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THURSDAY, FEBRUARY 6, 1908,

CRIMINAL LAW AND PROCEDURE

By Col. J. G. Freeze.

The criminal colle and precedure in Pennsylvania are the outgrowth of a commission, authorized by a Resolution of the General Assembly of the 16th of April 1858, page 523, "to collect all the statutes relating to the Penal Laws of the Commonwealth, to arrange the same systematically under proper titles, to suggest improvements, to designate such as ought to be repealed, and to prepare and submit new statutes, which seem to be a 1visable or necessary, for the consideration of the Legislature."

feeling among lawvers, that a re-vision of that revision is highly es of either bench and justices in court are the Jurors-Grand and Petit its derivation and growth from and ed." This of course implies that ions against persons whom none least twelve men, that the accused out of the law of England.

began to be a right of property; years after the statute. and while men took such as was The petition says: "Great evils beginning the Grand Jury grew to themselves. The ruling classes

greatest safeguard to these liberdates from June 19th, 1215, in the land.

The Habeas Corpus Act of 31 Charles II, (27 May 1679) provid-es the great remedy for the viola-tion of personal liberty. The full village in which his adversary is title of the Act is "Habeas Corpus so powerful that the defende title of the Act is "Habeas Corpus and subjectendum" "That you have the body to answer." It is a writ of right. It is designed to give the person in confinement, or who is restrained of his liberty, an immediate opportunity to test the question of law involved in his im-orisonment, or restraint. prisonment, or restraint. Thus under Magna Charta of 1215 and Habeas Corpus of 1679, the personal rights and liberties of the subject were ordinarlly well se-cured and protected. But the King or some of his powerful Lords and or some of his powerful Lords and Barons, occasionally thought that the rights and liberties of the sub-tect were too carefully guarded which the defendant will be conor some of his powerful Lords and ject were too carefully guarded, and therefore when some person, obnoxious to the King or to the Baron, was to be gotten out of the way, he was arrested and imprisoned; and as he was likely to be discharged or bailed under Habeas Corpus proceedings, the King is-sued a writ of Oyer and Terminer which was sent into the county where the obnoxious gentleman was confined, to try him. You ob-serve this was the King's writ-

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round family medicine known today." Mar G. D. FARLEY, 652 Wilder St., Lowell, Mass. "I recommend Hood's Sarsaparilla to any one." JOHN B. DUFFY, 14 Auburn Street, Lowell, Mass.

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not by or under any law of the realm- and he appointed the Judges who held the Oyer and Under the Resolution, the Gov-ernor appointed as commissioners to report upon the subject, Edward King John C. Kues and David Line and generally did so. A King, John C. Knox, and David Webster, who made a report to the Legislature, dated January 4th, nal law of England" by Sir Fitz 1860 and accompanied by a codifi-cation and system of Criminal law will show what these courts were. which was adopted by the Legisla- The first express mention of ture, and signed by the Governor, March 31, 1860. Under that code and its various amendments and statute is in these words: "A writ additions, we have continued near- of trespass, to hear and determine, two of them, the President being mum that can be imposed. Ip fifty years and there is a strong from henceforth shall not be grant- one, constitute the court.

necessary. It is not my purpose eyre, unless it be for a heinous Petit. to take up and deal with that trespass where it is necessary to question, except incidentally, but provide speedy remedy, and our grown out of the constitution of to give a brief historical resume of the criminal law as we have it, and hath thought it good to be grant-1164, by which, in case of suspic-the Grand Jury is the opinion of at

cestry, a growth from mere savag- the Statute left in existence, if it thereto by the Bishop, to swear prepared and tried, and can be as ery, when the rule was, "Let those did not introduce great abuses. twelve men of the neighborhood or well prepared and defended, withtake who have the power, and let This appears from a petition in the village, to declare the truth. They out the intervention of a Grand those keep who can," that there Parhament Rolls of 1315-thirty were persons who knew the facts Jury, as it can after that most pon-

unappropriated, possession being and oppressions against law are done up; the steps and processes are unnine points of the law, the rule that to many people by granting com- known, but the twelve men grew might was right, ceased to exist. missions of Oyer and Terminer, to twenty-four, and from being But for many years that was a rule more lightly or commonly than is persons who knew the truth, they only among the common people as proper, against the Common law, learn it from witnesses who testify zens of the county in many matters for when a great lord or powerful before them and whose testimony held the common people as serfs man wishes to injure another, he is inviolable.

