had for that it appears to the Court here that the said verdict is in no wise insufficient or erroneous, and that the same ought not to be set aside and that no new trial ought to be had in the prosecution aforesaid. Whereupon the said Thomas Burke now here in Court in his proper person moves the Court here in arrest of Judgment of and upon the proceedings and verdict aforesaid and saith that no Judgment against him ought to be given but that the same ought to be arrested and files in Court here the following reasons that is to say:

State of Maryland
vs
Thomas Burke

Whereupon the said Thomas Burke now here in his proper person comes and saith upon the proceedings and verdict aforesaid no Judgment against him ought to be given but that the same ought to be arrested and assigns the reasons following, (viz:) 1st That the said Indictment contains two Counts one for Felony and the other for a Misdemeanor. 2nd That the said Thomas Burke hath been arraigned upon and pleaded not guilty to the said Indictment. And that the Jury aforesaid was only charged and sworn to try the first Count in the said Indictment. 3rd That of the pannel of the Jury returned for the trial of the issue aforesaid nine jurors were sworn and the other fifteen challenged peremptorily and that after the said pannel was thus disposed of the Court awarded an order to summon three Talesmen. That upon the Sheriffs having returned by virtue of the said order three Talesmen two of whom were sworn and one of them peremptorily challenged: Whereupon an order was awarded by the Court to the Sheriff to summon and return one Talesman which was by him done and returned thereof to the Court made which said Talesman was sworn upon the Jury all which Thomas Burke alledges to be erroneous wherefore he prays that no Judgment may be entered on the proceedings and verdict aforesaid against him but that the same may be arrested.

Thos. Burke

Whereupon all and singular the premises being seen heard and by the Court here fully understood and mature deliberation thereupon had it is considered by the Court here that

(Judgment)

Judgment of and upon the verdict aforesaid by the Jurors aforesaid found ought not to be arrested and files in Court here their opinion in writing which is in the following words and figures, (viz:)

State of Maryland
vs
Thomas Burke

This case now stands on a motion in arrest of Judgment. The Indictment contains two Counts the first charging a Rape and the other an assault with intent to commit a Rape. The Prisoner was arraigned upon the whole Indictment and pleaded general not guilty; the attorney for State then elected to proceed against him on the first Count in the Indictment and the Jury were accordingly sworn and charged upon the first Count alone and found him guilty of the offence therein alleged particularly confining their verdict by the expressions of it to the first Count: on the second Count no verdict was given. Fifteen of the Jurors returned were peremptorily challenged by the prisoner when put upon his trial, and nine sworn which exhausted the original pannel: on motion of the attorney for the State an order to the Sheriff to summon three Talesmen was awarded by the Court two of whom were sworn and one challenged - an order to summon one Talesman was then awarded on the application of the attorney for the State and the person summoned sworn which made up the legal number of twelve sworn on the Jury. There are three questions for the consideration of the Court growing out of the Indictment and proceedings thereon and the reasons assigned in arrest of Judgment. First whether the Indictment containing two Counts one charging a Felony and the other a misdemeanor is radically bad: Second whether after the party had pleaded generally to the Indictment the Jury were legally sworn and charged upon some of the Counts only to the exclusion of the other: and 3rd whether when nine Jurors were sworn and the rest of the original pannel exhausted by peremptory challenges the Court could legally award an order to the Sheriff to summon only three talesmen: and again when eleven were sworn to summon but one. In the examination of these questions the order in which they are stated will be inverted and the manner of supplying the Jurors by Talesmen be first considered. It cannot be doubted but in this State, a Tales de Circumstantibus may be awarded in Capital cases:

(such)