and, in the case of wealthy men, to discharge public offices, and to have time to qualify for public life. The regular working hours should consequently be less than ten hours. The demand made by clerks and other employées for early closing is therefore of the greatest importance in a moral and social point of view. The precise number of hours, less than ten, is a question for each trade, depending on the amount of information and mental qualification required by the men.

It is often urged that the matter can be left to regulate itself; but experience shows that unless the hours be fixed by public opinion and some uniformity maintained, selfish men will try by keeping open for long hours to get business from those who close early. Those who adopt early closing become jealous and dissatisfied, and try to induce their employées to stay on. So a rivalry or bounty on encroaching by long hours on the labourer's domestic life is created.

In the view I take of the matter I think the question is primarily a moral and social question, and not an economic one. It follows then that strikes as to the hours of labour are different from strikes as to the rate of wages, and that, from the high moral and social interests involved, the public should lend their aid in the cases beyond the operation of the Factory Act, by strengthening the formation of a strong public opinion in favour of reasonable and moderate hours of labour.

DISCUSSION.

THE CHAIRMAN said he was aware that the builders of London insisted on limiting the period for labour from ten to nine hours a day. In the *Daily Express* of the 13th inst. he read an account of a strike which had taken place in Carlisle, which, so far as the bricklayers were concerned, was compromised by the masters withdrawing the hour system, and by the men being allowed walking time to all jobs outside the city. This case afforded a strong corroboration of the views put forward in DR. HANCOCK'S paper.

MR. GREGG thought, from his intercourse with workmen, they would ever be found willing to listen to reason.

COLONEL TORRENS, as a considerable employer of labour, found that he could always get as much work out of a man in eight or ten hours as he could in twelve.

MR. M'DONNELL was of opinion that the legislature should be very cautious in dealing with this subject.

VII.—*The Functions of Grand Juries in Criminal Cases.*—By James H. Monahan, Esq.

[Read Tuesday, 20th June, 1865.]

THE various branches of our criminal procedure are necessarily closely interwoven. The necessity or the usefulness of a particular step in the complex process by which criminals are brought to justice, is often dependent on, and inexplicable without, reference to the

mode in which previous and subsequent stages of the investigation are conducted. It is therefore impracticable to form a judgment as to the value, or uselessness, of any detail of the structure of our criminal procedure, without having previously acquired a conception of the entire procedure—from the accusation to the conviction—as a whole. And in order to confine the discussion of such a subject within reasonable limits, we must assume that the principal features of the rest of the machinery are to be regarded as practically unchangeable.

Thus, it is easy to conceive the existence of a system of tribunals, having cognizance of criminal offences, sitting in continual session from day to day; having jurisdiction over offences committed, within a limited area of such convenient size that access to them, in each particular case, might be easy and without delay; at once ready to take cognizance of accusations, and empowered to inquire into them—to arrest the accused, and after such short interval only as may be necessary to collect proofs and to give the accused a reasonable time to prepare his defence, to investigate the case, decide upon it, and acquit the accused or award him proper punishment.

Even in such a state of things, it would no doubt be necessary for the safety of innocent persons falsely or maliciously accused, that the tribunal should excercise a discretion as to receiving an accusation and putting it in a train of enquiry, or rejecting it at the outset. Some satisfactory primâ facie proof would inevitably be called for before the accused could be arrested or publicly arraigned; otherwise the peace of the most virtuous citizens might be disturbed and their happiness destroyed by any slanderer. But still, assuming the primâ facie probability of the truth of the accusation

commencement to the close would be a continuous whole. The tribunal whose conscience was originally satisfied that the prisoner had probably committed a crime, having finally to determine—on the proofs being finished—that he actually was guilty, or else that the first impression produced on it was erroneous: the prelimary proofs must naturally have weight in the final adjudication, and the ultimate hearing of the case would easily take the form rather of a public justification of the conclusion of guilt already arrived at, by recapitulating and repeating in public the evidence already taken and arranged in private, than that of an independent investigation of the facts, on evidence new to the tribunal whose duty it might be ultimately to determine the case.

