1854-55 (481) **Report from the Select Committee on Public Prosecutors; together with the proceedings of the committee, minutes of evidence, appendix and index.**

REPORT

FROM THE

SELECT COMMITTEE

ON

PUBLIC PROSECUTORS;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

APPENDIX AND INDEX.

Ordered, by The House of Commons, *to be Printed,*
9 *August* 1855.

481.

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REPORT.

THE SELECT COMMITTEE to whom the subject of the PUBLIC PROSECUTOR'S BILL was referred, and who were empowered to Report their Observations, together with the Minutes of Evidence taken before them, to The House;——HAVE considered the matter to them referred, and have agreed to the following REPORT:—

YOUR COMMITTEE have taken the Evidence of various persons well qualified to give information on the important subject of their inquiries. Considering, however, the advanced period of the Session at which the last portion of the Evidence was received, and the absence from town of several Members of the Committee, Your Committee think it most expedient to content themselves for the present with presenting to The House the Evidence they have collected. They recommend that they should be permitted to resume their labours at the commencement of next Session.

9 *August* 1855.

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PROCEEDINGS OF THE COMMITTEE.

Jovis, 7° *die Junii*, 1855.

MEMBERS PRESENT:

Mr. Phillimore.
Mr. Watson.
Mr. Ewart.
Mr. Philipps.
Lord Stanley.

Motion made (Mr. *Ewart*) and question, "That Mr. Phillimore do take the chair," put, and agreed to.

The Committee deliberated on the course of proceeding.

Ordered, That the Chairman do move The House for power to send for Persons, Papers, and Records.

[Adjourned till Tuesday next, at One o'clock.

Martis, 12° *die Junii*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Philipps.
Mr. Ewart.
Lord Stanley.
Mr. Attorney-General.
The Lord Advocate.
Mr. Walpole.
M. Watson.

The Right Hon. Lord *Brougham and Vaux*, and the Right Hon. *James Moncreiff*, Lord Advocate of Scotland, examined.

[Adjourned till Thursday next, at Twelve o'clock.

Jovis, 14° *die Junii*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Watson.
Lord Stanley.
Mr. Philipps.
Mr. Miles.
Mr. Ewart.
Mr. Attorney-General.

Mr. *Thomas Flower Ellis*, Mr. *Charles Sprengel Greaves*, Q. C., and Mr. *Robert Marshall Straight*, examined.

[Adjourned till Tuesday next, at Twelve o'clock.

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Martis, 19° *die Junii*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Ewart.
Lord Stanley.
Mr. Philipps.
Mr. Miles.
Mr. Walpole.

Mr. *Thomas Flower Ellis*, further examined.

Mr. *Henry E. Davies*, the Right Hon. Lord *Campbell*, Lord Chief Justice of England, Mr. *Bertie Markland*, Mr. *Hamilton Richardson*, Mr. *James Hemp*, and Mr. *George Leeman*, examined.

Mr. *Robert M. Straight*, further examined.

[Adjourned till Thursday next, at Twelve o'clock.

Jovis, 21° *die Junii*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Watson.
Mr. Ewart.
Lord Stanley.
Mr. Napier.
Mr. Philipps.
Mr. Miles.
Mr. Attorney-General.

Mr. *Henry Leigh Trafford*, Mr. *Charles Hay Cameron*, Mr. *John Hughes Preston*, Captain *Hatton*, and Mr. *Robert Barr*, examined.

Mr. *Hamilton Richardson*, further examined.

Mr. *Samuel J. Roberts*, examined.

[Adjourned till Tuesday, 26 June, at Twelve o'clock.

Martis, 26° *die Junii*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Philipps.
The Lord Advocate.
Mr. Attorney-General.
Mr. Solicitor-General for Ireland.
Mr. Ewart.
Mr. Miles.
Mr. Watson.
Mr. Napier.

Mr. *Henry R. Reynolds*, Mr. *Francis Hobler*, The Right Hon. *J. Napier*, and Mr. *Samuel Wilkinson*, examined.

[Adjourned till Thursday next, at Twelve o'clock.

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Jovis, 28° *die Junii*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Attorney-General.
Lord Stanley.
Mr. Philipps.
Mr. Miles.
Mr. Ewart.
Mr. Solicitor-General for Ireland.
Mr. Napier.

Mr. *Horatio Waddington*, Mr. *Samuel Robert Goodman*, Mr. *Henry Avory*, and Sir *Alexander J. E. Cockburn*, Attorney-general, examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Martis, 3° *die Julii*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Ewart.
Mr. Solicitor-General for Ireland.
Mr. Napier.
Mr. Walpole.

The Right Hon. *J. Napier*, further examined.

Mr. *George Wilkin*, and Mr. *Richard Hankins*, examined.

[Adjourned till Tuesday next, July 10th, at Twelve o'clock.

Martis, 10° *die Julii*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Miles.
Mr. Ewart.
Mr. Solicitor-General for Ireland.
Mr. Walpole.
Lord Stanley.
Mr. Attorney-General.

The Right Hon. *James Stuart Wortley*, Recorder of London, Mr. *Henry George Horne*, Mr. *William B. Brett*, Mr. *Henry Walter*, Mr. *Augustus Compton*, Mr. *William Foote*, and Mr. *Frederick Stephen Austin*, examined.

[Adjourned till Thursday, 9th August, at Twelve o'clock.

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Jovis, 9° *die Augusti*, 1855.

MEMBERS PRESENT:

Mr. PHILLIMORE in the Chair.

Mr. Attorney-General.
Mr. Solicitor-General for Ireland.
Mr. Watson.
Mr. Ewart.

The Committee deliberated, and agreed to report the Minutes of Evidence taken before them to The House, with a recommendation that they should be permitted to resume their labours at the commencement of next Session.

Ordered to Report, together with Minutes of Evidence.

EXPENSES OF WITNESSES.

NAME OF WITNESS.	Profession or Condition.	From whence Summoned.	Number of Days absent from Home, under Orders of Committee.	Expenses of Journey to London and back.	Allowance during absence from Home.	TOTAL Expenses allowed to Witness.
				£. s. d.	£. s. d.	£. s. d.
Mr. Bertie Markland - -	Solicitor - -	Leeds - -	3	4 8 -	6 6 -	10 14 -
Mr. Hamilton Richardson - -	Solicitor - -	Leeds - -	3	4 8 -	6 6 -	10 14 -
Captain Hatton - - -	Chief Constable of County.	Stafford -	3	3 5 -	3 3 -	6 8 -
Mr. Samuel J. Roberts - -	Solicitor - -	Chester -	3	4 6 -	6 6 -	10 12 -
Mr. Samuel Wilkinson - -	Solicitor - -	Walsall -	3	2 15 -	6 6 -	9 1 -
Mr. Henry Walter - - -	Solicitor - -	Liverpool -	3	5 - -	6 6 -	11 6 -
Mr. Frederick Stephen Austin -	Solicitor - -	Manchester -	3	4 14 -	6 6 -	11 - -
Mr. William Foote - - -	Solicitor - -	Swindon -	2	1 12 -	4 4 -	5 16 -
					£.	75 11 -

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MINUTES OF EVIDENCE.

Martis, 12 *die Junii*, 1855.

MEMBERS PRESENT.

Mr. J. G. Phillimore.	Mr. William Ewart.
Mr. Attorney-General.	Mr. Walpole.
The Lord Advocate.	Mr. Philipps.
Mr. Watson.	Lord Stanley.

JOHN GEORGE PHILLIMORE, Esq., in the Chair.

The Right Honourable Lord *Brougham and Vaux*, attending by permission of the House of Lords; Examined.

Right Hon. Lord *Brougham and Vaux*.

12 June 1855.

1. *Chairman*.] HAS your Lordship turned your attention to the subject of Public Prosecutors?—Yes, at various times, for many years past.

2. Will you be good enough to tell the Committee what your views are with respect to the appointment of public prosecutors, as to the evil which it is intended to remedy, and the means by which that evil should be remedied?—When I say that I have turned my attention to it, I ought to mention, that many years ago, I was examined before a Committee of this House upon that subject, and gave very full evidence upon it. I do not know what became of it.

3. Mr. *Attorney-General*.] In what year?—I think in 1833; but I remember inquiring afterwards, and being told that the evidence taken before that Committee had never been printed; at least that was the impression which prevailed; and that the papers were burnt in the fire the year after. I certainly went very fully into the question then. The first great evil which I think exists at present is the ineffectual provision made for the prosecution of offences. Nothing can be more ineffectual than the provision which the law, and the practice under it, now make for it. An individual is injured by either his person being attacked or by his property being invaded, and he is called upon himself to prosecute; and he is in some cases compelled to prosecute; though, generally speaking, I believe one may say that what is called "binding over to prosecute" rather means binding over to give evidence than to do anything more; it possibly comes to that practically. There is no doubt that a magistrate has the power where he pleases, in the alternative, to bind over to prosecute, or to bind over to give evidence; and sometimes, though I believe rarely, he binds over to prosecute.

4. I think he binds over generally to prosecute and give evidence?—Yes, but that I understand to mean giving evidence.

5. And by prosecuting, I understand that it is meant that the party shall go before the grand jury and prefer a bill?—Yes.

6. *Chairman*.] Does not it often happen that the policeman is bound over to prosecute, and the party injured is bound over to give evidence?—Yes; and sometimes a person would rather elect to be bound over to prosecute as well as to give evidence, in order to give him a claim for the costs of the prosecution; but I believe, substantially, you may say that binding over to prosecute rather means binding over to appear and give evidence than anything else. There is some hardship even in that, in being bound over to give evidence, for though a person's expenses are paid, yet they are paid after the trial, and upon the Court being of opinion that there was a ground for the prosecution where he was not bound over. Where he is bound over, it would be very hard indeed to refuse to

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Right Hon. Lord *Brougham and Vaux.*

12 June 1855.

to give him his expenses. But then, I believe there is this difference, at least the statutes take that distinction, that he may have his fair and reasonable expenses, but unless he is a poor person, he has, as I apprehend, no consideration given to him for his trouble and loss of time; if he is a poor person he has, but that is of modern date. I take it that that is really only since the 18th of George the Third.

7. Does your Lordship think that we might add to the list of the evils the danger of a poor prosecutor being induced to compromise and to waive the injury done to the public altogether?—It is possible, no doubt, that this might happen, but under that head of the escape of the offender, there is a much wider door open than that to which you refer, for it is a thing which constantly happens, that a wealthy person under prosecution buys off the witness. If the witness is under recognizances to prosecute, or to appear and give evidence, the forfeiture of the recognizance is by wealthy party very easily settled for, and there is no prosecution.

8. Mr. *Attorney-General.*] The difficulty which I feel is this: I do not quite see how the appointment of a public prosecutor would prevent that result. If the prosecution were altogether vested in a private individual, you might buy off the private individual. Put the case where there is a public prosecutor; the public prosecutor would seek to procure the attendance of the witnesses, so as to accomplish in the end a conviction. So far as I see, it would still be as easy to buy off the witnesses as it is now to buy off the prosecutor; and I have never seen quite clearly how the appointment of a public prosecutor would prevent that mischief which arises of getting rid of the testimony?—I do not see that any provision which you could make would absolutely prevent, in all cases, that very great mischief to which we are adverting; but there is a great difference between the case of a single witness bound over to prosecute and give evidence, and he alone, therefore, being certain to appear, and all the witnesses who may be competent to prove the case and whom the public prosecutor could cast his net over and bring.

9. All the witnesses are bound over now?—All those who are before the magistrate, no doubt.

10. *Chairman.*] Your Lordship thinks that it would diminish, but that it would not prevent?—No doubt it would very greatly diminish, without wholly and absolutely preventing.

11. Would not your Lordship think that a person in the rank of a public prosecutor, instead of a policeman, would have a very considerable moral effect?—I should think so. I gave one or two instances as to the moral operation when I was examined here before, and also lately in my statement in the House of Lords. One very remarkable instance was, a case which happened at Plymouth. I think the person engaged was an anchor smith in a large way of business; a very wealthy man. Under the pressure of temporary embarrassment he had committed forgery to a large amount. He was arrested, imprisoned, and the person was bound over to prosecute in the usual way. There was no appearance at the trial. The recognizances were of course forfeited. The man had been bought off, and there was no prosecution of that offender at all. That would have been a very difficult thing in Scotland, or where there is a public prosecutor, for the person who forfeits his recognizance is perfectly known; and unless not only the recognizance had been satisfied by the person under accusation but the party who had been forged upon had been got out of the country, the prosecution must have gone on; there could have been no mode of preventing the prosecution by merely providing for the recognizance being forfeited, because the party would have been, in some degree, under the jurisdiction of the court, and liable to be called upon; the public prosecutor would not have cared a rush for the recognizance being forfeited; he would not have cared a rush even for the recognizance; in all probability there would have been no recognizance in the case of there being a public prosecutor; he would have subpœnaed the witness, and that witness must have appeared; and the only way of getting rid of that witness would have been, by removing him from the country, which one has known in certain cases; but then they were not the cases of persons of a certain rank or station; but very inferior persons who were by the parties under accusation spirited away, or induced to go abroad by the payment of a large sum, nay, by the payment of an annuity for life to those individuals.

12. Mr.

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Right Hon. *Lord Brougham and Vaux.*

12 June 1855.

12. Mr. *Attorney-General.*] No doubt that does occur in certain cases?—One has known cases of that sort.

13. I quite agree that the appointment of a public prosecutor would tend, in many points of view, to improve the administration of justice, but I do not quite see how getting witnesses out of the way could be altogether prevented?—No doubt we must go by steps. Let me just put another case, which refers to parties who are incapable of being bought off in any way. There are members of the Society of Friends, Quakers, who are exceedingly hostile to the penal law as it now stands, and would have been much more hostile to it at the time I mention, when forgery was a capital offence. They are bound over to prosecute, and they forfeit their recognizance, without the party paying a farthing for it; even if there was no recognizance they would have a great reluctance to come forward; but they would be compelled to come forward. I know one case in which one of the great bill-brokers in this city had a forged bill in his possession; he refused to come forward; there was nobody except another party who had an interest in prosecuting that individual; if there had been a public prosecutor it would have made a case past all doubt.

14. *Chairman.*] I observe that in the evidence given before the Committee on Criminal Law considerable stress is laid upon the hardship to the poorer classes, saying that many cases of cruelty and violence by stepmothers to their children, and by parents to their children and to servants, are passed over altogether without notice, or with merely nominal punishment, in consequence of the want of a public prosecutor?—I think that exceedingly likely; I think a very misplaced humanity, and very often a personal delicacy towards parties, has the effect of preventing a prosecution, whereas a public prosecutor would be bound to have no such feelings, and would have none.

15. Lord *Stanley.*] Provided the facts came to his knowledge?—Of course.

16. *Chairman.*] For instance, in a case which occurred the other day, the overseers of a parish who found out that a child had been injured, would say at once to the proper authority, "It is your business to inquire into this, and to take care that it is investigated"?—I wish to be guarded in all the evidence which I am giving upon this subject, against its being supposed that I consider it at all an easy matter. I consider that it is surrounded with very great difficulties; I only hope not insuperable difficulties; but I have always felt the difficulty very strongly indeed. Lord Campbell, when the case was broached once or twice, I think, in the course of this Session and the last in the House of Lords, also felt the great want of a public prosecutor, but was staggered by the difficulties in supplying a remedy; and I cannot help feeling that there are very great difficulties. But perhaps I might mention, which I did upon that occasion, that an arrangement had been made in 1834, just before the Government was changed, for taking a step in that direction without at all introducing a legislative measure, which should give not only a public prosecutor, but what I am afraid must be a part of it, namely, a system of public prosecutors, because that is one great difficulty, that you must have not only one public prosecutor generally to superintend, but you must have locally his deputies, or in some sort his representatives. That was certainly one very great difficulty in the case. Our plan then was this: I was Chancellor, and Lord Duncannon, afterwards Lord Besborough, was Secretary for the Home Department; we had arranged everything at that time, namely, about October and November 1834, for making the experiment in this way: to take the Central Criminal Court, which has a very large jurisdiction, now extending over more than 2,000,000; and at that time it had not quite so great, but certainly a very large jurisdiction; and we proposed that in the Central Criminal Court the Treasury should employ one or more counsel, and always the same, and should give them the preparation and superintendence of prosecutions. This plan was formed upon the precedent which we had set us by the practice in some counties in England, chiefly the West Riding of Yorkshire and the counties of Durham and Northumberland. When this was mentioned in the House of Lords lately, the present Chancellor added the county of Chester also; he stated that there was an arrangement of the same sort there. The clerk of the peace singles out one counsel and gives him the general superintendence of prosecutions; the preparation of the indictment; the examination of the evidence previously, settling whether it is a case fit to be prosecuted or not, and then superintending it, and generally speaking, being the counsel at the trial; not always and not of necessity, but generally, being one of the counsel. That has been found exceedingly

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exceedingly advantageous; and there is a great difference as respects the mode of conducting the trials and the results; the proportions of acquittals to convictions in those counties are exceedingly different, I believe, from what they are, generally speaking. I think I may include the West Riding of Yorkshire; but I am more clear about Durham and Northumberland. Mr. Losh used to be the person always employed. I ought to mention in continuance of my answer to your first question as to the advantages of a public prosecutor, that not only does the want of a public prosecutor enable the guilty to escape, but it in many cases puts persons who are not guilty upon their trial when they ought not to be so put. I consider that the responsible character of an individual public prosecutor is the best possible security against that; and that this happens, and happens very frequently, I can have no manner of doubt. There is the check of the grand jury, to be sure; but that check has been found in many cases exceedingly insufficient, from there being no individual responsibility in the grand jury from no one knowing who finds the bill. Here are 23 persons; one cannot tell which of those 23 constitute the 12 who have found the bill. The case which I am stating has occurred. I shall not easily forget a case which I mentioned in my evidence many years ago in this House, and which I stated lately in the House of Lords; a case which happened at Lancaster. Mr. Blundell, of Ince, was put upon his trial for murder, and held up his hand in the dock charged with murder. The murder which the grand jury in this instance conceived to have been committed by him was this: There was a road in repair upon his estate, and his bailiff had omitted in throwing a rope across the road in order to prevent access, to put a lantern, and an old woman coming from market at night in a donkey cart, tripped over this rope, for want of a light, and broke her neck, and unfortunately was killed. The grand jury were pleased to consider, in the first place, that this was murder; and in the next place, that it was murder by Mr. Blundell, perpetrated by the negligence of his bailiff. The case was opened before Mr. Baron Wood; the counsel had some difficulty in keeping his countenance long enough to open the case; however he did get through a statement of the facts pretty nearly as I have mentioned them. Mr. Baron Wood immediately said "Are the grand jury discharged; go and see." The grand jury were discharged, and could not be found. "I am very sorry for it," he said, "this is a most shameful case." Mr. Blundell, of course, was immediately acquitted; but he went down to the grave with the stigma of having held up his hand on a charge of murder, in the dock among felons at Lancaster assizes. He was a Roman-catholic, and there were very great religious prejudices and controversies prevailing in that county; and I have no doubt that that was not the last time that he heard of this charge having been made against him. Now I say no public prosecutor durst have put Mr. Blundell upon his trial.

17. Mr. *Philipps.*] Had a magistrate committed in that case?—It is possible Mr. Blundell may have been committed; he was not in gaol at the time; if he had been committed, he was out upon bail.

18. Mr. *Attorney-General.*] Would your Lordship deem it desirable, with the view of preventing such a case of public outrage as that, that the public prosecutor should intervene prior to the finding of the bill by the grand jury, or after it?—I should greatly prefer the public prosecutor interfering in the first instance.

19. So that only such cases should be sent to the grand jury as the public prosecutor was of opinion ought to be submitted to them?—Yes; I have the greatest reverence for the institution of the grand jury, but at the same time I consider that in the great majority of cases it might be most conveniently and advantageously dispensed with.

20. The *Lord Advocate.*] If there was a public prosecutor, would it not be better to do away with the grand jury altogether?—I can hardly say that.

21. *Chairman.*] Would your Lordship be disposed to take this view of the case: supposing the public prosecutor refuses his sanction to a prosecution, would you allow the complaining party, at his own risk and expense, to take it before the grand jury; because otherwise, does not it appear to your Lordship that you give to the public prosecutor, supposing him appointed, absolute power?—I would by no means take away the power of the individual or the grand jury.

22. Then you would allow a person, though the public prosecutor refused his sanction, to prosecute at his own expense?—Yes.

23. Lord

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23. Lord *Stanley*.] But in such event, would not the person whose case the public prosecutor had refused to send before the grand jury, have undergone what would probably be regarded by the grand jury as virtual acquittal beforehand?—No doubt it would have that effect; the refusal of the public prosecutor would always be taken into account. In Scotland the course is this: the Lord Advocate, who is the public prosecutor there, may refuse to prosecute; but the private party, with what is called the concourse of the Lord Advocate, may prosecute; and it was always in my time a moot point whether the Lord Advocate had the right to refuse his concourse; I think the more general opinion was that he had not the right to refuse his concourse.

24. The *Lord Advocate*.] I think it is now fixed that he has not the right?—I have seen a prosecution (it was a case of military riot) in which several persons were tried, the prosecution being carried on with the concourse of the Lord Advocate by a private prosecutor; they were acquitted no doubt, but they might have been convicted; and I ought to observe, that in discussing the question of a public prosecutor with several of the judges particularly, their great objection to dispensing with the grand jury, and to having a public prosecutor which might virtually dispense with the grand jury, was the taking away from private parties their right of prosecuting and vesting it in the Crown. I also know that many persons other than judges had a great objection to the alteration of the law with respect to appeal of felony and appeal of murder. I remember Sir Francis Burdett very much objected to it, preferring even the possibility of the plea of wager of battle to abolishing it altogether, because it would be taking away the remedy of the public. But I do not see at all why that remedy should be taken away. I do not see the incompatibility of the two; they are not found incompatible in Scotland, though it very rarely happens that a private party prosecutes in Scotland.

25. Lord *Stanley*.] Even leaving the right of private prosecution and retaining the grand jury on its present footing, would not the decision of a public prosecutor, whom you assume to be an experienced lawyer, refusing to take up the case after hearing the statement of the aggrieved party, virtually supersede the functions of the grand jury, and throw out of court the case which he had refused to take up?—It might sometimes do that; but then there would be this security, that supposing the public prosecutor is the servant of the Crown, the other side of the question is to be considered of a prosecution being instituted, which ought not to be instituted, the grand jury in that case is a protection to the party. For instance, supposing in the heat of political discussion or political controversy, violent times were to recur, which God forbid! but which some of us are old enough unhappily to remember, there might be prosecutions where a grand jury would be a salutary check. However, this is to be said, and it may be considered no doubt as for a public prosecutor, and against a grand jury, that in times of that sort the grand jury always have a very great chance of being under the influence of the popular excitement at the moment.

26. Mr. *Attorney-General*.] Has it occured to your Lordship to consider the question with reference to a distinction between political and other cases, whether supposing it were thought expedient to dispense with the intervention of the grand juries in ordinary cases, they might be reserved for cases of a particular description?—It would be very difficult to draw the line by any legislative enactment between political and other cases; for example, in the very case to which I have referred where in Scotland, the Lord Advocate having refused to prosecute, a relation prosecuted the parties with his concourse, it was for murder, and the question would have arisen was it a political case or not? It was a murder connected with a riot no doubt, but it might not have been so connected in such a way as to come within the scope of a provision of that sort.

27. *Chairman*.] Referring to the question put by Lord Stanley, does not your Lordship think that the grand jury would be a wholesome check upon the public prosecutor's exercising his power in an arbitrary way, not only in not acquitting the guilty, but that if there was a grand jury, and the grand jury found a bill where the public prosecutor had refused to sanction a prosecution, and the man was afterwards found guilty, the knowledge of that state of things would be a check upon the public prosecutor, and would cause him to be more careful in the exercise of his discretion?—It certainly might.

28. The *Lord Advocate*.] In Scotland the whole system is uniform; the public

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public prosecutor has the charge of the case from the time the first information is given down to the conviction, that is through an organised staff of officers, of whom the Lord Advocate is the head; and in the Crown Office the whole proceedings are filed, and consequently at any time there can be a reference to the person who has the charge of the case. In England how does your Lordship propose that that should be done, because I think one important function of the public prosecutor is the fact that he is a person responsible in Parliament to the public for the whole proceedings which take place; that would require a very large organisation in England?—I think, before your Lordship came in, I mentioned that I considered that to be the very great difficulty in the case. In Scotland there is, as you know, a procurator fiscal in many districts and in many towns, independently of the counties, so that there is a local prosecutor everywhere. In England there ought to be something of the same arrangement, and that is a very great difficulty, no doubt. The plan which we thought of in 1834 was intended, at first, to have operated within the great district of the Central Criminal Court. It did not require an Act, for the Treasury were to employ the different counsel, and our view was that, becoming wise by the experience which we should have had of a year or two, we might extend it a little further, till at last we could enlarge it so as to cover the whole country. In the resolutions which I moved in March before the House of Lords upon criminal procedure, and which are still there for discussion, the 6th and 7th relate to a public prosecutor; the 6th resolution is, "That the prosecution of offenders should be entrusted to an officer appointed by the Government, with such number of subordinate officers as may be required for conducting prosecutions in the counties and larger towns; but that until such a measure can be adopted" (this is with a view to the difficulty in question), "it is expedient to appoint barristers who shall advise upon and conduct the prosecutions in the Central Criminal Court and the Courts of Quarter Session of Middlesex and Surrey," purposely to begin experimentally. Then the 7th resolution is, "That the public prosecutors should, in all the graver cases, as the pleas of the Crown and forgery, proceed by bill before the grand jury, but in other cases should at his discretion be allowed to proceed upon commitment by a stipendiary magistrate, without any bill found." These, among other resolutions, are now under consideration in the House of Lords and by the Government, they having, I will not say refused, but for the present declined, to issue a commission to examine into the whole subject, because these 18 resolutions extend over almost the whole of the criminal procedure. The Chancellor has pledged himself to bring in one or two Bills, which are now in preparation, to carry into effect several of these resolutions; and I believe one, but which is not yet so matured that he has been able to give notice of it, will have reference to curing the defect with regard to a public prosecutor, to a certain extent.

