

for the discovery of facts at the trial. These matters were dealt with, and the present functions of a court and petit jury were performed by the grand jury, composed of men selected from the neighborhood of the occurrence, and supposed to have a personal knowledge of the circumstances. The original function of the grand jury was, therefore, that of a trial jury and witnesses. As one writer puts it, "If a thief were taken in the act, the case was quite clear and no trial was needed." If not so taken, he was tried by "oaths and ordeals at the hundred court." If the grand jurors knew enough of the case personally, they at once decided the issue of guilt or innocence. If they did not know enough to enable them to judge, and the compurgation or oaths failed to satisfy them, then there was recourse to the ordeal, which was of different kinds and was used only as a last resort. The jurors actually tried the cases and were themselves the witnesses, for the simple reason that no other tribunal with similar functions existed. The accusation by a grand jury became practically a conviction. The jurors were, in contemplation of law, the witnesses. Sir James Stephen says: "It was by their oath, and not by the oath of their informants, that the fact to be proved was considered to be established, and the only form of perjury known to the law of England as a crime till comparatively modern times was that form of perjury which was committed by giving a false verdict, and which was punished by the process known as an attain." The indictment was the accusation presented by the grand jurors on their own knowledge. After several changes in the law had been made, witnesses were introduced before the courts to testify as to the facts of the case under consideration, and the jurisdiction of grand juries became very much curtailed in consequence. The principal reason for the convening of grand juries, namely—the trial of the accused by the peculiar modes then sanctioned as proper and sufficient—ceased to exist, as the final adjudication in criminal matters was gradually assumed by what is now known as the petit jury; but nothing appears to have been done towards abolishing the prior tribunal, although the changes we have indicated materially affected its power and procedure. It continued to exist, just as many other ancient forms and ceremonies, useless in themselves and cumbrous elements in the administration of justice, continue to the present day to exist, because our administrators are, in too many cases, imbued with a feeling of veneration for matters that have nothing but age to recommend them.

The Assize of Clarendon, 1164, and of Northampton, 1176, are amongst the earliest authentic records of the introduction of what was in some respects similar to our present procedure, with the exception of the ordeal of water. The provisions of the Assize of Clarendon are that, in case any one is accused before the justices of our Lord the King of murder, theft, robbery, or of harboring persons committing those crimes, or of forgery or arson, "by the oath of twelve knights of the hundred, or if there are no knights, by the oath of twelve free and lawful men, and by the oath of four men from each township of the hundred, let him go to the ordeal of water, and if he fails, let him lose one foot." The Assize of Northampton added to this the loss of the right hand of the accused, and to abjure the realm and exile himself from the realm within forty days.