The criminal procedure of France and most other European countries approaches more or less nearly to this type, varying from it, however, in a multitude of details which I need not dwell on. With us, however, a widely different system prevails; the preliminary investigation and the final trial are kept widely apart. Offences of any gravity are dealt with by tribunals not sitting continuously, but assembling at comparatively distant intervals. Though of course our judges are not arbitrarily removable, yet, when a judge goes circuit, he tries criminals under the authority conferred upon him by the commission which is issued for each circuit only. Omitting the

special arrangements made for large cities such as London and Dublin, these commissions are, in Ireland, issued usually but twice a year. The ordinary tribunals having authority to try the gravest offences committed over the whole of the country district in Ireland, meet only twice in each year for a short time; in England, but three times. Cases of considerable gravity, but not the very gravest, can be tried at quarter sessions, held four times in the year. Thus, for the latter class there are six courts held in each year at which they can be tried. And every case brought before any of these courts must be thoroughly established from beginning to end, without any direct reference to the proofs made before the final trial commences. The previous steps in the process which have led to the prisoners being arraigned before them, go for nothing. The proceeding is, strictly, a trial of a completely new case, not merely a publication of a case already virtually finished and determined.

I have no need nor space to dwell on the comparative advantages of these features of our system over the method of foreign tribunals. At all events, no one wants, I believe, to change them much, and for our present purpose, to keep within reasonable bounds, we assume that they are not likely to be much altered. Two consequences follow from this, which we must note before proceeding. The one is highly advantageous to the accused, and, I think, to the ends of justice. The other is an unavoidable hardship to every man charged with a serious office. The circumstance that the whole case, when it is finally tried, is treated as a new case, to be proved by independent evidence, prevents errors or miscarriages in the earlier stages from having any appreciable effect against the prisoner, on the ultimate result The length of time intervening between the sittings of our criminal courts, must invariably lead to a longer preliminary detention of the accused than is at all required for the purpose of arranging the case against him, and giving him an opportunity of preparing his defence. And, in some instances, this preliminary incarceration, during which the prisoner, his guilt not having yet been proved, is assumed, according to the maxim of our law, to be innocent, may be extended over many months. This is certainly a hardship to the accused; but one which cannot be avoided. For of course, in some cases, to effect the ends of justice at all, a man accused with primâ facie probability of the commission of a serious crime must be imprisoned until his innocence is established.

Thus the duty of deciding on the likelihood of the truth of criminal accusations becomes, with us, one of peculiar importance and delicacy. On the proper discharge of this duty every one's safety greatly depends. Our law casts this responsibility in the vast majority of cases on the justices of the peace. With them, as a general rule, rests the authority of permitting or refusing to permit the machinery of the criminal law to be put in motion. Their conduct in this respect is governed by a series of enactments, which have, at all events, the advantage of being nearly all collected for them in a tolerably intelligible code, reduced to a compendious form. Whatever other faults may be attributed to the rules that govern magistrates in the performance of their delicate duties, I

think that no one can impute to them that of bearing too hardly on the accused person. In this, as in every other stage of a criminal proceeding, our law, almost to a fault, throws round the prisoner every possible protection consistent with any reasonably efficient measures for the repression of crime.

The magistrate acts on sworn testimony, taken in the presence of the accused, and reduced to writing. In the great majority of cases every step in the proceeding is guarded by the protection afforded by complete publicity. The accused is free to obtain the best legal assistance; to cross-examine the witnesses; to test the evidence against him. The prisoner may put forward any defence he pleases; but he is carefully warned against making any statement to injure himself. He cannot be interrogated. He may examine witnesses on his own behalf. The magistrate is bound not to commit the prisoner for trial unless a prima facie case be made out against him by witnesses entitled to a reasonable degree of credit. No course more lenient to the accused can well be imagined than that prescribed by these regulations.

