

## A Caution

to Lawyers, Courts, & juries.

Directed to John Cunningham & James Cunningham

After obtaining a certificate under the hands of nine of the persons who had been grand jurors, with me, for the county Court of Washington in the state of Tennessee in the year 1804, of whom you were two of the members, rectifying some misrepresentations in regard to conducting the business of that jury, I had a thought of publishing a true statement of the business; but preparing to remove from that state, and other necessary business, diverted me from it, until now, being unwell & not fit for other business, I undertake to write it this 27th day of the 4th month 1807, at my habitation near Xenia in Green County in the state of Ohio, & wish you to get it inserted in a publick paper in that state, if it should be thought worthy of a place for publick benefit, without any cost to me; I having spent money enough there for publick purposes: for notwithstanding I have been represented by some of the lawyers, & the traders in & holders of free negroes, as a pernicious & litigious person, I think I may safely challenge the very best of such represented to compare acts of charity & beneficial liberality: & may expostulate with them as old Samuel did with the Israelites [1 Samuel 12 & 3] It is known to a number of the people of that state that I had made use of a portion of my time & living in preparing and procuring publications to preserve the poor inhabitants from distress at the last draught, & to preserve

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the life of the fifty-dollar law from the devouring jaws of those, who for sinister ends had nearly defeated its salutary intention, & to procure a law to prevent vexatious lawsuits & establish arbitrations; without exertions for the benefit of the community, whereby my character has been exposed to the fury of merciless men, & handled very unfairly by them; besides much time & trouble in procuring justice for such of the people of colour as were illegally held in slavery, without a view of being retaliated by any human: and altho I ultimately succeeded in every case, it was at the hazard of life & living; being violently threatened by several; (& once chased with a drawn knife) & even an occupier of a high seat in government was so conscious of the badness of his cause that he threatened he would not defend himself at law, but would do it with his gun; & said he could get enough to assist him. Inevitable ruffians they must be, that would assist in such a case, in violation of law, to fight against a poor woman, & by arbitrary power to stop the streams of justice from circulating to the oppressed widow & fatherless. But as this case was decided in court a little before I left there, I have not yet been informed whether any of the benevolent are excited with magnificent courage to see that further justice be extended to that family, & my labour thereby saved; or whether the defendant has superseded the necessity of a further struggle;

but if neither conscience, shame, nor honour, has influence enough to induce him to avoid disgracing the degraded seat, by continuing the family in slavery, after a final judgment in favour of the old woman, upon such powerful & glaring proof as was exhibited on the trial, every honest man ought to be ashamed to disgrace the state by keeping such a character at the head of it.

It will not excuse him to say the children are not now in his possession, for it can be proven that he claimed the whole of them as his slaves when demand was made, on which the suit was commenced.

It is also known that I made proclamation in the public papers about a year before I left that state, that any person who thought I had ever wronged him, or had been too pensive or litigious might come forward, & I would make such retaliation as two candid men would award, & defied the human family to show an instance of my ever refusing to arbitrate a dispute rather than settle it by law: and I now defy my opposers to show me an instance of my ever contracting a debt in that state, during my seventeen years residence there, to the amount of one dollar or more, & failing to pay it by the time agreed on, except a set of harrow teeth I engaged to William Brown, & voluntarily paid damage for disappointing him, notwithstanding the extreme disadvantages I laboured under, by.

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following a trade for a livelihood, & being frequently and barbarously disappointed by others; and altho I have often suffered greatly by unfair dealers, it has been my uniform practice, when I sell, buy, or swap horses or other property, if the other party should think his bargain hard I submit to a recant without fee or reward, if application be made in a reasonable time, before I sustain too much loss by the contract: And as the aforesaid conduct hath procured the enmity of some of the most unfair & impious part of the community, & thereby brought on me the ill treatment which I am about to relate, I have thought proper to make this remark to shame my opposers, & for a pattern to them & others; as I have been taught by woful experience that punctuality is generally too lightly esteemed in that place, among the highest as well as lowest; & remarkably so: and even a claim on the County may be held for years, & due diligence made, & not money obtained unless the holder will submit to a discount of half or more.

