room, perceiving that there was no priming in the pan, I ran down stairs to the shop, and got powder and prepared to commit the nameless deed. On returning, I was held by my wife, and entreated to forego the bloody purpose. I went into the room again, when she remonstrated and told me that Wake-

ly had locked his door, and as he was a more powerful man, he might be laying in wait for me, as he had sworn revenge in case that the terrible crime was disclosed. She depicted before my distempered imagination the fate of a murderer. After hearing her out, and frequently traversing the room, I became more calm, and said if she would be governed by me, I would give up the project of taking a great and just revenge of her ravisher with my own hands—to which she willingly acquiesced. I then proposed that she should keep the matter a profound secret, and treat Wakely as formerly, until other testimony might be procured, by confession from his own mouth, as he was apt to boast to his companions of his amours, and of his violence to other women. On this plan we agreed; for not having any knowledge of law, I did not then know that Mrs. Fay's testimony was sufficient to convict him.

Cross examined by Mr. Munro.

Q. Did you attend Wakely as a physician while your boarder.

A. I did; he had the venereal.

Q. How much per week did he pay you,

A. Four dollars, for board and lodging.

Q. Did he appear to you to be wealthy.

A. When he first came to my house he had no money, and I frequently lent him small sums; but after he had been there several weeks he paid me off. I had occasion for money afterwards, which he lent to me: he was so poor at one time that he pawned his watch in order to raise fifteen dollars for me to help to pay my rent.

Q. Did you give him a note when there was an execution in your house, for the sum of fifty dollars, which he lent you to pay it off and save your furniture.

A. No.

Q. Was he free in conversing with you, and did he disclose to you his amours and violences to other women.

A. Yes, frequently.

Q. Did you consider him a moral man when you received him as a boarder.

A. Yes, only he was diseased.

Q. Did you consider his having the venereal a proof of his morality.

A. No.

Q. Pray how could you leave your wife in private so frequently, with a man whom you know had used violence to other women.

A. Because she had a protector in Mr. Andrew Smith, who was also a boarder.

Q. Where was Smith on this evening, the famous fifth of December?

A. He had left the house a few days before.

Q. Did the physicians, called on consultation, examine your wife?

A. They did not. I reported the symptoms.

Q. Did they prescribe as for one infected with the venereal?

A. They did.

Q. Why did you not use your pistol, and shoot Wakely?

A. Because I listened to Mrs. Fay's entreaties, and was afraid of being committed for murder.

Q. Did he remain as a boarder in your house after the rape?

A. He did for a few days, near a fortnight, but was frequently absent from his meals, and often out all night.

Q. What evening was it, did you say, the rape was committed?

A. On Tuesday evening.

Q. Had you a party and a supper at your house, on the Friday following?

A. I had no party by my invitation.

Q. Who then invited them?

A. I do not know; when I came home, I found Wake-ly and several gentlemen in the parlour; he said they were there by his invitation.

Q. Who were those gentlemen?

A. Mr. Martin Tooker, Mr. Painter, Mr. Longworth, and may be one or two more, but my mind was agitated at the time, and I do not recollect.

Q. Was Mr. Longworth invited by Wakely?

A. No; he stepped in as a friend of the family.

Q. How did you spend the evening?

A. Mr. Tooker played on the Piano, and I opened the bed-chamber door, that Mrs. Fay, who was in bed, might hear the music.

Q. Did you nothing more ?

A. Yes : we played several games at cards—I believe whist was the game.

Q. You say you were much agitated ; are you in the habit of playing at cards when your mind is agitated ?

A. I have done it sometimes.

Q. Had you a supper, and who cooked it ?

A. The boy I believe warmed some meat at the fire in Mrs. Fay's bed chamber—as I asked the gentlemen to eat some bread and cheese.

Q. Did not Wakely assist ?

A. I believe he did ; he was frequently backward and forward in my wife's room, during the evening.

Q. Who provided the wine ?

A. Wakely provided some for his guests.

Q. Did your wife partake of the supper ?

A. I do not recollect.

Q. Did she drink any liquor ?

A. Yes ; a glass of wine, which I presented.

Q. Did you play at cards for money ? A. Yes.

Q. For how much ?

A. I do not now recollect.

Q. Did you lose or win ?

A. I do not know : I have forgot.

Q. How could you deliberately sit down, eat, drink, and play cards, and all this in company with, and at the expence of your wife's ravisher ?

A. I do not know that it was at his expence.

Q. How could you ask your wife to drink of his wine, who, you say, had so cruelly injured her ?

A. I do not know that it was Wakely's wine. I had some in the house.

Q. Did you frequently associate with him after the rape ?

A. No : I seldom saw him.

Q. Did you meet with him at Mr. Martin Tooker's ?

A. Yes ; one afternoon I was passing his house, and called in. That day my mind was excessively agitated. Wakely was there. Afterwards I went to see Mrs. Brevoort, of whom he had frequently said very hard things, to know whether he had not mentioned something about my wife. On my return to Mr. Tooker's, Wakely was still there.

Q. Where did you go afterwards?

A. Mr. Tooker proposed to go to Hodgkinson's to eat supper, to which I assented. Wakely and Charles Tooker went out before us; but we met them there.

Q. Did you eat supper in company?

A. Yes:—We had beeksteaks and oysters—I supped on beefsteaks.

Q. Did you take any oysters from off Wakely's plate.

A. No, I did not.

Q. Did he treat you, or pay for any liquor for you

A. Not that I recollect of.

Q. Did he go home with you, as a friend, arm in arm.

A. I think not—at least not to my knowlege.

Q. How was you capable of doing such violence to your feelings, of which you have spoken so pathetically, as to associate, in a public house, with your wife's ravisher.

A. Because I thought I had not sufficient proof to bring him to conviction.

Q. During this time had you never mentioned the circumstance to any body?

A. No, not directly—I went to Mr. Fay, but he was busy. I then stated the case hypothetically to Mr. Maxwell, as if it was a patient of mine, and that the young man wished not to be known. Mr. M. being busy came to the door and requested the person to call the next day—I stated it in the same manner to Justices Ferguson and Meigs, to know what was best to be done. I then at length, when he was about to leave the city, imparted the secret to Mr. Joseph D. Fay, and he advised his arrest on a civil suit—on which I went to Mr. Maxwell, and took out a writ for 10,000 dollars, in order to detain him, which I had served on him the same evening. Mr. F. said he could be arrested both on a civil and on a criminal prosecution.

Q. Did you say to the Sheriff, after you gave him the writ, that it might be settled without taking him.

A. I did not.

Q. Where was he taken. A. In my house.

Q. When was it.

A. About the seventeenth of December.

Q. Did the prisoner hold a note of yours for 50 dollars.

A. No.

Q. Do you owe the prisoner any money.

A. No—He owes me a three-dollar pair of shoes, on account of a breast-pin of Mrs. Fay, which she sold to him, and which I advised her to sell, as another might be procured—it contained her sister's hair.

Q. Were you in a porter house, or have you visited taverns with Wakeley since the rape.

A. I have not.

The Court then adjourned, being after ten o'clock, and sent the Jury to lodgings at the City-Hotel, under the care of six officers.

Proceedings of Monday, the 19th.

Mr. Fay, cross-examined by Mr. Munro.

2. How long has Mrs. Fay lived here?

A. Nearly two years.

2. How long have you been married?

A. Between five and six years.

2. Was you ever parted from your wife since your marriage?

A. Yes; we were separated about one year.

2. When came you together again?

A. It will be two years next May.

2. What was the reason of your parting?

A. I went to Philadelphia, in order to improve myself, by attending Rush and Barton's medical lectures.

2. Had you any dispute with your wife, which caused you to leave her?

A. No.

2. Where did she reside during your separation?

A. At her father's at Bedford.

Q. Where did you go.

A. First to Boston, and from thence to Philadelphia.

Q. Relate your history since you first parted with your wife.

A. I proceeded to Philadelphia, and remained four or five months attending medicinal lecture—from thence I removed to Bordentown, New-Jersey, and had charge of the young ladies department in the academy there, and finally left it, to settle in New-York. I commenced prac-

tice here about six months before my wife came, and all the time of our separation she remained at her father's.

Q. Why did you not send for her immediately on your commencing practice.

A. Because I was too poor to support her. But there never was the least difference or coolness between us.

Q. After your separation did you immediately go to Philadelphia.

A. No, I lived three months in Concord.

Q. Why did you leave there while your wife was at her father's at Bedford.

A. I do not know.

Q. Did you keep house after marriage, and how long.

A. Yes, about two years.

Q. At what place.

A. At Bolton, where I commenced practice.

Q. Why did you break up house-keeping.

A. In consequence of insolvency, and my pecuniary misfortunes.

Q. Was you ever confined in Concord jail on account of committing forgery.

A. Yes.

Q. Did you break up house-keeping in consequence of this. A. No.

Q. What was the nature of the forgery.

A. It was said to be for counterfeiting Mr. Longley's name on the back of my note.

Q. Did you leave Bolton on that account.

A. No.

Q. Where was, and who held that note.

A. It was given to the Worcester Bank.

Q. Where did you reside when you heard of your being accused of forgery.

A. At my house at Bolton.

Q. How long was it afterwards that you was arrested.

A. Four or five days.

Q. Why did you go off to Boston.

A. To sell a horse.

Q. Was you arrested at Boston, and brought back to Concord jail.

A. Yes.

Q. Why did you quit house-keeping.

A. Because my goods were taken for debt by Mr. Barry.

Q. Why not take your house also.

A. I do not know.

Q. Did you sell the house.

A. No.

Q. Why.

A. Because Barrey arrested me before I had an opportunity, and carried me back to Concord.

Q. How came you to owe Barry.

A. For money lent me, on my note with Mr. Longley as indorser. But when the note became due, Longley refused payment, and denied having signed the note.

Q. Was that note since paid.

A. Yes—My brother took it up and gave his own.

Q. Why did he do so

A. Because we are friends

Q. Did he do this in order to stop the prosecution against you for forgery

A. I do not know

Q. Did you pay all your debts

A. Yes

Q. What was the value of the horse

A. 350 dollars: he afterwards sold for that sum

Q. What did you give him to Barry for

A. He allowed about one hundred or one hundred and ten dollars for him.

[Here the Counsel interfered, with regard to Mr. Munro's minute manner of catechising, and appealed to the Court.]

Mr. M. replied that the witness was too hardened a sinner to be intimidated by a cross-examination, and the Court requested him to proceed.]

Q. Do you know Mr. Forbes and Mr. King of Boston, and have you ever associated with him.

A. No.

Q. Do you know Mr. Buck, who stands there (pointing him out to the witness)

A. No—I do not recollect to have ever seen him before.

Q. What was Barry.

A. A deputy-sheriff and keeper of the jail

Q. Was you indicted for a forgery

A. Yes, I was

Q. What note was your indictment predicated upon—that held by Barry, or the one in possession of the Worcester Bank

A. On Barry's—but the one to the Worcester bank was paid by Longley, to whom I had given a bill of sale of my property.

Q. Did Longley deny having endorsed either of these notes.

A. Yes.

Q. Was you tried for the one on which an indictment was found against you.

A. No.

Q. Why?

A. After being confined for some time I was admitted to bail.

Q. Who were your bail.

A. My brother and father-in-law

Q. What was the amount of your recognizance.

A. Five hundred dollars each

Q. Then it was for fifteen hundred dollars in the whole?

A. Yes.

Q. Did you undergo a trial? A. No.

Q. Why?

A. My friends were fearful that enemies would be bribed to swear against me, they therefore thought it proper that I should be out of the way.

Q. Then you forfeited your recognizance.

A. Yes.

Q. Did your brother and father-in-law pay it

A. They did; but my father-in-law was afterwards reimbursed by my brother.

Q. How long before your indictment for forgery was it that you parted with your house to Mr. Barry.

A. About a month, before my arrest. I never was indicted before the grand jury. I was only arrested. I now perceive there is a difference between an indictment and an arrest.

Q. How did your misfortunes commence.

A. From the loss of property, and being confined by sickness.

Q. What was the amount of the note held against you by Barry.

A. About three hundred dollars

Q. Why did you go to Boston ; I thought you said just now you was sick when your misfortunes commenced.

A. I had been convalescent about ten days previous to my departure. I went there on account of the loss of property and to avoid the observations that might be made about the pretended forgery

Q. Did you go to Boston to sell a horse only

A. That was my sole intention for going

Q. Did you break up house-keeping for the purpose of pursuing your studies and attending lectures at Philadelphia.

A. It was not my only motive

Q. What other inducement had you to do so and leave your wife

A. My brother insisted on my departure after getting out of jail, as he was afraid of a conspiracy being formed against me to effect my ruin, and I complied with his request

Q. Did you suppose that Mr. Longley would be bribed.

A. No—Mr. Longley had always been my endorser and was my friend, and a very worthy man ; but when the notes became due, and I had not the means of paying them, he made a declaration that they were wrongly given—and, after making over my property to him, he satisfied the Worcester bank. He was a poor man and a farmer.

Q. Are you certain your brother took the forgery in question out of the way and gave his own note in lieu thereof.

A. I did not see it and therefore am not certain ; but he told me so

Q. After you got out of prison where did you go.

A. I remained one night with my wife at her father's, and the next day went by the stage to Philadelphia.

Q. Did you ever change your name.

A. Never.

Q. How long did you study medicine before you commenced practice.

A. Three years.

Q. How long was you in practice at Bolton

A. About three years.

Q. Is your father living.

A. No—he has been dead five or six years.

Q. Have you ever been in Massachusetts since the time you left it so abruptly.

A. No—I have not been there since

Q. So you do not know Mr. Buck, which *I* pointed out to you in Court

A. *I* do not.

Q. Did you never write letters mentioning his name since the rape was said to be committed

A. Never, that *I* recollect.

Q. Do you know a Mr. M'Guire, and where is he now.

A. Yes—he is a friend of my wife's family and is now in Baltimore

Q. Did he board in your house.

A. No—he lived in my house, as a friend, while in this city—I charged him no board.

Q. When did he leave New-York

A. About the end of September last.

Q. Have you never written letters to him mentioning Mr. Buck's name

A. Yes—I believe *I* have

Q. Why?

A. Because he is my enemy

Q. How is he your enemy

A. Because he had reported something to the disadvantage of Mr. M'Guire about his leaving Boston, and also about my family—and my wife—and *I* advised him to be on his guard against him

Q. Did you communicate these sentiments to M'Guire, by letter, since the commission of the rape by the prisoner.

A. *I* really do not know

Q. What was the contents of your letters to M'Guire

A. *I* do not recollect

Q. Have you not seen Mr. Buck at Mr. Fisher's, who occupies the store in front of your house.

A. Yes—I think *I* have seen Mr. Buck there

Question by the Attorney-General.

Q. Have you not lived happily with your wife since your marriage

A. Yes, always—Our partial separation was entirely owing to family misfortunes.

Questions by Mr. Munro.