Assuming that, under these circumstances, a primâ facie case of guilt is established, it is absolutely necessary for the safety of society that the accused shall be detained; or that, in the less heinous cases, sufficient precaution be taken by bail to ensure his appearance at the trial.

And accordingly, the decision of the magistrates (subject to certain check and control which I need not here dwell on) determines the momentous matter for the accused, that he must remain for a time under the imputation of probable guilt; that he ceases to be a free citizen and, in grave cases, that he must suffer imprisonment

When that time comes, the prisoner has suffered the whole of the hardships inevitably incident to detention preliminary to trial—and which must perhaps often be endured by innocent sufferers from the fallibility of testimony. The charge against him and the allegation of the witnesses in support of it are certainly known to his own circle and to those whose good opinion is of most importance to him. If the crime be serious, the evidence has already been published by the press and has been read by thousands. His social existence has been interrupted—he has tasted all the bitterness of shame and suffered all the agony of suspense.

I should think that an innocent man, in such a position, must long for his public trial, and count the days till the time shall come when his case shall be fully, fairly, and publicly heard; when the evidence of the witnesses establishing his innocence shall be as widely published as that of those who incriminated him, and his fair fame re-established by an acquittal as open as the accusation. At length this wished for time arrives. The assizes have begun, and the trial will immediately take place. But, before this public vindication of a character wrongfully assailed can commence, a proceeding is had immediately concerning us.

There comes into court a number of persons summoned by the sheriff. They are resident in, or have at least some local connec-

tion with the county; but they need have no particular qualification for the duty they are about to discharge, beyond the moderate one of not being peers, aliens, traitors, felons, nor attainted. It is said that they ought to be freeholders; but no one knows to what amount, and it is at least doubtful whether they need be freeholders at all. By a custom enforced by social usage, but not sanctioned by any positive law, the sheriff usually summons the most considerable commoners of the county whom he can get to come, and arranges their names on the list, or panel, with reference to the social position of the gentlemen called, the greatest man going first. I have heard that, not very long ago, in the west of Ireland, this duty used to involve the sheriff in no slight personal risk; inasmuch as gentlemen, considering themselves not to have been called in their proper priority, occasionally, in accordance with ancient usage, challenged the sheriff to mortal combat; an invitation which of course that officer could not decline.

Of the gentlemen thus summoned, a number not less than twelve nor more than twenty-three, so that twelve may always be a majority, are sworn to try the accused. The number thus sworn constitute the grand jury. In Ireland, they have very important duties to perform connected with the local taxation and management of the county. With this branch of their business we have, now, no concern: let us follow them in the discharge of their functions in criminal cases. In order fully to appreciate the character of these functions, let us recall for a moment to our minds the stage of the proceeding at which we have arrived. The preliminary investigation and the preliminary imprisonment are now at an end. All the evils consequent upon being publicly accused of a criminal action have already been endured by the prisoner. All the mischief which can ensue from an incautious committal by the magistrates has already been accomplished and is utterly irreparable. And, as we have seen, the whole case is, now, about to be reinvestigated from beginning to end by a tribunal which will take no note of what has been done before the magistrate—at least none that can fairly be said to bear hardly on the accused. It is at this precise point, of all others, that the grand inquest gravely sets about the task of reconsidering and reviewing the decision of the committing magistrate. The function of the grand jury is to hear the witnesses for the prosecution, but not any on behalf of the prisoner: for, says Blackstone, "The finding of an "indictment is only in the nature of an inquiry or accusation, which "is afterwards to be tried and determined; and the grand jury are "only to inquire upon their oaths whether there be sufficient cause "to call upon the party to answer it." In short, they are now, at the eve of the public final trial, to repeat what has been finally and irrevocably done by the magistrates perhaps months previously; to reiterate an operation which has been finished long before, and which, supposing it to have been erroneously conducted, has worked every evil result which it is capable of causing. The grand jury may perhaps shelter a guilty man from punishment; they can never save an innocent man from the misfortune of having been wrongly committed.

And the method of procedure which they are forced to adopt, violates, in almost every salient detail, those conditions which we have grown accustomed to regard as essential to the sound and healthy exercise of judicial functions.