29. *Chairman.*] You have mentioned the great difficulties connected with the subject; has your Lordship turned your attention to the system in France and other countries where those difficulties have been completely overcome?—I am always exceedingly slow to speak about foreign law and foreign practice, but I believe we are really the only country in which there is no public prosecutor. When I made my statement lately in the House of Lords, I said that this was the case, unless in America they may have imported the English law in that respect as well as in others, but I believe there is very little doubt that they have a public prosecutor in America; I know in New York they have, for I have looked at the New York code; they have what is called the state attorney, county attorney, and the district attorney. In France no doubt they have a public prosecutor; everything is done by a public prosecutor.

30. The *Lord Advocate.*] In order to follow out the system fully, would it not be necessary to have something like a department of public justice?—I am quite clearly of opinion that not only in order to carry into effect this system, but that even if you never dreamt of touching the subject of a public prosecutor at all, there are a thousand other reasons why there ought to be a department of the ministry of justice. To take an instance of the want of such a department, it is hardly possible ever to sit in judgment in this country upon the construction of an Act of Parliament, especially Acts of recent date, without being astounded with the insufficient manner in which they are drawn. A considerable proportion of the business in courts of justice now arises from the mode in which Acts of Parliament are framed; it is very much improved of late since Mr. Coulson

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Coulson came into his present office, but still a single person will not suffice; there must be a Board.

31. Lord *Stanley.*] Then without such a minister of justice you do not believe that the system of a public prosecutor would be available?—I do not say that at all.

32. Mr. *Philipps.*] Before we quit the subject of the grand jury, in your Lordship's judgment, to which error do you think the grand jury most prone, that of throwing out bills which they ought to find, or finding bills which they ought not?—My own personal and professional experience upon the subject is of very little value, for I practised very little in criminal courts; it was by mere accident that I ever went into the criminal courts while I was either upon circuit or in Westminster Hall; but I should say that it was rather by the escape of the guilty than by the trial or oppression of the innocent that the evil existed.

33. Mr. *Walpole.*] Will your Lordship allow me to call your attention to the seventh resolution of your Lordship, which appears to me somewhat conflicting with what has passed since we have been in this room; I observe that in that resolution your Lordship proposed a distinction between different classes of offences; that in offences of a graver kind there should be a bill before the grand jury, but that any of a less grave kind should be proceeded with by commitment by a magistrate; does your Lordship still hold to the opinion that it would be desirable to keep up that distinction?—I think so, on the ground of there being so very many cases in which it is useless to have a grand jury; it is a mere form, which is very oppressive to the grand jury, and they have been suffering very much in the City, as appears from Mr. Wortley having brought in a Bill upon the subject.

34. Then as I understand your Lordship, in what I may call the minor offences you would dispense with the grand jury in future?—I should be very sorry to see any legislation which would go to abolish the grand jury even in that limited degree. I think there is so very strong an opinion in its favour, that at all events I do not think we are ripe for that. I have said in the resolution that in other cases the public prosecutor should "at his discretion be allowed to roceed upon commitment." With respect to grand juries, I may mention that the difference between a public prosecutor and the grand jury system is very striking from the returns which we have, and the result of which I may be permitted to state. The number of commitments for England and Wales in the last year for which we have a return, namely 1853, was 27,057. The number of persons tried was 25,585, there being 1,472 discharged. Of those tried 4,793 were acquitted, including those against whom the grand jury threw out the bills; that is to say, the acquittals were between one-fifth and one-sixth of those tried. In Scotland for the same year, the commitments were 3,756, the persons tried 3,139, and the acquittals only 279, or between one-eleventh and one-twelfth of the persons tried; so that the acquittals were twice as numerous in England as in Scotland. I took the liberty of stating that as clearly showing the difference between proceedings instituted and conducted by experiened, professional, responsible public men and those conducted by private individuals. Not only is there this difference between England and Scotland, that is to say between the result of proceedings under professional superintendence and those which are not so, but it varies exceedingly in the counties in England; it varies so much as this, that the average acquittals of the whole country being between one-fifth and one-sixth of the prisoners tried, the proportion in Somersetshire is one-third, in Hampshire and Buckinghamshire between one-third and one-fourth, in Sussex about one-fifth, in Wiltshire between one-sixth and one-seventh; so that in the different counties in England it varies in the proportion of two to one.

35. Mr. *W. Ewart.*] Does your Lordship recollect that many years ago Mr. Alison, in his Criminal Practice of Scotland, stated that at that time, in Scotland, the average of convictions to acquittals was as six to one, and in England as two to one, that being a confirmation of your statement?—Yes. With respect to grand juries, without intending at all to say that they ought not to be continued, it is impossible to deny that they are a very unsatisfactory body. In the first place, there is no challenge; you cannot tell who may be upon the grand jury; one or two of the very persons that ought not to be upon the grand jury may be upon it connected with the parties, either connected with the prosecutor or connected with the person against whom the bill is to be preferred; politically connected as

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as friends or as antagonists. Then there is a great variety of qualification, I may say, in the grand jury; at least there used to be; and I do not know whether it is not so still. Generally speaking, freehold qualification used not to be necessary for the grand jury; if it is now necessary generally over the country, it is of late years that that has been so. In Yorkshire it was necessary, but not in the rest of England. Then the practice in grand juries varies very much; the practice in different counties, I may say of my own knowledge, varies exceedingly as to the mode in which they resolve to proceed, the kind of evidence that will satisfy them, and the kind of evidence which they call before them. One very great variety, no doubt, existed in Ireland till the year 1816 or 1817, when it was found that, with the exception of one or two counties, the inveterate practice in every county in Ireland was never to see a witness; they never called a witness before them. That was discovered by Sir Samuel Romilly and Mr. Horner, and others of us in the House of Commons by some mere accident; we asked, and found, to our astonishment, that it was so; that the practice was inveterate and universal in Ireland, with the exception of these one or two counties, of only receiving the depositions before the magistrate, and then, without seeing a witness, proceeding to find the bill or to ignore it. The next year a Bill was brought in by Mr. Horner, supported by Sir Robert Peel, who was then Secretary for Ireland, which Bill was passed; and I recollect that through delicacy towards the judges and other official persons in Ireland, it was not made declaratory, though it ought to have been; but it was made enacting, as if there were some little doubt existing as to whether it was utterly illegal, no lawyer either in Ireland or in England having the shadow of a doubt that the procedure was grossly illegal. And what was the consequence of that procedure? Sir Samuel Romilly produced a proof of the result of this variety in the practice of grand juries in Ireland. Instead of the acquittals being one-twelfth of those tried as in Scotland, or one-sixth, as in England, the acquittals there were in the proportion of 15 to 16 of the persons tried; 192 were acquitted out of 205 who were tried. This was evidently owing to the lax mode of proceeding; which is one of the evils, no doubt. That is an extreme case; but still there are great differences in England, it is not to be denied.

36. Mr. *Watson.*] Does not the large proportion of acquittals which takes place out of the number of trials depend very much upon the laxity of committing magistrates?—It may; but a public prosecutor would remedy that.

37. Mr. *Attorney-General.*] The public prosecutor would have to exercise his discretion upon the very same materials that the grand jury in Ireland had before the new practice was introduced, namely, upon reading the depositions, and inasmuch as the great value of all examination is rather when the witness comes to be put more or less to the torture. I take it, that, so far as the grand jury are concerned, they having only to see that there is a *primâ facie* case upon which the man is to be put on his trial, it is comparatively unimportant whether they see the witness, in order for him to make the same statement as is contained in the depositions, and to be subjected to no cross-examination at all?—I cannot help thinking that it is very important that the grand jury should see the witness; a single question addressed to the witness might put an end to the case at once. I will give a very remarkable instance of that in the case of a very excellent friend of mine; he was put upon his trial, and there was a trial before Lord Denman, which lasted 12 hours, for a conspiracy to carry a bill by bribery, in Mexico. The grand jury found a bill without the least hesitation, and the foreman of the grand jury, on coming into court, I understand from persons who were present, chuckled exceedingly when he presented a true bill against the first merchant in the world. If the grand jury had known what they were about they would have put a question to the prosecutor, by means of which it would have been found that he owed the party charged 30,000 *l.* or 40,000 *l.*, and that this was in revenge because he would not forgive him that debt, and there would have been an end of the prosecution.

38. As the result of your very great experience at the bar, do not you believe that indictments for conspiracy, and for offences of an analogous character to conspiracy, are resorted to for the purpose of enforcing civil rights, or coercing people into doing what they cannot be obliged to do by means of civil procedure?—It is by no means rare. I was, for two days, once before Lord Tenterden for the defendants in an indictment for perjury, which was evidently transferred from the Court of Chancery, where the bill was pending on the answer to which the perjury

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perjury had been assigned, and we were trying at Nisi Prius a bill in equity, in fact.

39. Your Lordship must have known of that occurring very frequently?—Frequently, certainly.

40. Is it not most desirable that that class of cases should be subject to the control of a public prosecutor?—Certainly; I think it most important. Another case I might mention, as showing the errors committed by grand juries: it was before Mr. Baron Alderson, I think, sitting at the Central Criminal Court: there was an indictment for forgery—the forgery of a will; and it turned out, when the case came before him, that there was no case whatever. The question was put, and it turned out that the grand jury had never taken the precaution of seeing the will, upon the forgery of which the indictment proceeded; they had never looked at the document alleged to be forged. There were two cases before the same judge, Mr. Baron Alderson, upon the Midland Circuit, of persons being kept in prison five or six months. There was a woman (one of the grossest cases that could be conceived) who was kept in prison five or six months, with all the contamination of a gaol, and all the wretchedness of her family, from whom she was taken away; and it turned out the moment the case came to be looked at that there was an end of it, and it was hardly allowed to come into court. The other case was that of the daughter of a prisoner; there was an indictment for murder or manslaughter, in killing her mother by starving her, and they had chosen to find a bill against a child of 12 or 13 years old, as well as against her father, and the child was kept in prison the whole of that time as well as the father.

41. Has it occurred to your Lordship at all to consider the propriety of allowing magistrates' clerks to advise the magistrates upon the examination and the committal of prisoners, and allowing those clerks to have the conduct of the prosecutions at the assizes; does it at all strike your Lordship that that system in practice has rather a tendency to produce commitments?—It is very likely indeed.

42. *Chairman.*] Frivolous prosecutions?—I ought to mention that I never attended sessions in any way except the sessions of the Admiralty at the Old Bailey once or twice; I never attended quarter sessions, and therefore my experience upon that point is exceedingly limited.

43. Mr. *Attorney-General.*] I understand that what your Lordship would desire to see in a system of public prosecution would be, that the appointment or the institution of public prosecutors should be engrafted upon the present system of the grand jury?—Yes, for the present, at all events.

44. Lord *Stanley.*] Is it your belief that the number of prosecutions which ought to be instituted, and which are abandoned or not instituted, is sufficiently great to form an element of calculation which would be taken into account by persons committing or contemplating crime; that is to say, is it sufficiently great to influence the effect which the law has upon the commission of crimes?—It would be very difficult to answer that question, from the impossibility of having any specific data upon which to go; you can tell the proportion of acquittals to convictions; you can tell the proportion of persons tried to persons committed; but it would be very difficult indeed to do anything more than to make a mere guess as to any proportion between the crimes which go unprosecuted and the crimes which are prosecuted.

45. Mr. *Attorney-General.*] I dare say your Lordship would agree in this view, that it is always an evil that acquittals should take place?—Of course, where there ought to be convictions.

46. I go further than that; what I mean is this, that where persons are put upon their trial, it is desirable, with a view to its operation upon the public mind, that only those cases should be tried in which convictions do take place, and would; that it is an encouragement to persons who may have a tendency to commit crimes to find that there are acquittals the merits of which they do not understand, and in which cases therefore they may be disposed to think that the parties have escaped by a lucky chance?—I think that is one of the evils of acquittals where there ought to be no acquittals, whether by defect in the law or defect in the machinery of the law, or by carelessness.

47. Unnecessary prosecutions?—Unnecessary prosecutions, or negligent prosecutions. Acquittals are always most hurtful; because, as you have just suggested, they tend to the encouragement of offenders. I take for granted that the

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the first thing which a person who is wickedly disposed does when he is meditating the commission of an offence is, to look to the means of perpetrating it. The motive exists in his own mind. Then the next thing he looks to is, the chance of escape; and the first chance of escape he looks to no doubt is, the chance of getting away, and not being seized, or not being found out if it is a concealed offence. But the next thing he looks to is, no doubt, the chance of escape if he is arrested. He is, as all men are, wicked men among others, very sanguine in the estimate which he forms of his own chances, and he first expects to escape altogether bodily. He then thinks, "Well, but if the worst comes to the worst I shall be caught; what chance have I then?" He then calculates the chance of escape; he takes that into his account, and all that train of thought passes through his mind in estimating whether it is worth his while to commit the offence or not, so far as it is a matter of calculation. It is (and it goes much against many of the arguments used upon this subject), that a man is under the influence of violent passion, or of violent propensity, or of great fear and alarm about his solvency, and so forth, and that then his calculating powers are laid asleep, and that therefore under the influence of those motives he commits the offence; that is one of the reasons, among many others, which make one exceedingly anxious to look to prevention, rather than to the effect of punishment; that is to say, prevention by good moral training, sometimes called education; but I call it good moral training, beginning with infant training; because I am afraid it is but a melancholy result which those practical administrators with whom one has discussed the subject have come to, that the effect of deterring by example is not great, certainly much less than the preventive effect of moral training.

48. *Chairman.*] Your Lordship thinks that the appointment of public prosecutors would contribute much to the certainty of punishment?—Certainly.

49. And I suppose your Lordship agrees with almost all writers on jurisprudence, that the great secret to prevent crime is the certainty of punishment?—Yes, as far as deterring goes.

50. The *Lord Advocate.*] What do you think would be the effect of a public examination before magistrates and before coroners' inquests as an initial proceeding, with a view to prosecution?—There is a great deal to be said on both sides upon that, as upon many other questions. There are great inconveniences, no doubt, in the publicity of the examination; there is very great hardship to the party brought before the magistrate in its publicity; there is very great annoyance and hardship to the witnesses and to the prosecutor, who are brought before the magistrate, no doubt; but against all that, one cannot help setting the great advantage of the publicity of the proceeding, both preventing any malpractices by placing the magistrate, who is then the Court, in the eye of the public, and also by the great benefit which arises with a view to police, from its tendency to discover evidence, and to enable the parties prosecuting to be put upon the traces to find witnesses; so that, upon the whole, I have no doubt whatever that the benefits exceed the disadvantages of a public examination.

51. Has it not rather a contrary effect in some instances, namely, of affording guilty parties the means of escape?—No doubt it may have that effect. I am talking of the balance.

52. Mr. *W. Ewart.*] Does your Lordship agree in the following view which is expressed in the Eighth Report of the Commissioners on Criminal Law, in the year 1845. Summing up the subject, they say, "The existing law is by no means so effectual as it ought to be; the duty of prosecution is usually irksome, inconvenient, and burthensome; the injured party would often rather forego the prosecution than incur expense of time, labour, and money. The entrusting the conduct of the prosecution to a private individual opens a wide door to bribery, collusion, and illegal compromises"?—Certainly generally speaking, I should agree with that.

53. Mr. *Philipps.*] Speaking of grand juries, your Lordship alluded to the absence of the challenge; do you think it advisable that there should be any power of challenge with regard to grand juries?—No, it is not indispensable.

54. In one case bills are found by the majority, and the other case requires unanimity?—Yes, that makes a great difference.

55. *Chairman.*] With regard to the poorer classes, does not your Lordship think that it is a hardship upon the poorer classes that they should have nobody to whom they can go and say, "I have received such and such an injury; I call

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upon you, as the instrument of society, to assist me in the investigation"?—Certainly; and when I said, a little while ago, that it was a hard thing that persons were only allowed their costs, even when they were compelled to come and give evidence, there is this to be added, that it is not only hard that they should wait till the result of the trial before they know whether they are to have their costs at all, but it is hard that the costs should be paid afterwards, and not before, because a poor man may not be able without great inconvenience, perhaps not able at all, to find his way to the assize town, or to the sessions, as a witness. That is one great evil at present existing, which I hope will be remedied by some of those measures which the Chancellor says are now being framed upon the ground of my resolutions of March last. One great hardship to poor prisoners is, that they have no means of bringing their witnesses to the trial; and it has been suggested that they might have their witnesses allowed their expenses, upon their acquittal, after the trial; but, alas! they have no capital wherewith to bring the witnesses before the trial, and it is to bring them to the trial that they are wanted. Accordingly, one of my resolutions is, to give the power to the committing magistrates to say what witnesses shall at the public expense be brought to the trial.

56. Has your Lordship turned your attention to the French system on that part of the subject?—They allow all expenses. It would be a dangerous thing for us to give so large an allowance as that.

57. You would not allow the expenses of witnesses to character, perhaps?—Hardly; although at the same time it might be essential; but the difficulty I feel is this, that if you allowed an unlimited power of bringing witnesses, a prisoner in the hands of an unscrupulous practitioner might bring a cloud of witnesses for the purpose of obtaining their expenses.

58. Mr. *Attorney-General.*] Does your Lordship think that our present system is defective in this respect, that there is no one to see that the evidence is complete, so as to ensure conviction where a conviction ought to take place, between the time of commitment and the time when the bill is found and the trial takes place. A magistrate examines and sees upon the depositions what he thinks to be a case in which a trial ought to take place; he commits the individual, and he is sent to prison, and remains there till the time of the sessions or the assizes. The prosecutor, who is not a man cognizant of the law, comes to the assizes or the sessions, goes before the grand jury, and prefers a bill upon the depositions; but there is no one whose office it is to look, prior to that time, to see that the evidence upon which the magistrate committed is all the evidence which can be procured, or is at all events sufficient evidence to prove the case?—That no doubt is a great defect; and by the practice which I have mentioned, where the clerk of the peace makes it a rule in some of the counties always to employ the same counsel, and to have constant communication with him in the arrangement of the evidence, and finding out the evidence, the defect is to a certain degree remedied. The evidence is examined very fully, and the counsel says, "This will not do; you must get other evidence, otherwise we must not prefer a bill."

59. Lord *Stanley.*] Do you consider it desirable that the public prosecutor should interfere and take the initiative in cases of injury, where the parties aggrieved do not themselves desire to institute proceedings?—I should be inclined to think generally not. I can conceive a case in which it would be very painful to the party injured, and would be a great aggravation of the injury which he has received, if it were to be brought before the public. One can conceive cases of slander, cases of libel, cases even of personal violence, where the party would much rather put up with the injury he had received than be dragged before a court of justice as a witness.

60. Mr. *Attorney-General.*] Might not that be safely left to the discretion of a proper public person?—Certainly.

61. On the other hand, let me put this class of cases. There may be cases of personal violence of a serious character, in which, from fear or from other motives, the parties injured may not wish to come forward, but which at the same time operate injuriously upon society; particularly cases in which brutality has been shown by husbands to their wives, and sometimes by parents to their children; in such cases the women would be unwilling to bring them before the public for prosecution; but at the same time it would be right, and everybody would so feel it, that a prosecution should be instituted; would it not be dangerous to lay down a rule, that in cases of personal injury the public prosecutor should

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should not interfere without the consent of the parties aggrieved ?—I should by no means lay down the rule that the refusal of the consent of the party, or the opposition of the party to the case being proceeded with should be binding upon the public prosecutor, but I should leave it to his discretion, so as not to make it imperative upon him to go on merely because on offence had been committed.

62. Lord *Stanley*.] You would not leave absolutely in the hands of the aggrieved party the option of overlooking the offence?—Certainly not; and for one reason among others, that the aggrieved party might refuse, not only from motives of delicacy and of personal feeling, and dislike, to bring it forward, but from sordid motives, either of fear or of money.

63. The *Lord Advocate*.] It would enable a rich party to buy up his crimes? —No doubt.

64. Mr. *Watson*.] Are you aware that the evidence is very imperfect in a large number of cases of committals by magistrates throughout the country?—I am quite aware of it; it is very often most imperfect. I believe a very great improvement in the administration of justice (it does not apply so much to committing magistrates as to sessions) would be the adoption of the plan in England, which is almost universal in Ireland, of a professional chairman of sessions. I believe in almost every county in Ireland, with one or two exceptions, the assistant barrister is chosen voluntarily by the magistrates to be the chairman of the sessions. When I originally framed the County Court Act in 1830, and afterwards in 1831 and 1832, a provision was inserted placing the county court judge (he was then called the local court judge or judge in ordinary) in the commission without qualification, with the express view, stated at the time, of his being chosen as the professional chairman of the sessions, and by the less extensive Bill afterwards brought in by Lord Lyndhurst in 1845 or 1846, and which improved, is now the law, the same provision was inserted, and the county court judge always may be, and I believe generally is, in the commission of the peace; but I am told that in no one instance have the magistrates ever chosen him for their chairman.

65. Does your Lordship see any objection to the committing magistrate being one of the bench of magistrates who try the prisoner if he is committed?—Yes, I have considerable doubts whether he ought to be. It signifies very little if it is a large bench, but I think upon the whole it is better not to be so; I know it is a very common opinion that he ought not to be.

66. Mr. *W. Ewart*.] Can your Lordship compare the system of public prosecution pursued in France with that in Scotland?—I cannot say that I know enough of either system to make a very accurate comparison; particularly of the French system. The office of Procureur-General, the old Procureur du Roi, is a very important office, and the consideration of it is attended with a good deal of difficulty. I believe it to have been the model of the office of Lord Advocate. I believe it was very much upon that that the office of Lord Advocate in Scotland was established, and among other things one analogy rather leads to this conclusion; it is a trifle, but it shows the similarity The Lord Advocate in my time used always to be in the robing-room of the Judges, to robe with the Judges, and accordingly in a civil law case, at the Judicial Committee of the Privy Council, when the Queen's Advocate, answering to the Lord Advocate, is present, he remains in while the Judges are making up their minds upon their judgment; a prize cause for instance. So in France the Procureur du Roi has certain *quasi* judicial functions; he is called a magistrate, and when strangers have withdrawn, the Procureur du Roi, the public prosecutor, remains with the court, as he does in Scotland; that is so even in civil cases; and that is the most difficult part of the subject, and what to a foreigner is the least intelligible, as to the limits of his office; he sums up the case even in common cases where he is not employed, but is merely Procureur-General; he gives the court the benefit of his advice.

67. Mr. *Attorney-General*.] He is a sort of *amicus curiæ*?—A general *amicus curiæ*.

68. *Chairman*.] Sometimes, as in the case of Paquesseau, he makes most magnificent efforts?—Yes.

69. Mr. *Attorney-General*.] Is not the great objection to the French system that the Procureur du Roi is the public prosecutor, but is apparently one of the Judges, and that he is too apt to use his *quasi* judicial power as auxiliary to his functions

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functions as public prosecutor?—As to the French criminal procedure, with the exception of having a public prosecutor, and one or two other advantages over us, it is exceedingly bad. Their criminal law is very good, but it is impossible to conceive a much worse criminal procedure. There is no power of bail, for instance. I have known a most respectable man dragged through three or four departments, and imprisoned for three or four months till the assizes came on, against whom there was not the shadow of a charge; everybody admitted that, but there was no power of bailing, because the power of bailing is in proportion, not to the station of the party, or the probability of his being guilty or not guilty, but to the amount of the punishment which would be inflicted should he be found guilty; nothing can be more absurd than that.

70. *Chairman.*] Did your Lordship ever read the preliminary discussions to the Code Napoleon, with regard to the subject of the Procureur-general?—I have read a great deal of that book, and a most interesting work it is; and I will take the liberty of mentioning the authority of it, so far as regards a very interesting part of it, namely, the Emperor Napoleon's own observations in the course of the discussion. I asked a question of the French Arch-Chancellor, Cambaceres, many years ago, in the year 1817; we were speaking of this book, and I said, touching the parts which related to Buonaparte, "Monseigneur, est-ce d'une fidélité parfaite?" he said, "Plutôt d'une fidélité discrète;" and nothing, I believe, could be more correct than that; nothing was put down there that he had not said, but a great deal was left out which he had said. I wrote that in the titlepage of my copy of the Conference du Code.

71. We have touched upon the subject which your Lordship mentioned just now, introduced, I think, by the Attorney-General, as to allowing the expenses of witnesses, and I think that the principle which we laid down was that it would lead to enormous abuse if the expenses of witnesses to character were allowed, and that that was out of the question; but that the witnesses could be called originally by the prisoner, and that if they turned out to be the witnesses of truth they should be paid by the State. Does your Lordship think that an advantageous course to adopt?—My difficulty there would be, that a poor man might not have an attorney who would advance him the money; and unless it is advanced, he does not get the benefit of the witnesses at all, for he cannot get people to go upon the chance of being paid.

72. A witness may say, "I have been waiting three or four days, and cannot stay any longer;" that may be false, but it is a frightful thing that a man should be convicted because a witness to fact is unable to remain and give evidence in his favour; is there any other way of avoiding that than by allowing the judge to certify that the witness called is the witness of truth, and material to the trial?—My opinion is, that that would be a very great improvement upon the present system; but my doubt is, whether it goes far enough, whether there ought not to be some prospective power given; and accordingly one of my resolutions suggests giving a power to the committing magistrate to cause to be advanced a certain moderate sum for the expenses of bringing witnesses. I am quite sure, from all I have both seen at the bar and heard of by conversing with professional men who have much greater experience in criminal practice than I ever had, that great hardship is done to prisoners from the want of evidence; every man in the profession must be aware of that.

73. The *Lord Advocate.*] In Scotland, if a man has important evidence to bring forward, and it is not able to be produced, we inform him that if he brings up his witnesses and we think, at the conclusion of the trial, they were proper witnesses to be examined, he will be allowed the expenses; that is done very frequently; but we never pay until after the trial, and until after we have seen that these witnesses ought to have been brought. Sometimes the prosecutor brings up the witnesses himself, at his own expense?—The worst of all the practices in the French procedure is this, worse still than not allowing the power of bail; namely, the torture and question which the prisoner is put to upon his trial by the judge.