And altho some of these things may appear, to some of the jockies, too singular to be credited, I defy them to show, by the testimony of any honest man, one instance of my conduct to the contrary of what is here stated: & I now dare the very best of my Tennesse opposers, under like disadvantages, to compare characters with me, among honest men, in regard to charity, liberality, integrity, & fair dealing.

And now, as I know of no fairer method of conducting this business than to direct it to some of the men who were of the jury, who by being present when the chief of the business was transacted, will be able, if I mistake anything, to contradict it, I make choice of you two, James Cunningham & John Cunningham, & request your candour in the case, as I have <sup>here</sup> named you that each doubtful reader may know where to apply for information; & you can inform who were the other jurors, if necessary.

You know, if you have not forgot, that the state's attorney, in his charge to the jury, said that at least twelve jurors must sign a presentment; & that twelve agreeing to a Bill of Indictment, & the foreman endorsing & signing it, would be sufficient; or if the foreman should not sign it, twelve others signing it would be sufficient. This circumstance is certified in the aforesaid certificate. You also know that I proposed entering the first day upon such business as was within the knowledge of any of the jurors, lest the jury should afterwards be overcharged with business; but there was little or nothing done that day but convene & adjourn, not much the next day. & This is also in the certificate. You also know, if you have not forgot that three Indictments came before the grand jury against William Sullens, each stating that he had with force & arms beat & wounded; & I endorsed two of them, True Bills, & signed

them, as foreman, but refused certifying the other to be a true bill, because the evidence (there being none brought forward but E M who received the assault) testified that he did neither beat nor wound nor use any weapon to him; but only took hold of the strap of his shotbag & broke it.

The States attorney being called upon, asserted that those words could not be dispensed with, as the law required them to be in an Indictment; & that they were only words of form & therefore it was not material whether they were strictly true or not; & that it was the duty of the foreman to sign every bill whether he agreed with the jury or not; and he repeated, that if the foreman would not sign the bill, it might be signed by twelve others, & that would answer the purpose.

I contended that the law did not require anything but truth to be in an indictment & defied him to show laws that did; which he did not undertake to do; but said it was in some of the old authorities.

I said; when a person did beat & wound with force & arms, it would be right for the indictment to say so; but where that was not the case, those words ought not to be in; seeing by endorsing it A true bill, & signing it, every word in it is asserted to be true, & that upon oath, as the bill states that the grand jurors upon their oaths do present & say it.

But after considerable debate, the States attorney braced the word wound,

& interlined the word abuse in its room, in order to get me to sign it: but as it then stood with force or arms did beat & abuse, it was still untrue; and I considered that if I endorsed and signed it, in the common form (To wit: A true bill, & sign it Thomas Embree foreman) I should thereby sanction the bill, with the rest of the jury, & assert that for truth which appeared to be false. But the States attorney, finding there was enough of the jury ready to pin their faith on his sleeve to pass the bill, he repeated again, that if the foreman would not sign it, twelve or more of the jurors might sign it; which was accordingly done by the whole jury except myself; being fourteen in number; that is, they endorsed it. A true bill, & signed their names to it.

Afterwards several bills came before the grand jury against overseers of roads for neglecting to keep their respective roads in repair; which stated that the overseer had with force & arms committed a trespass & misdemeanor, & that all the good citizens in the County had used the road; which were endorsed & signed by 12 or more (two of the others became conscientious about it toward the last & refused signing such bills; but 12 stood it out to the last) I being not free to sign them in that order, because they contained untruth, as there appeared no force in the crime, neither did it appear that the overseer was armed when he committed it (even if it was proper to say he committed a trespass & misdemeanor, when

he only omitted a duty): and the word arms, in such a case, is uniformly understood to mean more than the arms of the body, & cannot without evasion, be otherwise construed. What person of common sense, on being asked if Sullens was armed or unarmed, when he assaulted Millian, would take the question to be whether Sullens was dismembered or not? Who would understand that a man was dismembered on being told he was unarmed or disarmed? When we read in history of a company of men under arms, we uniformly understand they had weapons: & if we should afterwards find they had none, we should not hesitate to charge the writer with giving a wrong information, altho it would not be more so than those indictments, nor appear more so to a candid person who should hereafter read them for information.