Q. Have you not boasted lately, that you had fixed two of the principal witnesses for the defendant.

A. No—I never did

Q. Do you know Ann Brower and Mrs. Farr

A. Yes.

Q. Have you not said to either that you had fixed Sinclair and Tooker

A. No—I have not

Q. Did you examine the injury your wife had sustained after you had agreed with her on the measures to be pursued.

A. I did, and found one of her knees very much rubbed, or the skin ruffled up—her thigh and arm bruised, and the genital organs much injured—Her s***t was b****y. I then applied a bath of brandy and laudanum to the parts affected—Afterwards we retired, about one o'clock, to bed, where we spent a sleepless night.

Mrs. Fay was again called before the Court.

Questions by Mr. Riker.

Q. Did your husband and yourself always live happily together since your marriage

A. Yes, always—It was misfortune alone that caused a partial separation

Q. When you came from Massachusetts to New-York who protected you on your journey

A. My brother-in-law, Mr. Fay, attended me from Bedford, and saw me on board the packet

Q. During your unfortunate separation, did you frequently correspond with your husband

A. Yes, very frequently, by letter

Questions by Mr. Munro.

Q. Did you keep house immediately after your marriage

A. No—About ten weeks afterwards we began to keep house, and continued to do so for about three years

Q. Was your husband's practice sufficient, in the town of Bolton and its neighborhood, to enable you to live in the stile you did

A. Yes—His practice was very extensive for a young man, and by his industry we were enabled to live comfortably

Q What was the origin of his misfortunes

A He speculated on a large quantity of hops, and lost money by them

Q Did you ever hear that your husband was accused of forgery

A Yes—on Saturday a note became due—He was sick at the time, and had no means to pay it—It was said that he had forged Mr. Longley's name, as endorser

Q When did your husband go to Boston

A On Monday ; he went there to sell a horse

Q For what cause did he leave you and go to Philadelphia

A In order to prosecute his studies

Q Was he arrested in Boston, and carried from thence to Concord goal

A Yes. he was

Q Was it on a charge of forgery

A Yes. I understood that it was on account of a note given to Mr. Barry, for about three hundred dollars

Q Was that the cause of his commitment

A Yes, I understood so

Q Did you break up house-keeping in consequence of this

A Yes

Q How long was your husband in jail

A About three months

Q Did your husband steal the horse

A No, he bought him of Mr. Rice

Q For how much

A For about one hundred and ten dollars

Q What was the reason of your husband's leaving his native state, after he was bailed from prison

A His brother advised him to do so, as he entertained fears of bribery being used against him by Mr. Longley's friends, because Mr. Barry used him very harshly

Q What connexion had Barry with Mr. Longley

A He held the note that was said to be forged

Q Do you know Mr. M'Guire

A Yes

Q Did he board with you

A Yes. while in New-York he lived in the house as a friend of the family

Q Did he ever take improper liberties with you

A No, never

Q You say the prisoner pulled up your cloaths in front

A He pulled them up behind and before

Q Then he left you quite naked

A Yes he did

Q You said that he put his right hand under your left arm, above the elbow—how then could it happen that he held up your clothes before and behind—shut the door with his feet, and carried you back to the table

A I cannot tell; but he did so

Q Did you not scratch him

A No—I could not

Q Why?

A. Because my left arm was over his shoulder, and my right arm was held fast, besides I had no opportunity, as my object was to get rid of him.

Q Did you kick him

A Yes—I attempted to

Q Did he carry you from the door to the table and lay you on it.

A. No—he jammed me against the corner of it

Q Did he ravish you there

A No—he twisted me to the front of the table and pushing me against it, forced me on it, and my head came against the wall

Q What did he do with his left hand

A He separated me with his left hand in order to make way for the gratification of his lustful passion

Q Why did you not shove back upon the table to prevent ravishment

A I was held so tight that I could not

Q Did you ever take Mr. Fisher into your bed-room.

A No, never—Mr. Fisher was one of the gentlemen who hired the front store, and of course I had many opportunities of seeing him.

Q Did he ever offer to kiss you, or insult your virtue

A He never did

Q What was the nurse's name who attended you after Mrs. Gable.

A Dorcas, a black woman, who came on the Wednesday following

Q Do you know Mr. and Mrs. Goodlad

A. Yes, I do ; they have been boarders in my house.

Q. Did you ever recommend to Mrs. Goodlad her putting herself upon the town ?

A. I never did.

Q. Did you not say to her that she might as well earn ten or twelve dollars of a night as not ?

A. No, never.

Q. How long did they lodge with you ?

A. About a week.

Q. Did you attempt to separate him from his wife ?

A. I did not.

Q. Did the husband remain in your house after the wife went away.

A. Yes, for one or two days.

Q. What was the reason ?

A. She seemed to be jealous, and a quarrel ensued, in consequence of which she left the house.

Q. How long did he remain in your house after his wife left it ?

A. Two or three days.

Q. Had you and Goodlad ever any sexual conversation ?

A. We never had.

Q. So you never recommended Mrs. Goodlad to prostitute herself ?

A. No, never.

Q. After Mrs. Goodlad left the house, did you offer to supply Mrs. Goodlad's place, and endeavor to induce her husband to remain ; and also say that he should not want any thing that he might be in need of.

A. I never did.

Q. What was the cause of Goodlad and his wife leaving your house.

A. I found her to be a bad woman—we disagreed—finally we fairly quarrelled, and I ordered her out of my house ; she went away, and her husband remained for a day or two.

Mrs. Goble sworn.

Q. Did you act the part of nurse to Mrs. Fay.

A. Yes ; I was called on, and went there on Saturday, and remained until Monday forenoon. When I went, I found Mrs. Fay very ill ; asked her husband the nature of

her complaint: he replied it was a stoppage of urine; and in the evening when I came there, prepared warm fomentations for her to sit over, in order to help the passage.

Q. Did you ask Mrs. Fay about her complaint?

A. I did; but she said she would tell me afterwards what her disorder was: she cried frequently during my stay, and I could not learn from her the nature of the case.

Cross-examined by Mr. Munro.

Q. Did you understand that stoppage of water was the disease complained of when you was nurse?

A. That I did understand.

Q. Had the fomentations you made use of the intended effect?

A. Yes, they had.

Q. You say her stomach was very much swelled: what did you apply to allay it?

A. I was recommended by the physicians who attended her to rub the parts with brandy, mixt with laudanum; I did so as often as they prescribed: she was confined to her room nearly 7 weeks.

Q. Did she frequently shed tears during your attendance as nurse?

A. She did frequently.

Q. As nurse, you had an opportunity to perceive when she passed urine?

A. Yes, I had, and perceived that in her water blood was frequently mingled.

Q. Did you hear her physicians say that a suppression of urine was the cause of her disease?

A. I did.

Q. Did Mrs. Fay ever relate the circumstance of the rape to you until after Wakely was in jail?

A. No, never.

Q. Did her spirits during her confinement seem very much depressed?

A. Yes, always.

DORCAS GROVES, SWORN.

Questioned by the Attorney-General.

Q. Dorcas, you have been nurse to Mrs. Fay. When did you commence your duties as nurse?

A On Wednesday, the 13th of December, I commenced my term of service at Dr. Fay's. The same evening I furnished Mrs. Fay with a change of linen, she having given me her keys. After having prepared it, I perceived she was unable to put her cloaths off; I therefore, under her directions, stripped her. Her shift I was obliged to draw over her head—Her right arm was very much bruised—I also perceived her knees and thighs much hurt, and I examined her ****, and am of opinion, that the violence used was the occasion of those bruises. On turning her over, I perceived a large bruise on the back part of her thigh, and also a small scratch on the inside of her right knee. Mrs. Fay stated to me that she had been ravished by the villain Wakely, and that the laceration of her **** and other bruises, were in consequence of said violation.

Cross examined by Peter Jay Munro.

Q Dorcas, are you a slave

A No, I am not

Q Was you originally one

A Yes, I was

Q To whom

A To Mr. Marsten

Q Was you afterwards in the family of Mr. T. White

A I was, in consequence of Mr. White marrying my master's daughter; afterwards I lived with Mr. Cruger for seven years, and was a hired servant to him, but in consequence of my behaviour, was set free; I also lived with Dr. Buchannan, and Judge Fay. Previous to my living with them, I went to Boston, with Jack Martin and his wife, and remained one year there; on my return, as I said before, I became house-keeper to Dr. Buchannan

Q Was you ever committed to the care of Mr. Hazard, for playing the pimp, or have you ever been in Bridewell?

A I have

Q For what reason was you confined there?

A I was accused of having been the cause of bringing a young girl to a house of bad fame, and for having received money for the same

Q Were you tried for the crime?

A No, I was discharged

Q Did you, or did you not, when you pulled off her

cloaths, as you have before stated, perceive a large mole on her posteriors

A Yes, I did

Q Did you perceive that it had hair on it ?

A I did ; it was the only blemish I perceived on Mrs. Fay, except the bruises.

Dr. Buchanan was next called, and sworn.

Q Has ever Dorcas lived with you ?

A Yes ; she lived with me 6 or 7 months. I have entrusted her with my plate, and every thing that was valuable in my house, and found her faithful

Q Why did you part with her ?

A It was her own choice.

Dr. Wm. Turk, sworn.

Q What do you know about Mrs. Fay ?

A I had been out of town, and on my return, on the 16th of December, I stopped at Dr. Fay's, having previously heard that he had called at my house, wishing to see me. I found Dr. Fay and Charles Tooker playing cards in the front room up stairs. He told me Mrs. Fay was sick, and wished to see me ; I went into her bed-chamber, and asked what was her complaint. She said it was a cold ; she had a pain in her head and back, and she complained very much of a retention of urine ; she stated that her husband had administered some medicine to her—I prescribed for her case, and generally called twice a-day afterwards.

Q. The first day you called did you see Wakely in her bed-room ?

A. Yes—he came in whilst I was examining her.

Q. Did she join in an exclamation against the barbarity of her husband's conduct along with Wakely ?

A. I do not recollect that she did ; but Wakely and herself expressed much joy at seeing me ; and Wakely said, that her husband had treated her with cruelty. I had frequently attended her for a similar complaint, previous to that time—namely, a retention of urine. I did not know the origin of her complaint until after Wakely's arrest, of which her husband related to me the circumstances. I prescribed for her as if afflicted with the gonorrhœa. After Wakely's commitment I advised a consultation, and met Dr. Hammersly at Dr. Fay's on that business.

Q. Did you examine her wounds?

A. I did not ; but finding her pulse strong and full, I extracted a pint of blood from her arm. Our consultation and prescription depended entirely on Dr. Fay's relation.

Q. Was there an union of sentiment between Mrs. Fay and Wakely, reprobating the conduct of her husband?

A. I understood there was.

Q. You say a retention of urine was her only complaint?

A. We were told so ; but the faculty prescribed as if for the venereal, because Dr. Fay reported to us that she had the symptoms.

Q. Was Mrs. Fay in bed when you first saw her on this occasion?

A. No—She was sitting in an easy chair before the fire, and complained to me that all things had not been done that ought to have been done for her.

Q. When did you first call on Mrs. Fay?

A. On Saturday, the 16th day of December.

Q. Was Dorcas her nurse at that time

A. Yes, she was

Q. In what arm did you bleed Mrs. Fay

A. In the right

Q. Did you bandage the arm, as is usual with physicians, in order to extract blood.

A. I did

Q. Did you perceive any bruise on her right arm

A. No, she did not complain of her right arm being injured.

Dr. Hammersley was next sworn.

He relates as follows :—About the latter end of December, he was called on to visit Mrs. Fay, along with Dr. Foot, Dr. Walker, and Dr. Turk. From the representation of her husband, we were of opinion that she not only had a gonorrhœa, but had been otherwise injured by violence.

Q. Did you examine her body

A. I did not, but her husband requested us to do so

Q. Did she appear delirious

A. When I first saw her, she appeared flighty or hysterical

Q. Could a simple gonorrhœa be the cause of delirium

A. I do not think it could, because the mind, although

in some measure dependent on the body, could not be disordered, in my opinion, on account of a simple coition: the inflammation of the parts, on account of violence, must have been gone before my visit; but my impressions were, and I still believe, that her hysterical affections were caused by the perturbation of mind.

Cross-examined by Mr. Munro.

Q. You say you did not examine Mrs. Fay's body?

A. I did not—we depended on her husband and relied on his statement of her situation.

Q. You saw nothing to prove the account given by him?

A. I did not, except examining her pulse, her eye, and noticing her sensations, as every physician would, and her symptoms entirely concurred with Dr. Fay's statement.

Joseph D. Fay, sworn.

Q. What do you know about Dorcas.

A. She lived with me about two months as a servant—I thought her sober, honest, faithful and industrious.

Q. When did you hear of the rape.

A. Some time in Dec. he met me in Wall-street, nearly about the hour of 3 in the afternoon, and told me, while in great agitation and in tears, the dreadful story. Having much to do, but at the same time feeling for Mr. Fay, I told him that I could not spare time, at that moment, to advise what was best to be done. We then parted, and afterwards he called on me and requested my advice as a counsellor. I stated to him the law in such a case, and advised him to prosecute Wakely on a civil suit, as at that time, he told me W. was about to depart for Virginia—I therefore told him to take out a writ for 10,000 dollars against Wakely, and that he could hold him to bail on a civil action, for *crim. con.*; but that he must likewise prosecute him for a criminal case, and if he commenced he must go through with it.

Cross-examined by P. J. Munro.

Q. How long have you known Dr. Fay

A. About two years ago he called on me and mentioned his name; that he was my cousin, and that he had practised

physic. I advised him to commence business in the city—He did so, and about six months afterwards his wife came from Massachusetts and he commenced house-keeping.

Q. What do you know of Mrs. Fay?

A. Myself and family have frequently visited her, and have always considered that she was a virtuous woman, and an excellent wife.

Q. Did Dr. Fay, previous to the rape, ever call on you and tell you he was jealous of his wife?

A. Yes, he did.

Q. What was it about?

A. He came to me, weeping, and told me that he had discovered a letter, a locket, and a lock of hair, which had been sent to Mrs. Fay, and wished my advice with regard to the subject. I thought very lightly of it and laughed it away.

Q. You have known Mrs. Fay ever since her arrival in this city?

A. I have.

Q. Did you consider that Dr. Fay and his wife always lived happily?

A. I did—Mrs. Fay I ever considered as a virtuous woman.

Q. Is Mrs. Fay a woman of free manners.

A. Yes; she is a woman that possesses a great flow of spirits, and I always considered her foibles to arise more from the simplicity of her manners, than from the errors of her heart.

Q. Did you ever perceive that she acted the part of a lewd woman during the period of your acquaintance with her.

A. I never did; but her flow of spirits impressed me with the idea, that although she spoke freely on various occasions, she was only an imprudent woman, and that her errors arose more from her head than from her heart.