74. Mr. *Attorney-General.*] The judge constantly converting himself, in the sort of intellectual contest which is going on between them, into an advocate. As your Lordship has adverted to that, I will take the opportunity of asking if you have ever considered whether one might not steer a middle course, not allowing the judge to interrogate the prisoner, whereby the judge forgets his judicial impartiality, and that he has to hold the balance, but keeping the judge as judge,

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judge, and allowing the advocate, the public prosecutor, to interrogate the prisoner; whether, after all, the interrogation of the prisoner may not be the very best means of ascertaining the true state of the case?—I am perfectly clear that some change in our law upon this subject, some relaxation, is absolutely necessary. My only objection to the French procedure is that it is the worst possible mode of doing it; namely, making the judge himself, with all his judicial functions, and character and weight, the person to put these questions. There was a most able paper of the late Lord Denman's in the Edinburgh Review many years ago upon this subject, in which it was thoroughly discussed, and, as might be supposed, most ably discussed; but I do not think he goes so far there as to say that our system is at all perfect, or anything near it; and I think it is quite compatible with the views which he takes that there should be a power given of examining the prisoner. One mode which has sometimes struck me as being a step towards it, and which might be safely taken, is, to give an optional power to the prisoner to be examined if he chuse. At present, by my Evidence Bill, 1852, a prisoner cannot be called in the same way as a party in a civil suit. In a civil suit the plaintiff or defendant can either tender himself, or be called by the adverse party. In a criminal proceeding that does not apply, and the question is whether a similar power should not be given to the party to tender himself for examination. In that case he must be subject to cross-examination, and his statements to be disproved by evidence; and moreover, to be prosecuted for perjury if he gives false evidence; you cannot stop short of that.

75. Still by that means he might be acquitted in this way, that not knowing beforehand what statements he was about to make, the prosecutor would not be prepared with evidence to rebut those statements, which might produce a certain impression upon the jury, and carry the point at the moment; whereas if the man, prior to the trial, were subject to an examination on the part of the public prosecutor, then if he stated things falsely, you could have and could desire no better *indiciæ* of his guilt than the falsehood which he had stated. At all events it would have weight. Therefore I am anxious to put it to your Lordship, who is so great an authority upon those matters, whether, however vicious it might be to make the judge the interrogator, if he were there to hold the scales, it might not be desirable to subject the man to examination, just the same as if any one of us had a servant upon whose character or conduct we were to pass judgment, the first thing we should do, if we thought it necessary, would be to examine him himself, and I do not see why that course should not be adopted?—Nor I either, and you will observe that as it now stands the prosecutor is subject to the fullest examination; the defendant is not subject to any.

76. The *Lord Advocate.*] What is your Lordship's opinion of the Scotch system in that respect, which is the examination of the prisoner when he is brought up for his first examination?—You mean his declaration?

77. Yes. He is examined by the Procurator Fiscal; he may either answer or not, as he pleases; the Procurator Fiscal may go on and put as many questions as he likes?—He is not bound to answer. In the case put by the Attorney-general there is a question whether he should be required to answer.

78. Mr. *Attorney-General.*] I do not know about that, but I quite admit that the Scotch system is so far very useful that if you put to a man perfectly fair questions, such as "Where were you on such a day?" when he is alleged to have committed the offence; "Did you do this, that, or the other?" and he refuses to answer, that silence would be very easily understood by the tribunal which had to adjudicate upon him, and its weight would be felt?—My opinion is, that self-crimination is no objection to a witness, if it is not in his own case but in another person's case. I think that a witness ought to be compellable to answer questions, though criminating himself, if he is the witness of another party; but that his answer should not be given in evidence against himself.

79. I think we have provided for that in the Common Law Procedure?—No; he has still the benefit of that objection; he is not compellable to answer; he may say, "I will not answer the question."

80. The *Lord Advocate.*] With respect to the public responsibility of the public prosecutor, the public prosecutor must have a great responsibility; and unless there is to be a large department for him, I do not quite see how that responsibility can be met; that is to say, how can you call the public prosecutor to account? In Scotland he is bound to answer in Parliament; but if there are a great number of public prosecutors, not amenable to any one head, then no

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one man or no one department is responsible ?—That I know to be one of the difficulties, that you must have a responsible person; you have the Attorney-general in England, which is a most effectual responsibility ; in practice, perhaps, the best kind of responsibility; he is not only liable to impeachment and to removal from his office, but he is liable to be questioned in Parliament; but then he must be responsible for all his deputies.

81. Mr. *Philipps.*] Do you think that the chances of acquittal generally increase or diminish with the inferiority of the bar; for instance, there are a few sessions left where no persons but attorneys practise; in others there are barristers of not much experience; in others barristers of very considerable experience; how do you think the bearing is generally as regards the superiority of the court; is it in favour of convictions or of acquittals ?—I apprehend that it is in favour of convictions where there is a bar attending, because the prosecutions are better conducted.

82. Therefore in estimating the number of acquittals, the inferiority of a particular bar may have an effect in producing that result ?—It may, no doubt; but that want of a bar is one of the great evils of local judicature which one is feeling at every turn; all the present system of county courts is exceedingly affected by the want of a local bar; that is the great difficulty.

83. *Chairman.*] May I take it that your Lordship agrees with this answer of my Lord Denman with regard to the general state of the question: "Our procedure for the purpose of preliminary inquiry is open to great objection. The injured party may be helpless, ignorant, interested, corrupt. He is altogether irresponsible; yet his dealing with the criminal may effectually defeat justice. On general principles, it would evidently be desirable to appoint a public prosecutor" ? —Yes.

84. Has your Lordship any plan to suggest with regard to the machinery by which the evil may be remedied ?—That is very difficult indeed; for the very crude sketch of a plan which we had in 1834 amounted really to little more than this; let us begin and try; let us proceed tentatively, and then see whether, wise by experience, we are not able to hit upon some mode which shall effect at least some of the good we want, and may not be liable to the objections; and then, after that, we shall be able to put it into shape. But, at present, the difficulty is very great of having in every county or two counties in England a local public prosecutor.

85. Would your Lordship think this system objectionable, namely, not to have anybody resident except a district agent, for the purpose of collecting and methodizing the evidence, to whom, in case of injury, the injured party might go; but to have chosen from the members of each circuit two or more gentlemen to fill the office of public prosecutor, and to undertake the management of prosecutions, not obliging those two or more barristers to reside always upon the spot, to which I think there would be many objections ?—I think there would be a very great advantage gained by even one part of your proposition being adopted, by having a local agent to superintend the preparation of the evidence and the getting up of the case, as it were, which should be brought before the grand jury, even if it went no further than that, the agent having the benefit of a locally resident counsel.

86. That is a practice I believe pretty general in America; they have what they call the district attorney whose duty it is to superintend all business of that kind; in some parts of America I know they have ?—The district attorney is the public prosecutor.

87. I am not sure, but I think he is a barrister ?—What they call the State Attorney is what we should call the attorney-general, and I thought that the district attorney had been a deputy attorney-general and a barrister; they are called "attorney." The State attorney is called "attorney," and he is a barrister.

88. The objection with which I have been most frequently encountered, with regard to the appointment which is suggested to your Lordship has been this, that it would give such prodigious patronage to the Crown; does your Lordship think that that is, I will not say a serious objection, an objection it certainly is; but does your Lordship think it an insuperable objection ?—I should say that it is an objection which one might overcome. For example, I had a great objection formerly to county courts for fear of the great increase of patronage of the Crown, but feeling the absolute necessity of having some local judicature, I must

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say I got over that objection as early as 1830. These deputies ought to be irremovable.

89. *Dum bene se gesserint?*—Yes, they ought not to be removable at a moment's warning. The Attorney-general must be removable at any moment from the nature of his office, but I am quite clear that those deputies if they are to be in the country, ought not to be removable with the Attorney-general. If so, you will just be getting England into the same state in which America is at present; there it is one eternal canvass from the election of one president to the election of another; here it would be one eternal canvass from the installation of one ministry to the installation of its successors; it would be perfectly intolerable and would interfere with the administration of justice.

90. Mr. *Attorney-General.*] The first great principle which ought to be inculcated into the mind of every Minister and of every Attorney-general with regard to public prosecutors, and with regard to all the subordinate agents in the administration of justice, is that politics are to have nothing to do with the matter?—Clearly.

91. And that whoever has the appointment of the public prosecutor, if a public prosecutor is appointed, should be entirely responsible before Parliament and responsible before the country for the selection of the very best man who can be procured, without any reference whatever to any personal or political consideration?—Certainly; politics have a worse, a more corrupting and more dangerous influence than even mere ordinary corruption, for this reason, that they apply to people who are above ordinary corruption; party politics apply to them, and just produce the same bad effects, and, therefore, they ought not to interfere at all in any branch of the administration of justice.

92. Assuming that these prosecutors ought not to be removable lest it should give rise to this species of corruption, and to applications from a variety of parties for these appointments when they become vacant; on the other hand, you say that you propose that the Attorney-general, if he is to be the head of the system of public prosecutions, shall be responsible in his place in Parliament for the conduct of his deputies?—No doubt.

93. You would make him responsible for these persons, however inefficient they may prove; suppose a man to have been appointed who is a very able man, but who turns out to be careless, inattentive, and lazy?—I would make the Attorney-general answerable for him.

94. *Chairman.*] I propose that the two Chief Justices and the Lord Chancellor shall have the power of removing them, in case of negligence or misconduct?—I consider that it should be so, decidedly. *Dum bene se gesserint* includes not merely corruption, but inefficiency, or other defects, a very bad temper, for instance.

95. Mr. *Attorney-General.*] I do not know anything so overwhelming as the having to find all these public officers; but I certainly would strongly urge upon the consideration of those who have to deal with the subject (and I put it now in order to elicit your Lordship's view upon the subject), that it should be either with a responsible officer of the Crown, or with the public prosecutor himself, to name the subordinate agents; and for this reason, that if this patronage is not placed in the hands of some responsible public officer (and by "responsible" I mean responsible to Parliament), if it is left to the judges, I am quite satisfied from past experience that it will degenerate into a system of nepotism; the judges are not responsible to Parliament; they are not responsible to anybody, except so far as their own sense of public duty goes; they are, of course, responsible to public opinion, as all public men are, but they are not immediately amenable to personal interrogations in Parliament, and the effect would be, so far as I can judge from the past, that personal feelings, an anxiety to provide for sons and nephews and relations, a desire to serve friends, and a little predilection for one member of the bar rather than another, would lead to the selection of these individuals. And another thing which I am afraid of is, that it would very seriously compromise the independence of the bar. I should, therefore, submit, that if public prosecutors are appointed, it should be either in the Lord Chancellor, or in the Home Secretary, or in two or more similar persons, but that it should be in persons responsible to Parliament?—I would acquiesce in that, if I could be sure that it would not lead to their going out at every change of government. The original appointment should be in that way, certainly.

96. *Chairman.*] And the filling up of vacancies?—And the filling up of vacancies; but it should never be understood that these were political offices.

97. Mr.

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97. Mr. *Attorney-General.*] Certainly not; and if the persons having the power of appointment removed them, they should only remove them for incapacity or misconduct?—Upon cause shown, and after a full inquiry.

98. Mr. *W. Ewart.*] Is not the procurator-fiscal in Scotland appointed by the local magistracy?—By the sheriff.

99. The *Lord Advocate.*] The Lord Advocate would require the procurator fiscal to be dismissed, if he thinks he is not discharging his duties; but he is appointed, and is removable by the sheriff. In the boroughs the town council appoints the borough fiscal, but that is not a part of the system?—That is so.

100. *Chairman.*] Then I understand your Lordship to be clearly of opinion that the appointment of attorneys to digest and methodise the evidence for the prosecution in certain districts is clearly desirable?—Clearly desirable, even if it stops there for the present. I look forward to its being possible by degrees to extend it, even to making it a complete system; but I have no hope of that being done at present.

101. The *Lord Advocate.*] Would not the county courts and the county court judges be able to a certain extent to assist in such a machinery as the sheriff does in Scotland; the sheriff has a criminal jurisdiction, and he superintends, in fact, the preparation of all the criminal cases?—One would rather be afraid of giving a judicial officer, such as a county court judge, an employment which is rather more like that of a private practitioner.

102. *Chairman.*] The labour of the county court judges must also be taken into consideration?—The labour is very great in their case.

103. The county court judges might attend quarter sessions?—Yes, very easily; it would be no very great addition to their business; 10 days in the year, I suppose. I suppose it is now only extended to eight days in the year.

104. Then your Lordship has no particular suggestion further to make with regard to the machinery by which this system should be carried into effect?—None whatever. I think it ought to be done experimentally, tentatively; and that you should begin upon a moderate scale if you can. According to the scale which I suggested it would be the central criminal court, which is as large as all Scotland in point of jurisdiction.

105. Mr. *Watson.*] Is your Lordship aware of the mode in which the prosecutions are conducted in Liverpool and Manchester by a person in the nature of a public prosecutor?—In my time, on the circuit, the clerk of the peace generally employed the same counsel to prosecute and to draw the indictment.

106. I believe in Liverpool there is a person in the nature of a public prosecutor who gets up all the prosecutions, receiving a stated salary?—Just so; and in the West Riding and in Durham and Northumberland the same counsel are always employed.

107. There they are not paid by salary, I believe?—No.

108. But in Liverpool there is a salary paid?—I was not aware of that.

109. *Chairman.*] That is the practice at Leeds also?—At Leeds also.

110. Mr. Markland, who seems to be a gentleman of great intelligence, says that it has answered exceedingly well at Leeds; that the evil was very great, but has now been remedied; and Mr. Ellis, who is the recorder of Leeds, says the same thing?—I am glad to hear it.

The Right Honourable *James Moncreiff*, Lord Advocate of Scotland, a Member of the Committee, Examined:

Right Hon. *J. Moncreiff*, M.P.

111. *Chairman.*] WILL you be good enough to give us an account of the system in Scotland, and how far you think it might be applied successfully to England?—I can very easily describe the Scottish system; the application of it in England perhaps requires more knowledge of the English system than I have. The system proceeds upon the principle that it is the duty of the State to detect crime, apprehend offenders, and punish them, and that independently of the interest of a private party. The Scotch system acknowledges the right of a private party to prosecute; but the duty of the public prosecutor is altogether irrespective of that. The staff, if I may so call it, of the public prosecutor is as follows: the Lord Advocate is the head of the criminal department; under him he has four advocates-depute, and these do the business that a barrister properly does in criminal cases; their duty is to advise in the proceedings while they are

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going on, in the collection of evidence in the country, and when the evidence is completed, to draw the indictment, and to attend the trial, and take the ordinary part in procuring a conviction. The Solicitor-general is also, in his criminal capacity, a depute of the Lord Advocate; he holds a deputation from the Lord Advocate as such. There is a Crown Agent, who is the Crown attorney of the Lord Advocate, appointed by him, and subject to his orders, and removable with the Lord Advocate; he is a political officer, and he goes out of office with the Lord Advocate; but the Crown-office is permanent, and consists of a considerable number of clerks, who are not changed in practice with the Government; the advocates-depute do go out with the Government; so that the political staff substantially consists of the Solicitor-general, appointed by the Crown; the advocates-depute, who are appointed by the Lord Advocate; and the Crown Agent. The means of detecting and punishing crime in the country consist, in the first place, of the procurator fiscal; there is a procurator fiscal for each county, and a procurator fiscal for some of the larger boroughs. In the counties he is appointed by the sheriff, in the boroughs he is appointed by the town council, but he is directly under the orders of the Lord Advocate and his deputes. The mode in which the system operates is this. The procurator fiscal receives information that a crime has been committed; his duty is to make immediate inquiry; if any person is suspected, he applies to the sheriff for a warrant to apprehend him; he does apprehend him, and the party is taken before the sheriff for examination, and upon that occasion the declaration is taken; the party is cautioned that he need not speak unless he likes, and then he is asked by the procurator fiscal, in the presence of the sheriff, any questions which seem to be material; and his answers are taken down and may be used against him in evidence. Then, if there appears to be ground for an immediate warrant to commit, he may be committed at once; the usual course is to commit him for further examination, and then the procurator fiscal takes what is called a precognition, that is to say, he examines the witnesses whom he can discover, not publicly but privately; they are not properly depositions, but they are statements taken down by the fiscal and signed by the witnesses; and if the case is at all of importance to warrant it, he sends this precognition to the Crown Agent. The witnesses may be examined on oath, but this is not usually done, unless the witness is reluctant. The precognition is sent by the Crown Agent to the advocate-depute of the district in which the crime has been committed; it is his business to read it over, and if he is satisfied, may order no further proceedings, or he sends down to the fiscal to have the party committed until liberated in due course of law, if that has not been already done, and proceeds to indict; but if the advocate-depute is not satisfied, he either sends it back to the fiscal for further investigation, or he comes to consultation with the Lord Advocate. We meet twice a week, and where the advocate-depute has any difficulty, he brings it to consultation, and in that way great uniformity is obtained both in prosecuting and in the preliminary proceeding. Then the question is, where the party is to be tried. He may be tried before the sheriff, or before the circuit, or before the High Court of Justiciary. If it is a small offence, such as an ordinary theft, the general course is, to send the party to be tried by the sheriff, either with or without a jury, and then the procurator fiscal attends and prosecutes. If, on the other hand, the party is an old offender, and he is indicted at the circuit, the advocate-depute attends. If it is a serious offence, or committed within the home circuit, he is tried before the High Court of Justiciary; and in that way, it appears to me that the machinery works remarkably well. How it would do upon a larger scale I can hardly say; but from Scotland being limited in extent, so far as my experience goes, I think it answers all the objects of such an institution very well indeed. I can say, from my own experience, that it operates fully as much in the protection of innocent persons against unfounded accusations, as it does in the detection of crime; and for my own part, I think that the want of publicity in the first examinations, if you have, as we have, a sufficient check in the superintendence such as I have described, tends very much indeed to the detection of the guilty; and I do not believe that our procurators fiscal would think it any advantage to have the witnesses examined in public; that is the system which we follow. These consultations which we hold twice a week have been found to be of very great advantage, because they methodise the law; and I think the whole criminal procedure is now reduced into a very uniform and good system.

112. The procurators fiscal, I suppose, are an inferior class of persons, who do

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do not go out with the Lord Advocate?—Generally a leading attorney in the county town is the procurator fiscal.

113. How many advocates-depute have you?—Four; and one for the sheriff court.

114. Those are quite sufficient for all Scotland?—Yes.

115. Do they reside in Edinburgh, or wherever they please?—They are practising barristers, and reside in Edinburgh.

116. They do not reside in any particular district?—No.

117. Mr. *Watson*.] What are they paid?—About 500 *l.* a year.

118. Mr. *W. Ewart*.] Do they make a circuit?—There are three circuits twice a year; one west, one north, one south, and an advocate-depute is attached to each circuit, and travels with the judge. There is a third circuit at Christmas, in Glasgow.

119. Mr. *Watson*.] He is paid by salary?—Yes, entirely; between 500 *l.* and 600 *l.* a year.

120. How are the procurators fiscal paid?—They were paid by fees formerly; but about three years ago, the fees were becoming rather excessive, and the fiscals, who drew the larger amount, were placed upon salary, so that all over 400 *l.* a year are now placed upon salary. Those whose incomes from fees were less are still paid by fees, and I think it is a very doubtful question whether it is desirable to extend the principle of salary any further, because while we found before that they reported cases which should not have been reported, we rather find now that the fiscal, having no interest in the matter, is sometimes apt to overlook things which he ought to attend to.

121. *Chairman*.] Suppose that the advocate-depute refuses to prosecute, and the party thinks he has ground to prosecute, then he gets the consensus of the Lord Advocate?—Yes.

122. Does that often happen?—No; I have hardly known an instance of a prosecution in that way; I have very often known instances of remonstrances from private parties, addressed to myself, and sometimes it has happened upon second inquiry that the judgment of the advocate-depute has been altered, and the case has been tried.

123. It also happens in the other way, that the advocate-depute adheres to his opinion, and the thing is put aside?—Yes, that does happen. The concourse is to a prosecution by a private party.

124. And that is almost unknown?—Yes; I remember one instance, and one only, of a regular prosecution by a private party since I came to the bar.

125. Mr. *W. Ewart*.] In former times it did happen?—Yes.

126. But in modern times it has been very rare?—It has.

127. *Chairman*.] That is a strong proof of the efficiency of the system?—A very strong one, I think.

128. Mr. *Watson*.] Suppose a case of conspiracy or of forgery, would it be submitted to the Lord Advocate?—Certainly; before the prosecution was instituted the procurator fiscal, upon receiving information of it, would report it.

129. *Chairman*.] Suppose a person in an inferior class of life, a helpless woman, received an injury, she would go immediately to the procurator fiscal and say, "I have received such an injury, and I call upon you to prosecute the offender"?—She probably would tell a policeman, or some friend, and he would go to the procurator fiscal at once.

130. But she would have a right to go to the procurator fiscal at once?—Yes.

131. Mr. *Philipps*.] If there is only one officer to whom a person may apply, is there any inconvenience from delay; may not persons escape?—If we found a procurator fiscal having information of a crime from any source, and not acting upon it, he would be liable to be dismissed at once.

132. *Chairman*.] What is the population of Scotland?—About 2,600,000.

133. How many procurators fiscal are there for a town like Glasgow, for instance?—There are one burgh and two county procurators fiscal resident in Glasgow.

134. Is one advocate-depute sufficient?—Quite.

135. Mr. *W. Ewart*.] Do not the parties injured sometimes apply to a magistrate, instead of going to the procurator fiscal?—Very likely, especially in the remote districts; the sheriff is properly the person to whom they go; the procurator fiscal is, to a certain extent, his servant.

136. Lord *Stanley*.] Is it optional with the procurator fiscal to refuse to take up

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up a case, and is there an appeal in that event to the Lord Advocate?—He may refuse if he chooses; but if the party complains to the Lord Advocate he is immediately ordered to report. I have constantly letters of that sort, and I write on them, "The procurator fiscal to report," and I get from him an account, and give what directions are necessary.

137. Mr. *Walpole*.] It sometimes happens that the private party does carry on the prosecution?—A private party may if he pleases carry on a prosecution, and I hold that the Lord Advocate is bound to give his concourse.

138. Lord *Stanley*.] Supposing that system to be extended to a population eight or nine times as large as that of Scotland, do you think that any one person, whether called a minister of justice, or whatever he might be termed, would be competent to deal with all the cases through his local agents?—No; as I have already intimated, I think that in England it would be impossible to make the system work as it does in Scotland, without having a special department for the purpose of superintending the administration of criminal justice. At the same time, I think that a staff of advocates-depute, as we call them, that is to say, a staff of barristers in London, but considerably larger, would be able to overtake the work.

139. *Chairman*.] In short, you would make the public prosecutor final; and if the public prosecutor misconducted himself it would be a subject of investigation?—Yes.

140. With regard to the independence of the Scottish bar; do you think that this system of patronage has an unfavourable effect on the independence of the Scottish bar?—I do not exactly know what you mean by independence.

141. A proper spirit?—So far as attachment to political opinion goes, I believe that they are as independent as any body of men in the country. I should say that there was a great deal of political honour at the Scotch bar; and I think the certainty that, upon a change of Government, the advocates-depute go out, is rather in favour of that.

142. Supposing, as was the case which we were thinking of, the persons appointed held the office *dum bene se gesserint*, judging from what you know of the system, do you think it would have an unfavourable effect upon the character of such a body as the English bar?—It is a very difficult question to answer; I should rather think that, with us, if they were not removed with the Lord Advocate it would give the Lord Advocate more political influence than he ought to have.

143. Or the Attorney-general?—Yes.

144. Mr. *Watson*.] Who issues the warrant to arrest a man charged with murder or theft?—The sheriff.

145. Upon the first intimation?—The procurator fiscal presents a petition praying for a warrant; the sheriff need not grant it if he thinks there is not sufficient ground set forth; he very often does not do it, but orders further investigation. The ordinary course is that he grants a warrant to attend for examination; if upon that examination there is ground for further inquiry, he then pronounces his judgment committing the party for further examination, and then upon that second examination he commits him for trial.

146. How are the expenses of the prosecution paid?—They are now paid almost entirely by the Treasury. They are made up by the procurators fiscal and the sheriff clerk, and those accounts are sent to the Queen's Remembrancer of the Exchequer in Edinburgh and paid.

147. Do you suppose that there is much care to keep down the expenses in the proceedings?—Yes, I can answer for that; the expenses are most rigidly kept down.

148. A question was asked just now about allowing the expenses of witnesses for prisoners; is there any such allowance in Scotland?—No, there is no allowance, properly speaking, for witnesses of prisoners; it depends very much upon the particular case whether assistance is given or not; I have it in my power either to direct the procurator fiscal to include particular witnesses in the Crown list, or if a representation is made of a very important witness or a very poor person, we make an arrangement with those acting for the prisoner, that in the event of its appearing to be a reasonable case after trial, an allowance shall be made.

149. *Chairman*.] With regard to the confidence of the public in the proper administration of criminal justice in Scotland, does it appear to you to be shaken by

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by the system, or the contrary?—I think there is very general confidence in it; sometimes there are complaints.

150. Mr. *Watson.*] You have the trial by jury, of course, in Scotland?—Yes.

151. Mr. *Philipps.*] How long has the present office of Lord Advocate existed?—It is a very old office indeed.

152. Lord *Stanley.*] There is a considerable discretion in your hands as to the amount of expense which is thrown upon the State and upon the aggrieved party relatively in the case of a prosecution; it is in your power to relieve the injured party of a considerable part of the expense of the trial or to leave it upon him?—Yes. I may mention, however, that the allowing the expense is a very exceptional case indeed. In an ordinary case, the prisoner provides for the trial, and it is a very rare case, though it does happen, that any allowance is made to him.

153. Mr. *Watson.*] Have you any reason to suppose that by this system any great criminals escape being brought to justice?—I think not in consequence of the system, certainly. Quite the reverse.

