

ment, when all the evidence taken together, is such, as in their judgment would warrant a conviction by the trial jury. Sec. 262.

"In some of the views of the Commissioners, as well as in the conclusion at which they have arrived on the subject, they find themselves fully sustained by an article published in the London Law Magazine, No. 64, on the subject of defects of criminal procedure.

This article is extracted by the British Commissioners in their Eighth Report, pp. 357-369, as being expressly written in answer to the questions propounded in the form of a circular by the Commissioners.

"In addition to the commendation of the Commissioners upon it, it bears the signature of J. Pitt Taylor, Esq., a distinguished modern writer upon legal subjects.

"In this note, the Commissioners have extracted that part of the article only which relates to Grand Juries. It will be observed that its reasoning goes to the extent of abolishing the grand jury altogether. This, as the Commissioners have remarked, cannot in this State constitutionally be done. The reasoning referred to and the facts adduced in this article are not, however, the less valuable, as demonstrating the necessity of circumscribing and more clearly defining the powers and duties of the grand jury.

"According to the existing practice, prosecutions by indictment may commence, either by bringing against the defendant a public accusation before a magistrate, or a private accusation before the grand jury. Let us imagine that the first course is adopted. Complaint having been made to a magistrate, and the accused having been summoned or apprehended, the prosecutor and his witnesses are called upon in a public Court, and in the presence of the defendant, to state on oath the circumstances on which the charge is founded. The accused, or his legal adviser, has then an opportunity of cross-examining the witnesses, of calling others to contradict them, and of making any statement with the view of explaining, justifying, or disproving the charge. If the facts be intricate, if important witnesses be absent, or if time be required for a more careful scrutiny, the inquiry may be postponed to some future day; till, at length, the case having been fully and openly heard on both sides, and the testimony having been reduced into writing, the magistrate decides whether or not the circumstances