Q. You have mingled with the world, and have had much experience in it; do you think that you could have been deceived by Mrs. Fay.

A. If she is not virtuous I have been most egregiously deceived.

Q. It appears from your evidence that you considered Dr. Fay an honest man, and treated him as such. After

what you have heard in this court, do you consider him entitled to that character ?

A. Of that much may be said.

Q. You then have been the dupe to Dr. Fay, your relation

A. I confess I have not been omniscient

Q. Is it not possible, then, that you might have been deceived by Dr. Fay's wife ?

A. It is possible ; but my opinion, with respect to Mrs. Fay, is even now favorable

Hugh Maxwell, Esq. sworn.

Q. When did Dr. Fay call on you concerning this business ?

A. In December last.

Q. Did he state the case specifically ?

A. No ; when he first came to me, he stated it hypothetically, but after I had issued a writ for 10,000 dolls. against Wakely, at his request, he told me the whole story.

Cross-examined by Mr. Munro.

Q. Did you advise Dr. Fay to make up the affair ?

A. I never did—But not being satisfied about issuing the writ, I requested him to detail the business, which he did. I never was informed of the cause of action for the writ issued against Wakely, until he unbosomed his injuries—I then told him that I was of the same opinion with Joseph D. Fay, and said, as he had commenced a civil, he must also commence a criminal prosecution against the prisoner.

Isaac Kip, sworn.

Q. Did you arrest the prisoner at the bar ?

A. I did—About the 18th of December I received a writ against him, at Mr. Maxwell's, for 10,000 dollars—it was at Dr. Fay's suit. The Doctor went with me to his own house, where Wakely then was—He told me that, perhaps, it might not be necessary to arrest Wakely, but requested me to wait below in the shop until he spoke to him.

Cross-examined by Peter J. Munro.

Q. Did you understand from the Doctor that his wife was ravished by Wakely.

A. I did understand so.

Q. Then the whole of your evidence rests on the Dr.'s account

A. Yes, the whole of it. I never saw Mrs. Fay during the pending of the trial, but from the representation made, was convinced that it was proper to issue a writ for 10,000 dollars, because I not only advised him, but pressed him to commence the suit.

[*Here the testimony on the part of the people closed.*]

Mr. Munro then rose, and delivered the following Speech :

May it please the Court, and Gentlemen of the Jury—Fatigued, as I am, I rise in favour of my client, and shall only detain you a few minutes with my observations ; you have already heard all that has been said in favour of Mrs. Fay, your prejudices have been excited, on account of her sex, strong appeals have been made to your passions ; but I stand here as the advocate of the prisoner, as the supporter of truth, of honest opinion, and of public faith. Before I proceed further, I beg leave to read Sir Matthew Hale's opinion respecting cases of this nature. In page 684 of his most valuable work, he thus speaks :—

EXTRACT—For in many cases there may be reason to admit such witnesses to be heard, in cases especially of this nature, which yet the Jury is not bound to believe ; for the excellency of the trial by jury, is in that they are the triers of the credit of the witnesses as well as the truth of the fact ; it is one thing, whether a witness be admissible to be heard, another thing, whether they are to be believed when heard.

“It is true, a rape is a most detestable crime, and therefore ought severely and impartially to be punished with death ; but it must be remembered, that it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent.

“I shall never forget a trial before myself of a rape, in the county of Sussex.

“There had been one of that county convicted and executed for a rape in that county, before some other judges about three assizes before, and I suppose very justly ; some malicious people seeing how easy it was to make out such an accusation, and how difficult it was for the party accused to clear himself, furnished the two assizes following with many indictments of rapes, wherein the parties accused, with some difficulty escaped.

“At the second assizes following, there was an antient wealthy man of about sixty-three years old indicted for a rape, which was fully sworn against him by a young girl of fourteen years old, and a concurrent testimony of her mother and father, and some other relations. The an-

cient man, when he came to his defence, alledged that it was true the fact was sworn, and it was not possible for him to produce witnesses to the negative; but yet, he said, his very age carried a great presumption that he could not be guilty of that crime; but yet he had one circumstance more, that he believed would satisfy the court and the jury, that he neither was, nor could be guilty—and being demanded what that was, he said, he had for above seven years last past, been afflicted with a hideous and great rupture.—[*The indelicacy of the remaining part of this paragraph, constrains us to omit it.*]—The prisoner was acquitted.

“Again, at Northampton assizes, before one of my brother justices, upon the *Nisi prius*, a man was indicted for the rape of two young girls, not above fourteen years old, the younger somewhat less, and the rapes fully proved, though peremptorily denied by the prisoner; he was therefore to the satisfaction of the judge and jury, convicted; but before judgment, it was most apparently discovered, that it was but a malicious contrivance, and the party innocent; he was therefore reprimanded before judgment.

“I only mention these instances, that we may be the more cautious upon trials of offences of this nature, wherein the court and jury may with so much ease be imposed upon without great care and vigilance; the heinousness of the offence many times transporting the judge and jury with so much indignation, that they are over hastily carried to the conviction of the person accused thereof, by the confident testimony sometimes of malicious and false witnesses.”

I shall also read to you, gentlemen, a short extract from Blackstone's Commentaries, on the same subject, vol. 4, page 213.

“As to the material facts requisite to be given in evidence, and proved upon an indictment of rape, they are of such a nature, that though necessary to be known and settled, for the conviction of the guilty and preservation of the innocent, and therefore ought to be found in such criminal treatises as discourse of these matters in detail, yet they are highly improper to be publicly discussed, except only in a court of justice. I shall therefore merely add upon this head a few remarks from Sir Matthew Hale, with regard to the competency and credibility of witnesses; which may, *salvo pudore*, be considered.

And, first, the party ravished may give evidence upon oath, and is in law a competent witness; but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury upon the circumstances of fact that concur in that testimony. For instance; if the witness be of good fame; if she presently discovered the offence and made search for the offender; if the party accused fled for it; these and the like are concurring circumstances which give greater probability to her evidence. But, on the other side, if she be of ill fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had an opportunity to complain; if the place, where the fact was alleged to be committed, was where it was possible she might have been heard, and she made no outcry; these, and the like circumstances carry a strong, but not conclusive, presumption that her testimony is false or feigned.”

After producing such substantial evidence from the wri

things of the dead, I shall now appeal to the works of the living ; therefore, I beg leave to read to you, on this subject, a passage of M'Nally's Rules of evidence, vol. 1, page 2 :—

“ It may also at this day be considered a rule of law, that if a jury entertain a reasonable *doubt* upon the truth of the testimony of witnesses, given upon the issue, they are sworn well and truly to try, they are bound in conscience to deliver the prisoner from the charge found against him in the indictment, by giving a verdict of not guilty.

“ Sir Edward Coke, *in favorem vite*, exhorts juries not to give their verdict against a prisoner, without plain, direct, and manifest proof of his guilt, which implies, that where there is doubt, the consequence should be acquittal of the party on trial.

“ This reasonable doubt may result from various causes, intrinsic of the evidence given upon oath ; for a witness may be perfectly competent and swear positively to a charge, material to the issue trying, and yet not deserve credit from the jury.

“ The infamy of his character, drawn from himself, upon a cross-examination, or given in evidence against him by other witnesses ; his interest in the event of the prosecution ; an apparent influence on his mind ; and various other circumstances, may render him unworthy of credit even on his oath.

So the credit of a witness may be materially affected, or totally destroyed, by his manner of giving evidence. Resentment or partiality, when prevalent, are apt to shew themselves in the voice and countenance of a witness, and, when they do, they are circumstances which must impress suspicion upon the mind of a jury. So it often happens, that a witness destroys the credit of his testimony, by inconsistency, by prevarication, by the manner of his representing facts, and often by obtruding his own sentiments and opinions ; sometimes by an excess of warmth, sometimes by a solicitous reserve, and often by an affectation of candour. In all these, and similar cases, his credibility is, at least questionable ; and, unless his testimony be supported by clear and unsuspicious collateral proof of the facts charged on the prisoner by the indictment, *doubt* must arise in the minds of the jurors ; and, by the humanity of the law, where doubt is created, an acquittal ought to be the consequence.

“ Therefore, wherever the evidence warrants the observation, the judges consider it an indispensable duty in charging the jury, to remind them, that as they are intrusted with the administration of public justice on the one hand, and with the life, the honour, and the property of the prisoner on the other, their duty calls on them, before they pronounce a verdict of condemnation, to ask themselves whether they are satisfied, beyond the probability of doubt, that he is guilty of the charge alleged against him in the indictment.

“ And this shews, that evidence does not consist in merely the swearing to facts—but in the proof of facts, by witnesses of undoubted credit.”

From what I have already read, you must have perceived, that a rape, in the language of the authors quoted,

is easily to be made, difficult to be proved, but still more difficult to be disproved. You have already perceived in the course of the testimony produced, that Dr. Fay is a perjured man. I have drawn from his wife and himself testimony, sufficient to prove him a villain. I think that in the course of her cross-examination, Mrs. Fay does not appear in a much better light. You have seen a great deal of stage-trick made use of on this occasion. The virtuous lady has acted the part of a weeping Melpomene! On our side we have been threatened as conspirators! Before my God and country, I solemnly declare that the charge is false—is infamous, and in the course of the testimony, which I shall produce, in behalf of the prisoner at the bar, I trust, I shall prove, to your satisfaction, that he is not only innocent of the alledged crime, but that his conduct toward the woman has been meritorious, honorable, and praise-worthy. I am well aware of the prejudices raised against him. The Court, the Jury, and the World, must, from our common feelings and our common nature, be prejudiced in favour of a helpless female. We have therefore to resist these prejudices, and convince you, gentlemen, that our client is innocent of the charge alledged against him—we shall produce you testimony sufficient to convince you of the infamy of the character of the wife and husband. I shall not remark on the nature of the testimony which they have produced; convinced that you must be sensible that I have already drawn evidence of perjury from their lips, in the course of the cross-examination. I shall therefore proceed to furnish testimony, not only to disprove what has been said in behalf of Mrs. Fay, but also to establish the purity, the innocence, and the integrity of my client. While I do so, I beg leave to recommend to you, not only to dismiss your prejudices in favor of the female character, but also to recollect the saying of the greatest man that ever lived in any age, that ornament of the British bar, Sir Matthew Hale, which is left by him on record, namely, “that the charge of a rape, is easily made, hard to prove, but still harder to contradict.”

Testimony on behalf of the Prisoner.

Catharine Cutsholk, sworn,

And relates—that she lived in Dr. Fay's house, as ser-

want, either one month and three days, or two months and three days.

Q Did you suppose that Fay and his wife lived happily together

A Yes, I did ; except a certain circumstance which occurred during my stay in their house

Q What was that circumstance

A I understood that Dr. Fay became jealous of his wife, on account of a letter which was delivered to her

Q Who was the author of that letter

A I judged that it was Mr. Fisher

Q Why ?

A Because he was intimate in the family

Q Did you perceive any thing improper between Mr. Fisher and Mrs. Fay

A I thought I did—Mr. Fisher kept a bonnet-store in front of the same house. Mrs Fay was fond of singing and dancing, and frequently did so in the presence of Mr. Fisher

Q Was Fisher and Mrs. Fay ever closetted together

A Yes—One day he was called up stairs by Mrs. Fay : curiosity prompted me to go up : I found the bed-room door locked : looked through the key-hole, but could not perceive them, although I saw the curtains at the foot of the bed

Q So you clearly perceived the foot of the bed, from the key-hole

A I did—The bed stood in the front room in the second story, and, looking through the key-hole, I saw the foot of it ; but know nothing about Fisher's connexion with Mrs. Fay

Q. In what position was the bed at that time placed

A. It stood with the foot toward the window, and the head toward the closet—there was only sufficient distance between the door and it to contain a chair—I could perceive only the curtains at the foot of the bed through the key-hole of the door.

Q Did Mrs. Fay correspond with Mr. Fisher

A The day Mr. Fisher was going to New-England, Mrs. Fay wrote a letter : I was scrubbing the stairs : her husband came in ; she folded it up ; pushed it down my back,

and charged me not to reveal it to her husband. Afterwards she took it out and came down into the kitchen, sealed it with a piece of sealing wax, and finally I saw her deliver the letter to Mr. Fisher with her own hand

Q Did she dance before the prisoner at the bar

A. I have seen her do so

Q Did you see her do so with her petticoats above her knees.

A I did—She danced in the kitchen in Wakely's presence, and pulled up her clothes above her knees.

Agnes White, sworn.

She states—that she now lives at Mrs. Ash's in John-street, but lived with Mrs. Fay, for 2 months and 3 days : heard her frequently complain of her husband's cruelty, and often heard her commend Mr. Fisher, who frequently supplied her with money. Wakely was a boarder in the house at the time, she also spoke well of him, she frequently went out with Mr. Fisher of an evening.

Q Did Mr. Fisher and Mrs. Fay often go out together

A Yes, they often did—for three evenings successively, before he went to the eastward, they went out

Q In order to go with him, did she jump over into Mr. Lorrilard's yard ?

A Yes, she did

Q Do you say that Mrs. Fay did so ?

A Yes—I did not see her, because I was down stairs in the kitchen, but the little boy, pointing to a bench which stood on the top of the cistern, said that Mrs. Fay had leaped over the fence, from the bench, and gone out to the street.

Q Did you ever see Mr. Fisher take improper liberties with her ?

A I have seen him kiss her, and they also one day went up stairs, and were locked in the bed-room together.

Mr. Thomas T. White was then introduced, and sworn.

Q Do you know Dorcas Groves ?

A Yes, I do : she was my slave ; I had her from my wife's family—she is a most atrocious character—every thing that is infamous is peculiar to her ; I would not believe her word, neither would I believe her oath, because I know her to be a very bad hussey.

Agnes White was again called, and cross-examined.

Q Who is your father ?

A He is a moulder, and lives in Canal-street ; I lived 6 or 7 weeks with Mrs. Fay, but went home every night to my parent's house—saw her dance one day in the kitchen, before Mr. Wakely, with her petticoats raised above her knees—she asked witness whether Wakely was not a proper man for * * * * *—saw Mr. Sinclair and Charles Tooker often at the house—Mrs. Fay said Sinclair was jealous of her, on account of her intimacy with Mr. Wakely.

[Here, in justice to the public, we think proper to apologise for not inserting two particular questions, which were asked the witness, relating to the menses.]

Witness saw Wakely come into the kitchen; while Mrs. Fay was cooking a beef-steak, and bending over the fire, he put his hand under her cloathes—was then standing by the table, and perceived it distinctly.

Q Have you been to see Wakely while he was in jail ?

A I have been there three different times.

Q Who went with you ?

A Eliza Wigton

Q Did Miss Cutsholk inform you that she read a letter of Mrs. Fay's, addressed to Mr. Fisher, in which it was said that she would leave her cuckold of a husband, and go with him ?