154. Mr. *W. Ewart.*] Did you hear it stated by Lord Brougham that the proportions of convictions in Scotland are much greater than the proportions of convictions in England?—Yes, his Lordship stated it quite correctly.

155. Lord Brougham said that there was a similarity between the French office of Procureur du Roi and the Lord Advocate; have you ever compared them?—Yes, I know a little of the French system, though I cannot say I know it very well.

156. Is not the Scotch system far more favourable to the prisoner?—Certainly, as it is worked; but I think it right to say, that while the Scotch system is remarkably well adapted, in my opinion, for the detection of crime (much more so than a system of great publicity), it seems to me essential, in order to make that system safe in a free country, that there should be a very direct responsibility.

157. Is it your opinion that it is of great advantage to the administration of criminal justice in Scotland that the Lord Advocate is a member of the House of Commons?—I think the system would be quite intolerable without it, because it would put in his power that which should not be in the power of any man who is not responsible to Parliament.

158. Therefore you suggest, supposing there were such an officer as a minister of justice, that he should be a Member of the Legislature?—My idea is that he should sit in Parliament like any Secretary of State.

159. *Chairman.*] In Scotland, the tremendous power which exists arises from the fact that practically the Lord Advocate has the power of saying that a man shall or shall not be prosecuted?—Not merely prosecution, but the power of restraining liberty.

160. Supposing it is still practically left open to the aggrieved person to carry on his prosecution, though the public prosecutor refuses to assent to it. that reason would not be so strong?—No; and probably in England it might operate as a check; in Scotland it would not, because the system is so settled.

161. Mr. *Watson.*] Has any complaint ever been made in times of political commotion, of this power of the Lord Advocate to prosecute?—No doubt in the political prosecutions at the end of the last century and the beginning of this, there was a great deal of complaint about it.

162. Mr. *Walpole.*] That might arise again in the event of political excitement running high?—It might, and very probably would, but at the same time the stringency of the Crown law has been a good deal relaxed since then. At that time the judges chose the jury; the list was that of the judges, instead of balloting, as they do now, and there are various other improvements.

163. The juries have much greater power than they had?—Much more real power.

164. Mr. *Watson.*] What is the number of the jury?—Fifteen; and the majority decide.

165. *Chairman.*] I understand you to say that the Scotch system gives satisfaction to the people?—I should say very great satisfaction, and the results necessarily lead to it.

166. Mr. *Watson.*]. You say that on the first examination there is a very careful investigation of all the evidence bearing upon the case?—Yes; it very rarely

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rarely happens that a crime is not thoroughly investigated. The other day, I had, through the Home Office, rather a violent letter from a man to say that the procurator fiscal had not inquired into some death, and that there should be a coroner's inquest. I was quite certain it could not be so, and sent down to the man to substantiate his charge. It turned out to be quite the reverse; that the procurator fiscal had himself completely investigated it at the time, and found it to be a case of suicide, and not of crime.

167. *Chairman.*] Under your system is it possible for a person to be long confined in prison upon what turns out to be a trifling and frivolous charge, namely, for three or four months?—It is a very rare occurrence indeed; I wish I could say that that is impossible; I have been endeavouring as far as possible to remedy the evil of detentions, whatever the charge be, and it scarcely happens that a person is more than five weeks in prison without a deliverance upon his case, and whenever it does happen, a remonstrance is immediately sent to the procurator fiscal to know how it has come to pass.

168. Could the following case have happened, that a woman was brought up on a malicious charge of bigamy for which there was no foundation at all, the charge most probably having been brought for some improper object, and that she was in prison for four or five months?—No, I think that case could not happen under our system.

169. Mr. *Watson.*] Have you ever exercised the power which the Attorney-general in England has to enter a *nolle prosequi* after a prosecution has been commenced?—Frequently.

170. Reasons arise why the prosecutions should not be proceeded with?—Yes; the course to be adopted would be to instruct the advocate-depute, when the case was called at the circuit, not to proceed.

171. Mr. *W. Ewart.*] Is there not an appeal from the Lord Advocate to the Privy Council or to the Crown in some way?—There is no appeal from the Lord Advocate as to whether a case should be tried or not.

Jovis, 14° *die Junii*, 1855.

MEMBERS PRESENT.

Mr. J. G. Phillimore.
Mr. Attorney-General.
Mr. Watson.
Mr. William Ewart.
Mr. Philipps.
Lord Stanley.
Mr. Miles.

JOHN GEORGE PHILLIMORE, Esq., IN THE CHAIR.

Thomas Flower Ellis, Esq., called in; and Examined.

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172. *Chairman.*] YOU are a Barrister of considerable standing?—Yes.

173. And are Recorder of Leeds?—Yes.

174. You have been already examined, I believe, on a subject connected with this inquiry; you gave evidence before the Criminal Law Commissioners, did you not?—I sent in one paper, I think, but not on this point.

175. Have you turned your attention to the subject of the appointment of public prosecutors?—I cannot say I have to any extent such as to make my opinion worth being received by the Committee; it has crossed my mind of course very often, but not further than that.

176. As Recorder of Leeds, will you tell us the system adopted in your borough, and why it became necessary to adopt that system?—I fancy it was adopted in consequence of hearing that it had produced very good effects at Liverpool, not on account of any very salient defects which were pointed out: but the change has worked very much for the better.

177. What was the change?—Anybody whatever sent in a bill instructing his own attorney; and occasionally the cases were carelessly got up, and the witnesses were not sufficiently watched: and then it was learned that at Liver-
pool

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pool the system was for the magistrates to bind over Mr. Dowling, the chief of the police; and that plan was adopted at Leeds, not upon any consultation with me. They always bind over either Mr. Reed or Mr. James, who are the two superintendents of police there, not quite filling the same position as Mr. Dowling, but being, more technically, head constables. They are formally bound over; and then the prosecution is put in the hands of one of two named attorneys; because, at the time when the system was introduced, one party, which is called the Liberal party, was very predominant at Leeds, and they were apprehensive that it might look like a party move, and therefore they proposed to the other party to name an attorney; and thus two exceedingly respectable attorneys were named, between whom the business is distributed: and the improvement has been very great certainly.

178. That system continues to give great satisfaction?—It gives me very great satisfaction; it has produced some complaint among prosecutors, who seem to consider themselves *domini litis*, as if it were a civil suit. On one occasion before me the prosecutor sent in a distinct bill, which was found besides the bill which the ordinary attorneys sent in; he claimed to be heard first: and when I found there were two bills, I said, "I must take what bill is before me; but, as one party is bound over and the other is not, I shall take the bill of the party who is bound over; and then, after the trial, I presume the prisoner, if he is indicted on the other bill, will plead either *autrefois acquit* or *autrefois convict*." There was great complaint of this. An application was made to a learned friend of ours, to know whether there was no remedy. After the assizes were over the prosecutor was very much discontented. His counsel informed him that the trial could not be got rid of (there was, I believe, a conviction), but that, if he liked to bring a criminal information against me, and would swear to malice, he could. He did not do that; and no more was heard of the matter.

179. Must there not have been some private feeling on the part of the prosecutor; some view of serving or encouraging some attorney?—I dare say there was something of that sort.

180. How long have you been Recorder of Leeds?—I was appointed in 1839.

181. These prosecutions, I understand you to say, having been carelessly got up, and evils of that kind arising, you adopted the present system?—I did not; it was done by the borough; they adopted it after I had been recorder three or four years; I should not like to overstate the extent of the evil; I did occasionally see carelessness.

182. How does the present system work?—Exceedingly well.

183. Do you find that there are many frivolous and trifling prosecutions?—They are very rare; but I do not attribute the want of that to the institution of a public prosecutor: these attorneys could not but take up a case which the magistrates chose to bind over; they would have no choice; they do not intervene till after it has been before the magistrates; the police come before that, and bring it before the magistrates; then it is put into the hands of the attorneys, and they look it over and see what is wanted; and it is the business of the particular superintendent of police who happens to be bound over, to keep the witnesses together and to see that they are forthcoming, and he generally does that by the instrumentality of the policeman who has seen most of the case; it is always done through a policeman.

184. In the course of your experience, have you paid much attention to the working of the criminal law?—To a certain extent; I see a good deal of it in my own court.

185. What is your opinion as to the fact of prosecutions being carelessly got up from the want of there being a public prosecutor?—I can only say that I have seen some difference in point of degree at Leeds; I do not know that I have seen enough to be able to speak very strongly of it elsewhere. I think I have seen something like it elsewhere, at the assizes; but I should be sorry to speak very strongly.

186. Mr. *Watson*.] Are these attorneys who conduct the prosecutions paid by salary, or by each individual case?—I think they are paid by individual cases. There was a report of Sir John Bayley upon the subject, in which he blamed exceedingly some proceedings which he thought were their's, which they had nothing to do with; he took for ganted that they had set all these things afloat as to which they had no choice. I am almost sure that they are paid by fees.

187. I believe you go the Liverpool assizes; are you aware that the prosecutor

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secutor in Liverpool is paid by salary?—I am not aware: I know nothing of the criminal system in Liverpool.

188. From your experience since this change has taken place, has it been found satisfactory?—I should say very much so indeed.

189. Has your attention been at all called to the proportion of acquittals to commitments?—Yes: one answers that question of course in a vague way. I should say that, taking the cases which come before me of bills found by the grand jury, we may average the number at perhaps 80 a sessions; I should say that if two are thrown out by the grand jury it is the full number; but I must be understood as putting this of course very vaguely. I should say that of those cases which are tried, where the bills are found, the acquittals may be one in about 12 or 15.

190. On speaking of acquittals upon the merits?—There are technical failures; but they are very rare. If the Committee wish for any return, they can have it. I have returns ever since I have been recorder, so that it goes to any extent. Perhaps I may mention that within the last year there have been very full returns printed, which have been sent up from the sessions every quarter, and which would furnish the Committee with information upon that point.

191. *Chairman.*] Lord Brougham gave us some statistics upon that subject? —For Leeds I could give them for 19 years. My Lord Brougham, as I caught it, spoke of the assizes.

192. Mr. *Watson.*] You have spoken of the sessions; is the same machinery used for commitments to the assizes and prosecutions at the assizes: is the police authority bound over to prosecute, and are there the same solicitors for the assizes as well as for the sessions?—Yes, in cases committed by the Leeds magistrates. The proportion between commitments and acquittals is much more influenced by the magistrates who commit, I should say.

193. Who arranges the costs of the prosecutions?—My clerk of the peace, Mr. Richardson.

194. Has your attention ever been called to whether there is any decrease in the expense of prosecutions since this arrangement has been made at Leeds? —No.

195. I believe, at York, Sir John Bayley and an assistant from the Treasury came down to settle all the expenses?—Yes, and they came down to Leeds; but I think the principal change at the assizes at York was in the diminution of fees to counsel. I do not think there was any serious diminution of payments to witnesses or attorneys.

196. It has been put upon some principle at York, I believe, by Sir John Bayley and the gentleman from the Treasury?—In the case of the Leeds prosecutions, of which I see most, they take the brief beforehand, which will contain the substance of the depositions, to Sir John Bayley, and he marks outside, one counsel so many guineas, two counsel so many guineas: he makes a memorandum, upon which they act.

197. Mr. *Miles.*] That is at the assizes?—Yes.

198. Mr. *Watson.*] Do you think that it would be an advantageous thing to have one of the solicitors whom you mention appointed at a salary for the purpose of conducting the prosecutions?—It does not occur to me at this instant what difference it would make, whether it was at a salary, or whether he was paid for the work he did, because he does not make his work or diminish it.

199. *Chairman.*] If he had the option, if it was referred to his judgment, which would you recommend: the system of a fixed salary, or being paid by each individual case?—If there was a fixed salary you would run the risk of his finding fewer cases to prosecute; supposing his principles not to be very strict, there would be a temptation to that.

200. Mr. *Watson.*] Did you find any inconvenience in former days from having the prosecutions in private hands?—Yes, there was carelessness sometimes.

201. Have you ever known anything like corruption?—I cannot say that I have been able to trace that at all; but, so far as my memory serves, I think I only held the office for four or five years before the change.

202. Can you speak of the proportion of prosecutions in Yorkshire coming from Huddersfield and the country towns?—I have seen very little indeed of them. With reference to a matter which I heard discussed on the former day as to the degree in which the prosecution is the property of the party prosecuting,

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cuting, I think some curious information as to the state of our law now, at all events as to the way in which it got into its present state, will be found in the state of the Jersey law (I was on the Commission there), which was founded on the *grand coustumier* of Normandy. What criminal law they had was really nothing but that; and there a public prosecution was nothing but an exceptional case; it was a prosecution in default of appeal by the party injured.

203. *Chairman.*] On the old barbarous system, that it was the individual, and not the State, who was injured?—Yes; and in following out the *grand coustumier*, it is put in this way. If there is no relative near enough, or nobody who will take it up, then what they call *la justice* intervenes. Then *la justice* does it in this way; *la justice* sets to work the *bedeaulx* and the serjeants: I do not recollect all their titles. This is the old system; they took a man; if they had flagrant suspicion, they used to commit him and put him in prison, with little to eat and little to drink; if he stood that for a certain time, which I think was a year and a day, I conceive he was let out; if he did not, he might get out by either confessing or demanding the decision of the *enqueste du pays*, which seems now to be called *la grande enquête.*

204. That is the grand jury, is it not?—No, it sounds like it; but in truth it is the jury for trying the ultimate traverse of "Not guilty"; it answers to our petit jury; what answers to our grand jury, would be these *bedeaulx* and other police authorities; the form, to a great extent, remains, although there is an attempt to bring it into the spirit of the present time. I should say that the case of *la justice* was always an exceptional case; but the way in which it now works is this: there are 12 parishes, and the police of the particular parish in which the offence is committed, find the man upon written evidence guilty or not guilty. If he then denies it, he has a jury of 24, which is the *grande enquête*, answering, as I understand it, to the old *enqueste du pays.*

205. Must that jury be unanimous?—There must be 20 out of the 24.

206. Do you recollect what was the date of the *grand coustumier*; was it not about the beginning of the 14th century when it was drawn up?—You will find it mentioned in the preface to the second institute. In a book called "*Le stille de proceder en pays de Normendie*," and in the *Northmannorum Origo* there is some discussion about it. It seems to have been drawn up at the time when King John was driven out of Normandy by Philip Augustus, and thus it represents what was in the Channel Islands about that time. Sir Edward Coke places the date of the *grand coustumier* about 1229.

207. You have no doubt that the system which you have described to us is a remnant of the barbarous custom that an offence committed against an individual was an offence against him, and that it might be compromised as he thought proper, and that if he was killed, then paying a fine to his relations was a sufficient satisfaction to society?—I have no doubt that that is so historically. I should mention one thing; it is pretty familiar law, though there was a little discussion about it the other day, that the grand jury may find a bill without any witnesses at all. Some question took place about examining the prisoner at the trial. I should mention that in Livingston's Code the following course has been taken: in the Indian Law Commission, on which I have the honour to serve, the question arose whether we should have the prisoner examined by the magistrate; and we had then before us Mr. Livingston's plan, which, in order to avoid the difficulties incidental to making the judge a party and almost a controversialist with the prisoner, provides that certain prescribed questions should be asked, and those only; that is Mr. Livingston's proposal; it is adopted at New York too, Mr. Greaves says.

208. Mr. *Miles.*] Leeds is a corporate town, is it not?—Yes.

209. Is it a new corporation?—It was a corporation of a very different sort; a very close corporation.

210. When was the corporation altered?—Under the General Corporation Act.

211. It now has justices of its own?—Yes; and a court of gaol delivery.

212. Is it confined to the old town, or is there any circuit of country added?—It has a very large circuit; but I think that circuit has been attached to it all along; the population is something near 200,000.

213. And the authority of the magistrates extends through all?—Yes; but the police themselves, I think, do not; I think in one or two of the out-townships they have still parish constables.

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214. That being the case, have you found more difficulty in getting up your prosecutions in those two or three places where they have not the police than you have in the other part of the borough?—Yes; the evidence is not so easily got; but that is a question of police, not of the prosecutor.

215. As I understand, the preliminary examinations take place always at the police office?—Yes; that is to say, it is in the same building as the police office; it is really in the court.

216. By police officers?—Not the preliminary examinations upon which the prisoner is bound over. The examinations which I see are those which go on before the magistrate; the police get the heads of them, of course; I suppose they must take down memoranda for their own information; they are not technical documents.

217. Are you able to compare the last two years before and after these two gentlemen were appointed, as to the failure in justice that occurred under the old system; first of all as to the findings of grand juries, and next as to the number of acquittals in comparison with the number of convictions; are you able to compare the two periods?—I can give the proportions of acquittals and convictions in each case, I have no doubt.

218. Will you be kind enough to forward that information to the Committee?—By all means; I have 64 returns; four every year for 16 years.

219. Are you at all aware what the payments amount to with a population of 200,000, with about 320 criminals brought before you; are you at all aware of the sums of money paid to the different gentlemen?—Not in the least. Those gentlemen themselves, as I think, would be exceedingly valuable witnesses to the Committee; they are, Mr. Markland and Mr. Rawson; they are both of them exceedingly intelligent gentlemen. Mr. Hamilton Richardson, the son of Mr. Richardson, the clerk of the peace, would be also a valuable witness.

220. Does it strike you at all that, though this system may be applicable to large towns, such as Leeds, there would be a difficulty in carrying it out in a large county?—Yes; I should imagine that there would be a difficulty in carrying any central system out where there is a greater area.

221. Of course there must be more than two gentlemen appointed, properly to carry it out; have you ever turned your attention at all to a county which has 16 or 18 or 20 different petty sessions as to the number of gentlemen that must be employed as public prosecutors?—Yes; I should think you would either want a great number, or you would require very confidential local policemen on the spot. Supposing there is a county police, at certain distances there would be some person of sufficient rank who could be relied upon to a certain extent: but that would not be the same thing.

222. *Chairman.*] With regard to the working of the system, the clerk to the petty sessions might collect the evidence and send it to the public prosecutor, might he not, as he does now?—He might. I think there has been, at all events in boroughs, some distinct enactment separating those functions, it having been thought not advisable that they should co-exist.

223. Mr. *Miles.*] Do you think it would be safe to make the clerk of every petty sessions the public prosecutor?—I should not like it; I think I see objections to it. My present impression is, that, when we were on the Municipal Corporation Commission, we recommended that in boroughs the offices should be kept distinct; that the clerks to the justices should not be allowed to conduct prosecutions.

224. At any rate, I collect from your evidence that it would be a most expensive thing in counties; more expensive than at present?—I do not know what the present expenses are; I should feel some little doubt about that. Am I to address myself to what takes place after committal now?

225. If you please?—I will suppose a man committed, and that there is a county public prosecutor, say for the West Riding, a very large district, whose business it is to see that the witnesses are forthcoming. I do not think that the applying, for instance, to the principal policeman within a certain district to take care that those witnesses come, would be more expensive, so far as I can at present see, than the existing mode of a man having to traverse the county who is not an official man, and get them.

226. This is on the witnesses coming up for the trial?—Yes; it must be seen that they are forthcoming.

227. Would not your public prosecutor have to determine whether there is evidence

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evidence enough to bring a man to his trial?—That would be before he is brought before a magistrate; after the magistrate has committed, is the intervention which I have been contemplating all along.

228. And not previously?—No; I did not understand any question to be addressed to me on that point.

229. Mr. *Philipps.*] If I understand rightly, these gentlemen are gentlemen selected to prosecute, more than filling the office of public prosecutor?—It is so, with of course a little discretion; they are functionaries, in fact.

230. Lord *Stanley.*] I find that in your printed paper of 1843, you give the following description of the system at Leeds: "The justices always bind over the head of the police as prosecutor, and the conduct of the prosecutions has been entrusted to two attorneys. Two I understand were named, in order that the appointment might not be made the subject of party contest; and each of the two political parties which prevail in the borough has nominated one. All this I state merely from common report; but if true, it shows that one risk in such an arrangement as this is acknowledged to be, that the appointment should become a matter of patronage;" do you now consider that that danger exists?—I think there is that danger certainly; in so far as patronage is a danger, that danger does exist. May I take the liberty of asking where I said that, for I have forgotten it?

231. Before the Criminal Law Commissioners in 1843?—It is a paper which I sent in; I had forgotten it; no doubt it does suggest that that is the risk.

232. Are we to understand that the system described by you there exists still?—Yes.

233. Are you competent to speak as to the manner in which prosecutions were conducted in Leeds before this system was established?—It struck me that they were occasionally careless when I first went there.

234. Did I rightly understand you as saying that the system which you describe here was established before you became recorder?—No; about four years after.

235. Mr. *Watson.*] Under your system the police intervenes first with the criminal?—Yes.

236. He has then to be brought before the magistrates?—Yes.

237. Some legal man must then take up the prosecution?—Yes.

238. Either the public prosecutor, or what may be called the clerk to the magistrates?—Yes.

239. Do you see any advantage in having a salaried public prosecutor, subordinate to the superior prosecutor, to take up the prosecution at that point where the party is brought before the magistrates, in preference to the present system of the magistrates' clerk taking up the prosecution?—I do not think the magistrates' clerk does take it up.

240. In many instances he does; it is done either by attorneys employed by the prosecuting parties or by the magistrates' clerk. Would not a salaried prosecutor be better under those circumstances?—The only two grounds which occur to me as to electing between those two systems are, first, the expense; it might be done more cheaply by a salary; it generally is; and, secondly, the risk, to which I adverted before, that an officer paid, not by the job but by the time, is apt to make the job bear the smallest possible proportion to the time.

241. Are you aware that in getting up prosecutions there is any jobbing on the part of the attorneys and the people who are employed to prosecute?—No; I conceive there can be none now.

242. I refer to the country generally, not to the borough of Leeds?—My experience is very slight.

243. *Chairman.*] With regard to the job and the time, there is no proposal in this case to abolish grand juries; therefore if the public prosecutor refused to undertake the duty of prosecuting, and said that there was not sufficient evidence, would it not be a check upon him, and prevent him from hastily refusing it, if the injured individual might go before the grand jury on his own ground; and if a conviction was got under those circumstances, in which case it would appear that the public prosecutor had neglected his duty, would not that obviate your difficulty with regard to the job and the time?—I do not myself feel the difficulty very strongly; but, if both were left open, there would be that check, no doubt.

244. With regard to the examination by Mr. Miles, I wish to ask you a question

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question as the matter now stands; from the moment that the deposition is taken before the magistrate, then is no person responsible for the proper getting up of the prosecution, to use the expression?—The person is bound over.

245. A rich man pays his attorney and tells him to manage the affair; but suppose a poor person is bound over to prosecute, and he goes to some low attorney or some incapable person, there is no public person responsible for the proper management of the prosecution?—No, the only security is the dread of the recognisance being estreated.

246. That is with regard to the man coming forward to give his evidence; but there is no security that the proper evidence shall be brought forward?—Yes, he is also bound to prosecute.

247. But you never heard of a person being punished, because he had not got all the witnesses he might have done?—A common mode of punishing a man in that case is to disallow his expenses.

248. There being no person responsible for the careful and accurate management of the prosecution, which may very well be neglected by an ignorant man, who may do a great deal and yet not succeed in getting up the prosecution so accurately as a trained person would, do not you consider it an evil that there should be no public person responsible for superintending the evidence, and putting it in a proper shape?—Yes, I think it much better that there should be such a person.

249. When you were asked as to the difficulty in large counties, are you aware that England is almost the only civilised country where such a system does not exist?—I have heard so.

250. Mr. *Miles*.] Supposing a poor man loses a fowl or a pig; he suspects some one, from what comes to his ears; does not he immediately go to the magistrates' clerk, and state the evidence which he is about to produce before the magistrates, as regards the person whom he suspects?—No; I think he goes to the parish constable, generally.

251. That is merely to have the prisoner taken into custody?—No. He says, "I have lost so and so; I wish you would look out and see."

252. But if it should turn out that he does go to the magistrates' clerk of the division, and he there states such evidence as he has got, and the magistrates' clerk tells him, "This is not sufficient; you must have such and such evidence, and then come before me; and with such and such evidence, in all probability the magistrates will grant you a summons or a warrant;" is not that tolerable security to the poor man that justice will be done?—I should have doubted that a little; I can only speak of it *a priori*; it would be some security, but I should think not very efficient.

253. Then am I to understand that, from what you know of the magistrates' clerks throughout the country, you conceive them negligent?—No; not from what I know, for I know nothing of it. I do not know the working in the country at all; I merely mean that the man sitting below the magistrates, would not probably be the best adviser.

254. *Chairman*.] Has it not constantly happened to you to observe cases where not a fowl has been stolen but where a child has been ill-used, and where for want of a public prosecutor no pains have been taken at all, and the party has escaped; has not that occurred repeatedly within your knowledge?—No, not within my own knowledge.

255. Take a case even of murder; have you never known cases of murder very ill got up, because there was no person upon whom the duty of getting them up particularly devolved?—I think I recollect one case some years ago; I can mention one case which came before the Court of Queen's Bench a few years ago; it arose upon the question whether costs should be allowed. A man had beaten his child with great severity, and the parish officers interfered; and then the question was whether they had a sufficient right to interfere as prosecutors to be entitled to costs under the Act, and the Court said that they were exactly the proper people, because it would be taken for granted that the child would come to them if abandoned; and they were allowed the costs.

256. And it was necessary that they, not knowing what the decision of the Court would be, should have advanced the money beforehand?—Yes.

257. Supposing they had refused to advance money for the prosecution, or had not advanced enough, the prosecution would have been ill-conducted?—They must have advanced some of the money; enough to take care of the witnesses.

258. Mr.

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258. Mr. *Miles*.] Does not that occur rather from the laches of the law, which does not allow such persons to receive costs, than from the actual want of ability to do it in these persons, who might always be bound over to prosecute in case of cruelty to a child?—It may arise from both, I should apprehend; but the Chairman will observe that this question relates to what takes place before the case comes to the magistrate, and not after.