I showed several passages of law in order to convince the jury that those words ought not to be in, where they were not true; but all my endeavours seemed of no other use with a majority of the jury, than to augment their determination to rely on the States attorney's word. But at last they became too headstrong to be governed even by him: for after he despaired of prevailing with me to sign the bills in that order he undertook to erase the words force & arms, & all, not doubting but the men who were so easily persuaded to sanction falsehoods would be as easily persuaded to sanction the truth. but he found it harder to lead them right than wrong.



for after he had made the erasements, & I was  
 about to sign the bills, one of the jurors  
 belched out, & declared he would not agree  
 for the bills to pass with the erasements.  
 saying they had signed some of them with  
 those words in, & if they should now sanction  
 them with the alteration, it would be swearing  
 back & forward; & one of them said it would  
 be all one as to swear he saw a certain man  
 in the street, & afterwards swear he had  
 not seen him; & he was backed by others,  
 & contradicted by none but myself: And one  
 expressed a doubt of the legality of the  
 bills without those words: & another  
 intimated that the jury had been detained  
 by my contending for trifles until the  
 business would not be got through that day,  
 & that the bills were so black from  
 erasing & interlining that he was ashamed  
 of them; & altho his expressions did not  
 proceed so much from a good understanding as  
 from his ignorance of the use of writing,  
 they, with the other harangues, had so  
 much weight that the most condescending  
 submitted to the most violent, & the State's  
 attorney had to interline the word, which  
 he had erased, before he could get the bills  
 to pass, & thereby made them blacker  
 than if they had been left erased. —  
 Astonishing! too much so to be credited  
 without a witness; but you know it is  
 true; I have nine witnesses to those  
 erasings & interlining & \* principal part not  
 the foregoing facts.

\* this part of the sentence had been corrected and the word  
 principal not clearly deciphered (to M<sup>r</sup> D)

The very men who would not enter upon business, at my request, the first day, because none was forced on them, reclaim against me for detaining them with trifles; & such trifles as are now declared by themselves to be matters of great & solemn import; & even contend beyond reason now on that side, & speak more than I had contended for in saying the erasing would make it contradict the other. If saying he committed a misdemeanor with force & arms had been true erasing the words force & arms would not make it untrue; or if the word all had been true erasing it would not make the others untrue. But the words which were left in because they were said to be only words of form, are now declared to be words of solemn import, & (altho untrue) must be inserted again (in the most hurrying time) because they had sworn to them. It was really astonishing, to see men so infatuated with a                      and disposition as to contradict themselves in such a glaring manner, merely for the sake of being contrary; and the very men who had the impudence to accuse me with contention for asserting that which they have now granted, (& more than granted) while the jury & state's attorney were in confusion about the erasing & interlining I, fearing more mischief against me, undertook to write a copy of one of the indictments, which I did before they were done intending to get some of the jurors to attest it, for which I was reviled for doing my own business while I ought to be at the

business of the County: But you know it would have been a mere folly for me to trouble myself any further in the debate; for those who reviled me were determined to not heed me, any other than in resentment; & it was not reasonable I should assist in interlining; & therefore was not detaining the jury. But they were doing it, with not trifles,

And you know I was the most industrious & accommodative of any of the jurors & as a lucky boy at their call: & when it was found that the State's attorney had, in haste, left one of the indictments without interlining, where he had erased the words force & arms and all, I being urged to do it (which is stated in the certificate) endeavoured to evade it, by saying I did not wish to have those words in, but was willing to sign the bill without them; & that such as wished them inserted might do it, I was abruptly answered, you are appointed to do such business for us, & you shall do it; or to that import.

