

GRAND JURIES AND THE PLEAS OF CRIMINALS.

to which we must direct our attention ; and it is evident that if we would effect the saving contemplated, and remedy the evils in question, we must alter our practice with respect to Grand Juries and with respect to the time of taking pleas.

We must either abolish Grand Juries, or deprive them of the power of calling and examining witnesses.

And we must call upon our criminals to plead a day or two before the commencement of the assizes or sessions at which they are to be tried ; and we must then summon those witnesses only whose attendance is absolutely necessary, namely, the witnesses against those prisoners who plead *not guilty*, and who consequently have to be tried. Can we make the changes indicated, without being unduly harsh to our criminals, and without weakening the efficiency of the administration of our Criminal Law ? We think we can, and we think the necessary changes of procedure can be made easily.

We will first consider the change which should be made with respect to Grand Juries. The Grand Jury is a very ancient institution. Its primitive constitution is described in the laws of King Ethelred II.* (A.D. 978-1016) ; and, we believe, English gentlemen have periodically met together as Grand Jurymen from that time to the present. We will not hesitate to confess that we are in favour of the abolition of Grand Juries. We think it prudent, however, to make their abolition an alternative proposition ; for we know that some people have great veneration for them, and consider them bulwarks of our liberties.

In days when our judges were creatures of the Crown, and jurymen were ignorant, and, in cases in which it was a party, were liable to be punished if they gave honest verdicts, Grand Juries were, no doubt, great safe guards to the people. There was some chance that the collective

wisdom and independence of the gentlemen who were summoned on them, would protect the liberty of the subject, and prevent the strong from oppressing the weak.

Grand Juries have, no doubt, done good service in the past, and we will not venture to say that they are absolutely useless now. We think, however, that they have ceased to be necessary ; that they sometimes cause a failure of justice ; and that they may be abolished without danger to the liberties of the people.

Our judges, recorders and chairmen of magistrates at Quarter Sessions, are no longer under the influence of the Crown ; and though our judges still, nominally, sit as its representatives, in reality they sit as representatives of the Nation, to preside over the administration of justice on behalf of the people at large.

They carefully consider the evidence against each of the prisoners tried before them, and, if any case is not made out by the prosecution, they declare that there is no evidence to go to the jury, and direct an acquittal. If, therefore, Grand Juries were abolished, all the protection which is fairly due to prisoners who are innocent of the charges made against them, would be given by the judges, recorders, and chairmen of magistrates who preside at Assizes and Sessions. In such cases, they would direct acquittals, and since they would do this after all the evidence had been given in open court, we think justice would be less likely to fail than it is at present, when bills are thrown out by grand jurymen, who have not generally had any legal training, and who have not the same facilities for sifting the evidence adduced.

It is also worthy of consideration, that common jurymen are now better educated than grand jurymen were a few centuries ago ; and that our free and vigilant press, and our parliamentary government, make oppression, under cover of criminal proceedings, almost an impossibility. We think, therefore, that the services of Grand Juries might safely be dispensed with, and that their abolition would be advantageous to the State. If, however, the people will not submit to their abolition, we can retain them, and still effect the objects we have in view.

We have seen that the only duty which

* "This is the ordinance which King Ethelred and his Witan ordained as 'frith-bot' for the whole nation, at Woodstock, in the land of the Mercians, according to the law of the English." III. cap. 3. . . . "And that a gemot be held in every wapontake ; and the xii. senior thegns go out, and the reeve with them, and swear on the relic which is given them in hand, that they will accuse no innocent man, nor conceal any guilty one."—*Thorpe's Ancient Laws and Institutes of the Anglo-Saxons.*