259. *Chairman*.] Does not it constantly happen that the attorney in a prosecution is obliged to advance money, in order to conduct the prosecution with effect?—He must, of course, or he cannot keep his witnesses together.

260. Mr. *W. Ewart*.] Are you aware that the Society of Magistrates' Clerks, in their answers to the Commissioners on the Criminal Law, particularly recommended themselves as public prosecutors, if the appointment of public prosecutors was necessary?—No; I did not know of such a society.

261. Will you read the answer of the Society of Clerks to the magistrates, in the year 1845, to the question of the Commissioners on Criminal Law, upon the subject of a public prosecutor?—I see that they state that the clerks to the petty sessions would be the best persons to perform the duty. They say, "the whole of these matters," the matters which they have before mentioned, "combined, tend very materially, in the committee's opinion, to the increase of crime; first, by the chance of escaping detection; secondly, by the chance that, if detected, the person injured will not incur the trouble, inconvenience, and expense of prosecuting; and thirdly, if he does, the chance of escape by the want of the case being properly got up against him, as well as the other chances, which the ingenuity of his counsel at the trial may give him unopposed, as is almost always the case at these sessions, by any counsel for the prosecution. To remedy this, the committee suggest the appointment of a public prosecutor to superintend and regulate criminal proceedings through all their stages;" that is, earlier.

262. Mr. *Miles*.] Is that the evidence of one gentleman?—It is by a committee.

263. What is this society?—The Clerks to the Justices Society.

264. Mr. *Watson*.] Is there not sometimes great inconvenience at York, for instance, from witnesses for the prosecution coming first of all to give evidence before the grand jury, and coming subsequently to attend the trial, they coming to York from Sheffield and other places, twice instead of once?—Either that, or being detained during the interval.

265. Mr. *Miles*.] That is from the great number of prisoners?—Yes; there have been all sorts of imperfect attempts to remedy that by classing particular sets of cases; but it works very ineffectually.

Charles Sprengel Greaves, Esq., Q. C., called in; and Examined.

C. S. Greaves, Esq., Q. C.

266. *Chairman*.] YOU are one of Her Majesty's Counsel?—I am.

267. You have paid considerable attention, I believe, to the administration of the criminal law?—I have.

268. And you are the editor of a very important work upon that subject; you published the work of Mr. Russell?—Yes, and I may say that I have attended to criminal law practically from my very earliest years. I began first of all attending petty sessions, where my father was a magistrate with Sir Henry Fitzherbert and others in Staffordshire. I then became a magistrate myself before I was called to the Bar, and I attended the Usk, Hereford, and Gloucester sessions for many years, and the Oxford circuit up to within the last three years.

269. I believe you have been concerned in almost all the important prosecutions both at sessions and on the circuit for a great many years?—In a great number.

270. And you have experience, having acted as a magistrate?—Yes.

271. In your opinion does the want of some responsible person to undertake the management of a prosecution lead to public evil?—Immense public evil. I may add that I am at this time preparing a report for the Chancellor upon the practice of the criminal law, and I have, of course, had to attend to that, amongst other subjects.

272. I believe you assisted Lord Campbell, also, in drawing up some of the Acts?—I did.

273. Your attention has been turned, I understand you to say, particularly to this

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this point of the administration of the criminal law?—Most especially so; more, probably, than that of almost any other person. Perhaps the Committee will allow me to point out the defects which I think ought to be remedied.

274. If you please?—In the first place, every magistrate who acts for a county knows that it frequently happens that a serious felony is committed, and nobody is personally interested; there is, consequently, nobody to institute a prosecution. If there were anybody to institute a prosecution, he might not be able to make a charge against any particular person, because he might have no evidence to substantiate that charge. The first defect, therefore, is, that you have no means of originating inquiries, except there be some person suspected, whom you may charge before the magistrates. That, to my mind, is a great and pre-eminent defect. I have no doubt that, in this country, many murderers escape through it, because, although coroners are sometimes very active, they also are sometimes not quite so active; and in cases where there is no coroner, there is no person whatever to institute an inquiry; for if you refer to Jervis's Act (11 & 12 Vict. c. 42), you will find that it is only in a case where some person or other will make an oath that he suspects some person, or that some person has committed a felony, that the magistrates are justified in interfering at all. I own I do not think that is the law, but still that is the law by that Act of Parliament. As a magistrate myself, I have interfered and made investigations, though there has been no charge before me, and would do so again; because it is quite obvious that where people are exceedingly poor, or where, as you suggested just now, a child is injured, or in many cases that can be put, there is nobody whatever to bring forward a charge; and I think that alone a very strong ground for having some public officer appointed, who should follow up what the coroner ought to follow up, and make investigations where very serious offences occur.

275. You say there is nobody to follow up the charge; might it not also happen that a person might pretend to follow up the charge with a view to extort money from the party accused, and then let it drop?—No doubt.

276. Do you believe that that often happens?—I have no doubt in many instances, where charges are made before the magistrates, they are afterwards improperly dropped or compromised to a certain extent before they come to trial. I was going to advert to that.—Then suppose there is a person to make a charge, if there is an appearance before justices or before a coroner, in important cases everybody knows that it wants some superintending mind to manage the case, before the coroner or the magistrates, in order that the facts may be got out; and I may mention this (I dare say it is familiar to magistrates who have investigated it like myself), that though it may appear that the magistrates have the proper witness before them, it is by no means an easy thing to get the facts from ignorant witnesses, those facts being really of importance, and some witnesses not considering them of any importance at all. Therefore you want somebody, at all events in serious cases, before the magistrates, to help them in eliciting the truth, and taking the examinations properly.

277. Mr. *W. Ewart*.] Then there are two evils to be remedied, one as to originating the inquiry, and the other as to managing the case?—Yes.—Then I was going to say, that the next thing is this; suppose a case is determined by the magistrate to be sent to the assizes or the sessions; as a general thing, the magistrate takes no duty whatever upon himself as to the prosecution; he simply commits. It is no part of his duty to say, "You are to employ an attorney, or any particular attorney." My own opinion is, that first of all, attorneys ought to be employed in all cases; and I am clearly of opinion that the proper course is this, that at the time when the magistrate makes up his mind to bail or to commit, he ought to say to the prosecutor, if the prosecutor be a person in such a situation of life as reasonably to be supposed to carry on the prosecution properly, "Do you intend to employ your own attorney?" If the prosecutor says, "I do intend to employ my own attorney," then that attorney's name ought to be marked down on the depositions, and he ought to have the conduct of the case; and no other attorney ought ever to be allowed to have anything to do with the case, or to receive any costs if he does attend to the case, unless there is cause shown to the satisfaction of the court. It is astonishing with how much mischief you have to put up in Staffordshire. It is very well known there, that though the costs are at a very low rate, there is a perfect hunt for the prosecutions by low attorneys, and by those persons who practise in the name of attorneys,

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attorneys, but who are not attorneys; the consequence is that they get hold of the prosecutors who are poor, and incompetent to carry on the prosecution; they tell them that they will conduct the prosecution; it gets into their hands, and they never take the least trouble about it, any more than giving counsel a copy of the depositions with the fee on the back of the brief, and they let the case take its chance at the assizes. That is a constant practice, and it is an evil which should be stopped; and what I suggest, I think would have a tendency to stop it. I do not say it is impossible to have some means of getting at the prosecutor beforehand; but still, if the magistrate caused the man to fix upon some attorney, and his name was put upon the depositions, it would prevent any intermediate intervention by improper persons between the time of the committal and of the assizes or sessions. Then there are cases which are taken sometimes before the magistrates, where there is no person who can be properly called the prosecutor; and it is a very common thing, and to my mind a very objectionable thing, that police officers or constables are bound over to conduct prosecutions. Constables are ministerial officers, and in my opinion, their duty is simply to take up a person, to hear what he has to say, and to keep him safely as long as he continues in their charge, and not to interfere in any other way whatever in the prosecution. I have seen mischief enough from that interference in many cases.

278. *Chairman.*] In the term "Constables" you would include police?—Yes; I mean all those persons, whether police or constables, who have anything to do with the apprehension or detention of prisoners.—Then in those cases where there is no person who can be properly called the prosecutor at all, or where, from poverty or otherwise, he is likely not to conduct the prosecution properly, I undoubtedly would give the magistrates the option of either appointing an attorney themselves, or directing the district officer, whom I shall name by-and-by, to appoint an attorney to conduct the prosecution, and to name that attorney at that time, so that you would have then, as soon as a case had got before the magistrates, and they had determined to commit, the case taken up by an attorney regularly in every instance, and carried on to the assizes or sessions, as I think I shall be able to show, in a proper manner, so as to secure the ends of justice, if there be evidence for it. At the present time, between the period when a person is before the magistrates and the period when he comes to the assizes, I find great defects. Everybody who has been in anything like the business I have been in, will know that a great defect exists in not getting up additional evidence, and not properly preparing the case for the assizes or the sessions, whichever it may happen to be. In very many instances, the whole evidence which counsel have at the assizes or sessions is a mere copy of the depositions taken before the magistrates; and it is obvious, especially in the most important cases, that there wants a very great deal more to be done; it is necessary that additional evidence should be got in very many important cases, and if attornies were appointed it would be their duty to do that. Then when you get to the assizes or sessions, your case goes before the grand jury. Now I confess I am not for abolishing the grand jury; I am very strongly in favour of the grand jury; and if necessary, I think I could give strong reasons for it: but the grand jury are placed in a position of very great hardship, and I think they are very unjustly accused for throwing out bills. Just see the situation they are placed in: a number of gentlemen are called together, and they are placed in a room, and they have a document brought before them; it may consist of half the size of this piece of paper, or it may consist, as I have seen it, of 45 yards, as I saw in Barber and Fletcher's case. They have nobody to explain to them the charge in the first instance; that is the first thing; it operates especially at the sessions, because at the sessions the grand jury are generally persons of an inferior order, and very little capable of understanding such documents as indictments. Then supposing they do understand the charge, every one knows that there constantly are cases which are really difficult to bring forward, and really difficult to lay before the petty jury, so as to be thoroughly understood: and yet a grand jury, supposed to be entirely ignorant of the case, are, without any assistance whatever, to be understood to find out the whole of that case in the very hurried manner in which they act, and to come to a satisfactory conclusion upon it; therefore they are placed in one of the most awkward positions which can be conceived, as to coming to right conclusions, even supposing the witnesses tell the truth, or supposing they are examined as accurately as they can be. But it opens this door to great frauds, which are no doubt committed:

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mitted: witnesses in many instances are tampered with by persons on behalf of the defendant; and if they do not, at all events, commit perjury, which sometimes is the case, they will do this: they will say, "I will tell nothing more than I am bound to tell;" and they go before the grand jury, and unless questions are particularly directed to them to get out what they know, in such cases they keep back most important evidence, and in that way I have no doubt many bills are ignored. I have made, in the course of my time, a good many inquiries as to the cause of the grand jury ignoring bills, and I have no hesitation in saying that the principal cause is, that the witnesses are not thoroughly examined. The grand jury do not know what questions to put, and the witnesses do not give the whole of their evidence, and that I am quite sure is the principal cause of bills being ignored.

279. Mr. *Attorney-General.*] Have you any experience what proportion of bills are ignored?—I have not; it differs so very much in different counties and in different grand juries.

280. It is a very small proportion, is it not?—I think in some cases it is considerable, and I certainly have known some very important cases in which grand juries have ignored the bill, where there was not a doubt that there would have been a conviction if the case had been properly presented. I have known cases where the counsel on both sides have thrown up their hands in astonishment at the grand jury ignoring the bill. I have no personal knowledge about the number, but I have watched the practice of the grand jury in cases where I have been concerned myself, and in looking at the evidence which I have had in my briefs, I have had no doubt that the witnesses would, if properly examined, have given at all events that evidence; they might have broken down if cross-examined, but I feel quite confident that the majority of the cases which break down before the grand jury are cases in which the evidence is not properly got out.

281. *Chairman.*] That injury is not irreparable, because the prosecutor can go again?—No doubt; but in substance I think I may state, from a long practice, that it is, as I never knew two cases in my practice. I can at this moment recollect only one instance of a case going to a subsequent assizes or sessions where the grand jury ignored the bill at the first. It is no acquittal, no doubt, and it is no bar to another prosecution; but in practice it is so, because you must consider the expense, and I doubt whether any magistrate would bind over, and there is no allowance of costs if the party goes a second time improperly.—It seems to me that there is a means of remedying these defects which I have pointed out, and I think the remedy is the appointing an intelligent district officer. Generally speaking, you may have a district officer to perform the duties which I am going to suggest, for the county; I of course do not mean the largest counties, where there is an immense quantity of crime, but for ordinary counties I think a district officer ought to be appointed, whose duty it should be generally to act as prosecutor till the case comes to trial.

282. Would you have such a district officer go before the grand jury?—I will point out all the duties which I think he might attend to as well as he could. In the first place, I began by mentioning the difficulties in making investigations at present, where there are no known persons to prosecute a serious offence, or where there are only poor persons to take it up; that should be his first duty. If, for instance, he heard of a serious offence taking place, and he did not see any investigation before the coroner, he ought himself to cause inquiries as to that serious offence, to elicit who had committed it, although no person was suspected; and I can illustrate how it would work. Suppose a rick to be set on fire, it is very possible that it may be that nobody suspects anybody, and yet that there may be a chain of circumstantial evidence leading to the guilty person. The public officer should go to the place, and ascertain who were about the place, and make inquiries of them. It is very easy to see, that by making those inquiries, although the evidence of any one person might lead to nothing, the information which he might get from all would make such a chain of circumstances as would leave no reasonable doubt that a particular person had committed that offence; then he would have a charge made before the magistrates, and the case investigated before the magistrates. That I would put as an illustration of the way in which a man might work in such a situation as that. His next duty should be, where a charge of murder was made, or of any very serious capital offence, personally, if he could, to attend either before the coroner or the magistrates, and to see that the case was properly conducted there. I should say next,

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next, if he had time, in other serious cases, or where, from the nature of the case, there was difficulty in it, he should generally give his attention to the magistrates' court, to assist them in any difficulty; and in cases where he did not attend personally, he should have liberty to see the depositions, which should be returned to some central place, say the office of the clerk of the peace, for all minor offences. He should look through those depositions, and see whether or not the evidence was sufficient, or whether there was too much evidence, and give directions to the attornies, appointed as I have mentioned, as to what witnesses they should be prepared with, and any additional evidence which might seem to him requisite; or if there were any superfluous witnesses, not to bring them; and I must say, that I think that an officer who did even that would save a great deal of expense, and that cases would be brought very much more satisfactorily into court than at present; for judges are constantly complaining, on the one hand, that there is a witness wanting, and therefore the case breaks down, and on the other hand, you hear them complaining of two or three witnesses being summoned to prove a fact, when any one of them would have done it. That is the case particularly as to the production of property; you constantly have three or four policemen called to trace it through three or four different stages, when any one of them might do so.

283. And producing different articles at the same time?—Yes. Then, supposing the case has been sent to the sessions or to the assizes, the district officer should have power to see that that case is properly managed by the attornies; to say, "What are you doing in this case? Have those investigations which I directed been made?" and to see that no compromise takes place, and that nothing is done to defeat the ends of justice.

284. Mr. *Attorney-General.*] You would not take the prosecution out of the hands of the attorney, and put it into the hands of the agent?—No.

285. Would not that involve a double expense, and perhaps two conflicting views; the attorney for the prosecution might not agree in the view taken by the public agent?—I think the public agent would only be authorised to say this. "In my opinion, such and such witnesses are required for this prosecution. If you have other witnesses, it must be at the peril of your client." I would not give him the power of preventing witnesses attending, but the power of saying "In my opinion such witnesses are necessary," or "such witnesses are unnecessary, and if you produce them I shall say to the court that in my judgment those witnesses were not necessary, and I shall not recommend their expenses."

286. Would it not be better to have a public prosecutor, and for him to conduct the prosecution?—I do not think you can do that.—Then I think the district officer ought to keep his eye on the prosecution till it came before the grand jury, and when the case came before the grand jury I think it ought to be his duty to attend before the grand jury; it should be his duty in the first place to explain to them the charge, and in the next place to see the witnesses called and sworn before the grand jury, as they ought to be.

287. *Chairman.*] You are aware that in Charles the Second's time, in the case of Lord Shaftesbury, the Queen's counsel attended before the grand jury?—Yes; upon the trial of the murderers of Charles the First, the resolution of the judges was, that the King's counsel had a right to attend before the grand jury; you will find that in the first few pages of Kelynge. Then I should say, that on attending before the grand jury the district officer should take no part of course in their proceedings, but he should take care that the evidence was properly got out. It appears to me, as I think I have stated, from that passage in Kelynge, that the Queen's counsel and the prosecutor might attend; and in the Queen's Bench there formerly was an officer, the clerk of the grand juries, I believe he was called, whose duty it was to attend and perform the duties which I have been describing in the grand jury room. That officer was abolished I think by the Act of the 6th Victoria, the Crown Office Act; but though that officer is abolished in name, his duties are still performed by the first clerk of the Crown Office, as I have learned within the last few days from Mr. Robinson.

288. Does the first clerk of the Crown Office attend?—He attends the grand juries.

289. Does he examine the witnesses?—I do not know whether he examines the witnesses or not, but he attends the grand juries, in order to give them any information that may be necessary. Although that officer was abolished by the Act

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Act of the 6th Victoria, there is still a person who regularly attends before the grand jury in order to assist them with advice as to indictments, and so on. In the Eighth Report of the Criminal Law Commissioners, p. 345, will be found the evidence of Mr. Jones, of the Crown Office, who gave very important evidence of the use of that officer, pointing at exactly the same things as I have been pointing at. He points out in strong terms the great advantage which such an officer is to the grand jury sitting at Westminster. At the Central Criminal Court there certainly was an officer whom I have seen present here, namely, Mr. Straight, who used to attend, because I was examined as a prosecutor there; and I believe his duty was to hold the depositions in his hand, and to look at the depositions, and see whether the witnesses told all that they had stated in the depositions, and to examine them if they did not. I rather think that in Durham the same is the case, but I do not know. Those therefore are precedents for having some person, at all events, attending before the grand jury. I think it is, at the Central Criminal Court, by the Central Criminal Court Act; but I do not know how it is at Durham. I suppose, in the Court of Queen's Bench, it is by ancient usage, for I do not know the origin of it; I think if those things were done by the public officer it would tend to prevent the failure of very many prosecutions. I think also such an officer ought to inquire, if a defence was set up before the magistrates, as to that defence; because every one knows that at present, as a general thing, we have no means, as counsel for the prosecution, of knowing anything about the defence. If he found that a defence was likely to be set up, he ought to institute inquiries, because I am inclined to think there are many cases in which fictitious defences succeed when they otherwise would not.

290. Lord *Stanley*.] You mean if a defence was set up before the committing magistrate?—Yes; or if it was offered to be set up. I can mention a very remarkable case which occurred at Gloucester, and I am going to suggest to the Chancellor that magistrates should always be bound to take the examinations of witnesses tendered for the defence, in consequence of that and other cases which have occurred within my knowledge. A man was charged with a burglary at Cheltenham; the watches were found upon him at Brighton; he went before the magistrates and was committed, and they refused to examine his witnesses. When his witnesses were called at the trial they proved an *alibi* in fact. I had not the slightest instructions about them, and could only cross-examine them upon suggestions that came into my own mind; the result was an acquittal; they proved an *alibi* in London, at a particular house named, and the case was that they were all keeping the birth-day or the wedding-day (I forget which) of the owner of that house. The very moment that an inquiry was made afterwards, it turned out that there was no such house or person. If the magistrates had examined that evidence on the first occasion when the man was before them, the whole of that would have been found out, and the man would have been convicted.

291. Mr. *Attorney-General*.] Was that evidence tendered before the magistrates?—Yes, and they refused it.

292. *Chairman*.] Then would not the result be, that the man would hold his tongue, and not bring his witnesses?—Perhaps so; but when a man does tender his witnesses you may possibly calculate that he will tender them again.

293. Mr. *Attorney-General*.] Supposing the result of the inquiry before the magistrates should be, that a very good *primâ facie* case is made out against the party accused, but that he makes out, to the satisfaction of the magistrate, and the magistrate believes that it can be made out upon the trial to the satisfaction of the jury, that he was not there at the time, what is the magistrate to do?—I should dismiss it. I will illustrate it by a case: it sometimes happens now that the wrong man is taken up; the magistrates, by not investigating the case, sometimes commit that wrong man for trial; and not only is he wrongfully detained in prison, but the right man escapes. I could mention a very remarkable case of that kind: a person of the name of Yarworth was murdered near Cheltenham, and a man of the name of Bowen was taken up before the magistrates; he offered, before the magistrates, to prove that he was not the man, and that he was at Worcester at the time; they refused to hear that evidence, and when the trial came on the *alibi* was so clear that Mr. Justice Coleridge stopped the case. Now his witnesses not only proved that he was not the man, but gave strong evidence of who was the man; and that man, in the interim, while the other was in gaol, escaped from the country altogether, and got rid of the charge.

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charge. Therefore you may not only have a man improperly shut up in prison till the assizes, but also, by not taking the evidence for the defence, you may let the guilty man off.

294. *Chairman.*] Will you be good enough to proceed with the statement of your plan?—I have made the observations which have occurred to me as to the duties of the district agent; in addition to which I may say, that many cases must have come to your knowledge of this kind, namely, where children, apprentices, and servants have been maltreated. It is nobody's duty to take such a case up at all; anybody is regarded as an officious, meddling, busy person if he gives information to the police, or does anything of the sort. I think those cases might well fall within the duty of the district officer; he should keep his eyes and ears open, and if he hears of anything going on likely to produce manslaughter or murder, he should take up the case. Again, I think an officer of that kind would be very useful in preventing public nuisances. Nobody takes up, as a general thing, the prosecution of a public nuisance. He ought to have power to give notice to the party to stop it, and to say that, otherwise a prosecution will be instituted; and in case of its being continued, to institute a prosecution.

295. Would you have the district officer on such a footing that any person against whom an injury had been committed should go at once and say to him, "I have sustained an injury, will you look into it?" without the intervention of the district attorney?—Yes.

296. You consider it a great hardship now, that there should be no person on whom a poor ignorant man can devolve the duty of prosecuting an offence by which he has been a sufferer?—I do.

297. Would you have that district officer on the footing that that poor man should have a right to go to him?—I think a poor man should have a right to go to the magistrates, as now; he should make his complaint, as now, before the magistrates. If the magistrates judged that it was a case to be prosecuted they would commit or bail the prisoner, and upon their committing or bailing the prisoner, the matter would fall within one of the categories which I have mentioned.

298. Then the duty would devolve upon the district agent?—Yes; subject, as I have said, to either the district agent naming the attorney in that case, or the magistrates naming the attorney, who is to conduct the prosecution.

299. Would you not have the district agent an attorney himself?—No; my view of the district agent is, that he should be superior to attornies. It would not do for one attorney to tell another what he should do.

300. Then you do not take the view of the district agent performing the duties of the attorney?—No; I think we want a superintending mind to see that the cases are properly managed by the attornies, the prosecutors, and so on. If we had the attorney to perform those duties, we must have an attorney for a very small district; it is a *reductio ad absurdum.* You cannot have the attorney to conduct all the prosecutions of the county, because he cannot attend to all; he must have agents; but I contemplate having a superintending mind.

301. Has it ever occurred to you to consider this state of things, that the justices of each petty sessions should have the power of choosing their clerk; that that clerk should be paid, not by fees as at present, but by a fixed salary, and should have, therefore, no sort of interest in augmenting the number of prosecutions; that the moment a prisoner was committed, that clerk should send the depositions, in communication with an officer, who should be the agent of the district; that that district agent, according to the importance of the case, should attend before the magistrates for a second examination; but that at any rate it should be the duty of that district officer to attend at the assizes and see that the affair was properly managed?—In substance my plan will do that, and a great deal more.

302. But then you have what was pointed out by the Attorney-general, namely, the difficulty of two attorneys, or rather of an attorney and a district agent, who is to have a sort of official authority over the attorney?—No doubt; but I do not feel the least pressed by that. I allow the prosecutor to select his own attorney, his own attorney going on as he thinks fit. The depositions are returned, according to my plan, to this district agent. The district agent says either, "I think there is not sufficient evidence," or, "I think there is too much." "I wish so and so to be got," or, "I wish so and so to be omitted."

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The only effect of that would be in mulcting him in the costs at the assizes or the sessions, if that evidence which was wanted was not brought.

303. Would you not divide the responsibility between the attorney and the district agent?—I think not.

304. If you had an improper case brought, or a failure of witnesses, the judge would at once say, "How happened this"?—If it happened in consequence of the district agent saying that those witnesses should not be brought, and they were not brought, it would most justly fall upon the district agent; and what I find in practice very often is this, that the attorneys now dread bringing witnesses who are really necessary, for fear of being blamed. I have known cases break down at sessions and assizes in consequence of that. I can give two remarkable instances of murder. One occurred at Gloucester five or six years ago, of a murder by poison. It was of the greatest importance to show that that poison had been bought at a particular shop: in consultation, the attorney told me that he had such a witness to prove it. I inquired into his character and so on, and I had doubts as to his being a proper witness to support that fact; I asked, "Was there anybody else in the shop?" The answer was, "There was a little girl;" and I directed her to be sent for. The witness in question broke down completely in about three minutes, upon cross-examination; if it had rested with him the case would have been gone. The little girl completely set up the case. She was a perfectly credible witness, and the consequence was there was a conviction. There was a case occurred, I think two years afterwards, which was just the reverse. Only one witness was called for a similar purpose; he broke down upon cross-examination, and the prisoner was acquitted of a gross murder. In both those cases I had pretty good reason to know that only one witness was provided, for fear of a lecture at the assizes for having called two witnesses.

305. Judges take very different views?—Yes; a district officer would be very useful to prevent that; he would see where the pinch of the case was, and would direct such things to be done; and I have reason to know that the attorneys in most instances would be most glad to have such an officer, taking the responsibility off their shoulders as to what witnesses should be called and what should not.