For the protection and establish passed, and purchases commissions duly expensive. It is composed of ment of the liberties of the people, of Oyer and Terminer to people the writ of Habeas Corpus was the favourable to himself and hostile to the other side, who will be answer to the call, one of them is ties. Its origin is lost in antiquity, ready to do whatever he pleases, discharged, although twelve of the but it was well known to the Com- and will fix a day of which the mon law, which is or was, a body other side will either receive no bill. The twelve who say "No" of unwritten law, and was in use notice from the Sheriff and his if the twenty-four were left on, speedy and certain in the punisheven before Magna Charta, which bailiffs (who are procured to take cannot overpower the twelve who ment of offenses. As for examples parts in the fraud.) or else such short say "Yea"-but notwithstanding, reign of King John, and is the notice that he cannot attend; and most ancient written law of the so he is greviously amersed, name- of the United States, either by con- 49. Twelve would reduce the ly, lbs. 20, or 20 marcs, or lbs. 10, stitution or by statute, there has amount one-half, and seven or nine

"A Good Name at Home" that no commission of Oyer and ought to be abandoned. I am of And it was repeated in the Constitution of 1838, and in that of 1874.

The powers and duties of the Criminal courts as they exist at present are regulated by the Conthese words:

Courts of Oyer and Terminer and General Jail Delivery, Courts of Quarter Sessions of the Peace, Or- Along this line phans' Courts, Magistrates Courts, and in such other courts as the General Assembly may from time to time establish.'

And by section 9 of the same Ar-ticle: "Judges of the Courts of shall be judges of the Courts of Oyer and Terminer, Quarter Ses-sions of the Peace and General Jail

wealth, 75 Pa. 430.

So, while we have Courts of Oyer

The Grand Jury seems to have It was, among our English An- the practice had previously been wished or dared to accuse, author-ized the sheriff, being required trial. But the case can be as well and declared the truth. From this derous body of gentlemen has sat

> not less than twelve nor more than presented in these few remarks, twenty-four, and if twenty-four twenty-four men c.:n find a true one must go. However, in many | paid, by County Statement \$925.come to be a great difference in the would cut off another large sum.

Terminer should ever be issued. opinion that a Grand Jury ought to be called, and I am also of the opinion that the number seven is sufficient for a Grand Jury. Certainly the present number is expensive and cumbrous; and as a stitution of 1874 Art. 5, Sec. 1-in true bill merely requires the defendant to be put upon trial, it is monwealth, shall be vested in a Supreme Court, Common Pleas, out of twenty three first welve any rate it is a question for legisla-

Along this line the legislature of the state, at its last session, passed an Act providing that in certain cases, defendants may enter pleas of "guilty" and be sentenced forthwith, without a bill of indictment being presented to a grand jury. Common Pleas, learned in the law, There is, as it seems to me, altogether too much delay and fuss and feathers about the administration of the criminal law, with respect to minor offenses.

Prompt justice, whether it be acquittal or conviction, is most

economical; and it is a deterrent from wrong doing. The District Attorney ought not only see to it case of O'Mara vs. The Common- that no guilty man escapes, but also that no innocent man is im-prisoned or held under restraint.

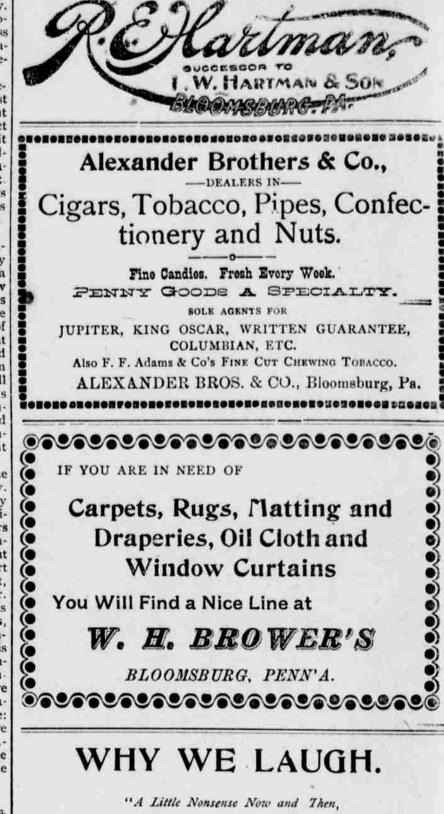
> The truth is, there is no substantial or satislactory reason why any criminal charge should go before a Grand Jury, certainly none below a felony. If the investigation has any effect at all, it is against the upon it.