One of the passages which I showed, in order to convince the jury that nothing but truth was necessary to be in an indictment, may be found in Blackstones Commentaries; stating that in an indictment for murder the word murder must be expressed, & one for Burglary must state that he Burglariously took, and one for felony, that he feloniously took, &c. But if any legislation had ever been so infatuated as to make a law that required lies to be in such indictments, such law would

revised, page 506; which is as follows, to wit.

"In all Criminal prosecution hereafter to be had by Indictment or Presentment in the County Courts, it shall be sufficient to all intents & purposes that the Bill shall contain the charge against the Criminal expressed in a plain, simple, intelligible & explicit manner, & that no bill of Indictment or Presentment shall be quashed, or Judgment arrested, for or by Reason of any Informalities or refinements, when there appears to the County Court sufficient in the face of the indictment to induce them to proceed to Judgment."

Is it not surprising that a professed lawyer should undertake to trifle with men's consciences, by putting falsehoods in indictments & persuading them to swear they are true, by telling them the law requires it, after having such plain law to the contrary before his eyes, even if the law ever had required it; which if it had, such law ought not to be obeyed, because it would be repugnant to the divine law.

But I defy all the lawyers in that state to show such a law that ever was in force there; which I presume they are not able to do; but I can show instances of indictments in England, about 150 years back, without those words in them: Two copies which are in print in Sewel's history, now in my possession; one in Latin, & the other in English: & they have neither force & arms nor vi et armis, in them, & yet passed for good bills.

But another one near the same date has force & arms in, & the prisoner who was indicted for preaching called them lies, because he had not made use of any. And

even the practice of putting falsehoods in  
 declarations, without an oath, has been exploded  
 by some of the most pious men of former ages,  
 as can be shown in history, to wit: Sevel 149  
 & 172 & other authors, much more indictments,  
 which are certified on oath; and I intreat  
 such lawyers as wish to be governed by solid  
 principles, to avoid imposing on men's  
 consciences in that line. If they have found  
 they can lead the common people like oxen (as  
 one of them boasted) they ought to be merciful;  
 & altho they lead them to submit to lies in  
 pleas & declarations with as little regret as  
 if there was no material difference between  
 truth & falsehood they ought to avoid it  
 where they are under solemn oath. They  
 ought not to even put a wrong day in an  
 indictment & persuade a jury to swear to it,  
 by saying the law dont consider a mistake  
 in the day material; for a mistake being not  
 material does not justify a jury in asserting  
 a crime to have been committed on one day when  
 the witness had testified to another day; for  
 that is not mistake. But you know if you  
 have not forgot that this was the case  
 with that jury; & almost every indictment  
 & presentment which were drawn by the  
 State's attorney, except some of the last,  
 declared the crime to have been committed  
 on a different day from the time asserted by  
 the witness; & purposely so; but with some  
 difficulty I got liberty to rectify them, &  
 also to insert affirmation in such bills as  
 I signed (as I did not swear) & I was  
 pointedly directed (which is stated in the  
 certificate) to make such alterations in

regard to time, place & c. as should be found necessary: & some blanks were left on purpose for me to fill them. Which rectifications were afterward made use of to prejudice the people against me, as though I had done it with an evil intention; but they were not made the grounds of quashing the indictments; as I can show in a certificate under the hand of the clerk of the court, & also by securing to the bills in the office you may find my hand writing in rectifying some of those which I signed & were not quashed: & if I mistake not, I rectified the two against Sullens which I signed, & did not rectify the one that was quashed: Had you know that I thus officiated for accommodation; & was as accommodating & moderate as the nature of the case would well admit of; in so much that one of you said afterwards, he wondered how I stood all the insolent revilings with so little appearance of resentment or to that impart. Some of the jurors who signed the indictments against overseers were the only witnesses to them: & if the very same person had been called before a justice to give testimony to that very fact, & asked if he saw the overseer armed when he was committing the misdemeanor, I suppose he would say no: & would not even say he believed he was armed, not withstanding he declared it positively in the bill.

