

These twelve men were originally the accusers instead of the private person wronged, and there is no less an authority than Mr. Justice Stephen, in his admirable History of the Criminal Law, for the assertion that "the system of indictment by a grand jury, which merely reported on oath the rumors of the neighborhood, might, and no doubt often did, work cruel injustice." After a time, the practice of convening what he calls "something like a county parliament," fell into disuse, and the sheriffs gradually adopted the plan of "summoning only a sufficient number of *probi et legales homines* to form a grand jury, and as many petty juries as might be needed." The theory was to summon the county magistrates until twenty-three appeared, but practically the summoning of "good and lawful men," not necessarily magistrates, was held to be a sufficient compliance with the law. This is now the practice of our system of criminal procedure, and it is based entirely on the theories and customs in vogue amongst the early law-givers and dispensers of justice during the Saxon and immediately succeeding periods of English history. All that has been left to the grand jury is the function of preliminary investigation.

Bearing in mind that the original grand jury system was a sort of county council and a local executive body, having an eye to the whole details of local government and the administration of justice or injustice, as the case might be, that the accusation of supposed criminals was only one of its numerous duties, and that to all intents and purposes it has been stripped of its once great power, we may fairly ask whether the shred that still remains might not go with the rest. Other functionaries and other bodies perform the greater part of the work originally assumed by grand juries in a better manner than it was done by them, and parliament of late years, still further encroaching on the functions of the grand jury in giving summary trials and a direct appeal to the court for its judgment of guilt or innocence, has shown itself to be guided by good sense and practical ideas. At any rate, it will be seen from the brief sketch we have given that there can be no argument in favor of the system grounded on its inception or early history; and like all other matters in this utilitarian age, if it has nothing to recommend it save the veneration which comes from the accident of old age, it must, we predict, soon become a fact for historians only.

We come now to the present state of grand juries, and the first questions which suggest themselves are: Is the system in accord with our modern ideas of fair trials? Is the bill found or ignored an independent judgment by a competent tribunal? Is it right that a man should be put in peril by an irresponsible body in his absence? Is not the theory of a secret tribunal entirely opposed to our whole system of legal procedure? Is it a safe tribunal to deal with the reputation or the liberty of a subject? We must not forget that the finding of a bill is of serious moment to the accused. In grave offences he is seldom allowed bail after a bill is found, although six months must elapse in many instances before he can be tried. The mere finding of a bill is also of the greatest consequence to the reputation and future of a person charged with an offence, even if the presiding judge directs an acquittal. It is therefore highly proper to enquire whether, in an important matter like this, we have retained and nourished out of the legal wrecks and deformities of the past, a useful or injurious article.