I am making no attack upon the organization called the Grand Jury. It is an important and necessary help to the court, and to the citirelating to the expenditure of monand their property as legitimate olunder, which they had the power or maintains some one else on Jury seems to be cumbersome and or maintains some one else on Jury seems to be cumbersome and the Grand Jury is a back number. ey, and the general management It is very evident from the facts that fifty years of the present Criminal Procedure Legislation has shown that it can be greatly simplified, and made much less expensive to the county and much more Last year the Grand Jurors were

> Dr. Miles' Anti-Pain Pills relieve pain. Hoarding of enormous sums of

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KIDNEY TROUBLE

The importance of knowing just what to to when one has kidney disease or urinary

 to when one has killey disease or urinary troubles, is best answered by the following letter which was recently published in the Poughkeepsie, N. Y., News-Press: MILLINGTON, Dutchess Co., N. Y.
"Dr. David Kennedy, Dear Sir: -For more than eighteen months I was so badly afflicted with kidney trouble I could scarcely walk a quarter of a mile without almost fainting. I did not gain any until I began to use Dr. David Kennedy's Favorite Remedy. After using the first bottle I noticed a de-cided improvement which continued, and I

DR. DAVID KENNEDY'S **FAVORITE REMEDY**

saved my life, for I was in a miserable con-dition up to the time I began to take it-my ritends thought I never would be better. My sister also has been very sick with bladder trouble for over a year, so bad that yountities of blood would come from her. She suffered at times most frightful pain, and nothing seemed to help her until she began the use of Dr. David Kennedy's Fa-torite Remedy. She is now using her third bottle, and is like a different person. MRS. THOMAS DYE." Write Dr. David Kennedy's Sons, Rondont, N. Y.

victed of the trespass, though he may not be guilty, and the damage taxed at the will of his adversary, that is to say for a trespass for which 20 pence would be enough, at 200 lbs, 400 lbs, sometimes 1000 marcs, and if the party convicted is caught. he will be imprisoned, and remain there until he has paid every penny, or until he agrees to sell his land; or until his friends pay, if he is ever to get out. And if he cannot be taken he will be put in exigent and exiled for ever." (by being outlawed."

And this from a petition to Par-liament to have the Writs and Commissions abolished.

No wonder that in the Pennsylvania Constitution of 1791, the Declaration of Rights provided,

the The Kind You Have Always Bought Bears the Chart Fletching lignature of

facts which are a little curious and quite instructive, upon the question money in gold by foreign-born of making some statutory changes miners and saloon keepers in ceedings and personnel, in Pennsylvania

with a grand jury in any case. and privileges. And in Alabama and Mississippi there is provision for other process in criminal cases. In Nebraska, the legislature may provide for holding persons to answer for criminal offenses on the information of a public prosecutor. In Oregon seven men are drawn from the body of jurors in attendance, and sworn as Grand Jurors. In Utah the law find a bill; in others twelve, but nine can find a bill. In Virginia nine to twelve; seven fiud a bill; in Florida twelve to fifteen sinkt sinkt. Florida twelve to fifteen, eight can find a bill; in Indiana six, five can find a bill.

It is clear that there is no magic Combination and Golden Lad in the number 23 for a grand jury, with 12 to find a bill. The variations prove that the younger states are progressing and that the Com-mon low rule is cumbrous and

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in the criminal practice and pro- Schuylkill county has been disclosed by investigation by bank offic-ials. Of the sums of money re-In Indiana, Illinois, Iowa, Ne- ceived from foreigners for liquor braska, Oregon and Colorado, the licenses, all was in gold. Mine of-constitution gives the legislature ficials state that the hoarders are authority to make laws dispensing men ignorant of banking customs

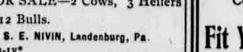
AUDITOR'S NOTICE.

Estate of Asa Yorks, Deceased. Notice is hereby given that the under-signed, appointed an Auditor by the Orphans' Court of Columbia county, on exceptions to the second and final account of Asa Yorks, late of said county deceased; and also to make distribution of the estate in the hands of his Execuas Grand Jurors. In Utah the law is the same. In South Dakota, not less than six nor more than eight. In Idaho, sixteen. In Washington not less than six nor more than seventeen. In North Dakota not less than sixteen nor more than twenty-three. In California nine-teen, New Mexico twenty-one. In several states seven, but five can

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