306. Then you would not have a public prosecutor in the sense in which that officer exists abroad, a person who should be responsible for collecting the evidence for the magistrates, and for bringing the case into court; but you would recommend that there should be communication with a district officer who should give advice to the attorney selected by the prosecutor?—Certainly, that is my view.

307. Would that get over the difficulty which now so constantly arises from struggles between low attorneys and combinations between policemen and attorneys to get hold of particular prosecutions?—I think it would, coupled with what I have mentioned, that at the time when the case was before the magistrate, the attorney should be named. Having acted as a magistrate, I know practically how these things happen. In nine cases out of ten, the prosecutor comes to the magistrate for a summons or a warrant upon a charge; the magistrate then issues the summons or the warrant, and the man is brought before him. During that time there is no certainty whatever of there being a prosecution; there is a chance, it is true; but I do not think it would be found to be worth the while of the low attorneys to get hold of prosecutions at that stage; I do not say cases might not occur.

308. To return to the main point, as to the change of the present system: is it within your knowledge that it is often requisite for the attorney to raise considerable sums of money in prosecutions?—Undoubtedly it is.

309. Do you consider that a great evil?—I do; and it checks prosecutions.

310. Is it not within your knowledge that many cases of great importance break down for want of the funds which are requisite to bring the evidence before the court?—I believe they do; and I would observe, that my view when recommending this officer is principally with reference to the most important cases, for it is exactly in the most important cases that the mischief tells the most. The most important cases are generally cases of circumstantial evidence; they are generally cases requiring important witnesses to be examined, and carefully examined, and the evidence properly got up; and therefore the evils of the system tell very much more with them than in any other case.

311. In cases of murder, does it not very often happen that there is nobody having a direct personal interest in the investigation of the murder?—Very often. As

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As a general thing, in the lower ranks of life, nobody takes up the prosecution in a case of murder.

312. The attorney advances a large sum of money, and is very often out of pocket by it?—Yes. A very singular case is mentioned in the evidence of Mr. Shepherd before the Criminal Law Commissioners; that was a case of murder. He was directed by the magistrates to investigate the case, and I think he says that he was 40*l.* out of pocket, after being complimented for the way in which he had got up the case. His statement is this: "I will mention a particular case, which occurred to me four or five years ago. A most atrocious murder took place in my division; the woman who was murdered was a poor labourer's wife;" and so on. "The murderer shot her and burnt her;" and so on. "The coroner sat upon the body, and one or two of the division magistrates came over to me, and said, 'We think this is a case requiring looking to; perhaps you will see to it.' Of course they had no power over me to tell me to do it. There was no person whom I could look to as the prosecutor; the parties were all poor. It was since the operation of the Poor-law Amendment Act, and I knew the parish could not pay. I took the hint and went to work, and upon the exertions which I made the case was made out, upon the evidence of, I think, six witnesses, sufficient to induce the coroner to commit. I saw the magistrates again afterwards, and they said, 'This is really a case which ought not to go unprosecuted; we do think the thing ought to be taken up.' Of course I understood what that meant; it was not anything which compelled me to do it, but still I felt I was in duty bound, as what I should like to see generally, the public prosecutor of the division to take the matter up: I did so. I had occasion to get witnesses from Manchester, where the party was apprehended. I subpœnaed 20 witnesses, independently of those whom the coroner had bound over. The case took from nine in the morning till eight at night; the party was convicted and executed, and I think a clearer case never went into court. I had the satisfaction of receiving the compliments of the judge and the bar, and of my brother clerks, who said the case was well got up; and I had the satisfaction of losing about 40*l.*"

313. That was a case in which society was immediately interested in the investigation?—No doubt.

314. Is it within your knowledge that profligate men often take up prosecutions for the sole purpose of being bribed to withdraw them?—I have no positive knowledge of it; I have no doubt it is the fact.

315. You believe it to be the case?—I believe it to be the case. I have no doubt that in Staffordshire prosecutions are got hold of in order to get money anyhow.

316. Would not a low attorney, for instance, have great means of oppression by indictments for riots and assaults in country districts?—No doubt.

317. However you may differ as to the details, you agree in this, that it is desirable, for the administration of justice, that there should be some person responsible for the proper management of criminal prosecutions?—I am quite clear of it; and I am quite clear that anybody who has had experience of the working of the system must see that that is the great defect in it.

318. And that at present our system is lamentably deficient in that respect?—I am quite clear of it.

319. Lord *Stanley*.] I understand your plan to be this, that you would have an officer appointed as public prosecutor in every district in correspondence with some officer of higher rank in London?—Yes. I have confined myself at present to the proceedings up to the trial. Staying there, I was going afterwards to point out that I would have a counsel in London, to whom the district officers should be entitled in all cases of difficulty to refer the cases for advice. So that if a case occurred in which there was a difficulty as to the evidence or the indictment, the evidence should be sent up to that person, and that person should direct what was to be done.

320. Have you formed any estimate as to the number of such local officers who would be required in the country?—My own impression is, that in ordinary counties one would be sufficient; in counties where there is a vast deal of crime I think two would be sufficient, generally speaking. I would not venture to speak positively upon that subject, but that is my impression.

321. I suppose you would make it imperative upon such an officer not to engage in any private practice, that the whole of his time should be given to the duties

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duties of his office?—I would make it his primary duty to attend to the duties of his office, so that nothing should interfere with the discharge of them.

322. Would you allow him to practise on his own account, or not?—I do not necessarily say that he should be a person in practice at all, because I think you may meet with persons of such great intelligence and activity as to be quite equal to a professional man. I would not necessarily prohibit him from practising; the only limit that I would put would be, that he should not do anything to interfere with the discharge of his duties. I would lay down a regular scale of his duties, and I think there would be times when he would be perfectly idle if he did nothing else. Very often in the counties you have not heavy cases occurring for several weeks at a time, and then, perhaps, you have an inundation of them, and several occur close together. As to the ordinary duties which I have pointed out, the superintending the depositions and giving advice, those would take comparatively little time.

323. Mr. *W. Ewart*.] Then if he were a professional man you would not prohibit him from practising?—No; I would prohibit him from any practice which would interfere with the discharge of his duties.

324. Lord *Stanley*.] Would you not expect that he should be a person of some considerable professional knowledge?—I do not think it requires any great knowledge; I think, for the duties which I have pointed out, a great many persons possess sufficient knowledge to perform them perfectly well.

325. Mr. *W. Ewart*.] Would he not require a knowledge of the criminal law and of the law of evidence?—I think he would, to a certain extent, undoubtedly; but I do not think that knowledge would be so great as to require a first-rate man in that respect.

326. Lord *Stanley*.] Have you formed any idea of the salary that it would be desirable to give such an officer?—Yes, I think I should give such an officer somewhere about 500 *l.* a year for a county.

327. By whom would you have him appointed?—By the Government.

328. Not by any local authority?—No, I should not. I think it is better for public officers to be appointed generally by the Government.

329. You would have him appointed on what tenure of office?—As long as he conducted himself well.

330. Mr. *W. Ewart*.] Are you aware that in Scotland, where they have such an officer, he is not appointed by the Government?—No, I am not aware how that officer is appointed.

331. *Chairman*.] You mean a superior officer?—I mean a superior officer.

332. Lord *Stanley*.] In the case of a large county, where more than one such officer was required, would you have one such officer at the head of the business of the county, and the others acting as deputies under him; or would you have the county divided for the purposes of such appointment?—I would rather have two distinct officers, each exercising a duty, such as I have described for a single county.

333. Then, in short, your plan comes to this; you would have probably from 60 to 70 such officers, receiving on the average 500 *l.* a year each, and permanently appointed by the Government?—Yes; and I think in three years' time they would save their salary in the amount of property saved and the protection of person alone, without other things.

334. On whom would you throw the expense; upon the counties or upon the Treasury?—I should say upon the counties; because I calculate the benefit to arise to the counties. I have no doubt that the more efficient you make your criminal procedure, the greater protection you will afford to person, and the greater protection will you afford to property; and you will find, if I am not greatly mistaken, from all the returns from the counties in which police have been established, that the security of life and property is infinitely greater than it was before those police were established at all. This would be carrying out that system still further, because I have no hesitation in saying, that instead of having 30 per cent. acquittals, which is the case in some parts, you would have very few acquittals. I think the district officer should, in connexion with the Crown counsel, have the power which the Attorney-general has of stopping improper prosecutions. There are cases which, in point of law, do not amount to felony or misdemeanour; or if they do amount to felony or misdemeanour, the evidence is not at all sufficient to put a man upon his trial, and I would vest the

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the joint power in the district officer, with the sanction of the Crown counsel in London, of stopping those cases.

335. *Chairman.*] Is not that a larger power than is vested in any person whatever below the rank of a judge?—No, the Attorney-general has the power now of entering a *nolle prosequi*, as exercising the power of the Crown.

336. Practically that is not exercised?—No. I would let it be open to the option of the court, if the court thought it right to proceed with the case, to let it proceed; but I would recommend that the Crown counsel, in conjunction with the district officer, should have the power to stop it. In Mint cases, in Bank prosecutions, and in Post-office cases, the evidence is invariably laid before particular counsel, and they act upon their opinion whether or not the prosecution ought to go on at the expense of the different parties. It is true they have not the power, as I suggest there ought to be, of stopping the prosecutions.

337. You would have a counsel to whom reference should be made?—No doubt.

338. Would you have so many counsel on each circuit?—No, I would have one counsel in London; because one great object of my scheme is to get a uniformity of practice throughout England if possible, as I am quite sure that the happiest results would arise from it; I would have one counsel in London who should be the referee, and who should direct proceedings in all cases of difficulty.

339. Lord *Stanley.*] Reverting to your proposition that these officers should be appointed by the Government, but paid by the counties, does not it strike you as an objection that you would have local expenditure without local patronage?—I do not see the objection to that. I think the objection would come more forcibly to vesting it in the patronage of the magistrates of the county or an election by the county. I think it is likely that in London a more qualified man would be ascertained than in a county, for instance.

340. Mr. *W. Ewart.*] Would you appoint any subordinate officers under the district officers?—No.

341. Do you think the district officers would be sufficient?—I do; quite.

342. Mr. *Miles.*] I wish to clear up a part of your evidence relative to the officer appointed by the county, or two officers, or whatever number may be appointed for the county, instituting in certain cases preliminary inquiries. You intended your evidence, as I understand, only to go to cases of murder?—Capital cases, and cases which clearly from their nature require investigation.

343. And there you would not only give the district officer the power before magistrates, but before coroners likewise?—The coroner, in his own case, of course, will sit, but the case to which I meant it to apply was not the case, generally speaking, where the coroner took up the investigation, but the other cases. The principle of the coroner's court is, that wherever a death occurs under suspicious circumstances there shall be an investigation, though nobody is charged. My view extends that principle to other cases standing *pari ratione*. If a house is burnt down with a person in it, and nobody is suspected, nobody can be charged; that is a case which, in my opinion, should be investigated.

344. You gave us an extraordinary case which you quoted from the Eighth Report of the Criminal Law Commission, in which, from the circumstance of some magistrates being present at the coroner's inquest, a prosecution was instituted?—No, they were not present; but they knew of the case, and desired their clerk to conduct the prosecution.

345. From your great experience, in how many cases in the year, generally speaking, do you conceive that a gentleman placed in that position as county prosecutor would have to act in the initiatory proceedings?—I do not know how many, and for this reason: of late years I have not lived in the country, and therefore I am not practically acquainted with those cases with which in former times I was, when such cases were pretty numerous, and very serious crimes were committed. I have known cases of arson in several instances which have occurred, when it has never been discovered who the person was, and no investigation has taken place, in consequence of there being no power to investigate. My own impression is, that in a county the number of serious offences might amount to 12 or 14; I do not think they would be a greater number.

346. Instead of returning the depositions as you do now, after they are taken, to the clerk of the peace, would the return be to the public prosecutor?—I should say, to the clerk of the peace, with a power for the public prosecutor to see them.

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347. Would it not be very much better that the return should be immediately made from the magistrates' clerk to the public prosecutor?—I have no objection to that, if it is thought right.

348. And that then, having been inspected by the public prosecutor, they should be returned to the clerk of the peace?—Yes.

349. So far as regards ordering a prosecution, I think you stated that the magistrate, in cases of poor people, should order an attorney?—Yes, that he should either order an attorney himself to take it up, or direct the district officer to order an attorney to do so.

350. Who is to pay the expense of that?—The expense must be properly paid by the county. When I say by the county, I mean out of the same fund as it is now paid from. I believe it is by the Government.

351. *Chairman.*] By the public?—Yes, in the same way as all other expenses.

352. Mr. *Miles.*] The state of the case, with the gentleman whom you would recommend as a public prosecutor, would be this, that, except in capital cases, he would not take the initiatory proceedings?—No.

353. That everything would go on before the magistrates as at present, except that, supposing a poor person came, the magistrates should order an attorney to prosecute?—Yes.

354. That the evidence would then be sent by the magistrates' clerk to the public prosecutor?—Yes.

355. That the public prosecutor would then determine whether or not there was sufficient evidence to convict?—Yes.

356. Or whether there was a superfluity of evidence?—Yes.

357. That he would have the power of stopping a superfluity of evidence going before the court, or he would have the power of getting any additional evidence he could, and that at the same time, as I understand, he should sit as an *amicus curiæ*, if I may use the expression, to the grand jury?—Yes, that is the general view. I do not say that he should prevent witnesses attending; all I say is that he should say to the attorney, "I think such and such witnesses unnecessary," or, "I think such and such witnesses ought to be procured;" and it would be for the attorney, at his peril, to do the one or the other.

358. Mr. *Attorney-General.*] Does not it strike you that there is some little anomaly in making a man, clothed with the character of public prosecutor, sit as *amicus curiæ*, and exercise a quasi-judicial authority with the grand jury?—I do not give him any authority or any power with reference to the grand jury, but merely to give them information, and to inform them as to what the charge upon the indictment is, and to see that the witnesses tell the whole of their story.

359. Would it not be better for the public prosecutor to lay the case before the grand jury at once, not merely as an assistant, but as discharging the functions of a public prosecutor?—It seems to me that what I mention would be sufficient; it seems to me, that the failure which now arises, arises first of all from not understanding the charge, as I think the grand jury do not at the sessions; and secondly, if they do understand the charge, from the evidence not being got out, and I think anything to meet that would be sufficient.

360. Would it not occur to you as better, that the depositions should in all cases be sent to the district agent, and not only in the more important cases?—I have suggested that my view is this: that in all the important cases, murder and capital cases, he should, if possible, personally attend the investigation; that in all cases where he does not attend, the depositions should be sent to him, in order that he may see whether or not the evidence suffices, or whether or not there is a superabundance of evidence.

361. A part of your scheme would be, that where the district agent sees any difficulty he shall put himself in communication with the district counsel?—I do not advise a district counsel. I advise a single counsel in town whose duty it should be to answer all questions from the district agents; that if the district agents have any difficulty as to the evidence or the indictment, they should send up the depositions and a statement of any additional evidence they may have to such counsel, and act upon his advice.

362. It forms no portion of your scheme that there shall be the appointment of counsel in the various districts to conduct the prosecutions?—No. I have a very strong objection to appointing any such counsel on the circuit, or at the sessions.

363. Mr.

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363. Mr. *Watson.*] Where a person, for instance, is so poor that he cannot prosecute, or cannot obtain an attorney, by what means is the attorney to be appointed by the magistrate?—Either by the magistrate, or the magistrate should direct the district officer to employ one.

364. And you would have his name introduced upon the depositions, and that he should be irremovable, excepting by an order of the magistrates or of the Government?—I would propose that no other attorney should be allowed costs at the assizes, unless he satisfied the court that there was good ground for the removal of the attorney named.

365. Do you think you would by that means ensure greater certainty?—I am quite sure of it.

366. Has the subject of prosecutions from malicious motives entered into your consideration?—Yes.

367. What effect would the person of whom you speak as public prosecutor, have upon those?—I think he would have the effect of stopping them. My suggestion is, that no prosecution should be stopped at all without his sanction. We constantly have in court, a counsel get up and not offer any evidence; I would not permit that to be done, except with the concurrence of the district officer. I think you will probably have evidence of a most extraordinary case which will be mentioned to you. It is easy to conceive that where there is either no person, or a poor person, to conduct the prosecution, the prosecution may get into the hands of some friend of the prisoner, and that he may actually instruct counsel to prosecute, and thereby compromise the case.

368. And such a thing may happen as a prosecutor being bought off?—Yes, and no doubt it does; and no doubt low attornies play into the hands of other low attorneys, who are attorneys for the prisoners.

369. There is a class of cases which never go before magistrates at all; for instance, indictments for conspiracy, and sometimes for perjury; what is your scheme as to those?—I am going to recommend, in my report to the Chancellor, the forbidding those cases going before the grand jury at all, unless they have been previously investigated by the magistrates, or the court shall permit them to go, not having been investigated, because I see the greatest mischief in it. A man is charged with perjury, or a man is charged with conspiracy, and the first he hears of it is a warrant issued by the court for his arrest, and a bill found and prosecuted. I think that should be stopped; but at the same time I would not make the decision of the magistrates, even of dismissal, final, but subject to an application to the court that the party might prefer his bill.

370. Would not this do, that he should submit his bill to the public prosecutor before such a proceeding from private motives was instituted?—That would not meet the difficulty. A man wants to know what he is charged with; therefore, if you only gave the sanction of the public prosecutor to the prosecution, unless you compelled the person to give the evidence, or a minute of it, to the defendant, that would not effect my view.

371. You are aware that a great many prosecutions are instituted purely for procuring money, or to enforce civil rights?—Yes. Nothing is so common as that where there is a bill in Chancery, and a man makes an answer to it which does not satisfy the person who filed the bill, an indictment is preferred for perjury; the first thing you hear of that indictment is upon the man being arrested.

372. There is another class of cases, such as assaults, which combine both civil and criminal remedies, and also the repair of roads and bridges?—Yes; with regard to the repair of roads and bridges, those are cases of a civil character; and I would suggest whether they should not be turned into really civil cases. There is, first of all, the expense of going before the grand jury, and, excepting indictments framed under the Highway Act, that is always at a different assize or sessions from the assize or sessions at which the case is tried; you therefore have a double attendance of witnesses; and if a hundred is liable to a civil action in a case of robbery, I do not see why a division should not be liable in a case of that kind to an action also.

373. What is your view upon assaults; a trifling assault, for instance; what course would you suggest as to that; that it should go before the public prosecutor, or that the leave of the court should be obtained?—In practice those cases very rarely come before the assizes or sessions; there is no power in a trifling case

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case to award costs, unless bodily injury is done, and that stops most of those prosecutions.

374. Then the prospect of costs, I collect from you, has an influence in prosecutions?—Yes.

375. The prosecutor would not go on unless he got his costs?—No, especially with poor people; it is the only remuneration they have.

376. You have paid very great attention to all these matters; is it your opinion that, by having such an officer as you suggest in prosecutions at assizes and sessions, the expenses would be reduced?—I am quite clear that the expenses would be reduced, and the certainty of conviction would be very much increased; and the very strong reason I have for recommending this system is, that I am quite satisfied that the increase of crime has very much arisen from the uncertainty of convictions. I am quite clear in my own mind that every acquittal has a tendency to create more crime; and therefore, exactly in proportion as you diminish acquittals you make person and property more secure.

377. Mr. *Miles*.] You mentioned cases of assault coming before grand juries; you are perfectly aware that in many cases it occurs that a man prefers before the magistrates his complaint of assault; the magistrates dismiss that case, and if the man happens to be down as a witness in another case before the grand jury, he has the power, notwithstanding the dismissal before the magistrates, of preferring an indictment on his own showing before the grand jury?—Yes.

378. The grand jury on that showing find a bill; does not it often occur that an unfortunate individual who has been acquitted before the magistrates has at very great expense to himself to bring a great number of witnesses for nothing?—No doubt.

379. Of course you would do away with that?—Of course. My proposition is, to prevent the grand jury having any bill whatever before them, except the case is sent by the magistrates, or except the court give leave for a bill to be preferred before them, so that in those cases, in order to have authority to go before the grand jury, the man must make an application to the court for leave to go before the grand jury; and in order to provide for that, I recommend that the depositions in all cases being taken before the magistrates, whether the case is dismissed or not, shall be sent to the court where the case would be tried, and the court will have that evidence to judge of, as well as the statement made.

380–81. *Chairman*.] Would not that be putting the court in the place of the grand jury?—No, I think not.

382. If a man prosecutes without cause he is liable to an action for malicious prosecution?—No great good is done by that; the great point is to prevent injury to the party; a man who is a pauper may prosecute.

383. Mr. *Philipps*.] Have many cases of that sort come to your knowledge?—Yes, a great many; a very large expense was incurred in one case where the witnesses had to come from Devonshire; I think 200 *l.*

384. Mr. *Miles*.] In cases in which the magistrates have committed, and the depositions are sent to the public prosecutor, and the public prosecutor, upon looking over those depositions, does not think there is sufficient evidence to convict, I do not think it is clearly stated what would be then the course of action pursued; will you be kind enough to state it?—It must be a perfectly clear case of there being no evidence to convict; if there be any question for a jury he should not stop the case, and he should never stop it except with the concurrence of the Crown officer in town. He should do exactly what the Mint and the Bank officers now do; saying "This is not a case for a prosecution, and therefore it should not go on." He should have the power of setting the prisoner at liberty, subject to an application to the court.

385. Do you propose that to be done under the signature of the gentleman in London?—The prosecution should be stopped under the joint signature of the two, and then the district officer should have authority to send a discharge to the gaoler, or a notice to the persons bound over to appear not to appear.

386. Mr. *W. Ewart*.] I understand you to restrict the action of this district officer to capital cases?—No, not entirely so; as to his personal action in attending before magistrates and coroners my present impression is this: first of all I say he should in all cases of murder and capital cases give his personal attendance, if possible; and I say "if possible," because it may so happen that two cases may occur

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occur concurrently, so that he cannot give his attendance to both. Then I say, in addition to that, in the next class of important cases, if he has liberty and time, he should attend to that duty; cases where the sentence of transportation for life, for instance, is usually passed; and then, in all the rest of the cases, that the depositions should be looked at by him.

387. Mr. *Miles*.] You could not put it in "if he has time enough to do it;" but the duties which he has to perform must be clearly laid down?—No doubt.

388. *Chairman*.] There is one point to which I have not called your attention, with regard to allowing witnesses for prisoners; have you turned your attention to that?—I have.

389. Is it your opinion that witnesses ought to be called at the public expense, to facts for prisoners?—I will explain what my opinion is. Lord Brougham has a general resolution, as you have seen, I have no doubt, that in all cases where there is an acquittal or the grand jury does not find a bill or the prosecution fails, the prisoner shall be allowed his costs. I am quite clear that that would not do at all; I am quite clear that it would be a great inducement, in the first place, to set up fictitious defences, and it would in a multitude of instances be paying the really guilty their costs. But I am quite clear that cases do occur, where innocent persons are sent to the assizes or sessions, and I think that justice requires, as they are sent for the benefit of the community, in order that public justice may be done, that if the public send them there, and have them tried wrongfully, the public should pay the expenses of their defence.

390. It is a shocking thing to hear a prisoner say, "I could have proved so and so, but my witnesses are poor and could not come"?—Yes, I think the only course to be adopted is this, which I am prepared to suggest: that the court should have a discretionary power if it *bonâ fide* had reason to believe affirmatively that the man was innocent, to grant the costs of the defence, but not otherwise.

391. The French system is, that the witnesses are sent for by the Crown; the prisoner states the witnesses whom he wants sent for; they are put down on a list, and the witnesses are summoned in the name of the Crown. With a public prosecutor, do not you think that something of that sort might be adopted, not as respects witnesses to character, because it is very remarkable that the case has been a good deal considered by French jurists, and they found that calling witnesses to character led to such enormous abuse that they gave it up?—I do not think that that would do, because it would lead exactly to what I state, namely, to any sort of defence being set up and attempted. I think you must limit it to cases where there is reason for it. The reason for giving a prisoner costs is, that he is improperly prosecuted; that is, because he is an innocent man, and you must limit the payment of costs to those cases. The difficulty is, to ascertain what those cases are, to which I have turned my attention very much. I have known a case apparently entirely break down. I have known the judge read a lecture to the prosecutor, and yet I have no doubt that the man was really guilty, and if a subsequent investigation had taken place, it probably would have been proved that he was so.

392. Mr. *Attorney-General*.] You suggest that the court should have authority to direct the payment of the expenses of a prisoner, supposing the prisoner to be acquitted, if the court was satisfied that it was an improper case for the man to be put upon his trial, and that the charge was without foundation. That can be brought to the knowledge of the court only by the production of the witnesses, and we are considering this case, that a man may have witnesses to bring forward who could vindicate his innocence, but has not means to do it?—I have taken that into my consideration, and I think I mentioned that it was one of the duties which I had put down for my district officer, that if a defence was made before the magistrates, it was to be investigated by the district officer. If the district officer found that that defence was really one that should come into court, and was also satisfied that the prisoner was too poor to bring his witnesses, he should have the power of ordering those witnesses to attend, or serving them with subpœnas to attend, in order to give evidence. I also suggested that in all cases where the district agent did that, it should be a ground for the court, in its discretion, if it thought fit, allowing the costs of those witnesses so summoned, even though on the trial the court might not be satisfied of the innocence of the prisoner; because inasmuch as those witnesses would be forced by the public officer to attend, after examination as to whether they should attend or

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or not, I think they should not be summoned to attend, and pay their own expenses.

393. You would leave that to the discretion of the public prosecutor?—I would have him as an assistant. Whenever he knew that a defence was going to be set up before the court, I would have him investigate that defence. Supposing the man was in gaol, and said to the gaoler, "I have witnesses, but am too poor to procure their attendance;" he might notify to the public prosecutor what the case was; and I would suggest that the public prosecutor should be entitled, if he thought fit, to send those witnesses to the assizes.