The witness against Sullens had been one of the jurors that signed that indictment & had been previously sworn before a justice; & asked if Sullens went armed against Millian? & he answer, no: & if he did

beat or wound him? & he say no, & this testimony was committed to writing, & compared with the indictment which was sworn by that very person to be true; how would it look? how would they compare together? must not one or the other be false? Can any custom or law (if there had ever been such a law) make yes & no, or he did & he did not, both true, in answer to one & the same simple question? If the bill had stated that Bullens struck Mellian with a sword & cut off his ear, could the jury swear it to be a true bill, & clear themselves of guilt, by saying the attorney said the law required those words in (if he had said so) & by saying it had to be tried over again by a traverse jury? Or if the proof had been that he struck with a coultter, & the bill stated that he struck with a hammer, could they declare it a true bill, & excuse themselves by saying it did not alter the magnitude of the crime? Am I justifiable in swearing to a lie because I think somebody else will take care that it do not injure the prisoner? or is it my business to declare the truth, & leave the consequences, & not acquiesce with such logic as would require a man to swear white is black, or that a man's hand is a sword? This matter is so glaring that it is really astonishing to find that any rational being (not to say a company of men chosen for integrity & good sense) should render any argument necessary to show the absurdity of such conduct, & I am ashamed of it, & now leave it, to proceed to the next stage of the business.

The jury did not break up untill late in the evening, & I being unwell, & the weather wet, stayed in town that night; & understanding next morning that the lawyers intended to call me to account about the indictments, I stayed to see what would be done. And the first step they took was to call Sullens into court, (as if they had a curiosity in trying what they could effect with the people they talk of leading the open) notwithstanding he had before come into court & confessed guilty to that indictment (as well as to the other two) & judgment was entered against him; they prevailed with the court to let him come into trial again, & plead not guilty, & then prevailed with the court to quash the indictment for want of being signed by the foreman; & then proceeded to those against overseers of road, & had them all quashed on the same ground; & then moved to have me fined (the most officious on the bench being an impious young man, more revered for his malignity than for wit or eloquence; whose enmity I had procured by obstructing the trade of free negroes; & who was afterwards arbitrator in the case, than whom I had rather had an indian). But an offer was afterwards made for arbitrating, to which I consented; but they would not give me time to go home, or to procure some of the jurors for witnesses; but insisted upon doing it immediately; & kept me waiting untill night, & then were not ready; but insisted on doing it early next morning: as



The States attorney seemed to do his en-  
 deavour to support the bills (it being his  
 interest then to do it) & still seemed friendly,  
 & said the indictments were legally  
 authenticated as they stood, I relied on  
 him to give a candid statement to the  
 arbitrators, which he promised to do (& I  
 did not then know he was interested); But  
 the statement he gave was not an oath nor  
 as candid as I expected: but altho he acknowledged  
 he believed I was conscientious in my conduct,  
 he stated that I had been so obstinate &  
 contentious that he had been called upon  
 twenty times, & so hindered that he could  
 not get all his business done; with some  
 other misrepresentations. But after he had  
 done & gone out, I followed him, & tried to  
 persuade him to go back & mention some  
 things which he had omitted, & which he  
 then acknowledged to; but he would not;  
 but with such testimony as I was put off  
 with, the arbitrators gave judgment for me  
 to pay the amount of cost included in a bill  
 which the clerk of the court had furnished,  
 amounting to thirty eight dollars & thirty five  
 cents; which money was appropriated to the  
 use of the clerk & states attorney, instead  
 of the fee they would have been entitled to  
 if the bills had not been quashed; &  
 then I understood why I was so disappointed  
 in the evidence. And I gave lawyer Powell  
 five dollars to try to keep me from damage  
 in court; which makes \$43.35 in all;  
 besides much fatigue & trouble, & all for  
 endeavouring to serve my country  
 conscientiously, to the best of my understanding,

in the business which I had not sought, but was forced into. Perhaps the arbitrators may not all recollect the exact number of times the states attorney said he was called upon; but I recollect it well; & have a good reason for remembering it: for I was much displeas'd, as well as dishearten'd, to hear my case misrepresented at the rate of twenty to three, or rather twenty to two, by one who had promised candour, & thereby induc'd me to trust to him. Instead of twenty times, it is stated in the aforesaid certificate to have been but three times, & only two of them on account of my disputing. It is also stated in the certificate, that my uniformity of conduct, my diligent attention to business, & readiness to sign every bill that was consistant with my ideas of truth, evinced that I was not influenced with prejudice or partiality, but endeavour'd to act conscientiously, legally & for the good of the community.

