

explaining the charge as if he had been proceeded against by an information before a magistrate ; while, on the other hand, he is to be committed or bailed upon the presentment, in precisely the same manner as upon an indictment. In this manner the rights of the defendant are protected, and the demands of public justice are abundantly answered.

“ By other provisions, the duties of the grand jury, relative to the kind and degree of evidence upon which they may legitimately act, are defined. In practice, there is no established rule upon the subject ; and grand jurors are left wholly uninformed, except as they are occasionally instructed upon it by the Court, as to the precise line of duty marked out for them by the law. The consequence has been, that acting very honestly under a mistaken view of their powers, indictments are frequently presented by them, upon evidence wholly inadmissible, and which, even if admissible, was legally inconclusive. In one case, an indictment for false pretences was found, upon a one-sided and extra judicial affidavit taken in another state. In another, a witness was conducted into the grand jury room, with a long written narrative prepared by another, and was sworn by the grand jury, generally, as to the truth of the statement ; and without further examination or a single question as to the particular facts constituting the accusation, the witness was dismissed and an indictment found. In both these instances, too, the cases originated before the grand jury ; no previous complaint having been made. Nor was any remedy within the reach of the defendants. Indicted, as they were, upon palpably illegal evidence, there was no way of bringing the facts before the Court, so as to justify an application to quash the indictment. The Commissioners have reason to believe that innumerable cases of a similar and even of a more flagrant character have existed, and could, if necessary, be furnished. These, however, are deemed sufficient to illustrate the necessity of legislation, to guard against the continuation of the abuse—arising, too, from no dishonesty of motive, on the part of the grand jury, but from the fact that the delicate and difficult duties of the grand jury in this respect are entirely undefined by law.

“ The remedy proposed by the Commissioners is to be found in the provisions which declare, that in the investigation of a charge