Most men are now agreed that the full and complete publicity of legal proceedings is the best safeguard, both of the credit of the law and of the lives and liberties of citizens. The grand jurors hear and judge in a private room; they are bound by oath to keep their counsels secret. It is contrary to the humane maxims of our law to take evidence against a man in his absence; the grand jury never permit the prisoner to be present at their investigation. While we all feel the value of the system of ordinary trial by petit jury—when the bulk of the citizens, with minds unwarped by legal rules and unfettered by technicality, take their full share of the important duty of deciding the ultimate issue of the lawsuit—still those most familiar with it know best how essential it is that juries, while left undisturbed in the exercise of their proper functions, should yet be guided and assisted by men with practised brains. The grand jury is wholly deprived of any professional assistance. They sit in a room apart, the witnesses are sent in to them, and they must shift as best they can to get perhaps unwilling witnesses to tell their tales in a reasonably intelligible manner.

It is not then surprising that we are told that when crimes are hushed up, when evidence is bought off, the scene of perjury is neither the police office nor the sessions court, that it is laid in the chamber of the grand jury. We are not astonished to read in the recent charge of a judge to a grand jury in England; "How, gentle-"men, you make your way among these various impediments and "perform your task with (comparatively speaking) no little da-"mage to the interests of justice, I am not quite able to explain; "but most assuredly, the praise of doing less harm than might "reasonably be expected is the only compliment which existing "arrangements permit me to offer for your acceptance." In an article written by Lord Denman, after referring to the word "jury" as being so musical to English ears, and its functions as beyond all doubt one of the best and noblest securities for all the rights of social man, he goes on:—"But the generous institution here "characterised corresponds in no single feature with that anomalous "excrescence attached to courts of criminal law in England, under "the name of a grand jury. That is not an open but a secret tribunal; "the accused has no voice in its formation; no challenge against "his worst enemy, who may possibly direct its unwitnessed deli-"berations. The legal points that may arise are clandestinely debated "and decided without the assistance of any known minister of the law. "In their private chamber, the grand jurors hear the testimony on "behalf of the accusation only, subject to no cross-examination or "contradiction. In a spirit directly hostile to the most cherished "principle of English law, every thing takes place with closed doors, "and in the absence of the party to be affected. Finally, as if to "complete the contrast, the verdict need not be unanimous or even "the opinion of two thirds: for a bare majority, twelve to eleven, is

"sufficient either to put a party on his trial or to stifle the most "important investigation * * * * When they find the bill, they "only express the opinion already adopted and acted upon by the "committing magistrate, after a much more satisfactory proceeding. "Is not this superfluous? If they differ from him, and, by rejecting "the bill quash the charge, they can hardly clear the suspected "character, but may do irreparable injury to public justice." Perhaps we can now understand how it came to pass that the grand jurors of the Central Criminal Court so long ago as the year 1852, expressed their unanimous opinion that "a grand jury increases "the expense and adds to the delay of criminal prosecutions. It "affords an opportunity for corruption and for tampering with pro-"secutors and witnesses."

These authorities are many and weighty, and in truth they do no more than justify the anticipation which one cannot help forming on a short glance at the nature of the functions exercised by grand jurors in criminal cases, and the methods pursued in exercising them. I imagine that if the establishment of the grand jury, as an addition to the rest of our criminal procedure, were now, for the first time, proposed as an improvement in our system of law, the whole project would inevitably be rejected—branded as an attempt to introduce a certainly useless and probably dangerous anomaly into our legal system.

Grand juries, however, are they say at least as old as the laws of King Ethelred, and the directions given by Bracton, (who wrote in King Henry the Third's time) for the guidance of justices in eyre, have an almost startling resemblance to what happens on every circuit to this day. He says, "And first are read the briefs which give them authority." This exactly corresponds to the "opening" of the commission with which each of the assizes going out next month will commence. Perhaps some of the charges to the grand jury may not be far off from this. "And then the senior and the more discreet "of the justices shall deliver a discourse upon the advantages of keep-"ing the peace, and a lamentation over the violation thereof 'per "'murdritores robbertores et burglatores.'"