I thought, & I think yet, as the state's attorney said that the bills were legally authenticated by being signed by twelve jurors without the foreman; because the act of 12 is as full authority to the court that 12 did agree, as the act of the foreman representing the 12 if he had signed alone. A representative of any set of men cannot convey a greater authority for those men, than the whole of the men could do for themselves; & therefore unless there be some express law to make it void it is as valid as if done by the foreman, even

if there was an express law to authorize  
 a foreman to sign bills on behalf of the  
 jury; for such a law would not disannul  
 the right of the jury to sign for themselves,  
 unless it be expressed in the law. They  
 did not read a passage in court which mentioned  
 the custom of being endorsed by the foreman (&  
 we know it is a custom which saves time &  
 trouble, whether there be any express law  
 to sanction it or not) but no other authors  
 within my acquaintance, do even mention  
 it as a custom for the foreman to sign for  
 the jury; but Blackstone says, 'when twelve  
 agree to a bill, they endorse on the back of it  
A true bill,' without saying anything about  
 foreman; and no doubt but he would have  
 been careful to mention it if he had thought  
 it so material as not to be legal without  
 being signed by the foreman; for he is  
 generally particular in such cases; & I  
 presume his work is considered as good  
 authority as the one that was read that  
 day, if not more so; & he speaks of no less  
 number than 12 to endorse a bill of in-  
 dictment, & says not a word about  
 foreman in the case; & the other author  
 only speaks of the custom in the case; the  
 foreman, & says not a word against the  
 legality of being signed by twelve  
 without the foreman; & yet the court was  
 so accomodating as to quack the bills, &  
 knew at the same time it was undertaken  
 by the combined party on purpose to injure  
 me, because I had offended them by  
 endeavouring to promote the publick good.  
 But notwithstanding the number of authors,

& common law on the original nature of things, are greatly in favour of the legality of such signing, it being sufficient to show the court that 12 did agree (more sufficient than being signed only by the foreman) & therefore is a legal method unless some express law makes it otherwise; yet it is not my intention to disapprove the custom of signing by the foreman, as it may save time & trouble:

But after the jury was discharged I was sorry I had been so accommodating as to make the aforesd alterations in the bills, seeing my benevolent intention was treated with ingratitude; & I was sorry I had not thought of a new way of endorsing, so as to clear my conscience, & avoid the storm, to wit: Thomas Embree, foreman, on behalf of twelve other jurors. But even this might not have answered the purpose, where such a combination can find vassals to effect almost anything they undertake.

It is probable the resolution of some of the grand jurors to oppose me, proceeded in part from my having been represented as stubborn when on a traverse jury sometime before, where two or three party men (who were too well accustomed to profane swearing to be very timorous about an oath & one of them I had sued for holding a free negro in slavery) had, after long debate got all the jury but myself to submit to them; & then held up an argument that as eleven was against me I ought to conclude I was wrong.

But eleven was not in reality against me: for several of them said afterwards, they still thought as I did, but concluded it was better to give up & let the party get a new trial (which we were not sure he could do) than to be kept all night & not be able to have it done right at last: but as what they contended for would contradict plain law, I could not with a clear conscience submit to it, as I was placed there to act according to my own judgment, & not to pin my faith on the sleeves of others, if there had been forty against me. But the parties at last agreed to a mistrial, & it was tried the next court & carried in the way I had contended for, & then removed to the Superior court, & carried the same way again: which was 25 to eleven, if there had <sup>been</sup> eleven against me: but I believe if three of the most violent had been away, all the rest would have agreed with me. But I should be sorry to trust my life or living in the hands of such condescending jurors with a headstrong enemy among them: for notwithstanding jurors may, in some cases, give way to one another where it appears for the best; yet men who will give up to the most violent, for the sake of ease, or to please a party, in pointed contradiction to plain law, are very unsafe men to rely on.

