1810.

Bowly vs Lammot

7. After the indictment was found, by law, a *capias* should have issued to bring in the prisoner to answer the indictment, which was not done in this case.

8. By law, an indictment cannot be found without the presentment of a grand jury, or an order by the county court. [In this case there was a presentment found by the grand jury summoned under the commission.]

9. By law, no criminal process can issue or be awarded from any court of original jurisdiction, unless on presentment of a grand jury, or special order of the county court to be entered on record.

10. It should appear by the record that the jurors were freeholders, which does not appear.

The court of oyer and terminer, &c. overruled the motion, and rendered judgment upon the verdict that the prisoner be hanged, &c. The prisoner obtained a writ of error, and the proceedings were brought before this court.

The cause was argued before BUCHANAN, NICHOLSON, GANTT and EARLE, J. by

Whittington and *Wilson*, for the Plaintiff in error, and by *J. Bayly*, for the State.

JUDGMENT AFFIRMED.

JUNE.

BOWLY'S LESSEE vs LAMMOT.

W L. by his will, devised as follows: "I give and bequeath to my dear wife A L, for and during her natural life, my tract of land and plantation called *C*, *(save and except the rope walk)*." "*Item*, I give and bequeath to my dear son G L, his heirs and assigns, my tract of land called *C*; but in case my said son should die before he attains of legal age, and without issue, then I leave and bequeath the said tract of land called *C*, to my dear wife A L, or her assigns, to be at her own will and disposal, as it originally was, *save and except five acres to be laid off*," &c. "*and that said five acres, together with the rope walk, I give and bequeath to my dear nephew D B, his heirs and assigns* And it is further my intention, that if my dear wife should die before my dear son G, so that my estate be vested in him, and he should afterwards die before he attains legal age, and without lawful issue, then," &c —*Held*, that the devise of the *rope walk* to D B was an immediate, and not a contingent devise.

The intention of the testator is to be collected from the words of the will, and the whole of the will is to be considered and compared Such construction must be made as will gratify every part of the will, if it can be done consistent with the general intent.

The *rope-walk*, and the five acres, must be considered as the same.

APPEAL from *Baltimore* county court. *Ejectment* for a tract of land called *Chatsworth*, lying in *Baltimore* county. Defence was taken on warrant, and plots were made. At the trial it was admitted by the parties that *William Lux*, deceased, was seized in fee simple, on the 1st of January 1773, of the tract of land called *Chatsworth*, granted to him by patent, containing 950 acres; and being so seized, made his will on the 5th of May 1773, whereby he devised, among other things as follows: "*Item.* I give and bequeath to my dear wife *Agnes Lux*, for and during her natural life, my tract of land and plantation called