A Yes, she did say so

Q Why did you leave Mrs. Fay ?

A Because she had no further employment for me—we never quarrelled—I thought her a very imprudent woman.

Question by Mr. Riker.

Q Do you know Mrs. Fay to be a very industrious woman ?

A Yes, I thought her so.

It being now half past ten o'clock, the Court adjourned till the next morning, and the Jury, in the custody of six marshals repaired to the City-Hotel.

*Proceedings of Tuesday the 20th.
David G. Castro, sworn.*

Q. Where do you live ?

A In Chatham street, next door to the house occupied by Dr. Fay

Q Can you hear any noise in your house from that of Dr. Fay ?

A Yes, I can ; I can hear the piano forte played; and sometimes when they have been playing cards, I have heard them say, " I have bet you."

Q Do you go early to bed ?

A Seldom or ever before eleven, or half past eleven o'clock, because after shutting up my store I post up my books in my parlour.

Q Are you frequently out in the evening

A No, never after eight o'clock

John S. Taylor, sworn.

He relates that Dr. Fay and Mr. Wakely came into his house on the twelfth of December, and called for liquor, of which they drank ; that Dr. Fay borrowed some money from Mr. Wakely while in the store, in order to pay off an account which Taylor had against him. Mr. Wakely sent for wine the same evening, which was charged to his account. Mr. Wakely lived at Fay's from the fifth to about the eighteenth of December.

Mr. John Gilbert was then sworn.

He relates that he had a capias against Dr. Fay, and the Dr. offered Mr. Wakely as bail, which he refused, because Mr. Wakely was not a house-keeper ; thinks that this happened about the middle of November last.

Mrs. Eliza Goodlad, sworn.

Says, that in October last she arrived from England, and expected to have met her father, who is a clergyman, on her arrival, she requested Mr. Hall to look out for rooms, and went to board at Mr. Willis's ; they had letters for Dr. Bennet, and a box of china consigned to him, which was in their possession. In November, they were solicited to go and board at Dr. Fay's ; entertained a very favorable opinion of Mrs. Fay, but had soon reason to change it, for the very first day after I went there, she put into my hands a book, containing obscene cuts : my husband and Dr. Fay were absent, and on their return, she snatched up

the book, and concealed it, remarking in a jocular manner, to Mr. Goodlad, that she had been teaching his wife Geography. Next morning asked how her husband had treated her in the night, in a coarse and indelicate manner, and how many times he had done it, and said the doctor did it only every other night. Mr. Wakely came in at this time, and Mrs. Fay, whispering, commended him, and asked her if she did not think he was capable of performing family duty, and if she would not like to try him; witness denied being unchaste to her husband, on which she said, you do not know the virtue of it, one bit from a strange man, is worth five from your husband; called Mr. Fisher a nice man—you are poor, if you will go into my room, I will send him up, and he will make you a handsome present—if you will go with me, I will take you to some of the first houses, you may get twelve dollars, and if you catch the venereal, I can prevent its communication to your husband—said if she had as many dollars as she had known men, she might ride in her carriage—after dinner, she called Mr. Wakely up stairs—curiosity led me to follow—I found the bedroom door locked, and looking through the key hole, perceived Mrs. Fay and Wakely in bed—afterwards they came down, and Mrs. Fay danced, while Mr. Goodlad played the flute—perceived she took great liberties with my husband; she also told me that the doctor had used her very ill, and shewed bruises on her legs and arms; I became jealous of my husband and Mrs. Fay, and proposed to leave the house, and take lodgings with Dr. Kass, but my husband would not agree to go with me; I left the house on Saturday, and my husband remained until Tuesday—on Wednesday called for my clothes, and Mrs. Fay then told her that she had had connexion with her husband.

Cross-examined by Mr. Griffen.

Q When did you leave England?

A In the month of August last

Q Have you any children?

A I have not; was only married on the 16th of May last.—[*she then produced her marriage certificate before the Court.*]

Q Did you ever state that you had children of your own

A I never did

Q How long was you in Mrs. Fay's house before the Geography scene took place

A It was about one hour after my coming there—she told me she was an experienced midwife, and said she would give me lessons

Q Was your husband confined in jail

A Yes, he was

Q Did he attempt to put an end to his existence?

A He did

Q What was the cause?

A He was in despair, disappointment in life had rendered him desperate

Q Did you ever see Mr. Sinclair at Dr. Fay's

A I frequently saw him there

Q Did Mrs. Fay ever take any improper liberties with him in your presence

A One day she held up her mouth to kiss him

Q Do you know what time of the day it was when the bed scene took place

A I do not recollect

Q. Where was the bed situated in the room.

A. They had been that day washing the room and windows; the curtains were thrown up above; the head of the bed stood nearly close to the middle window in front, and the foot toward the back part of the room. I could perceive the parties in bed, through the key hole.

Q Did Mr. Willis turn you out of doors

A No, he did not

Q Did you live at Mrs. Van Allen's?

A We boarded there

Q Was your husband put in jail by Mrs. Van Allen

A Yes

Q Did you report what Ann Cutsholk and Agnes White said about Mrs. Fay

A I did tell what they related to me.—[*Here the witness produced a letter from Dr. Bennet, who lives in Connecticut, which was read in Court, on which Mr. Sampson observed, that it was a plain tale, representing no forgeries, and related to no fine horses.*]

Q Was your husband sued by Dr. Fay for defamation of character?

A I heard that a writ was issued against him by Dr.

Fay, for \$ 10,000 but never taken on it. Dr. Fay kept a box of china, and part of our cloathes, and turned us out of the house, destitute of resources.

Robert Swanton, Esq. was then sworn.

He relates, that some time in November, Mrs. Goodlad called on him—represented her distresses, on account of her husband being detained from her at Dr. Fay's—imputed his behaviour to her to have originated from Mrs. Fay's conduct.

Mr. Morrell, sworn.

He states, that on the 28th of November he commenced a suit against Dr. Fay, by the direction of Goodlad, that both the husband and wife called on him, and related their grievances; stated that Dr. Fay refused to give up their property—Mrs. Goodlad said that Mrs. Fay stated that she was a fool for being so poor, when she could go out, and earn her ten dollars a-night.

Peter J. Munro, Esq. was next sworn,

Stated that about the 23 of December, Mrs Goodlad called at his office, told her story and said that Wakely and Mrs Fay had been too intimate, I told her that as Mr. Morrell, had commenced the suit, I should act the part of counsel on the trial of her husband against Dr. Fay

Mrs Goodlad was again called

Q Is your husband's family respectable in England

A They are so, his father is a gentleman of independent fortune

Q did you bring no letters of introduction to this city

A we did not, because my husband intended, some time before he left England, to have emigrated to Americ, and his father wrote letters to Col. Troup, requesting him to aid and assist Mr. Goodlad on his arrival here.

Q. Has Col. Troup given him any assistance?

A. No, he has not: we called on Col. Troup, but as we had no letters to him, he declined patronizing my husband

[It was then proposed that three or four of the counsel should go and view the situation of Doctor Fay's house, and examine the key hole and see if the bed could be seen, in the positions in which it was said to be placed by Catharine Cutsholk and Mrs. Goodlad. On their return, they all agreed that the bed located in the room as stated by Catharine Cutsholk and Mrs. Goodlad, could not be perceived by looking

through the key hole. Mr. Griffen then moved that the jury be sent to view the premises, to which the court agreed. On their return, Mr. Sampson volunteered his evidence respecting the affair, and endeavoured to convince the jury from the marks of violence which were perceptible on the lock, that its position might have been materially changed—he went into a full explanation of the principles of perspective and the doctrine of propositions, and showed the possibility of the bed being perceptible by changing the situation of the lock.]

Thomas Goodlad, sworn.

He fully corroborates his wife's statement concerning their arrival here, and living in various boarding-houses, from the time he went to board at Dr. Fay's—he looked upon the house as little better than a brothel—from Mrs. Fay's favours, he was induced to quarrel with his wife.

Q Your wife left the house before you

A Yes, she did, and on the Monday following, when I proposed to visit her lodgings, Mrs Fay requested me not to go, as I could have any thing I wanted, from her.

Q Had you any connexion with Mrs. Fay.

[To this question the witness refused answering, unless he obtained a release from the Doctor, which was instantly given by him.]

A I had—After some dalliance, she invited me up stairs into my own bed-room, * * * * *

Cross-examined by Mr. Griffen.

Q Did Dr. Fay ever loan you any money

A Yes; he lent me eight dollars to pay the custom-house duties on a box of china

Q Did you execute a bill of sale of all your property to Dr. Fay.

A I did, in order to secure him for the money which he advanced

Q Was it not to cheat your wife out of the miserable pittance, which you had along with you in a foreign country.

A I was afraid that she might dispose of the property

Q When did Mrs. Fay commence her plan of seduction against you

A On Thursday; but I had nothing to do with her, except on the Monday following

Q Did you attempt to take your own life, while in prison

A I did, in consequence of being in despair, and drinking three half-pints of gin

Q How did you get out of jail

A I took the benefit of the 200 pound act, and Mr. Wakely endorsed my note to Mr. Morrell for the costs of suit.

Q Did you not say that you was rich, to Mr. Willis?

A I do not recollect that *I* did

Q Have you given up your suit, against Fay, to Wakely

A Yes—I have made it over to him, as security for his endorsement.

Q Was the box of china your own?

A No—Dr. Bennett's brother sent it to him under my care, and on its delivery, *I* was to receive ten pounds.

Q Do you not think you was was a villain to part with property which did not belong to you?

A *I* considered it my own.

Q Where do you now board?

A At 149 Church-street.

William Sinclair, sworn.

Became acquainted with the Fay's in the early part of last September. Mrs. Fay, before three weeks acquaintance, kissed the witness, while singing a song with her—forced upon him the vanity to believe that she entertained a strong personal affection for him—assured him she did not love the doctor, that he treated her very ill, would come to bed with his boots on, &c.—that a Mr. M'Guire arrived about this time from Boston; that in the course of the same week of his arrival, M'Guire, the Doctor, Mrs. Fay, and witness, having set up very late playing cards, the witness staid at the doctor's, and slept with M'Guire—remained in bed in the morning after M'Guire had risen, and at about eleven o'clock, the doctor and M'Guire having gone out, Mrs. Fay came up stairs—after some little time, threw herself upon the bed—the Court would draw their own inferences, as the witness could not bend his feelings to accept any release from the doctor, as the last witness had done, nor needed any. Witness soon had his feelings piqued, for the same attentions he had received from Mrs. Fay, he saw, after two or three days' acquaintance, paid to M'Guire—saw Mrs. Fay kiss M'Guire—saw M'Guire put his hand on her bosom, &c.—displeased at such jilting, he

endeavoured to vex *M'Guire*, by taking similar liberties, on which *M'Guire* observed, with much sang-froid, "I'm not jealous, sir." *M'Guire* has since boasted in Baltimore, of having had connexion with *Mrs. Fay*, as may be proved by two respectable gentlemen now in court, *Mr. Bush*, and *Capt. Merk*. On *Wakely's* going to board at *Fay's*, soon suspected, and learnt, that *Wakely* also had become a favorite. From that time, astonished at such conduct on the part of *Mrs. Fay*, witness made his visits less frequent, and gradually left off going to their house—Witness had been a standing joke at his boarding-house, in consequence of *Mrs. Fay's* so frequently sending for him, as might be proved by a very respectable gentleman, *Dr. Burns*, then in Court—had always been strongly suspected by most of his friends, of being a particular favourite of *Mrs. Fay's*—had been constantly jeered and joked by them—particularly remembers, long before the alleged rape, that on mentioning to a highly respectable young gentleman, *Mr. John Smith*, and *Mr. Peter Dempsey*, clerk to *Thomas Smith, Esq.* the clerk in chancery, that witness had heard a report of *Dr. Fay's* having got a writ for 10,000 dollars against *Goodlad*, for defaming *Mrs. Fay's* character—the report naturally led to a conversation about *Mrs. Fay*—that they joked the witness as usual, and *no doubt* must have imbibed the same impressions, as the court must have done, from the narration the witness had given.—*Mr. Dempsey* was in court, and might corroborate this statement—Witness gave to the Court the names of gentlemen who might corroborate any part of his testimony as a malicious report had been industriously spread, that a combination had been formed to screen the prisoner from justice, at the head of which they had placed the witness—(On being questioned by *Mr. Munro*, as to a knowledge of a particular mole on *Mrs. Fay*—replied in the affirmative.) Related that *Mrs. Fay* had often mentioned, what the witness thought malign traits in the Doctor's character—that of his frequently getting up in the midst of night, and in darkness, sitting hours by himself. Witness stated that the Doctor would often talk of a dagger, extending his hand out, as if in the possession of one, and with dark, malevolent, energy of gesture and expression, would exclaim, "I have a dagger for some damned villain."—

Witness had seen Mrs. Fay once since Wakely's arrest, before the commencement of the criminal prosecution—in the course of the conversation, she observed, Wakely had better *make it up*. That the witness was *soul* impelled, by the self and collective knowledge he possessed of the characters of Mrs. Fay and her husband, to appear and confess the moral impropriety of his conduct, to save the prisoner from this outrageous prosecution—felt sorry for the degradation of Mrs. Fay—but he sacrificed his feelings to his duty—to humanity.

Cross-examined by Mr. Griffin and the Attorney-General.

Q How long have you resided in this country

A Since the beginning of September last

Q Who is Mr. Wakely?

A An Englishman, and a farmer—he arrived in America I believe in June last

Q How did you become acquainted with him

A Till he went to Fay's we boarded in the same house

Q Were you not his gambling companion

A No—but I have frequently played billiards with him.

Q Were you not his whoring companion?

A No, never—but I went with him at his request to play a game at whist, without being aware where I was going—did not stay—nor did we play. Once waited for him some little time at another place, where he promised to call—Never stayed in any house with him.

Q Well then since your arrival you have been generally occupied playing billiards?

A No such thing; I have employed most of my time in Mr. Thomas Smith's office, without receiving any emolument—without expecting to receive any—for my own pleasure and employ.

Q Has not Wakely paid your board while you have been acquainted with him?

A The insinuation is false—I have always paid my own—If he had, my pride should be sacrificed to the sacred obligations of an oath.

Q How have you lived since your arrival, not being in business

A From my private funds.—[Here the witness tendered a detail of himself; but the Attorney-General stated, he

wished specific answers to his queries, as he thought it necessary to examine in the closest possible manner—On which, the Recorder remarked, that he had a right to do so ; but the witness had also a right to answer in the fullest possible manner.]

Q Did you not go with your companion Charles Tooker, on the night of the eighteenth of December, to the house of Dr. Fay.