394. We may consider it just possible that the public prosecutor, though no doubt efficient in the discharge of his duties, might sometimes run a little beyond his discretion; he might say, "I am satisfied that this man is guilty, and that these witnesses would be of no use, and I will not sanction their production;" would you leave a concurrent discretion with the magistrates if they were satisfied?—One suggestion which I have made is this. I have assumed, in some instances, that the district officer may not be adopted, and I have said that I should leave the discretion in the visiting justices of the gaol, with the assistance of the gaoler; for this reason, that he has probably better means of knowing what the defence is and the reason of it, than the local magistrates; the prisoner has the means of communicating with the gaoler in gaol, but he has not with the local magistrates, who are at a distance. I should be glad to find out any scheme which would effect the object. The object is a laudable one, but the difficulty is to find any scheme not open to some objection. If you leave it to the court, the case suggested by the Attorney-general arises, of not having the witnesses there. I can give two very remarkable instances, in both of which acquittals took place, and in both of which probably convictions and executions would have taken place if the witnesses had not been called. Two men were tried for a capital offence at Gloucester. One of the men was able to make a speech, and fully impressed my mind that he was an innocent man; he stated where he had been, and where the other prisoner had been. I suggested to the learned judge that he should ask the constable whether, as far as he knew, the prisoner's statement was correct as to witnesses who had attended the county assize town till the day before, but who could not stay any longer; the constable confirmed the prisoner's statement; the witnesses were sent for by the learned judge, and a distinct *alibi* was proved. At Shrewsbury, a man was tried for murder; and on his defence, he stated that his son was kept in the workhouse on the part of the prosecution; and that he could give most important evidence to contradict the principal witness against him. The witness was sent for, and he came and gave such evidence in contradiction of the other witness, that the jury acquitted the prisoner. Both those cases were before Mr. Justice Patteson. Those cases clearly show the great necessity of prisoners having their witnesses present to be examined; because it is obvious that any investigation at the Home Office, after conviction, is not half so satisfactory as in a public court.

395. *Chairman.*] Then your plan would be, that after hearing the case, the judge should certify that in his opinion such and such witnesses were proper witnesses to be called, and that on his certificate their expenses should be paid?—Yes, and I would not limit his certificate to what appeared at the trial. After the termination of the case, I think the district officer should make any inquiries which the court directed him to make as to witnesses of that sort, and as to the man himself.

396. And in some cases you would allow the expenses to be anticipated, where the district officer thought it a proper case for investigation?—I do not see how you can anticipate the costs; I have not stated that. I said that he should cause the witnesses to be subpœnaed or to attend; not that he should anticipate the payment of any expenses.

397. Mr. *Miles.*] Do you not think that, inasmuch as, generally speaking, particularly in minor crimes, the person who is taken up belongs to the district in which the crime takes place, it would be much fairer to him if you were to allow his friends, if he could get them to do so, to come forward for nothing and sustain his case before the magistrates who were hearing the case, in order to decide whether it was a case for committal or not, and that it would be very much better then to allow the magistrates themselves to be judges, having heard both sides of the case, whether they were proper witnesses to be called in his defence

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defence or not, and that upon their certificate the expenses should be allowed?—I am not quite sure that that would do, and it would be placing the magistrates in this dilemma, that they must almost decide the case before they came to that determination, as it occurs to me; because I can hardly see that a magistrate would come to the conclusion to allow the expenses of a witness for the defendant, unless he thought that that witness was an honest witness, and really impeached the case for the prosecution.

398. Does not it appear to you that if the judge alone is to certify as to the expense of the prisoner's witnesses, inasmuch as he would very often not certify, supposing a law passed to that effect, the prisoner would not by any possibility be enabled to get his witnesses forward, because they would not be certain of payment?—Perhaps it would have that operation; but on the other hand we must recollect that it might turn out that the prisoner was guilty, and that there was no reason for calling those witnesses. Even though the magistrates might think that those witnesses should be allowed, it might turn out on subsequent investigation that those witnesses had imposed upon the magistrates, and had told a false story. Therefore the case must be looked at on both sides, I think.

399. *Chairman.*] Taking the balance of evil, you think it is on the side you mention?—I think so.

400. Mr. *Miles.*] In any alteration of the law on a question of this importance, it will be necessary, of course, first, to take the greatest care that no imposition is practiced, and next, to see that the defence of the prisoner is as complete as possible, so far as evidence is concerned?—So far as evidence goes, no doubt.

401. And you think that what you have now submitted to the Committee would be sufficient to enforce that?—My own impression is, that there would be a great difficulty as to the question in whose power to place the summoning the witnesses, or the preparing any defence for the prisoner beforehand. I do not think that there would be so much difficulty with the court after it had heard the case. In the State of New York they have this process. Every one is entitled to send for counsel or attorney, and to have counsel or attorney in the whole proceedings. Then they are entitled, without any expense whatever, to have all their witnesses subpœnaed. That is the course in America. The witnesses are bound to attend, and they are not only subject to attachment, but subject to a civil suit for so many dollars if they do not attend to give evidence for the prisoner.

402. *Chairman.*] This is what the Lord Advocate said, in answer to a question put to him. He was asked whether the expenses of witnesses for prisoners were allowed in Scotland. He said, "No; there is no allowance, properly speaking, for witnesses of prisoners; it depends very much upon the particular case whether assistance is given or not. I have it in my power either to direct the procurator-fiscal to include particular witnesses in the Crown list," (which is the French system) "or, if a representation is made of a very important witness, or a very poor person, we make an arrangement with those acting for the prisoner, that in the event of its appearing to be a reasonable case after trial an allowance shall be made." That is the Scotch system. Does that modify in any way the opinion which you have just given?—I think I would rather leave it to the discretion of the court, not being guided simply by the evidence on the trial, but making inquiries afterwards, and judging in the best way whether or not there was reason to believe that the prisoner was an innocent man. Some cases would require no investigation, where a clear *alibi* was established. There are other cases where we know that there may be an acquittal, and the case is doubtful, but yet he may turn out afterwards to be innocent.

403. *Mutatis mutandis* you would apply the system now adopted in prosecutions by the Mint to all England. First, there would be the district agent; then you would have the case submitted to counsel; and, according to that counsel's opinion, the prosecution should be carried on at the public expense or not?—Yes.

404. And if the person injured chose to take his chance, he might, in spite of that, go on?—He might go to the court, and get leave from the court to proceed.

405. You would not allow him to do so of his own option?—No.

406. Mr. *Attorney-General.*] Would you not, in an ordinary criminal case?—Not in an ordinary criminal case, where the Crown counsel and the district officer stopped the prosecution.

407. Supposing the magistrates have committed, the depositions are transmitted

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mitted to the district officer; he submits the case for the consideration of the counsel whom you have suggested; they think the case should be stopped; the party is desirous to go on: in that case you would not allow him to do so?—You, with deference, put a case of difficulty. I am only saying that the district officer would say, "Here is a case which cannot be supported upon law or facts; that is my opinion." He submits it to the Crown counsel, who is of the same opinion, and it is stopped; but I do not think that either of them would be justified in stopping a case where there was a difficulty. I merely allude to the same course as you pursue in Mint cases, namely, saying, "There is no case here." In those cases I think power might well be given to the district officer and the Crown counsel to say, "We stop this case, unless the court permits it to go on."

408. What court?—The court to which the prisoner was committed or bailed.

409. Mr. *Miles*.] If you allowed that condition, would it not be very hard in the case of a prosecution, where the public prosecutor said that it was a case which ought not to be prosecuted, to allow it to be prosecuted; notwithstanding the witnesses had been ordered to keep at home?—But I apprehend the court never would allow it, unless the court was satisfied there was reason to doubt the decision which had been come to by the public officer; and my view is this, that the public officer and the district officer never would interfere, except it was a perfectly plain case; and we know that it is a very common case, for a counsel to get up and say in court, "My Lord, the facts are so and so; I do not know whether I should leave them to the jury, or whether it will be for your Lordship to say whether, in point of law, the case can be sustained."

410. Mr. *Attorney-General*.] Suppose the prosecution to succeed where the public prosecutor has said that the case should not go on?—That may be; I have known a case of conviction in a Mint and Bank prosecution, where neither the Mint nor the Bank have prosecuted.

411. Would you allow the costs?—Yes; the court there would allow it to go on; but what I mean is this, that after the public officers had said, "In our opinion there is no case," the man should not go on without the leave of the court.

412. You are aware of the Scotch system, in which a private prosecutor can go on?—Yes.

413. *Chairman*.] With consensus?—Yes; and so a private prosecutor can, on my plan.

414. Mr. *Attorney-General*.] And he gets his costs?—Yes, if he succeeds.

415. *Chairman*.] Would not it lead to great abuse (because we must suppose that public prosecutors are liable to the temptations of other men) in political cases, especially if you vested in the public prosecutor the power of saying, "I stop the prosecution"?—It would be only stopped, unless the court allowed it to proceed.

416. The court might be biassed. What harm do you do in leaving a man his constitutional right of going on at his own risk. You have the check of the grand jury?—You do this harm. You see a perfectly plain case where a man should not be prosecuted at all, and yet you either allow the man to remain in gaol or to be bailed till the next assizes or sessions, where there is a clear case of acquittal.

417. I put the case of a man violating his duty?—I think you can scarcely suppose that the district officer in the country and the Crown counsel in London would concur in that.

418. It has happened, and may happen again; you do not think that that is a serious objection?—I think not any more than Mr. Attorney-General having the power to enter a *nolle prosequi*.

419. Mr. *Miles*.] Unless there was the power of stopping a frivolous prosecution in this officer, and of keeping witnesses at home, in all probability the proportion of committals and convictions would stand very much in the same ratio as now, would it not?—It would in those cases.

420. Mr. *Watson*.] As I understand, the question put just now by the Chairman implies a corrupt exercise of his duty by the public prosecutor?—No doubt. We are to recollect also, that Mr. Attorney-General, in cases, generally speaking, of serious importance to the Government, takes them up himself. Therefore, of course, this officer would not be authorised to interfere with his discretion.

421. *Chairman*.] With regard to the question put just now by Mr. Miles, is it

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it not quite clear that in the great majority of cases, where the district officer and the Crown prosecutor were of the same opinion, a person would be restrained from carrying on his prosecution, because in those cases he would say, "I will not run the risk of the expense"?—No doubt.

422. Even if he had a strong feeling that he was ill-treated, you would not allow him to go before the grand jury?—Unless with the sanction of the court; which, I conceive, would not be withheld in any reasonable case.

423. Mr. *Miles*.] That would entirely stop it, in the case of poor persons, because they could not bring up their witnesses without their expenses being paid?—Yes; it by no means unfrequently occurs, that the judge, upon reading the depositions, tells the grand jury that upon that evidence there is no offence. If the district officer I suggest is appointed, the probability is, that those cases will be very few, because he will stop them *in limine* very often before the magistrates.

424. *Chairman*.] Do you still think that a single officer in London would be sufficient for the whole business of the country?—I do. I only assume that difficult cases are sent to him, and I think that a single officer in London would perform those duties.

425. In ordinary cases you would refer to the district agent?—Yes.

426. And you are decidedly against having barristers employed on the circuits, in the same way as the Attorney-general would be employed by the Crown for the management of the prosecutions?—I am.

427. Mr. *Attorney-General*.] Will you state your reasons?—In the first place, I do not think they are wanted; my experience teaches me that prosecutions are as well conducted as they would be if there was a public officer appointed to conduct them. On our circuit the rising juniors, the ablest young men on the circuit, have, generally speaking, conducted the prosecutions, especially the most important ones; and I think I may say, that if one was appointed as the Crown counsel on the circuit, it would not be a gentleman who expected to rise to the head of his profession, because, if he is to undertake prosecuting all the prisoners on the circuit, he cannot attend to civil business; therefore, whoever takes it must make up his mind to give up civil business *in toto*.

428. Mr. *Miles*.] Supposing it were adopted, would it not be really shutting the door to all junior counsel?—It would.

429. *Chairman*.] Have you ever studied the history of the French bar?—I have not.

430. Mr. *Watson*.] Have you any other reasons to offer?—I think it would have a very great tendency to stop the study of the criminal law, which I should like to see studied very much more than at present, because I think there is now a stimulus for men to go into the Crown court, and learn criminal law, in order to get into business in the Crown court, and from the Crown court to the civil court.

431. Mr. *Attorney-General*.] Are you aware of the system in Ireland, that counsel are employed for each circuit?—Yes, I am not acquainted with how they conduct prosecutions at all personally, but I see that there were a good many objections raised by Mr. Pitt Taylor to that system in Ireland, in the 8th Report C. L. C., p. 363. I do not know at all how it acts in practice.

432. *Chairman*.] There is this objection to your plan; you would have a double set of costs; you would allow the district agent his salary, and besides that the public would pay in many cases the attorney employed by the prosecutor?—Yes.

433. Then there would be a double expense?—No doubt.

434. Upon the other system, if the district agent *ex officio* conducted the prosecution and methodised and arranged the evidence, you would have one man with a larger salary, but a superior man; you would have only one person to pay instead of two, and those perhaps clashing with each other?—But you must recollect that you must then multiply your district agents immensely, because it is utterly impossible for one man to conduct the business of the county.

435. Supposing in ordinary cases you had the clerk to the petty sessions, and supposing the clerk to the petty sessions, who would be adequate to manage and to digest the ordinary cases, was paid by a fixed salary, and you had one or two district agents over a large area of country to be referred to in cases of difficulty, that would not require a very large number. If every prosecutor has his attorney you multiply the attorneys, and they are paid by the public just the same; the only thing is, that instead of paying a great number of attorneys you have two or three

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three officers?—My objection to that system goes to the root of it. I deny the right to take the cases from the private prosecutors.

436. Although you contribute by it to a purer administration of justice?—I do not think that.

437. Supposing you did contribute to a better administration of justice by such a system, would you deny the right?—I differ entirely in thinking that you would contribute to a better administration of justice.

438. But supposing you did, you would deny the right?—Yes; I look at both sides of the question; I look at what the effect of it would be, and I look at the present position of things, and what is the feeling in the public mind, which I think a very material thing to be taken into consideration with reference to prosecutions. You have an old practice in operation here which has become part of your system, and every person thinks it a right which he has to prosecute, and I think that right should be continued, unless there are strong reasons to show that by the continuance of that right you prevent a better system being adopted. All our provisions have gone upon that view. First of all we have the restoration of property upon conviction; in the next place, by the common law no man can bring an action for any felonious act done to him till he has prosecuted the person. Therefore you must meet those cases if you establish the Crown's right to interfere, and take the prosecution out of the prosecutor's own hands. Besides which, I am quite sure that, in a great number of important cases, if you put a public officer to prosecute, the private parties would throw cold water upon the case. Take a case of embezzlement of bankers' property; they would not allow a public officer to investigate their affairs; or suppose, for instance, a forged deed is put in on the trial of an action, the attorney who knows the facts should conduct the prosecution.

439. Mr. *Attorney-General.*] Is any inconvenience known to arise in consequence of prosecutions being taken out of private and put into public hands?—I do not know.

440. *Chairman.*] In Scotland, the proportion of acquittals to convictions is much less than in England; do you attribute that to the want of a public prosecutor?—I have pointed out what I think are the defects in our present system, and how I think they may be remedied by the officer I have suggested; but I think that is quite consistent with permitting the prosecutor himself, in proper cases, to have the general conduct of the case.

441. You have mentioned the cases of forged deeds and bankers; would not all that apply to Scotland?—No doubt it would; but in Scotland, with all deference, the public prosecutor and the private prosecutor have both rights.

442. I beg your pardon; the fact of a private prosecutor prosecuting by means of his attorney is unknown in Scotland?—But they have the right.

443. If you look at Lord Rutherford's evidence you will see that the consensus was never applied for, to his knowledge; and, practically speaking, it must be taken that it is always done by the officer of the Crown, namely, the Lord Advocate; and almost the last answer of the Lord Advocate in his evidence was, that the system gave perfect satisfaction to the people. Surely if your objections apply, they would apply to the Scotch, who are not particularly fond of letting people know what they are about?—With all deference, I adhere to the plan I have suggested.

Robert Marshall Straight, Esq., called in; and Examined.

R. M. Straight, Esq.

444. *Chairman.*] WHAT are your functions?—I am Deputy Clerk of Assize on the Home Circuit, I am one of the Clerks of Arraigns of the Central Criminal Court, and I also practise as a Crown Draftsman under the Bar.

445. How long have you been employed in those capacities?—I have been at the Old Bailey ever since the year 1832, and on the Circuit since 1838; I have been engaged in all the departments of the office; I have been clerk of indictments and clerk of arraigns; I have sat with the grand jury, and I have taxed costs.

446. How long has that period extended?—Twenty-three years.

447. Then your experience in criminal matters and the working of our criminal system is very considerable?—Yes; I have been present at a vast number of trials.

448. In your opinion, do any evils arise in the present system from the want of some responsible person to undertake the duties of criminal prosecutions?—I think

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I think there are evils, but I do not think they are so great as is generally supposed.

449. Will you state what those evils are, and why you do not think that they are so great?—Will you allow me to define the stages into which I would divide a prosecution: the first stage I would designate as that from arrest until examination before the magistrate; the second I would describe as commencing with the examination before the magistrate, and ending at commitment; the third, commencing at commitment and ending at presentment; the fourth, presentment; the fifth, trial; and there are two other stages which do not very often occur, viz., those upon removal by certiorari, and on proceedings in error. I think it must be admitted, that in that stage which I have described as commencing at commitment and ending at presentment, some person, you may call him what you please, but who ought to be a responsible person to have charge of the prosecution, is required.

450. You think that evils arise from the want of such a person?—I think so, in a few instances.

451. From the time of committal to the time of presentment?—Yes; I think some person should have charge of the prosecution, and I think evils arise from people taking charge of prosecutions who ought not to have it. With reference to that, I would mention a case within my own knowledge: a man was indicted at the Central Criminal Court; it was for murder; the counsel opened a case of acquittal; he said that he would not go on. I believe he was perfectly right. I do not think that a conviction could have been expected; but afterwards, upon inquiries as to who was the real person instructing the counsel and employing the solicitor, it turned out that it was the wife of the accused; he was charged with the murder of his child. That, of course, could not be right.

452. That is a case within your own knowledge?—Yes; and I have heard it suggested to-day that attorneys collude with police constables to get prosecutions; and they do get those prosecutions. I do not mean to say that they are not properly carried on in the majority of cases, but I do not think police constables are the persons who ought to have charge of them.

453. Your experience is simply confined to London and the home circuit?—Yes.

454. You do not know anything about Stafford?—No; I once went the Oxford circuit, but it is a long time ago.

455. Then, in your opinion, the deficiency to be supplied is in that state of our criminal jurisprudence which makes no person responsible for the management of a prosecution from the time of the committal to the time of the presentment?—That is so.

456. Have you any remedy to suggest for that evil?—Yes, I quite concur in the recommendations which I have heard, that some district officer should be responsible for the prosecution; but that may be either a very expensive affair, or it may be made an economical one. I can imagine that if the clerks to the magistrates were paid by salary in lieu of fees, and were permitted to prosecute these cases, they would be most efficiently prosecuted. On the other hand, I am aware that there is a feeling that the magistrates' clerks ought not to be entrusted with these prosecutions; if they are to be, the system might be economical; if they are not, I should imagine it would be extremely expensive.

457. With regard to the magistrates' clerks being entrusted with these prosecutions, supposing there was a district officer paid by a salary, would there be any objection to its being the duty of the magistrates' clerks, they being paid by salary, that is to say, the clerks of petty sessions, to send the depositions to the district officer in cases of difficulty, and in cases of no difficulty to conduct the prosecution?—No, I do not think there would be. I do not exactly understand what you mean by the words "district officer." I think we are using that expression in different senses.

458. The person charged with the duty of collecting and methodising the evidence in all criminal cases where his assistance is required, over a certain area, as the person to whom the magistrates' clerks would refer; does that system appear to you objectionable?—No, I do not think it would be objectionable; it does not occur to me that it would be so.

459. Mr. *W. Ewart.*] The magistrates' clerks would have discretion in certain cases to apply to the district officer?—Yes, though I should have thought it more convenient to have an officer for each petty sessional division.

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460. *Chairman.*] Do you think you would get a man of sufficient capacity; in one case, you would pay a certain salary to a person for superintending the whole, whereas you would pay the clerks of petty sessions a given sum, altogether ranging, I suppose, from about 100*l.* to 150*l.* a year in place of fees?—I object to the payment of fees to magistrates' clerks upon committals altogether.

461. That you admit to be an improvement?—Yes.

462. Taking the average of what the fees are, and paying them a certain stipend, leaving that allowance entirely in the hands of the justices of the petty sessions?—Yes.

463. Do you object to have a district agent appointed by the Crown, *dum bene se gesserint,* acting with the clerks of petty sessions, but a superior person, to whom they might refer in cases of great difficulty (murder, and so on) for assistance in managing the prosecutions?—I see no objection to it; but I think it would not meet some evils which in my opinion exist. Having sat with the grand jury in London for some time, I think I have the means of forming a pretty accurate opinion as to the number of unfounded prosecutions which are made; I am of opinion that the number of prosecutions which are instituted without probable cause are not very numerous; I think that a great number of prosecutions are commenced where there is a reasonable and a probable ground, and the party accused is really guilty, but they are not proceeded with, because the prosecution is founded in order to enforce some civil claim. That, I think, is a great scandal upon the administration of justice. In case a prosecution is commenced, it should be the duty of some proper officer to see that it is effectively carried on. Therefore what I would suggest would be this: that where a prosecution is commenced before a magistrate (which I hear is very frequent in London) evidently merely for the purpose of enforcing a civil claim, the magistrate should have the power of sending for the district officer, and saying, "Such a charge has been made, which I think should be proceeded with; it is very likely that it is instituted for the purpose of a compromise, I will therefore entrust it to you to see that it is properly dealt with."

464. Mr. *Attorney-General.*] That would be provided for, supposing all depositions before magistrates were sent to the district officer?—No; I understand that persons are summoned before magistrates, and that they probably never appear to the summons; the matter is compromised before it comes on to be heard.

465. *Chairman.*] You are aware of the system by which Mint prosecutions are carried on?—Yes.

466. In your opinion, does that system prevent a great number of frivolous prosecutions?—Yes; and I have also heard recently that in some instances, where the proper authorities have refused to give their assent to those prosecutions, the parties nevertheless have been convicted, so that it may prevent proper ones.

467. I am supposing that they act upon proper authority. In your opinion, does the system cause prosecutions which would otherwise fail?—Almost all the cases prosecuted result in a conviction.

468. Is not that the strongest test you can have of the propriety of the prosecutions, and that they are properly instituted?—There is no doubt that they are all properly instituted; but there may be others which ought to be instituted which are not.

469. In your opinion, does that system prevent frivolous prosecutions?—Yes.

470. And from your experience, are there many frivolous prosecutions carried on for want of a public prosecutor, and is much expense incurred?—No; I do not think there are many frivolous prosecutions carried on for want of a public prosecutor.

471. You do not think that much expense is incurred by the public in the prosecutions being set on foot without sufficient ground?—No, I do not think that is so; I think that here and there prosecutions may fail for want of the evidence being properly got up after commitment.

472. Mr. *Attorney-General.*] Perhaps that is the great evil?—That is what I consider the great mischief. And I also think it a great scandal upon the administration of justice that persons should have an opportunity of making a criminal charge without the slightest intention of going on with it, but only for the purpose of settling some civil right, and of abandoning it at their pleasure, though well founded.

473. You

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473. You would not go the length of saying, that because a man makes a frivolous charge for that purpose, it should be dragged by a prosecution through all its stages, when it is certain to end in the person charged being acquitted?—I am assuming a case where it is not a frivolous charge, but is true.

474. Might not somebody have a discretion upon that?—I would suggest that the magistrate should be at liberty to require the public prosecutor or the district officer to conduct or watch over such a charge.

475. You are assuming a public prosecutor?—Yes; I say that that might be the function of this public prosecutor; you may call him a district officer, or anything else, to prevent these adjustments being made.

476. Then your opinion is, that the appointment of a public prosecutor, with complete exercise over criminal cases, would have a tendency to prevent frivolous cases from being brought forward for the purpose of enforcing civil rights, or well-founded cases from being converted into an engine for enforcing civil rights and then being compromised?—Yes.

477. *Chairman.*] Is it not within your knowledge that, in many cases of great importance to the public, the attorney for the prosecution is obliged to advance considerable sums for the expense of the prosecution?—I do not think he does; I do not think he pays his counsel's fees until they are allowed him on taxation.

478. I am not talking of counsel's fees, but of the expense of finding out the evidence and tracing the crime. The case, for instance, referred to by Mr. Greaves, in the evidence before the Criminal Law Commission, where an attorney was 40 *l.* out of pocket in the case of a conviction for murder; do you know of such cases as that?—Here and there an attorney may be out of pocket.

479. If the attorney is out of pocket, is he not obliged to advance the money? —Not necessarily; he may, perhaps, not be allowed full costs. Here and there he may be out of pocket, from advancing money for witnesses, and getting up the case. I do not think that such cases are of frequent occurrence, and I do not think it probable that the attorney in the result would be out of pocket from that cause.

480. I am talking of the time before the costs are allowed; is he not in many cases obliged to advance the money before the costs are allowed?—I should not say in many cases.

481. Have you ever known cases in which he has been obliged to do it?—I have doubtless known cases.

482. Do you consider it an evil in the administration of justice that it should depend upon whether the attorney advances a certain sum of money; in cases of murder, for instance, as in the case which Mr. Greaves referred to in detecting the criminal?—What do you mean by detecting the criminal?

483. Finding the evidence?—After he is committed?

484. Yes?—I do not think the attorney should be put to that expense, or rather that the success of a prosecution should be made dependent on his willingness or ability to do so.

485. If that happens, do you think it an evil?—Certainly.

486. Have you any doubt that it does happen?—I think it happens in some cases, but not in many.

487. Mr. *Miles.*] Would not an attorney do that entirely with his eyes open; because, first of all, there is a table of fees to be given by magistrates; it is thoroughly understood, both before committal and after committal, what are the charges which are allowed upon each case, and the judge has then the power, if any extraordinary exertions have been used, of ordering a sum of money?—Yes, he has; that is, in certain cases. There are costs, which we call costs of apprehension, which are distinct from costs of prosecution; and in the allowance of the costs of prosecution I should include such charges as a solicitor would reasonably be entitled to make for getting up fresh evidence.