In fact the grand jury is but a relic of the great system of inquest by jurors which, though adopted from the old Saxon system, was so largely used by the Norman kings in conducting the government of the country, and which, according to Sir Francis Palgrave, had so marked an effect in limiting the royal prerogative in every branch of its exercise—the system through which it came to pass that "The thunder of the exchequer at Westminster might be "silenced by the honesty, the firmness and obstinacy of one "sturdy knight or yeoman in the distant shire." The grand jury seems to be even an older institution than the petit jury—or at all events to have sooner intervened in almost every criminal case. The earliest date at which we have an intelligible conception of how a criminal trial was conducted in England is the 5th Richard the First, (1194). The course was this: On the presentment of the malcredence or violent suspicion of a jury, which to a certain extent corresponds to the finding of the bills by the grand jury, ap-

peal was had to the barbarous expedience of the ordeal: in ordinary cases, and as a general rule, the case was not submitted to a second jury. The accused must forthwith clear himself by the ordeal of water or the ordeal of fire. In some special cases—it is not now easy to ascertain their precise nature,—in lieu of the ordeal,—the accused was, as a matter of favour, of purchase, or of privilege, brought before a second jury summoned from the neighbourhood of the place where the crime was alleged to be committed. These, though they were in fact rather witnesses than jurymen, are the lineal ancestors of our petit jury.

By the 18th canon of the fourth Lateran Council in November, 1215, trial by ordeal was abolished throughout Europe. The mandate of the church was obeyed in England, but the authority which prohibited the ordeal substituted no other mode of trial in its place: and the system of having recourse to a second jury, after the malcredence of the first, was, from default of any other mode of trial, extended to all cases. And thus it would really appear that the trial by jury—that word so musical in English ears—that palladium of our liberties—owes, at all events, much of power and general establishment to a decree from a quarter whence few Englishmen, perhaps, think it likely that such benefit could emanate.

However, this is far away from our immediate purpose. Enough has been said to recall to our attention the great antiquity of the institution with which we are dealing. This no doubt accounts for the strenuousness with which some persons still supported it. For its venerable age enlists on its side that sentiment of respect for things ancient which has so high an influence on men's minds and is of such real use to society. But we must remember that respect for antiquity and dislike of change must be indulged within reasonable limits only—and that time by no means stands still; "that," as Bacon says, "contrariwise it moveth so round, that a froward retention "of custom is as turbulent a thing as an innovation; and they that "reverence too much old times are but a scorn to the new."

I have now stated the more salient vices of the system of submitting bills of indictment to the grand jury, omitting designedly some matters of detail which appear to me to be of comparatively minor importance. I have neither cared to dwell on the hardship which may arise when bills of indictment are sent before the grand jury, without any previous investigation before the magistrates having taken place; such cases may no doubt occur, and the defects in the method of procedure governing the deliberations of grand juries cannot fail to expose the accused, in such cases, to great hardships. But, in this country at all events, such incidents are so rare as hardly to merit discussion.

Having thus stated what appears to be the strength of the case against "the functions of grand juries in criminal cases," it is but right to look at the reverse of the shield—to listen to the more prominent of the reasons put forward by the apologists of the system. It is said that it conduces to the ends of justice that grand juries should intervene to ignore bills; because thus a criminal against whom the