A. He is not my companion ; nor did I go with him—I learned on returning home, about eleven o'clock, that he had been particularly enquiring for me—that he was just gone to Dr. Fay's—I followed him to prevent any thing rash, and in the hope of collecting some information respecting Mr. Wakely, whom at that time I had not seen since his arrest. I found Tooker waiting up stairs for the Dr. who was in the adjoining bed room. I requested him, finding Fay was not up, to come away ; but he refused. While I was yet requesting, and he still refusing, Fay came in, with only a great coat over him. Tooker enquired if it were true, what he had heard about Wakely ; the Doctor gave an evasive answer ; on which Tooker abused him. Fay immediately made a plunge at Tooker : I parried the blow ; and in fact succeeded in getting Tooker out of the room ; but as he approached the head of the stairs, the Doctor rushed by me ; attempted to force Tooker down the stairs—a scuffle ensued : Tooker pulled him hard by the nose ; Fay called out for me ; at the moment, I was looking for my hat ; but before I could get to them, they had tumbled together down the stairs : I called and earnestly implored them to desist ; they did desist after a few seconds. Tooker went away, and I followed out after him. I therefore had no hand in the squabble, nor ever had any personal animosity to the Doctor.

Q. Well then, you went with Charles Tooker.

A. No, I did not go with any one, I followed another.

Q. Well then, the Doctor was knocked up, you heard the loud knocking.

A. How could I have heard knocking—I stated he was in some time before me.

Q. Well then, the doctor came down stairs.

A. No, he did not come down, he came in : I mentioned before, the rooms were adjoining.

Q. Did you not think the disclosing of Mrs. Fay's infidelity, if it should reach his ears, would harrow up the feelings of her husband.

A. No—indeed, I did not.

Q. Do you know where the Goodlad's live at present.

A. No, I do not.

[Some other questions were put by Mr. Griffin, to this witness—but the Recorder observed it only appeared to be a trial of skill between them—and that they were not particularly relevant.]

Mr. Andrew Smith, sworn.

He says, that he boarded several months in Dr. Fay's family, previous to the beginning of December last—that Wakely also boarded in the house; and gives Mrs. Fay an excellent character, both as a wife, and as a modest and industrious woman—has seen Mr. Sinclair there frequently, but never saw any thing indecent or immodest in Mrs. Fay's conduct. He left the house about the 3rd of December, and as Dr. Fay owed him money, purchased half of a box of china from him, for twenty dollars. As the box contained a complete set, was induced some days after to purchase the remainder. Boarded in the house more than three months, and thinks that he cannot be mistaken respecting the excellence of Mrs. Fay's character—knows Mr. and Mrs. Goodlad, and considers them both to be base and unprincipled people. Their conduct while at Dr. Fay's, induced him to form this opinion, which he has had no proof to induce him to alter since that time.

Mrs. Sarah Test, sworn.

Says, that she is housekeeper to Bishop Prevoost, and has been acquainted with Mrs. Fay ever since her arrival in this city, which will be two years next May—that she rented the store in front of Dr. Fay's for a milliner's shop, and on Mrs. Fay's commencing house-keeping, boarded there for three months—since she left Chatham-street, has been intimate with Mrs. Fay, and visited her at all times of the day—knows her to be a modest, industrious, and domestic woman, and considers her an excellent character—often advised her not to work so hard, as she was often without a servant. One of the Jury asked the witness if she knew how Mrs. Fay used to garter her stockings, to which she replied, that she gartered them below the knee.

On Mrs. Test's evidence being finished—Mr. Munro solemnly asked her—madam, I have a more important question than any that has yet been put to you—Pray how does Bishop Prevoost?—*A laugh!*

Mr. Jonathan Fay, sworn.

Relates, that he has been acquainted with Dr. Fay for two years. On his arrival in New-York, he introduced himself as his relation. They are second cousins—boarded in his house, and commenced the practice of physic. After he had got some employment, he sent for his wife, of whom he always spoke with affection, and from all that he ever saw, considers Mrs. Fay a good housewife, and a virtuous woman—never heard of any quarrel between the husband and Mrs. Fay, except that the doctor once called on him, and expressed his jealousy of her, in an impassioned manner, and said something about a letter, and a lock of hair; he treated the matter lightly, and endeavoured to laugh him out of his puerile jealousy.

[Adjourned till to-morrow at 10 o'clock.]

Proceedings of Wednesday, the 21st.

Mr. John Willis, sworn.

States, that Goodlad and his wife boarded about a week at his house—that she pretended to be pregnant, and staid almost constantly in her room, and that he seldom saw her. They pretended to be people of property, but left my house clandestinely—did not say to what lodgings they were about to remove to, but Mr. Goodlad returned two days after, and gave me his note for the amount due by them, and spoke about a box of china which he had for sale—has never yet paid it. He then told me that his wife had abused Mrs. Fay, in consequence of which she had turned her out of doors.

Mr. John B. Poles, sworn.

Says, he is Dr. Fay's neighbour, and believes Mrs. Fay to be a good and virtuous woman. The doctor told him that some person was his enemy, and wished to destroy

him ; and said, in consequence of this, he carried a dagger, which he saw.

Stephen Price, Esq. sworn,

And proved, Mrs. C. Goble to be an excellent character—she had formerly been his nurse.

Mr. Robert M' Mennomy, sworn.

Says he never saw Mrs. Fay but once. It was on the 4th of December, that he called at Dr. Fay's, on business, and that Mrs. Fay conducted herself with great propriety.

Mrs. Mary Van Allen, sworn.

Keeps a boarding house. Goodlad and his wife boarded with her upwards of a month—they frequently disagreed, and the husband on these occasions would often say that she was at her old tricks. Their conversation was often indelicate, and offensive to the ear of modesty ; but never saw any thing in her conduct to justify an opinion that she was a harlot, and imputed their quarrels to jealousy, and their poverty, for they had no money, and could not keep them any longer on that account. Heard Mrs. Goodlad say she had one child, and had been likely for five. Heard several people say Mrs. Goodlad was a bad woman.

Cadwallader D. Colden, Esq. sworn.

Gave Miss Test an excellent character, as a woman of virtue and veracity.

Mrs. Frances Durell, sworn.

Testifies, that for 18 months, she has been intimate with Mrs. Fay—frequently called at her house at all times of the day, and never observed any thing in her conduct that appeared like levity of manners. Considers her a much abused woman, and one who has, since the term of their acquaintance, acted the part of an industrious, domestic, virtuous, housewife. Indeed, she was not only plain in her dress and manners, but often injured her health, by doing the hard work of the family, as she was often without a servant.

Mrs. Rebecca Fay was again examined.

Stated, that she was only twenty-three years of age—was born at Lexington, and when an infant, her father removed to Bedford, in the state of Massachusetts, and generally resided in his family, until her marriage, except the

time that she was at a Boarding-school, and visiting her brother at Bolton. After marriage, kept house several years—broke up house-keeping, in consequence of her husband's arrest, and returned to Bedford, about twenty-five miles distant, and there constantly resided during the time of the separation between her husband and herself, except paying once or twice short visits to her friends and relations at Boston, Bolton, and the neighbourhood, but never resided at New-Haven, and never saw Hartford—was never there in her life—neither did she ever see or know any thing about a Mrs. Pope, and a Mrs. Raymond, nor did she ever live in the same house with them at Hartford.—[*Here Mrs. Fay's child was introduced, a boy of four years old, which she said had been constantly with her in all her journeyings, and that until she left Massachusetts, to come to New-York, she had never been 40 miles from her father, who is a farmer, in the town of Bedford.*

Aimy Nielson, a coloured woman, sworn and examined.

[*The extraordinary nature of Aimy's testimony, excited a very great degree of sensation among the friends and relatives of the persons concerned in the prosecution, as well as among the numerous spectators, for the Court was crowded every day during the trial. The substance of her testimony is as follows.*]

Q. Did you ever live in Hartford or New-Haven.

A Yes: in both. I lived with Mr. Imlay, who was loan-officer at Hartford, for four years, and took care of his children.

Q Did you ever see Dr. Fay and his wife there

A Yes: they lived in a white house, next door to Mr. Imlay's, along with a Miss Raymond and Miss Pope: the house belonged to Mr. Imlay.

Q Do you perfectly recollect that they resided at Hartford?

A Yes, I do: I was frequently in the house, while they were there, as I had the care of the children: but they only staid about three weeks.

Here she was confronted with Mrs. Fay, whom she recognized: she was also requested to point out Dr. Fay, who was then out of Court; when he came in, she immediately designated him, and further related, "that the house was re-

puted one of bad fame—that it was in the Spring when they resided there, about the month of April, and is nearly three years ago—that Mr. Pope hired the house of Mr. Imlay some time before, but did not take possession of it until the month of April, when Dr. Fay, his wife, Miss Raymond, and Miss Pope all moved in at the same time—that after three week's residence, they eloped in the night, and were said to have gone to New-York—that they were all prostitutes; and, before they went away, heard Miss Raymond advise them to go to New-York, saying, that they could do much better there—that she has seen Miss Raymond and Miss Pope in the street, but no where else since her coming here—that she also saw Dr. Fay and his wife once at their house in New-York, where she went to get a tooth extracted and knew them both, from their living in Hartford—that this happened a year ago last fall—that she knows this because Ralph Isaacs, who she says is her father, was in New-York at the time—that she is his natural child and goes by her mother's name—that the report was at Hartford, that the cause of their leaving it so suddenly was, that the ladies had taken up goods in another person's name, from Mr. Galladet—that she heard him tell her master so, and they went away during the succeeding night—that she also heard Mr. Wadsworth tell Mr. Imlay that Dr. Fay was a forger—that she knew Mr. Pope very well—he was a journeyman coach-maker, and his wife proved to be a light woman."

When cross-examined, she appeared to be very much confused respecting dates, on which the counsel summed up her history, and the time where she had lived since that period, and made it about four years since she left Hartford. Her account is, that her master, Mr. Imlay, died five weeks after Dr. Fay and the ladies eloped—she left Hartford immediately afterwards, and came to Butler's at New-Haven, and resided there two years—that she has lived one year with Mrs. Saltonstall in New-York—went to the southward, four months, with a family—lived in Orange-street, several months, and was supported by a Frenchman, of the name of Frinckman—finally they quarrelled, and she went out to service—has lived 3 months with John A. Graham, esq.—[From her incorrectness respecting dates, notwithstanding that she related her story very circumstantially, great doubt was excited by her testi-

mony.]—Mr. De Castro was called forward to prove that she had lived at New-Haven with Mr. Butler, two or three years ago, and recognized her fully. It was also proved by the lady of the family where she now resides, that the witness only knew of the trial by accident, a few days previous to her being called on, as a witness; and related to her, at the time, the story of Dr. and Mrs. Fay living in Hartford—in consequence of which, Col. G. heard of it—mentioned it to Mr. Wilson, one of the prisoner's counsel, who had subpœnaed her only the evening before, but had little or no opportunity to examine the amount of her testimony or to what it would tend.

Dr. Proudfit, sworn.

Stated, that at the request of Mr. Wilson, one of the prisoner's counsel, he visited Mr. Wakely, who was confined in the debtor's prison, on the 19th of December last. That he appeared surprised at the witness telling him, that the object of his visit was to examine him——We went into a private room, and he submitted to my examination. After a mature investigation of the subject, and remaining with the prisoner about twenty minutes—after carefully inspecting his linen, which appeared to have been worn some time; and taking every possible precaution against concealment: I pronounced him perfectly free from gonorrhœa, or any symptoms attending the disease—(here the Doctor entered into a dissertation respecting the nature, the symptoms, and the cause of the disease)—and gave it as his decided opinion, that a man of Wakely's habits could not have communicated it to Mrs. Fay only a fortnight before, and be at the time of the examination he underwent, perfectly cured of the complaint. During the course of his observation and practice, he had sometimes seen very slight cases cured in a very few days, but it generally took, in common cases, about three weeks to effect a cure, and in many instances it required a much longer time. He was therefore of opinion, that although it was within the circle of possibilities, it was by no means probable that Mr. Wakely had the complaint on the 5th of December last, and that he had communicated the same to Mrs. Fay.

(To prove the old saying true, that Doctors will differ,)

Dr. Walker was then sworn.

Stated, that it was impossible for a physician to discover whether a person laboring under an ordinary contagious gonorrhœa, was infected or not, provided the person so affected had a disposition to conceal it : that he could avoid detection by passing urine immediately preceding the time of examination, and by denying that he had any symptoms peculiar to that disease, and that a cure was generally effected in 7 or 14 days.

Dr. Bullus called and sworn.

The object of calling Dr. Bullus, the Navy agent, was to prove the hand-writing of Gen. Dearborne, Secretary at War; which he did. This letter was an answer to one which Dr. Fay had written, and of which a copy was produced in Court, soliciting a surgeon-mate's birth, in the army or navy. The copy was dated in Philadelphia in the month of February, 1807, and the answer was addressed to Dr. Cyrus Fay, Philadelphia, dated at the city of Washington in the month of April following. The intention of producing these letters was to disprove that the Dr. resided at Hartford, in April, as asserted by Aimy Nielson, the colored woman, whose testimony has been given in the preceding pages.

On Dr. Fay's being questioned,

He asserted, that he passed through Hartford in the stage, but only stopped to dine, while on his journey to attend the medical lectures of Drs. Barton and Rush, at Philadelphia, and that he was never there before nor since—that he boarded while in Philadelphia at Mrs. Gideon's, in Cherry street; on leaving Philadelphia, he came to Bordentown, N. J. and taught a young ladies' academy there, and from thence he came to New-York, and commenced practice, and has resided here ever since.

Jonathan Burrell, Esq. sworn.

The reason that Mr. Burrell was called as an evidence on this occasion, was to ascertain the period when Mr. Im-lay, late loan-officer at Hartford, died; in order that Aimy Neilson's evidence might either be corroborated or invalidated.

Mr. Burrell stated, that the U. S. Branch Bank had honored drafts of Mr. Imlay's in June, 1807, and that a treasury

warrant was issued the 15th Aug. following in his favor, that another was issued for his successor, on the 24th of Sept. Of course he must have died within the time of these last dates—viz: between the 15th of August, and the 24th of September, 1807.

Thomas Smith, Esq. sworn.

Became acquainted with Mr. W. Sinclair on returning to town, on Monday after the opening of the Court of Chancery, being the 6th of November last. Understood he had employed himself in assisting Mr. Dempsey in the office, for his amusement; that Mr. Sinclair had attended his son, Mr. John Smith, as a friend, during his sickness; had received him as an inmate at his table, treated him rather as a son of the family, than a stranger; in every transaction had found him honest, correct, and honorable.

Mr. P. Dempsey, sworn.

Says he has been in friendship with Mr. Sinclair since the first of his arrival in this country; always found him the gentleman; that Mr. S. had spent much of his time in voluntarily assisting in Mr. Smith's office; gave Mr. Sinclair a high character; said, that in consequence of being joked about Mrs. Fay, by Mr. Smith, Jun. and himself, while conversing about a suit, that he understood Dr. Fay had commenced against one Goodlad, for defaming Mrs. Fay's character; the witness had no doubt that Mr. S. had received favors from Mrs. Fay; was present at his examination, and what Mr. S. had related, that had a reference to the witness, was certainly true; the conversation alluded to, occurred in November last.