You know (& the two aforesaid juries are glaring instances) that men who are the most condescending, & anxious to please everybody, are apt to give up to the most violent & dangerous; & notwithstanding I believe the majority of the arbitrators [not all] wished to

do right, I suppose the outcry of a formidable party had some influence in this decision; & I think if I had been the most formidable & dangerous party; & the displeasure of the others had not appeared dangerous, the award would have been differently made even with the evidence especially as the states attorney acknowledged. I had acted conscientiously; & it was that was my benevolent exertions that had excited the enmity of the combined party, & brought me into that scrape. But I suppose the uproar had induced the best of the arbitrators to conclude it would be best to give away that much to pacify them, & prevent further mischief: for the outcry that was made (each negro pedlar giving it a cant: one rejoicing at my embarrassment & another pretending pity that it was so deplorable) seemed to have the effect on the populace of silencing everything in my favour, & induce even my friends to believe I was liable to a great penalty; & I confess I was intimidated when I found what power my enemies had over the minds of the common people; & especially when I saw how they had carried their point in court, & recollected how the jury had acted; & I considered myself in a dangerous situation, & expected to remain so while I lived among men who can try to do whatever the lawyers may please to direct: believed men that could swear to those lies, because lawyers directed it, could swear to any others they might direct; & a court that could quash indictments to please them, on the plea they

were quashed, is a very unsafe guardian.

In the foregoing account of this business, I have aimed at comprising the substance of the whole, by relating such matters of fact as are material, with such candour as to do justice to all who had a hand in the business, according to my understanding & recollection; & it was so effectually impressed on my memory as not to be easily forgotten; & as I said before, nearly all the material facts relating to conducting the business of the grand jury are stated in the aforesaid certificate; and now after having them revived in your memories, what do you think of them? Do you think the State's attorney was less in fault than myself? Do you think he merits such a sum of money from me for refusing to sanction lies? Or would there have been more justice in awarding him to pay money, seeing it is evident such falsehoods ought not to be in indictments; but he imposed them on the jury, & persisted in it until some of the jurors became too venemous to allow of an alteration; & if he had not done wrong the bills would not have been quashed, nor he hindered from his business? Do you think the jurors who would not sanction the truth after the states attorney had used the falsehoods, were less in fault than myself. Do you think the members of the Court who quashed the indictments without seeing or hearing any law making an indictment less valid for being signed by twelve jurors than if signed by the foreman, & at the same time being informed that such signing

was began, & the jury had been instructed so in the charge given in open court at that term, were less in fault than myself? Do you not think the whole of the proceedings against me, to sum them all together, are such as would disgrace a heathen village? Would not the very indians blush to hear of such conduct being transacted among them, against one of their own tribe; & especially one whom gratitude would require to be esteemed their benefactor?

A copy with some variations in expression without varying the facts, (Thomas Embree sent to Greenbrough by post & was received by McAlister & John Cunningham & I saw it there, & I suppose James got it.

After meeting with the above treatment, I concluded to leave that state; & after I had advertised my land & property for sale, two men, who were drinking at a tavern, wantonly burned one of the advertisements with a candle; one of them was a colonel of the lighthouse, & had been a legislator & had borrowed money of me some years before, & got broke up so that I could not get it of him; & the other was nephew to the governor of that state, & also in such fix that people could hardly get their due of him; whereupon I set up another advertisement, with the following addition: "Such theoretical gentlemen as wantonly burned, with a candle, & destroyed an advertisement for the above purpose in Leesbury, are requested to suffer this to stand until the day of the sale. If such pampered wretches were employed in some useful



business that would enable them to pay their debts, & preserve them from such insipid conduct as (among men of breeding) would disgrace (not to say a legislator & Colonel, or the governor's nephew, but) anything superior to a brute, honest men would have a chance of living without abandoning the country."