evidence is not complete, when the time for trial comes, does not necessarily escape altogether as he would if put upon his trial before the petit jury and acquitted. For, it is said, though the grand jury ignore the bill, and thus enlarge the prisoner, he may, on the discovery of fresh evidence, be again arrested and again indicted. Now, no doubt, such cases may possibly occur; but they are so very rare as really practically not to be worth considering. In the case of offences of minor importance it is not likely that the matter will be taken up again. In the more serious cases it is highly improbable that it ever can be—for the discharged prisoner is either guilty or not guilty. If he is not guilty, it is vastly improbable that the false charge, having once failed, will be repeated—it certainly is not desirable that it should. If the prisoner is in fact guilty, after such a narrow escape, he will probably take steps to withdraw himself from the reach of justice. And experience enforces this anticipation. Cases of prisoners a second time indicted after a grand jury has once ignored the bill, are so very rare that in forming a practical judgment on the subject, they may fairly be left out of account. And, having regard to the privilege of postponing the trial of serious criminal cases, usually conceded to the crown and largely exercised in important cases, the shadowy help to justice thus given by grand juries is certainly not needed.

Another and I think a better argument in support of continuing the functions of grand juries in criminal cases is one founded on the social advantages gained by inducing that higher class from which grand jurors at the assizes are taken, to share in the administration of criminal justice. This argument has no application to grand jurors at quarter sessions; for they are taken from the very class who compose the petit jury. As I have already stated, there is no well defined legal qualification for grand jurors at the assizes. There is, however, a qualification required for grand jurors at quarter sessions and it is the same as that for petty jurors at the assizes. There is nothing more urgently needed and more loudly called for in our law than greater simplicity, more conformity, and less of arbitrary distinction, in the methods of procedure. Should the grand jurors at quarter sessions be abolished, it is not likely that those at the assizes can long continue their functions in criminal cases. The preliminary enquiry before the grand jury having been found to be superfluous in the one case, can hardly, with any show of reason, be retained in the other.

But I think that the question cannot be determined on an issue like this. The direct and immediate effect of the interposition of the enquiry before the grand jury must, necessarily, be either useful and conducive to the ends of justice, or be merely nugatory, or else mischievous. If it be immediately useful or directly conducive to the ends of justice let its advocates meet us in this ground, and shew us that it is so. If they accomplish this, there is no need for them to go further—they have already established their point. But if they are defeated upon this ground—if it be shewn that those immediate and direct results are nil or mischievous—surely it is little

short of an insult to the class whose co-operation is desired, to suggest that an institution, shown to be idle or harmful, should be retained merely for the purpose that that class should be engaged in working it. I do not think that the elevated and enlightened body from which grand jurors at the assizes are selected, is likely long to care to exercise functions which have become almost a mere form and which may perhaps work mischief.

In conclusion it is right to note that, with all its faults, the system of sending bills of indictment before grand juries does much less mischief than might be reasonably expected. This probably is to be accounted for by the circumstance that the enquiry before the grand jury has become little more than a mere form. However, idle forms are the things of all others which men now are impatient of in legal procedure. It is no great effort of prophecy to predict that the attacks which have already been made in parliament on this ancient institution will be renewed on a more extensive scale than has yet been attempted. And one feels inclined to add that, when such attacks shall be made, no one who regards our legal system in an enlightened spirit will desire to raise a finger in defence of the "functions of grand juries in criminal cases."

VIII.—*Proceedings of the Statistical and Social Inquiry Society of Ireland.*

EIGHTEENTH SESSION.—FIFTH MEETING.

[Tuesday, 21st February, 1865.]

THE Society met at 35, Molesworth-street, Jonathan Pim, Esq., V.P., in the chair.

Dr. Shaw, F.T.C.D., read a paper entitled "English Schools and Irish Masters."

E. D. Mapother, M.D., read a paper on "The Difference between the Statutes bearing on Public Health for England and Ireland."

The ballot having been examined, the following gentlemen were declared duly elected members of the Society:—John P. Byrne, Esq., J.P.; John Simon Carroll, Esq.; Alexander W. Hodges, Esq.; James A. Mowatt, Esq.; The Solicitor-General for Ireland (Edward Sullivan, Esq.); Erwin Harvey Wadge, Esq.

SIXTH MEETING.

[Tuesday, 25th April, 1865.]

The Society met at 35, Molesworth-street, Professor Ingram, F.T.C.D., V.P., in the chair.

Professor Houston read a paper on "The Strike and Lock-out in the Iron Trade."