John T. Smith, jun'r, esq. sworn.

Knew Mr. Sinclair since last October: entertained an excellent opinion of him: he had been intimate in their family: had been accustomed to leave him in the office to receive the fees of the office: had found him a man of honor, both in his word and in his dealings: gave Mr. S. a high character; and corroborates the circumstance of the conversation about Mrs. Fay, between himself, Mr. Dempsey and Mr. S.

Cross-examined by Mr. Griffin.

Q Would you trust him now, sir?

A Sir, I would trust him with my life

Mr. Zadock Seally, sworn.

On being questioned what he knew about Mrs. Fay, he stated, he knew no harm of her; but as his bed-room fronted Dr. Fay's house, he got up rather late on a Sunday morning: the bells were then ringing for church, and the sun shone clearly on the opposite side of the street: looking out at his bed-room window, over which a curtain was placed, except a small space which was torn, about the breadth of a dollar or the palm of his hand, he perceived Mrs. Fay gartering her stockings: the object of vision strongly impressed his mind and he could not forget the circumstance, that he saw Mrs. Fay garter above the knee: distinctly perceived it, because she placed a chair exactly fronting one of the windows, and raised first one foot on the chair and put on the stocking and gartered it, and then the other foot.

Mrs. Poles, sworn.

Gave Mrs. Fay an excellent character; says she has been slightly acquainted with her some time, and considers her a notable woman.

Mrs. Ann Brower, sworn.

She affirms that Dr. Fay stated on Thursday evening last, that Wakely would be disappointed in his principal witness; that Mr. Sinclair* and Tooker were in jail, and that Goodlad and his wife were also there; and that he had a principal hand in their confinement—has seen Mrs. Fay—knows nothing of her.

Mr. Michael Henry, sworn.

He states that he only once visited at Dr. Fay's, along with Mr. Painter, and on the 7th of December last was at Mr. Martin Tooker's, by Tooker's invitation. Mr. Painter and Wakely were also there, for they had all been invited to spend the evening at Tooker's house; afterwards Dr. Fay came to Mr. Tooker's to enquire for some one of the party: they spent their time sociably at cards, after which it was proposed that they should adjourn to eat supper at the Shakspeare—perceived that the Doctor and Wakely were particularly friendly; and that during the supper Dr. Fay helped himself to oysters out of Wakely's plate; they drank freely together, and afterwards went away, as he believes, arm in arm together!

* Mr. Sinclair NEVER WAS IN JAIL.

Mr. Martin Tooker, sworn.

Mr. Tooker states that he saw the prisoner at the bar for the first time at Mr. Painter's on the 7th of Dec. last, and was there introduced to him. Mrs. Tooker being unwell, he invited Mr. Painter, Mr. Henry, and Mr. Wakely to spend a passing hour with him. Dr. Fay called at his house to enquire for some one of the party, but thinks it was for Mr. Painter: it was the first time he had ever seen Dr. Fay. After being invited into the parlour, the prisoner and the Dr. appeared to be on the best terms of friendship—they played at cards together, and Wakely went to the sideboard and helped the Dr. to what he wished to drink; afterwards we adjourned to the Shakspeare, and had a supper of beefsteaks and oysters: the Dr. and Wakely appeared extremely friendly on the occasion, and invited me to come and see them at the Doctor's house. A few days afterwards I went there to spend an evening—Mr. Painter went with me—Wakely was there; the Dr. afterwards came in, and also Mr. D. Longworth; we sat down to whist and stayed till midnight. When about to depart, the Dr. requested us to take some supper, when Wakely went into the next room, along with the little boy, and cooked pork steaks. During our game at whist, Wakely and myself and Fay and Painter were partners; we played for a shilling a game, and I understood that it was at the Doctor's request, Wakely went into the next room to cook the pork steaks, which was Mrs. Fay's bed room—understood Mrs. Fay was indisposed at the time.

Cross-examined.

Q. Did you play on the piano forte that evening?

A. I attempted to play, but I know very little of music.

Q. Was the bed chamber door open in order that Mrs. Fay might hear?

A. I perceived it frequently open: the Dr. opened it several times, and the prisoner also.

Q. Did you perceive the Dr. very much agitated that evening?

A. No, I did not; we passed the whole of the evening pleasantly.

Mr. M. Nestell, sworn.

Says, he has been acquainted with Mrs. Fay and her husband for some time past; speaks in high terms of Mrs.

Fay, and says he never had any reason to suspect her virtue, that he had frequent opportunities to see her, and that she never gave him any reason to suspect that she was a light woman. Finally, he thought her a modest, virtuous, and amiable character. (Being asked by Mr. Griffin what he knew of the last witness, Mr. Z. Seely?) said he knew very little of him. Being pressed, as to Mr. Seely's religious opinions, he said he would rather not reply to the question. Mr. Griffin still demanding an explanation to his question, he replied, that in conversing with Mr. Z. Seely, on the subject of religion, Mr. Seely said, that when a man was dead, his earthly remains were no better than a brute, a cow, or a hog—[*On which Mr. Sampson humorously observed, that Seely was right, because a good piece of beef, or a fat hog, was better than the carcase of any dead man.*]

Mr. Andrew Smith was again called.

Stated that he understood in the family of Dr. Fay long before the alledged rape, that the prisoner was diseased; also, that he understood the two servant maids Catharine Cutsholk and Agnes White were turned away by Mrs. Fay.

Mr. Logan, sworn.

Stated he was a neighbour, and has known Dr. Fay and his wife for some time past; that he had visited them three times, and Mr. Fay frequently called in as a neighbour. Always considered Mrs. Fay, from the slight acquaintance that subsisted between our families, as neighbors, that she was a good, honest woman.

(HERE THE EVIDENCE CLOSED.)

Mr. Sampson, in a Speech of two hours and a half, fraught with argument and genuine humour, commenced the defence of the prisoner. Our limits do not permit us to furnish a full report of any of the Speeches: we shall, therefore, only give a brief summary of the arguments used by each of the Counsel, for and against the defendant, on this important occasion.

After reading a passage from Blackstone's Commentaries, *Lowe vs. Jolen*, concerning the nature of the crime alledged against the prisoner; he again brought before

the Jury, the same passage in McNally's Rules of Evidence, which Mr. Munro had read, on opening the defence, and commented considerably upon it—He also introduced Sir Matthew Hale, as authority, that, according to the old, upright principles of law, the crime against the prisoner had not been proved. Mr. S. then described the nature of the punishment, to which the law of the land subjected a criminal convicted of a rape—and feelingly descanted on the heart-rending miseries peculiar to being sentenced to imprisonment for life. He depicted the punishment in all the glowing colours, with which a vivid fancy, and a feeling heart could represent it—and aptly introduced Sterne's inimitable story of the Prisoner, adding every day a notch with his rusty nail, to the long catalogue of the miseries of tedious confinement.

He said that the whole of the unconnected story, told by the prosecutrix, reminded him of Sancho's trial before the king of Batraria, for a similar offence. Sancho was brought before the throne of the monarch, and a woman swore a rape against him—and minutely stated all the circumstances attending it. To put an end to her rattling tongue, the king ordered Sancho to deliver her his purse—on which she curtseyed silently, smiled, and retired—The monarch then ordered Sancho, to go and take the purse from her, and bring it back to him—He went—and returned with a scratched face, and a bloody nose—and as an apology for not bringing the purse, told the king that the woman would not part with it, and that she had beat him most unmercifully, while he was attempting to obey his majesty's orders. The king on this acquitted Sancho, alledging, that if the woman could so courageously beat him off, while attempting to regain his purse, he could never have robbed her of her virtue against her will.

He then commenced a severe critic on the evidence produced in behalf of the prosecution—and used all his ingenuity to invalidate the testimony of the witnesses, who had been sworn. He was particularly severe on Dr. Fay, and stated that a man who had forfeited his liberty, perhaps his life, in one state, could never be a good and virtuous citizen in another: and his keen irony was also directed against the testimony given by Mrs. Fay—As to the lady she had not acted the part of the Roman Matron,

the immortal Lucretia, who, when ravished by the tyrant Tarquin, nobly sacrificed herself—which had so great an effect upon the public mind, that the despot was dethroned, and by her deed, her country was freed from an usurper's yoke. He next noticed the testimony of the nurse Dorcas, endeavouring to prove her an inconsistent and incredible witness.

He lashed with attic wit, the Attorney-General and Mr. Griffin, who had charged on the prisoner, the crime of combining and bribing witnesses, to arrest the course of public justice, and screen himself from the rigours of the law—and endeavoured to convince the court and jury, that they were misled by the prejudices of their sex, in favor of the female character. He denied that there was any conspiracy formed by the prisoner or his counsel——Paid a high compliment to Mr. J. T. Smith, for the spirited and handsome manner he had spoken to the character of Mr. Sinclair, on whose testimony and conduct, Mr. Sampson passed the strongest encomiums, declaring that had he withheld his testimony, seeing a man so infamously prosecuted as was the prisoner—he would have deserved execration—he would have been inhuman. Mr. Sampson then reviewed in a masterly manner, the body of evidence produced in behalf of the prisoner. In detail he scrupulously weighed it ; and after again adverting to the testimony against him, he compared it with that given in his favor—and finally, finding that his client had the balance on his side of the scale, made a strong, a forcible appeal to the Court and Jury for his acquittal.

[Although his Speech is taken verbatim, it is conceived unnecessary to give it fully ; but it is our opinion, that Mr. Sampson did ample justice to his client and his cause ; and we rejoice in having an opportunity, to bear testimony to his erudition and his talents. He is an acquisition, and an ornament to the country in which he resides.]

Mr. George Wilson then rose, and addressed the Jury.

After taking a survey of the nature of the crime alledged against the prisoner at the bar, and descanting on the dreadful punishment which would attend conviction, he proceeded to investigate the testimony which had been produced, to substantiate the charge.

He entered largely into Mrs. Fay's story, and endeavoured to prove her evidence inconsistent—and therefore incredible. He showed that however respectable the evidence were, who had been brought forward, to patch her character, and tinker her reputation, there had been testimony equally respectable produced in behalf of the prisoner, to shew that she was not the character—the virtuous character that her witnesses had represented. Admitting that the witnesses adduced in support of her character, had spoken the truth, (and he was not disposed to disbelieve them) still from his acquaintance with the world—still he knew how easy it was for the depraved and vicious to assume a fictitious character—The wanton harlot could put on the semblance of modesty, and the finished Messalina, could best entrap, under the guise of innocence and virtue—it was not even the interest of the corrupt to triumph openly in vice. It must be recollected by the court and jury, that the witnesses brought forward to support the reputation of Mrs. Fay, were all, what may be denominated passing visitors; and therefore it became her interest to preserve a reputation, and a character in their presence. But those produced on behalf of the prisoner, were persons who had an opportunity of entering into the secrets of the prosecutrix, and of discovering the baseness of her conduct, and the infamy of her character.

He then attacked the testimony of the Dr. and of Dorcas [the black nurse] and endeavoured to show the inconsistency and improbability of their tale. According to his representation of the Dr's evidence, before the Court and in the presence of the Jury, he had “damn'd himself to everlasting infamy;” as to Dorcas, he was happy, on his client's account, that *such* a nurse had attended *such* a lady. She had indeed acted the part for which she had once before according to her own confession, been sent to the care and safe-keeping of Mr. Hazard—to wit: that of a pimp—a seducer of innocence—She was therefore the most proper of all human beings to become a nurse to Mrs. Fay—and finally a witness on this occasion. Taking then the whole of the evidence in behalf of this prosecution into one view, and as it were stripping it of its exuberance, he insisted that it was impossible, that the Doctor and his wife, after receiving such irreparable injury from the prisoner, should con-

tinue in warm friendship with him for thirteen days after the commission of the horrid crime alledged against him—He remarked particularly on the testimony of Dr. Fay—He then appealed to the jury, and asked, if a man amongst them could have acted the Doctor's part, in a case where their feelings, their honor and their happiness were so deeply at stake ; that it was not in nature, to imagine a man so callous, so hardened in guilt, so sunk in depravity, as not immediately to resent so detestable, so villainous an outrage, and an injury so unpardonable. He therefore insisted that the story was destitute of truth. He next commented on the testimony of Mr. De Castro, and appealed to the jury, who had an opportunity to examine the situation of Dr. Fay's house, and also that of De Castro's, whether it was possible, or within the circle of probability, that the cries—the exclamations, of a woman about to be ravished, would not have rent the ears of De Castro's family, situated as they were—as next door neighbours—with only a slight partition wall to separate the families. He then reviewed the testimony of Agnes White, and Catharine Cutsholk, and shewed, that in all material points, they were consistent. He remarked on that of Goodlad and his wife, with considerable ingenuity, and then advanced to what he considered the citadel of the testimony, in behalf of the prisoner, and took a comprehensive view of Mr. Sinclair's evidence, as fortified and supported by the respectable testimony of Messrs. Smith and Dempsey, and insisted that his evidence went to impeach the veracity of Mrs. Fay—that it also pictured in the strongest colors, her loose and abandoned conduct, and that before they brought in a verdict of guilty against the prisoner at the bar, they must believe that Mr. Sinclair had been guilty of perjury, which he contended was impossible. He then paid a compliment to the witness (Mr. Sinclair) and expatiated on the elegant style in which he had delivered his testimony—he approbated the humane, the generous and disinterested motives which actuated his conduct toward the prisoner, in coming forth on this occasion to testify to facts, which of necessity evidenced a breach of the laws of morality in himself as far as it regarded his intimacy with the prosecutrix—yet that he the witness, regardless of minor considerations had sacrificed his own feelings, in

order to effect a great, a noble purpose, that of furthering the cause of justice, and as far as his testimony went, of delivering a stranger in our land, from the abominable conspiracy, formed by Dr. Fay and his wife, for the purpose, in the first instance, as the counsel supposed, of extorting money from the prisoner, and in the second, of gratifying their malignant passions, by endeavouring to effect the prisoner's conviction, and consequent imprisonment for life—a punishment, to a mind of sensibility, more cruel than death.

[During the whole of this important trial, the laborious part of the duties devolved on Mr. Wilson ; and if any merit is to be attributed to any one who had been engaged, in favor of the prisoner, (and all the Counsel exerted themselves to the utmost, on the occasion, in his behalf,) Mr. W. is entitled thereto—Although our limits reluctantly compel us to give an imperfect summary of his logical and ingenious speech, we are happy to have this opportunity to bear testimony to his industry, his talents, and his rising reputation, as an Advocate.]