After I removed to Ohio I prevailed with the jurors to join me in having the falsehood erased, except one time I failed, & a bill was sanctioned with force & arms in it, against a person for stealing banknotes, & one against another for menace; & it was contended that those words are a form, used in a figurative sense. But to have words in an indictment which literally declare what is not meant, is (to say no worse of it) improper in stating facts on oath.

In the case of Bullins, it was said, he did not commit the crime without arms (meaning the arms of his body) But even if arms, in that place, meant the arms of the body, force & arms would not be true in the indictments against overseers; neither would it make the word beat true in the other case.

Jacob's law dictionary says "Arms & Arms in the understanding of law, are extended to any thing that a man wears for his defence, or takes into his hands or useth in anger, to strike or cast at another." Not his body or limbs, but something to defend them, as helmet, shield, sword, &c. In England, indictments were formerly written in Latin, & vi et armis stood for force & arms, & had no more allusion to the arms of the body.

(which in latin are called brachia) than to the eyes or toes, or corn or oats: & force & arms retain the same signification in english indictments as vi et armis had in the latin ones: & there is no more truth in swearing it was with force & arms the overseer committed the offense, or that a man committed a menace, or assault if he did not use force or weapons, than in swearing a hog is a horse, or a man is a dox; & one that can do the one because a lawyer said the law required it, can do the other, with no less propriety, if he is so directed. But reason might teach every man of sense enough for a juror that justice needs no false swearing to support it; & that if a statute had required it, such statute would have no legal force, because it would be repugnant to the divine law: & if ever it was considered that common law required it, I think the people that thought so were under a wrong apprehension. Common law is common right: & I do not think lying was ever a common right, in a just & civilized government (whatever might have been the opinion formerly in england, or on this island where geography describes the people to be all thieves by profession) or that the custom of lying ever made it lawful, much less, made truth unlawful. But it is said in Crown circuit companion, (a book in vogue among lawyers & judges) page 42 that at common law, "the words vi & armis were never necessary in indictments where it would be absurd to use them; & they would be absurd where they are not true. And the author further says, "however

material these words might have been by common law, yet now it is enacted by 37th Henry 8, ch. 8, that the words force & arms, viz. with clubs, knives, bows & arrows, shall not of necessity be put in any indictment or inquisition, even where they would be true. But while courts & lawyers can & will lead jurors into a custom which has a natural tendency to degrade the solemnity of an oath or affirmation, & impair the distinction between truth & falsehood, & is even more barbarous than was considered necessary prior to Henry's improvement; & while slavery is tolerated, the banking system unreformed, & punctuality disregarded, our country will lack materials for supporting a civilized government.

Judges & lawyers, you know that two contradictory assertions cannot be both true; & you know that when a jury declares a Bill True, all the facts contained in it are declared true; & you know that beat & wound with force & arms are important facts (or would know it if they were played on yourselves) & you will not seriously say they are true in a Bill for a bare assault or menace without force or weapon, or that force & arms would be true in an indictment for bare theft or neglect; & you know if they are not true they are false; & you know that the notoriety of their being false will not justify a juror in swearing they are true, any more than a man being a noted liar will justify him in lying; & can you believe, upon serious reflection, that you are justifiable in inducing the men you force into service (& ought to patronize) to swear they are

true, by telling them they are only words of form, & afterwards have the traverse jury to find the defendant guilty in manner & form of the indictment. The grand jurors swear the Bill is true, under the idea that the entire words are only form, & the traverse jurors find him guilty agreeable to that form. I am not finding fault with the manner of entering verdicts on docket, but I think jurors ought to be instructed to give a special verdict when only part of the Bill is found to be true. Altho judges & lawyers are blamable for leading jurors wrong, the latter are not excusable in sanctioning lies, if they understand English; because they have a right to judge for themselves in regard to facts, & are bound to do it; therefore jurors, take care for yourselves. That you will not sanction lies, you may effect a reformation without force & arms.