

*Thomas Hardy*, 24 How. 214. That primate in the field of criminal jurisprudence delivers himself in these words: "It will be your duty to examine them (the facts) in a regular judicial course, that is, by hearing the evidence, and forming your own judgment upon it." In a fresh connection, he observes: "I am apprehensive that I shall not be thought to have fulfilled the duty which the judge owes to the grand jury, when questions in the criminal law arise on new and extraordinary cases of fact, if I did not plainly and distinctly state what I conceive the law to be, or what doubts may arise in law, upon the facts that are likely to be laid before you, according to the different points of view in which those facts may appear to you." Again, as to the withdrawal of considerations of fact from judicial examination, he proceeds:—"My present duty is to inform you what the law is upon the matter of fact, which, in your judgment, shall be the result of the evidence." This point he impresses anew: "Upon this last statement of the facts of the case, I am not called upon, and therefore, it would not be proper for me to say more." His luminous exposition terminates as follows:—"Gentlemen, I dismiss you with confident expectation that your judgment will be directed to those conclusions which may clear innocent men from all suspicions of guilt, bring the guilty to condign punishment, preserve the life of our gracious Sovereign, secure the stability of our government, and maintain the public peace, in which comprehensive term is included the welfare and happiness of the people under the protection of the laws and liberties of the people."

But the most sweeping determination on the question before us is furnished by a United States case, *Shattuck v. State*, 11 Ind. 473, where Hanna J., in delivering judgment in the Circuit Court, says: "By that law and practice (the English Common Law) from which we derived the main features of our grand jury system, the jury could call upon the prosecuting attorney for legal advice. But under that law and practice the advice given by the Court or prosecutor could not legitimately be upon questions of fact, but was confined to questions of law."

It may be added that Dickenson's Quarter Sessions, a guide whose reliability can be vouched for, lends its high authority to the proposition that the counsel which a judge, as expressed by this decision, may afford the grand jury, on request by them, should be