MR. WILKINS followed Mr. Wilson in behalf of the prisoner, and placed the subject of the prosecution in a new and ludicrous point of view. He so happily blended and amalgamated the testimony of Dorcas, the Doctor and his wife, and placed the pretended crime in such a ridiculous point of view, as to keep the numerous audience in almost a perpetual roar of laughter ; and even on some occasions disturbed the gravity of the court and jury. He, with that strength of language and pith of irony peculiar to himself alone, repelled the charge of perjury, and of an unprincipled combination which was pretended to have been formed by the prisoner, for the purpose of arresting the course of justice. He deprecated the idea, that a stranger and a foreigner should not be protected by our laws, and receive a fair and impartial trial by a jury of our country, and entered into an elaborate survey of the testimony produced in favor of his client : he particularly dwelt on the merits of Mr. Sinclair, and said that by his evidence, allowing for argument sake that he had no character before, he had now completely established one—that he had made an honorable sacrifice of his pride, and his private

feelings, to perform one of the noblest offices of humanity, viz. to rescue a fellow creature who was his countryman, from a punishment which, to a man possessing the common feelings of our nature, must be considered more cruel—more excruciating than death itself. Again adverting to the testimony in favor of the prosecution, he unequivocally stated it as his opinion, that on their part, it was one of the most selfish and most avaricious prosecutions that he ever witnessed—that the husband and the wife had employed their wits to ensnare and entrap the prisoner, in order to obtain money; and that they had acted the part of an auctioneer in this business, with a purse of gold in one hand and a piece of parchment in the other—Finding that the bid was not sufficient to gratify his principal love of money—money, money was the object—he knocks down the purse to blank, and furnishes the parchment to the real bidder, in order to consign him to a prison for his kindness !!!

In speaking of Mr. Sinclair, Mr. W. further observed that Mrs Fay, had taken some pains to represent that he was a Musick Master. He said that it had been shown be indubitable testimony that he was no more a music master than he (Mr. W.) was a dancing master.

[Mr. Wilkins, on this occasion, did himself great credit—We have seldom seen him in a happier humor—and, if a second edition is printed, we shall certainly give the whole of his accentric and original speech on the occasion.]

Mr. Munro then addressed the Jury, in a neat and well digested speech. After travelling over the same ground that had been trodden by his predecessors, he, from several indisputable authorities on the subject, proved that by the rules of law, and the stern principles of justice, the charge against the prisoner had not been substantiated.

He then went into the evidence produced on his behalf, and considered it conclusively in his favour.

After commenting with much severity and great ability on the charge of conspiracy, by perjury, to effect the prisoner's release—he rapidly reviewed the testimony of the Doctor, his wife, and of Dorcas, which last witness he contended was a slave. He ably examined their evidence,

and finally, finding that they stood on slippery ground, told the jury, that notwithstanding the opposite council would attempt, on this occasion, to awaken their sensibility, and enlist their passions in their favour, yet as they appeared, from their own acknowledgment, to have been birds of passage, they might retire to the British possessions on our continent, or emigrate to a southern climate, and again unite, in one house, and in one family, the fane of Venus with the temple of Esculapius.

[It is but justice to Mr. Munro, to declare, that although his reputation stands high, he is one of the best cross-examiners we ever heard ; and that in this walk, we consider him the GARROW of the American bar.]

MR. MAXWELL associating with Mr. Riker and Mr. Griffin in favor of the prosecution, in behalf of the people, opened the summing up on their side.

His speech was well adapted to rouse the feelings and excite the prejudices of the jury in favor of a young, a virtuous, and a much injured woman ; while his own high sense of honor led him to pourtray the husband (Dr. Fay) as a contemptible, crawling, foot-licking sycophant, to the ravisher of his guiltless wife. He then reviewed the testimony in favor of Mrs. Fay's character and conduct, and appeared convinced that a jury of his country would give it entire credence, and find a verdict against the prisoner. On the other hand, he took a survey of the testimony produced in favor of the prisoner, and endeavoured to prove that there had been a dark conspiracy formed, to destroy the fair fame and reputation of an innocent and injured female, and concluded by a pathetic address in favor of the prosecution.

[Mr. M. did great credit to himself by his speech. He is a young Barrister of great promise, and we regret that our limits do not permit us to enter fully into the detail of his arguments on this occasion.]

MR. GRIFFIN succeeded Mr. Maxwell, and addressed the jury, nearly as follows.

Gentlemen of the Jury.

We have now reached the period of this eventful drama, when it becomes my duty to address you. Often

and justly have you been reminded of the importance of this trial to the prisoner at the bar. Your own sensibilities must have taught you the pathetic lesson of its importance to the prosecutrix. If the prisoner be innocent, justice forbids that he should be convicted. But if he is indeed guilty; if to the offence of polluting the person of this unfortunate woman, he has superadded the inhuman crime of combining a band of wretches to pollute her character, you will feel it a privilege to consign him to the state prison for life. To turn him again loose upon society, would be treason against humanity: justice would revolt and mercy herself become indignant at his acquittal. But at this late hour of the night, and sinking as you perceive me under the fatigues of this protracted trial, I will not indulge myself in any range of general remark. Permit me at once to invite your attention to the testimony of the principal sufferer in this affecting tragedy of real life. You have heard her distressing narrative. [Here Mr. G. briefly recapitulated the testimony of Mrs. Fay.] Has this woman perjured herself? A distinguished excellence of our system of criminal jurisprudence is, that the jury have an opportunity of seeing the witnesses face to face, and observing the manner of their testifying. You have seen the prosecutrix—you have heard her—you have observed her passing through one of the most severe and unrelenting cross-examinations ever witnessed in a court of justice; where to an oppressive minuteness of inquiry were added, a sternness of voice and intimidating emphasis of manner, probably better calculated to confound than elicit truth.—But she bore it all with meekness—she bore it with magnanimity. It was not the province of the broken-hearted to be proud: the pride of the sex had been torn from her by the ruffian violence of the ravisher. Was her modesty that of affectation? Was her assurance that of affrontery? It was probably her first appearance in a court of justice; and did she not appear in precisely the manner which we should expect of a woman who came to tell the sad story of her own undoing? She informs you that shortly after the disaster, her husband returned, and she disclosed it to him. He directed her to keep it secret. Oppressed with injuries of body and anguish of soul, she sank into a state of indisposition, which her physicians have told you

was serious. While stretched on the bed of sickness, a magistrate attended, and she made her complaint on oath. In this perilous situation, do you believe her capable of insulting her Maker with a lie? Call to mind the affecting solemnities of a sick bed; consider the tremendous impression of such a scene on the soul of the guilty, and then say, whether this woman would have selected the bed of serious illness for the inception of a system of perjury.

But the testimony of the husband—he cannot have been deceived: if the wife be not innocent, he is a perjured deceiver. He testifies to circumstances which cannot be true on the supposition of her guilt. He informs you that on returning home after the disaster, he found his wife in tears; that, with a breaking heart she told him the story of her wrongs; that he discovered marks of brutal violence on her person; that at the time of the ravishment, the prisoner was diseased, and that his wife knew it. This latter circumstance is confirmed by the testimony of Mr. Andrew Smith, who learnt it in the family at a period when there was no possible inducement to deception. The knowledge by the prosecutrix of the prisoner's loathsome complaint repels, with resistless energy, all imputation of assent on her part; for even *lust* itself would not be voluntarily connected with *disease*.

The prisoner then is guilty, or this husband and wife have forged the tale of her pollution, and confirmed it by united perjury. Nature revolts at the supposition that human beings would unite in such a combination without an adequate motive. Nothing but a powerful motive could extort from the lips of a wife a fabricated story of her own dishonor. Nothing but a motive still more powerful could induce a husband to unite in a fabrication so humiliating. Nothing but a motive utterly irresistible could tempt both wife and husband to confirm the fabrication by *perjury*.—The dangers of the state prison of this world, and of the world to come, are not encountered from mere love of perdition. What motive then can be assigned for the unhallowed combination imputed to this unfortunate pair? It is not pretended that they were stimulated by a spirit of vengeance towards the prisoner. Was it to extort money? Even the wanton and unnatural aspersions heaped upon the prosecutrix by the ruffian associates of the

prisoner, evince that she is *not mercenary*. Not one of them pretends that money was ever given or asked for her favours. Another fact is extorted from the lips of her defamers—she was beloved by her husband. They accuse him of loving her even to jealousy. His jealousy is a test of the sincerity of his affection: jealousy is the distempered child of love. No husband doubts who does not “doat;” none throbs with the agonies of suspicion who does not also “strongly love.” If the prosecutrix was beloved by her husband, would he not have sooner coined his heart than submit to earn money by her dishonor? On this point a jury of husbands cannot listen to argument: they recollect that they have wives, and feel indignant conviction.—But if money were the object of the complaint, why has no overture of that tendency been made to the prisoner? Why, when one of the counsel of the husband, for the purpose of testing his sincerity, intimated to him at an early day, the expediency of accepting two or three thousand dollars and staying proceedings, did he indignantly repel the suggestion? If money were the object, why was a criminal prosecution instituted? Recollect the period of its commencement—the prisoner was already in custody on a civil suit at the instance of the husband for ten thousand dollars. An effort had been made on the part of the prisoner, but without success, to mitigate the amount: there was no prospect of his obtaining bail—he had no alternative but compromise or confinement: he was at the mercy of the husband. Would a mercenary husband have delivered his victim, thus circumstanced, into the hands of the public prosecutor? Would he have placed him within the grasp of criminal justice, where he had been informed, and well understood, no compromise could be made? But there is yet a fact which must remove doubt from the mind of suspicion itself—the prisoner was a *poor* man; such his counsel announce him; such the testimony represents him. To obtain the amount of a quarter’s rent, he was compelled to pawn his watch.—Had money been the object of the prosecutrix and her husband, they would have selected a *richer* victim. The *poverty* of the prisoner afforded him a sure protection against the machinations of a *mercenary* combination.

How fully is the narrative of the prosecutrix and her

husband corroborated by the auxiliary testimony of her two nurses. Mrs. Gable, whose character is raised above suspicion, enters the family of the prosecutrix the Saturday after the disaster. On the succeeding Monday, she is compelled by a prior engagement to depart. The prosecutrix is not yet indulged with the sad privilege of disclosing her wrongs; but she cannot conceal her anguish, and her tears. The compassionate nurse inquires the reason of her grief: "I cannot tell you now; but will at some future time," is the reply. A black woman by the name of Dorcas succeeds Mrs. Gable. In changing the prosecutrix's linnen, she discovers her horrid injuries. She asks the cause, but is then answered only with weeping. After the prisoner is removed from the house, and the injunction of secrecy imposed by the husband dissolved, the prosecutrix details to the black woman a circumstantial narrative of her misfortune. Two gentlemen of high respectability, with whom the black woman has lived, give her an excellent character.

If the truth of this pathetic narrative be not already established, beyond the reach of doubt, "confirmation strong as proof from holy writ" is derived from the testimony of Dr. Hammersley and the other attending physicians.—These eminent medical gentlemen were called in after the complaint had been formally made, and the prisoner lodged in confinement. They found the prosecutrix seriously sick: the cause and nature of her indisposition were minutely explained, and the marks of personal violence circumstantially detailed to them. With this relation, the medical gentlemen inform you, the visible symptoms corresponded. They also inform you, that the *husband invited them to examine the person of his wife*. Would the husband have dared pronounce this invitation, if conscious that the result of the examination would have convicted *him* of hypocrisy and *her* of perjury?

But the prisoner was permitted to remain under the same roof, in habits of intimacy with both husband and wife, for thirteen days after the commission of the alledged offence. This circumstance composes the supposed rock of the defence; here the counsel for the prisoner entrench themselves, and hence they triumphantly pour on this devoted woman volleys of the most virulent invective.—

That the delay of prosecution is a circumstance of apparent mystery, I readily admit. But is it evidential of the innocence of the prisoner? *That* is the point for the consideration of the jury. On the 18th day of December the rape was first publicly announced. If it were a fabrication, the prosecutrix and her husband must have been aware, that from the boldness of its character, their destinies were involved in its success; and of course their combined skill, must have been deliberately exerted to give it every semblance of reality: they would not needlessly have stamped on its forehead a palpable mark of improbability; *they would not have located the transaction back thirteen days.* Why not have fixed it on the preceding evening and charged the prisoner with having violated the sanctuary of a sick bed? Had the complaint assumed this form, it would have been invincible; even innocence would have been no shield to the prisoner—nothing but a miracle could have saved him. The intervention, therefore, of so much time between the complaint and the commission of the rape, prove it to be *no* fabrication. A fabrication would not have been disfigured with this feature of improbability. It was *truth*, and *truth alone*, that compelled the prosecutrix and her husband, to involve their narrative thus in mystery. But why was the prosecution so long delayed? Why did the injured husband permit his righteous vengeance to sleep? Unfortunate man!—feeble, timid, and fluctuating; pursued and borne down by a *dreadful secret*! He had been driven from the country of his birth by a charge of forgery; he had fled to this city, and was here endeavouring to re-unite the fragments of a broken reputation. But the secret of his youth haunted and preyed upon his soul. His wife informs him that she is ravished; but also informs him, that the ravisher had triumphantly threatened her, “if you dare tell your husband, I can and will ruin you both.” These tremendous words resound in his ears like the hollow voice of a messenger of fate. His affrighted conscience tells him—that the prisoner is in possession of the secret of his shame. The indignant emotions of the husband—the trepidations of the coward contend in his bosom for mastery—fear for a time predominates. He com-

mands his wife to suppress her anguish, and meet her ravisher with a smile. Most injured, most miserable of women! With what a rapid succession of misfortunes has she been overwhelmed—brutally ravished—complaining of her wrongs to him who ought to be their avenger—constrained to hold her peace—to weep in secret—to receive and reciprocate the civilities of her destroyer—to drink of the wine of his abomination—to be brought at last before the public eye, involved in a cloud of mystery—exposed to the derision of the multitude—agonized by the suspicions of the good! *Who* has sunk her to this degradation? Who but the prisoner at the bar? Abandoned despoiler of female purity! Savage murderer of domestic peace! Nature disowns him! He was not born of woman! When the horrid deed was done, no sentiment of contrition softened his heart—no tear of pity melted in his eye. Deliberately he retired to bed—audaciously he remained under the roof, confident in the weakness of the husband—assured in the aid of his own infernal associates. You have marked his demeanor—his irreverent levities during the affecting solemnities of this trial. In the sanctuary of justice, (with indignation do I speak it) has he dared attempt to confound and overwhelm the sinking victim of his lust, with his basilisk gaze. But I trust the hour of retribution is at hand.

