At which said second tuesday of October court, the fourteenth day of the same month anno Domini one thousand seven hundred and eighty eight, comes again here into our General Court as well the said John Bull lessee of the said James Clarke by his attorney aforesaid, as the said Philip Hall by his attorney aforesaid. — Whereupon this cause — standing ready for trial, let a Jury thereupon appear before the Judges of our General Court here on the second tuesday of May next, by whom and who qualified as doth appeart and so forth, to recognize and so forth, because as well and so forth, the same day is given to the said parties then and there and so forth. —

And now here at this day court, the said second tuesday of May being the twelfth day of the same month Anno Domini one thousand seven hundred and eighty nine, comes again here into our General Court as well the said John Bull lessee of the said James Clarke by his attorney aforesaid, as the said Philip Hall by his attorney aforesaid. — And the Jurors of that Jury whereof mention is within made, being called, come, that is to say. George Lisper, Jacob Shryock, John Digges, Thomas Gardiner, Archd. Golder, James Williams, John Craig, John Aidgely, John Smith Magruder, John Campbell, Samuel Durham, and Zachius Onion, who being duly elected tried and sworn to say the truth in the premises, and the said John Bull lessee of the said James Clarke having produced several authentick Deeds to prove the title of his lessor under whom he claimed The Jurors aforesaid here from the Barr to commune among themselves of and concerning their verdict thereon to be rendered, departed and thence of among themselves communed and were agreed, and here to the Barr returned to render their verdict; Whereupon the said John Bull lessee of the said James Clarke although solemnly called comes not, nor doth he further prosecute his Declaration aforesaid against the said Philip Hall:

Therefore it is considered by the Judges here that the said John Bull lessee of the said James Clarke take nothing by his plaint aforesaid against the said Philip Hall, but that he and his pledges of prosecution court, John Doe and Richard Roe be in mercy and so forth: And it is also considered, that the said Philip Hall go thence of without day and so forth, And that the said Philip Hall recover against the said James Clarke lessor of the said John Bull the quantity of six hundred and eighty six pounds and four fifths of a pound of tobacco by the Court here unto him on his agreement adjudged for his costs and charges by him about his defence in this behalf laid out and expended, and that he have ~~the~~ of his Execution and so forth. —

Memorandum, Before the Jurors aforesaid withdrew from the Barr of the Court here, the Parties aforesaid, Plaintiff and Defendant by their attorneis aforesaid, file in Court here, the following Bills of Exceptions to wit. —

Bill the first. May Term 1789.

James Clark's Lessee against Philip Hall. —

The Defendant to prove the issue on his part, and to make title to the land in question, produced to the Court, and read in evidence to the Jury, the Will of John Frazer; which will was executed before and signed by three Witnesses only, in the presence of the testator, and at his request. And the Plaintiff offered to prove, by parol evidence, that William Ashew, one of the

the three subscribing witnesses to the Will aforesaid, was a convict, and transported into this State (then Province) in the year 1750. from Great Britain, agreeably to certain statutes for the transportation of felons; and the Court was of opinion that such parol evidence was admissible to prove, that the same William Ashew was a convict and transported as aforesaid; but in as much as before and during the year 1750. there were offences not amounting to felony, or rendering a person thereof convicted infamous, for which, by the statutes of Great Britain then subsisting offenders might be transported from Great Britain to the then British colonies, in the same manner as felons are directed to be transported, there to serve for a term of years, the Court was further of opinion, that it was incumbent on the Plaintiff, in order to prove the incompetency of the said William Ashew as a subscribing witness to the Will aforesaid, to prove, by record, or other evidence, that he was transported for some offence made felony or infamous by the common law of England or by some statute of Great Britain. And the Court being of opinion, that the parol evidence offered as aforesaid was admissible, the Defendant by his counsel — prayed leave to except, and that the Court would seal his exceptions according to the form of the statute and so forth, which was granted &c.

A. C. Hanson (Seal)
R. Goldsborough Jun. (Seal)

Bill the second. May Term 1789.

James Clark's lessee ag. Philip Hall.

The Defendant, to prove the issue on his part, and to make title to the land in question, produced to the Court and read in evidence to the Jury, the Will of John Frazer; which will was executed before, and signed by three witnesses, only, in the presence of the testator, and at his request. And the Plaintiff offered to prove, by parol evidence, that William Ashew, one of the three subscribing witnesses to the will aforesaid was a convict, and transported into this State (then Province) in the year 1750. from Great Britain agreeably to certain statutes for the transportation of felons; and the Court was of opinion, that such parol evidence was admissible, to prove that the said William Ashew was a convict and transported as aforesaid; but in as much as before, and during the year 1750. there were offences not amounting to felony or rendering a person thereof convicted infamous, for which, Nevertheless, by the statutes of Great Britain then subsisting, offenders might be transported from Great Britain to the then British Colonies in the same manner as felons are directed to be transported, there to serve for a term of years, the Court was further of opinion that it was incumbent on the Plaintiff, in order to prove the incompetency of the said William Ashew, as a subscribing witness to the said will, to prove, by record, or other evidence, that he was transported for some offence, made felony or infamous by the common law of England, or by some statute of Great Britain. to this last opinion of the Court, the Plaintiff by his counsel prayed leave to except, and that the Court would seal his exception, according to the form of the statute &c. which was granted &c.

A. C. Hanson. (Seal)
R. Goldsborough Jun. (Seal)

Test.

John Irwinn Clk.