Inhuman is the effort which has been made to impeach the character of the prosecutrix. Who are the witnesses to support the impeachment? High in station among them stands an infidel and blasphemer—a being who holds that the grave is the place of eternal sleep, and that the human soul is of no higher grade than the soul of a brute.* From my heart, I rejoice, to find the enemy of God and of man arrayed in the ranks of opposition to this persecuted woman. Next appears an acknowledged prostitute, of sable face, but more sable heart; a wretch who boasts and glories in her shame; from whose foul lips, truth would be ashamed to proceed; the falseness of whose story appears from

*It is but candid to state, that the person here alluded to, after the jury had retired, came forward to the Court, and disavowed the sentiments imputed to him. For the honor of human nature, it is hoped that the disavowal was sincere, though the contrary had been sworn to, by Mr. Nestell, a very respectable witness.

written documents, as well as its own intrinsic improbability. In the same hideous group we indignantly find two servant-maids, whom the prosecutrix had dismissed. Beware, gentlemen, how you countenance the slander of discarded servants. Turn your recollection to their incoherent narratives; reflect upon their contradictions of each other, and of themselves. How often have they been in the prison, closeted for hours with the prisoner in his chamber; and *yet* they affect to forget every word that was uttered during the interviews. Well may they conceal the horrid secrets of that chamber! I will not insult you with a minute review of the loathsome testimony, and more loathsome character of Goodlad and wife. You have been eye witnesses of her perjury, and ear witnesses of his—outcasts on our coast, she the cup-bearer, and probably the strumpet of the prisoner, he the receiver of the wages of his wife's dishonour—both wandering from house to house, until ultimately settled in a receptacle of prostitution. But Sinclair—the specious, the fair-seeming, the rotten-hearted Sinclair—the Belial of this infernal confederacy, who, when a stranger on our shores, without employment or friends, was in an evil hour incautiously admitted into the hospitable mansion of the prosecutrix and her husband—he has dared to wound with his adder tongue the fame of his benefactress. He tells you that, before he had known her a fortnight, she came to his bed, not “under the shade of guilt concealing night,” but in the open face of day, and requested him to pollute her! I would not believe this story, though Cato himself had told it; and I trust my incredulity may be pardoned, when it proceeds from the lips of Sinclair—a wretch, who avows that he uttered this infamous calumny to the prisoner, and two other of his companions long before any purpose of justice required the disclosure, although, as he admits, he knew it would destroy the peace of the wife, and harrow up the soul of the husband. It was probably his ungrateful slander that first directed the lust of the prisoner to its unhappy object.

From this chaos of darkness and guilt, grateful is the transition to the region of light and truth. With pleasure and with pride I present the prosecutrix before you—not as she now is, oppressed, traduced, trodden under foot; but as

she was at the period when the prisoner and his associates marked her as their victim. After the misfortune of her husband had deranged their youthful establishment, she and her child sought refuge in the sanctuary of her father's house; but when the renovated prospects of her husband permitted, she and her little one rejoined him. About eighteen months ago, with a heart full of hope, did she first enter this city, unapprehensive of the storm of wrath which was gathering, and so soon to burst on her devoted head. Too elevated to intermingle with the low and the vulgar, too depressed to be admitted into the circles of the rich and the fashionable, her range of acquaintance was respectable, but not extended. You have heard her character from witnesses who could not have been deceived, and who are incapable of deceiving—from men of established reputation, of whom most were her neighbours, and one was her boarder—from respectable women, who have known her intimately, loved her affectionately, and magnanimously adhered to her, through all the terrors of her trial. The panegyric of these witnesses, is the language of humanity and honor. *They* are no outcasts on our shores; no sympathy in guilt binds *them* together. How interesting is the portrait of this woman's virtues, when drawn by the pencil of truth!—domestic, economical, industrious beyond her strength, pure in her manners, plain in her attire, dedicated to the endearments of the fire-side, an affectionate wife, a fond mother.—Such is the woman whom fiends have seized, and conspire to sacrifice—To you she appeals for protection. If she be deserted, where is the safety of the sex? To a jury of sons, brothers, husbands, fathers, I commit her. And may that being, who, while he presides in the councils of the universe, condescends to be the protector of human innocence, strengthen your hearts, and enlighten your understandings.

We have gone more into the detail of Mr. G's speech than that of any of the counsel employed on this interesting occasion, because, in our opinion, it comprehends the sum total of all the arguments which were so ingeniously used in behalf of the prosecution. The language is suited to the solemnity of the scene—the arrangement is correct, and the expressions are lucid. Although the reputation of this Barrister is already fully established, we think that this speech furnishes another incontestible proof of his erudition and his talents.

Mr. Riker, the Attorney-General then rose, and in a luminous speech of nearly two hours, followed the course pursued by his colleagues. Much as we always respected the talents of Mr. R. we never witnessed him more animated than on this interesting occasion. He ingenuously endeavoured to overturn the arguments which the counsel in behalf of the prisoner had made use of in his defence, and to destroy the effect of their satirical wit. Fully tracing, and minutely investigating the testimony produced on the side of the prisoner, with a whip of scorpions he severely lashed the persons who had been witnesses in his favour, and declared it to be his settled and sincere opinion, that there had been more abominable and damning perjury committed on this occasion, than ever came within the range of his observation, during his whole course of practice. That there had been formed by the prisoner a most unprincipled, detestable, and villainous combination, to shield him from merited punishment, and defeat the ends of public justice—that a knot of strangers recently vomited on our shores, had polluted the channels of the stream flowing from the sacred fountains of justice and of law, and had impregnated their pure and holy waters with deleterious poison. Then turning to the testimony of the prosecutrix, and the witnesses ranged on her side, he feelingly and eloquently described her injuries, and recapitulated her wrongs—shewed that they had been almost insupportable, because, at a husband's command, she had smothered them within her bosom for a length of time; and although the opposite counsel now exult in a circumstance that does lasting honor to a faithful wife, and although in their opinion it may raise suspicions against her, yet it is a noble trait of her affection and fidelity, and worthy to be recorded as a credit to her sex. He then in a most pathetic and masterly manner summed up the cause, and appealed to the understandings of the jury, and the best and most generous affections of the human heart, in favor of an innocent and injured female, and trusted, that by their verdict, they would inflict an awful and a just punishment on her inhuman ravisher.

CHARGE

Of the Honorable Pierre C. Van Wyck, Esq. to the Jury, after the termination of the Arguments of the Counsel.

GENTLEMEN,

You have been engaged in a tedious, and a laborious investigation. The charge against the Prisoner is of a very serious nature. If proved to your satisfaction it deprives him forever of liberty, property, and reputation. It becomes my duty, on this important occasion, to explain to you the law on the subject of the crime alledged against the prisoner at the bar. Sir Matthew Hale, in his invaluable work, says, that it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent. McNally tells you, that

it is a rule of law, that if a jury entertain a reasonable doubt, upon the truth of the testimony of witnesses, given upon the issue, they are sworn well and truly to try—they are in conscience bound to deliver the prisoner from the charge found against him in the indictment, by giving a verdict of not guilty—And that evidence does not alone consist, in merely the swearing to facts, but in the proof of facts, by witnesses of undoubted credit.

The witness first introduced on this trial, is Mrs. Fay—the person on whom the rape is said to have been committed—she testifies to the fact, that on the evening of the 5th of December, the prisoner, by violence, robbed her of all that is valuable to a woman of virtue; and minutely relates the circumstances of the transaction.

You are the competent judges, how far her testimony is entitled to credit; for if she is supported by unimpeachable witnesses, as to fair fame, you are bound to find the prisoner guilty of the charge.

The next witness in order, is Dr. Fay. He corroborates his wife's story; and his testimony establishes her's; but there has been such strong proofs of the baseness of his conduct, drawn from his own lips, that you will place little or no dependance on what he has said on this occasion.

Mrs. Gable's testimony is entitled to the fullest credit, as far as it goes. She attended as nurse to Mrs. Fay, four days after the rape was committed, and remained two days in that capacity. She perceived Mrs. Fay, labouring under strong affections of grief; but knew nothing of the causes of her illness, although she prepared fomentations, and administered medicine to Mrs. Fay.

The testimony of Dorcas is clear, and unequivocal. She narrates Mrs. Fay's story, and their accounts exactly coincide. In dressing Mrs. Fay, she saw her wounds, and perceived the marks of violence on her body: but it must be recollected, that this was nine days after the rape was committed, and that the bruise on her right arm above the elbow, was not observed by Dr. Turk, who had bled Mrs. Fay, a few days afterwards, in the same arm. Besides you have heard her character described by Mr. White; and by her own confession, she has been a tenant of Bridewell. You will therefore attach as much credence as you think proper to her testimony.

It appears from the evidence of Mr. Joseph D. Fay, that

he was the first to whom Dr. Fay, communicated his own and Mrs. Fay's grievances; and as far as can be gathered from Mr. Fay's testimony, that this was about a week after the rape had been committed. It also appears that Mr. Fay was the Doctor's adviser, to pursue the steps that he has taken against the prisoner.

The character of Mrs. Fay is fortified and supported by seven or eight respectable witnesses, who have been examined, in the course of this trial. They all agree in pronouncing her to be a woman of reputation and virtue.

The testimony produced on behalf of the prisoner, in order to invalidate Mrs. Fay's evidence, is in some parts contradictory, and in others, clear and conclusive. It is, therefore, my duty to point out in detail, what I think creditable, and what doubtful, in the body of the evidence, which has been presented before you.

The first is Catherine Cutsholk, who appears to have lived in Dr. Fay's family, last summer. Her story about Mrs. Fay and Mr. Fisher, deserves your serious consideration. Particularly relative to the situation in which the bed stood, and her seeing the foot of it through the key-hole.—You have examined the room, and are therefore competent judges of the fact. But if you are of opinion, that the bed could not be perceived, where she located it in the room, you are to discredit the whole of her testimony, for when you find a contradiction in evidence, or perceive that a witness is prejudiced, or malevolent, you are bound to disbelieve the whole of the testimony of that witness.

The next witness produced is Agnes White, whose evidence has not been materially contradicted. She proves that Mrs. Fay's manners have not, at all times, been regulated by the strict rules of decency and decorum. As a servant, she had certainly better opportunities of observation, than transient visitors, or even Mr. Smith, who was a boarder in the family, because his avocations did not permit him to be much at home—Besides she says that there never was any quarrel between Mrs. Fay, and herself—I therefore think her evidence entitled to your serious attention.

Mr. De Castros evidence is chiefly relating to the situation of the house, and the probability of his hearing the shrieks of Mrs. Fay. As you have visited the premises, you are competent judges of the importance and truth of his testimony.

Goodlad and his wife, appears before you as very suspicious characters, and you are to receive their testimony with great caution. Indeed their evidence will have very little weight, in determining the fate of this prosecution. But if you find that the bed could not be seen, through the key-hole, placed in the situation in which Mrs. Goodlad has represented it to stand, then you are bound to reject her evidence altogether. And from the inconsistency of her husband, as well as the insanity of his conduct, little or no credit can be attached to his testimony, by a judicious jury.

Mr. Sinclair's evidence in this cause stands uncontroverted—except on account of an acknowledgment of the moral impropriety of his conduct, in regard to Dr. Fay's family.—It appears he was treated by the husband as a friend; and if you believe his testimony, he, to say the least, did not resist the temptation of becoming the destroyer of his peace, and the murderer of his wife's honor. You will, therefore, judge of his testimony according to M'Nally's Rules of Evidence, which on the threshold of my observations, I quoted for your information on the subject.

Aimy Neilson's testimony, respecting Mrs. Fay and her husband, appears in so questionable and contradictory a shape, in respect to dates, that you will hesitate to give it credence. If it be true, it is all important in the invalidation of the evidence of the prosecutrix. You will, therefore, maturely weigh, and give it what degree of credit, you please.

Finally—you are deliberately to weigh the whole of the testimony for and against the prisoner at the bar. If you believe Mrs. Fay's representation of her injuries, and find it supported and corroborated by unimpeachable witnesses.—You are bound to find a verdict against the prisoner.

But if it has been proved to your satisfaction, that her character stands impeached, by undeniable evidence of a breach of those principles of moral rectitude, which are imposed on her by the sacred ties of matrimonial duty; then it becomes you to pronounce the prisoner innocent of the crime alledged against him.

I now commend the cause to your impartial consideration. Have to thank you for your solicitous attention, and laborious investigation during this trial; and have only to warn you against being swerved by the declamations of the counsel on either side. Your duty is to collate and compare the testimo-

ny, and to bring in a verdict according to conscience, so that it may meet the approbation of the Supreme Ruler of human destinies, and be approved of by your country, whose laws you have on this occasion solemnly sworn to execute.

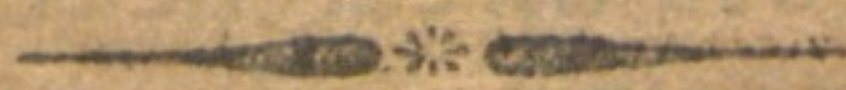
The Jury then retired, it being about 2 o'clock in the morning ; and returned, after an absence of three quarters of an hour—with a verdict of **NOT GUILTY**.

After the verdict was pronounced, a very improper scene took place. Many of the audience, some of whom were casual visitors, and some of them patient attendants during the whole of this tedious trial, gave three cheers. The thinking and sensible part of the community, who were present, considered it highly indecorous in a Court of Justice. The circumstance is related as a fact—and, without inferring that the verdict was unanimously approbated by the by-standers, for this was not the case, because a number hissed at the same moment, it proves the high value that ought always to attach, (and which on this occasion, appeared to be spontaneously, although improperly, expressed, by the crowd,) to **FAIR AND IMPARTIAL TRIAL BY JURY**—the sacred bulwark of individual rights, and best guardian of human liberty.

NOTE.

The hasty manner in which this publication has been ushered before the public, will apologise for the typographical errors, and any other inaccuracies, which have unavoidably crept into it. As we have been already severely censured, and expect to be publicly attacked, respecting our motives, for publishing the history of a trial of such a nature, as that contained in the foregoing pages, it becomes us to state, that we are of opinion, that instead of injuring, it will subserve the cause of morality, by warning the unthinking part of both sexes, against the terrible consequences which result from crime, and the indulgence of unlawful passions. We should be the last to attempt to break down the great barriers, which are the principal fences of social order and individual happiness. We have maturely deliberated on the subject, and finally resolved, to give a fair and impartial narrative of the mysterious transaction, as the public mind appears to be divided on the verdict given by one of the most honest and independent juries that

ever were impanelled, to decide on the fate of a human being. Another strong reason for this publication, is, that the Grand Jury have found bills of indictment, against several of the witnesses, who had been produced in behalf of the defendant. It is therefore proper that the whole of the facts given in evidence, should be fully developed. For ourselves, we give no opinion on the subject, but submit the work with all its imperfections, to the bar of the public.



ERRATA.

- Page 18 Line 2 for house read horse
 3 do do
 do 21 5 for Buck read Bush and continue the transposition
 throughout.
 do 25 16 for Physician read Dr Fay,
 32 After Mr. K's testimony, erase the cross examination by P. J.
 Munro.
 38 erase from line 4 to line 10
 44 8 Propositions read Proportions
 66 24 for associating read associated
 For Pintard read Paynter through the whole trial