488. Then your opinion is, from your long practice, that whatever cases may occasionally occur of attorneys being out of pocket by getting up prosecutions, they are rather exceptions than the general rule?—I think they are exceptional cases.

489. Mr. *Attorney-General.*] Is it borne out by your experience that the effect of the present system is to compel a person necessarily to resort to an attorney for the conduct of any prosecution?—No; there are cases of the contrary at the Old Bailey. I left this morning, and there might have been 10 cases in the list; probably in eight cases out of those 10 there was no solicitor employed at all, and we ourselves perform those functions which ought to belong to a public prosecutor;

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secutor; we have the depositions copied and delivered to counsel, and there is no attorney at all. I think this an evil.

490. Who gets up the case and collects the witnesses; who brings them to you with a view to the indictment?—We draw the indictment from the depositions; in most cases we do not see the witnesses.

491. Who collects the witnesses?—It is done by the policemen, in London, generally.

492. In fact, are there a great majority of prosecutions conducted and brought to the court by the policemen?—Certainly.

493. Do you think that that is a desirable state of things?—No; I think there should be some other person who should have the charge of prosecutions between commitment and presentment.

494. Does it appear to you also desirable in cases of an ordinary kind that there should be somebody to see that the case is complete, that all the evidence which is necessary shall be ready before it comes to the court?—Yes; I think so. I think that in some cases prosecutions fail for want of some one to advise upon the evidence, and to examine the witnesses, and to see that all the proper evidence is forthcoming upon the trial; but I do not think they are very numerous.

495. In those cases you would think that the establishment of a public officer, a public prosecutor, or a district agent, or whatever he might be called, would be a desirable thing?—Yes.

496. In the residue of cases, in which you do not think the intervention of such an officer necessary, do you think it would be in any degree prejudicial; would it do any harm; supposing it was the duty of the magistrate's clerks to send all the depositions, before or upon final commitment, to such an officer, with a view for him to select those cases in which he thought that his more active interference was desirable in the class of cases to which you have referred, do you think, with regard to the residue of cases, any harm could arise from the depositions being sent to him?—That is, taking the matter out of the hands of private parties.

497. Yes?—I think not. There are some few cases where I think a public prosecutor ought not to interfere.

498. What class of cases are you referring to?—I refer particularly to political cases, and to cases in which the Government might be interested. I will give an instance of what I mean. The other day, the publisher of a periodical paper, not being a newspaper, complained that, as the law then stood, he had not the right of sending his periodical through the post without getting it stamped as a newspaper. To obtain the postal privilege, it was necessary that he should get it stamped as a newspaper; but in order to get it stamped, it would have been necessary for him to have made a declaration to the effect that it was a newspaper, when in point of fact it was not. There were various other persons, the proprietors of periodicals, who did not scruple to make that declaration, and therefore they got this privilege. The proprietor to whom I refer objected to make the declaration, and he said to the Commissioners of Inland Revenue, "You are, with your eyes open, granting persons a privilege upon their making a false declaration; if you will not allow me the same privilege, without making that declaration, I will indict all the parties for making a false declaration, which I can do." Now I think, in such a case, the Government ought not to interfere. The object of the prosecutor being to test the legality of the acts of the Government, he ought to be at liberty to raise the question by an indictment, if there is no other course open to him.

499. That might be met by giving the private prosecutor a power to prosecute when the public prosecutor declined to do so?—That is what I propose, that the private prosecutor should have a right to prosecute.

500. *Chairman.*] Then you differ so far from Mr. Greaves?—Yes; but I should not allow him his costs, as a matter of course, if he did not choose to avail himself of the public prosecutor. If there was a public officer appointed to undertake all these cases, and he did not choose to avail himself of that officer, he should not be entitled to the costs of the prosecution, unless the Court made a special order for them.

501. Then you do not agree with Mr. Greaves, who would make the consent of a Court in such a case necessary?—No, I think the prosecutor ought to have the right.

502. The system that you mention of political cases would be precisely the reverse

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reverse of that which now exists, because it is in political cases that the public prosecutor interferes; for instance, my learned friend, the Attorney-general, would undoubtedly interfere in a political case?—Yes; but there may be a political case in which a private individual may be interested, as against the Crown. Suppose a conflict between the troops and the people, and it is alleged that the Government or those who represent the Government have given orders which were unjustifiable and illegal, I think that the injured person ought to have a right to arraign the Government without the permission of the public prosecutor, by means of a grand jury. The grand jury is a very great constitutional privilege. The Crown can put no one upon his trial for felony or treason without the consent of the grand jury, who represent the people; on the other hand, the people by means of the grand jury, that is to say, if they have the fiat of the grand jury who represent them, can arraign any officer of the Crown they please. In political cases affecting the community a grand jury is indispensable, and no restriction should be put upon its motion.

503. Mr. *Miles*.] I must refer to exactly the period which you have been mentioning, namely, between committal and presentment; I will first ask you whether previously to that period you have any recommendations to offer?—Merely that one to which I referred to just now, namely, where it may be made to appear to a magistrate upon the application for a summons that an offence has been actually committed, and he has reason to think that it is done for the purpose of a compromise, he should be at liberty to call in the assistance of the public prosecutor, or the district officer, or whoever it might be, and direct him to see that that charge is proceeded with; it appearing to me to be a great scandal that if a well-founded charge is once made to a public functionary, any private individual should have the power of stopping that charge.

504. Again referring to the period as to which you have given evidence, you would recommend, as I understand you, that the gentleman who acts either as public prosecutor or as district officer, should conduct all the prosecutions?—If there be an officer of that kind appointed, I would allow him to conduct all prosecutions where the prosecutor made no valid objection.

505. Still leaving it open to a private individual to prosecute either by his own counsel or by the public prosecutor?—Yes; and in order to prevent improper compromise, if the private prosecutor chose to conduct the proceedings himself, he should enter into a recognizance in a large amount to prosecute the case with effect, and he should not be entitled to the discharge of his recognizance, unless the prosecution were conducted to the satisfaction of the public prosecutor.

506. *Chairman*.] Have you any doubt that there is a great deal of corruption with policemen in the management of prosecutions?—I always look with great suspicion upon policemen with reference to costs, for I fancy some of them get a per-centage off them if they can; that is to say, when we make an allowance to witnesses, I think it possible that the policeman may think himself entitled to take something off for his own share.

507. Independently of that, is it possible that the policemen can be a proper body, taking generally the class to which they belong, and the temptations to which they are exposed, to be entrusted with the management of bringing to trial important cases?—I have the greatest objection to policemen being the prosecutors.

508. And yet you have told my learned friend, that as matters now stand a great number of important cases are conducted and prosecuted by policemen?—That is at the Old Bailey; and in some counties on the Home Circuit I believe the police are very frequently entrusted with the prosecution.

509. You do not consider them a proper body in whom such a trust should be deposited?—No.

510. Do not you think that they are exposed in many cases to pecuniary temptation, taking a vast number of them?—I never knew any fact which would justify me in coming to that conclusion; I think they take a per-centage off the allowance to witnesses.

511. Is not a person who is capable of such conduct as that liable to pecuniary temptation; you do not consider that honest?—Certainly not; I consider it excessively dishonest.

512. Then you must suppose that such people are exposed to pecuniary temptation?—Yes; I say I think the police are totally unfit for the office of public prosecutors.

 513. Which

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513. Which they now exercise in a great number of instances?—Yes, I think them too eager to convict.

514. Mr. *Miles.*] Though they may, in certain cases, become public prosecutors, there is no necessity, because there is a vice in that system, entirely to alter the law, with the view of eradicating that vice?—I think that the police, in some stages of a prosecution, are extremely useful, and that no other persons could be entrusted with them, namely, in the preliminary stage, commencing at arrest and ending at commitment.

515. You do object to their getting up a case for trial?—Yes, I do not think it is right.

516. Of course that only happens in those parts of the country where there are police?—Yes.

517. What system would you substitute in those parts?—We are now confining ourselves to the second stage. If I were called upon to devise a system (and I have not considered this question of a public prosecutor very much), I should be disposed to make the magistrates' clerks these district officers, who might be called public prosecutors, paying them a salary; and I would let them be responsible to some one officer in the county, who should be called the county public prosecutor.

518. Agreeing there very much with the evidence of the last witness?—In some respects I agree quite with Mr. Greaves.

519. Mr. Greaves likewise stated that there should be a public officer appointed in London, to whom all these district officers should make reference; do you think that would be an improvement?—I do not think one would be enough.

520. But still you think it necessary that there should be a supreme power, to whom application should be made by the district officers?—Yes, and I should like to see them responsible to him; that is to say, he should be authorised to investigate any alleged misconduct of these district officers. There were two branches of this subject to which I alluded, to which, I think, I ought to call the attention of this Committee. With reference to *certiorari*, when an indictment gets into the Court of Queen's Bench, nobody has charge of it at all, for by the practice of that court, the existing recognizances of the prosecutor and witnesses are discharged; so that it is the easiest thing possible to compromise prosecutions when they get there; and I know it is commonly supposed that indictments are removed into the Court of Queen's Bench for the mere purpose of compromise. If after an indictment is removed into the Court of Queen's Bench (that is, by the defendant), the prosecutor prosecutes the law honestly and with effect; should the defendant not be convicted, the prosecutor is not entitled to his costs. If the proceedings get into a court of error, there, I think, the compromises are still more facilitated.

521. Your last two answers look to some alterations in the higher courts, do they not?—It seems to me that in those courts the compromises are much more easy than in the inferior courts.

522. How would you meet the difficulty?—Either the Queen's coroner, or some one to be deputed by him, should have the watching of all prosecutions which go into the Court of Queen's Bench; and a proper officer, to be appointed by the Court of Error, should watch over proceedings when removed into that court. I think the Attorney-general knows that when the proceedings get into either of those courts, compromises are extremely easy, and that the evil requires a remedy.

523. Then would you give this officer so appointed, the power of conducting to issue each case?—What should be his duty would be this, to see that the case was fairly brought to issue. As to the details of his duty, I am not at all prepared to say what they should be. I merely point out the general duty.

524. *Chairman.*] You have not turned your attention with regard to the details of the plan, I understand?—Not at all, but I am quite certain that evil does in a few cases result from the want of some public functionary to take charge of the prosecution previous to trial.

525. Mr. *Attorney-General.*] And those generally are a more serious class of cases?—They are.

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Martis, 19° *die Junii*, 1855.

MEMBERS PRESENT.

Mr. J. G. Phillimore.	Mr. Philipps.
Mr. William Ewart.	Lord Stanley.
Mr. Walpole.	Mr. Miles.

JOHN GEORGE PHILLIMORE, Esq., in the Chair.

Thomas Flower Ellis, Esq., called in; and further Examined.

T. F. Ellis, Esq.

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526. *Chairman.*] I UNDERSTAND that you wish to add something to your evidence?—It is rather to correct something that I said. In one of the earliest questions which were put to me by the Committee on my first examination, I was asked whether the change in the system at Leeds had been instituted in consequence of any great faults found to have existed before. My answer was, that, although I myself had seen something like carelessness, I did not believe that the change had been introduced so much to correct faults which had struck anybody, as in consequence of hearing that the system had worked so very well at Liverpool. I find now that I very much understated the case; I have since seen a gentleman who knows a great deal more about it than I did, and who can inform the Committee of the circumstances under which the change took place. There were one or more very great faults, which did lead to the change. It did not come before me as recorder; and I spoke only from my own knowledge. The Committee desired me to procure some returns. I wrote to Mr. Hamilton Richardson, the deputy clerk of the peace at Leeds, for them; he is in attendance upon the Committee now, and has brought them; and they will require some explanation, which he will give. It will be remembered that my examination was confined exclusively to the part which intervenes in the prosecution between the committal by a magistrate and the trial; it had no reference to the getting up of the case before the magistrate, or to conducting the case by counsel.

Henry E. Davies, Esq., called in; and Examined.

H. E. Davies, Esq.

527. *Chairman.*] YOU are a Barrister, are you not?—A Counsellor.

528. In America?—Yes.

529. In what part of America?—In the city of New York; I am counsellor in all the courts of the state of New York, and in the courts of the United States.

530. What legal offices have you filled?—I have been a member of the corporation of the city of New York, assistant alderman, and alderman and judge of the local courts, by virtue of the office of alderman; I have for nearly four years been counsellor to the corporation of the city of New York.

531. And you have had, I have no doubt, a very extensive experience?—My practice has been very large in all the courts of the state, and in the courts of the United States to some extent.

532. May I take the liberty of asking how many years you have followed the profession?—Over 25.

533. Will you be good enough to explain to the Committee the system which prevails at New York with regard to the prosecution of criminal offenders?—In the state of New York there is a local officer in each county of the state, the state being divided now into 56 counties, who is called the district attorney.

534. Mr. *Philipps.*] What is the average population of each county?—It varies greatly. The city and county of New York has the largest: the population of that is now estimated at 750,000.

535. What is the smallest?—Perhaps from 15,000 to 20,000 in the more sparsely settled districts of the state.

536. *Chairman.*] What are the duties of the district attorney?—His duties are, to conduct all criminal prosecutions arising within the county of which he is the local officer.

537. Does he conduct those as attorney, or as counsellor?—Both.

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538. The same person fills both offices?—Yes.

539. Will you be good enough to describe what takes place; is it his duty to interfere before the person is taken before the magistrates; does the policeman go to him?—No: the process is this: the committing magistrate, who in the city is called a police justice, and in the counties in the country a justice of the peace, receives complaints and investigates them, and reduces the depositions of the witnesses to writing, and then he makes out the commitment.

540. Mr. *W. Ewart.*] Who brings the complaint before the sitting magistrate?—Any person may.

541. Is there any public officer authorised to do so?—It is the duty of all officers; police officers, magistrates, constables, or any other public officer who is cognizant of it.

542. No particular person is specially appointed for the purpose?—No; it is regarded as the duty of all officers to aid in the detection and punishment of crime, and I may say of all good citizens.

543. *Chairman.*] Then, the person being taken before the magistrate, the duty of the district attorney commences?—Yes; the committing magistrate often advises with the district attorney as to whether a case is made out, and the district attorney gives that advice as part of his duty.

544. He attends during the investigation?—In very important cases the district attorney often attends the examinations before the committing magistrate, not in ordinary cases; he often attends before the coroner's inquest in cases where life has been taken.

545. In ordinary cases, are the depositions sent to the district attorney?—They are transmitted to the grand jury by the committing magistrate, for the purpose of finding a bill in cases of that character.

546. After the grand jury have found a bill, what takes place?—The district attorney is regarded as the legal adviser of the grand jury.

547. Does he attend the grand jury?—He does. There is always an express order of the court that the district attorney is to attend the grand jury, and to remain with them, and they are directed to consult him upon all questions of law which may arise before them.

548. Mr. *Miles.*] Does he take up the bills of his own particular district with him to the grand jury?—He prepares them all, after the grand jury have determined that a case is presented to warrant a bill.

549. To whom do the magistrates, from their particular districts, send their bills; is there an officer who collects them generally?—It is the duty of all magistrates to return all recognizances to the next court. Proclamation is made according to the same form which has prevailed in this country, requiring all magistrates to return their recognizances, and all persons who are under recognizance to attend at the next court succeeding the time of commitment, or of entering into the recognizance, or that their recognizances will be estreated.

550. I understand you to say that they are returned to the grand jury?—Yes; they are returned formally to the court, and by them sent to the grand jury; they, in fact, go to the grand jury for their action.

551. Mr. *W. Ewart.*] The first obligatory act of the district attorney is before the grand jury?—Yes.

552. He is not obliged to act till then, as I understand?—I should say that I think it is regarded as his duty to advise the committing magistrate.

553. But he must be always with the grand jury?—He always is with them.

554. *Chairman.*] What is the salary of these officers?—It varies greatly.

555. What would be the salary of the New York attorney?—The salary of the district attorney of New York is now 5,000 dollars of our money, 1,000 *l.* of yours, per annum; he is allowed clerks and an office, stationery, and disbursements which he makes.

556. Then he is at the head of a considerable staff?—Yes.

557. Do his clerks attend for him in ordinary cases before the magistrates?—There is an assistant district attorney in the city of New York, who has a salary half that of the district attorney; but there is in New York the largest amount of criminal business of any county in the state.

558. Have other counties assistants as well as New York?—I believe there are none except in the state of New York.

559. Mr. *W. Ewart.*] Out of the 56 counties, New York is the only county which

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which has an assistant district attorney?—The only one; it becomes necessary by reason of the large amount of business, and several courts sitting at the same time; the same officer can only be in one court at a time.

560. *Chairman.*] Does he transact the business in the other courts by his deputy?—Yes; for instance, when the district attorney is trying a case in the oyer and terminer court, the deputy district attorney will be trying a case in the sessions.

561. Then the business in a populous district, like New York, would be too much for any one person?—It is quite impossible; physically so. After the grand jury have determined that the case presented in their judgment is sufficient to find a bill, it being necessary that 12 of the grand jury should concur to find a bill, the district attorney draws up the bill of indictment, which we regard as requiring high professional skill, because if the indictment is defective either the prisoner will be acquitted or the indictment will be quashed. Then the indictment is endorsed by the foreman of the grand jury as a true bill, and the grand jury attend in a body and present it to the court. Then a bench warrant is issued for the arrest of the prisoner, and he is brought in, and if it is a bailable offence, he is bailed; if it is non-bailable, he is committed to custody until trial. Then the district attorney issues subpœnas for the witnesses; it is his business to prove the case, to see that the witnesses are necessary to sustain the indictment; and he is also bound, on the application of the defendant, to issue subpœnas for his witnesses.

562. With regard to the expenses of the prisoner's witnesses, what is the course pursued?—If they sue *in formâ pauperis*, they are paid by the county; that applies only to witnesses, however, who are poor and unable to attend at their own expense; the court makes allowance for their expenses to be paid.

563. Is that the case indiscriminately, whether they are witnesses to fact or whether they are witnesses to speak to the character of the prisoner?—All witnesses who attend.

564. If they are poor people, the expenses are defrayed by the county? —Yes.

565. In the case of a witness who had come manifestly for the purpose of perjuring himself, for proving an *alibi*, for instance, that was fraudulent, would there be any difference as to the allowance of expenses, supposing the judge was of opinion that the witness was not the witness of truth?—The only occasion in my recollection on which the expenses of witnesses have been paid, has been where the witnesses themselves have been so poor as to be unable to pay their own expenses. In those cases, the statute authorises the court to make an order that the expenses of attending, either on the part of the prosecution or on the part of the defendant, shall be a county charge, and paid out of the county treasury.

566. Supposing the witnesses called by the prisoner are called to make a false statement, is the judge in that case justified in not allowing their expenses?—I think there is a discretion vested in the court, by which, in a manifest case of fraud, they would not be allowed.

567. Have you ever known that discretion exercised?—No case now occurs to me.

568. In your opinion, that system of allowing the prisoner to call witnesses, to be paid for at the public expense, does not lead to fraud or to forged defences?—I have no recollection of ever hearing it suggested as having led to anything of that kind.

569. Not to false *alibis*, for instance?—No, I do not remember a case of the kind.

570. Is the office of district attorney one which would be taken by a gentleman of eminence in the profession of the bar?—It is regarded as a very high professional appointment, and is esteemed a very honourable position.

571. Is it compatible with a seat in the Legislature?—It might be in some of the counties in the interior of the state, but it would not be compatible in the city and county of New York, where the district attorney is daily employed for the whole year.

572. Mr. *W. Ewart.*] Could he be a member of Congress?—The same difficulty would present itself; there is no legal incompatibility, but it would be quite impossible for the district attorney to discharge the duties of the office and to be at Washington.

573. *Chairman.*] They are of such an engrossing nature that they require his exclusive

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exclusive attention?—It is so in the county and city of New York; and I suppose it is the same in the county in which the city of Albany is located, in the county in which the city of Troy is located, in the county in which the city of Buffalo is located, and some others where large cities are located, where there is a much larger amount of criminal business than in agricultural counties.

574. If the case fails for want of a witness who might have been summoned, is the district attorney held responsible?—He is held responsible in not having discharged his duty; he has the eyes of the court and of the profession and of the public upon him.

575. Have you ever known a case in which a district attorney has been removed for incompetence or for inefficiency?—I do not now recollect any.

576. How long has the system existed with you?—The present system of having a local officer in each county has existed since the year 1821. Previously to that the state was divided into four great districts, and a district attorney was appointed for each district; that obtained from the organization of the Government in 1777.

577. Mr. *W. Ewart*.] Have you a statute of the United States which regulates the appointment of those officers?—The officer is now elected by the people in each county by a constitutional provision of the state; the statute regulates the manner of his election; the details are regulated by statute, but it is a constitutional provision that he should be elected.

578. Is that under the original constitution of the United States?—I am speaking now of the state of New York; the constitution of the United States is entirely different. The district attorneys have been elected since the year 1846; they were appointed from the year 1821 to 1846 by the county courts of each county.

579. Is there any Act of the state of New York which will give us the legal information on this subject generally?—Yes; the duties of the district attorney are prescribed by statute; they will be found in the revised statutes of the state of New York.

580. Could you obtain a copy of the statute here?—I suppose there are copies.

581. *Chairman*.] How long has the system of a public prosecutor, some person responsible for the conduct of the prosecutions of offenders, existed in New York?—Always, I believe, in the state of New York, and I believe in most of the other states of the Union. We have a law officer called the attorney-general of the state, who is regarded, if I may use the expression, as the head of that department. It is his duty to assist the district attorneys of these various counties in very important cases, to act as associate counsel.

582. He is the superior of the district attorneys?—He does not interfere with the detail of the office of district attorney.

583. But if there is a case of great importance, treason, or anything of that sort, he assists?—It is then the duty of the attorney-general of the state to go down and assist the district attorney in the trial.

584. Otherwise, his functions are distinct entirely from those of the district attorney?—Yes.

585. Mr. *W. Ewart*.] Is that by the constitution of New York?—I think we derive it from the practice supposed to have obtained in England.

586. You are not sure whether it is taken from the English system or from the Dutch?—I am not.

587. Mr. *Philipps*.] Are these situations changed with the changes of the government?—The district attorney holds his appointment for three years; that is his regular term of office, and if he is a good officer he is pretty certain to be re-elected.

588. I think you said that the district attorney consults with the committing magistrate, and also consults with the grand jury?—Yes.

589. Suppose there is a disagreement between them, how does it generally terminate?—It is for the grand jury of course to decide; no man can be put upon his trial until he is presented by the grand jury.

590. The magistrate only takes his advice?—That is all.

591. Mr. *Miles*.] In what shape is your bill or your charge preferred before the grand jury?—The witnesses are all examined before the grand jury, and the testimony given by them is reduced to writing by the clerk of the grand jury.

592. Does it come up in the form of a bill of indictment before the grand jury?—

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jury?—After the grand jury have determined that a case has been presented sufficient to warrant an indictment, they direct the district attorney to prepare the bill of indictment.

593. Then it is presented, as I understand, to the grand jury merely upon the depositions taken before the magistrates?—The grand jury themselves personally examine the witnesses; the grand jury never find a bill upon depositions taken by the committing magistrates; they examine the witnesses themselves, and determine as to the credibility to be given to the witnesses from an oral examination.

594. In what written way does the statement of the charge against a prisoner come before the grand jury?—The statement of the charge against a prisoner is never made, excepting in the form of the depositions taken before the committing magistrates, until after the grand jury have determined to find a bill. Then it is the duty of the district attorney to frame the bill; after he has framed the bill, he submits it to the grand jury, and the foreman endorses upon it "a true bill," and signs his name as foreman; and the grand jury in a body go into court and present it.

595. Have you in America regular magistrates' meetings in different districts to take charges?—No.

596. How is the preliminary complaint of injury or crime commenced?—If a police officer sees a crime committed he arrests the party immediately, and takes him before a police magistrate, and makes affidavit that he was present and witnessed such a crime committed; or he finds out who were present; he has them brought before the committing magistrate, and he takes the depositions of the witnesses, and commits the offender, and takes the recognizances of the witnesses, either their own, if they are deemed to be of any responsibility, or if they are non-residents or not responsible, they are committed to be kept till the time of trial.

597. In the case of an individual suffering an injury, or a crime being committed against any individual without the cognizance of a peace officer, will you be kind enough to tell us how the complaint originates?—The individual would go before a committing magistrate and make complaint, or he would wait until the session of the grand jury, who, in the city of New York, sit monthly, and go before them and make his complaint there.

598. Then is the business transacted by magistrates in their own houses?—No, they have public offices located all over the city.

599. Turning your attention to the country districts, for instance, taking one of your 56 districts, in which there may be a population of some 20,000, how many petty courts of magistracy would there exist in that particular county?—Each county is divided into towns, and each town in the country has four justices of the peace; persons who are elected; they are farmers of a little more intelligence and position than ordinary are generally elected justices of the peace. If a crime is committed in their neighbourhood, they hear of it, or the constables of the town hear of it, or the party upon whom the offence has been committed goes before a justice of the peace and makes his complaint; and he issues his warrant of commitment.

600. Necessarily these petty sessions are far distant for each other?—They are hardly called sessions with us.

601. Meetings of magistrates?—No; a magistrate sits by himself; there is no meeting of magistrates except at courts; those are called sessions. The magistrate acts by himself, or, if he deems it important, he calls in some of his neighbouring magistrates.

602. Is it thought necessary to have the district attorney at every such meeting of magistrates?—No.

603. Only when particular cases arise?—Yes.

604. Mr. *W. Ewart.*] Can the magistrate command the district attorney to attend?—I do not know that we have any statute making it imperative for him to attend, but he does when it is deemed important that he should attend and advise.

605. *Chairman.*] In short, no case can be tried without the agency of the district attorney in some shape or other?—No; in cases of very great magnitude, where the crime consists of injury to an individual, or cases of forgery upon banks, the district attorney very often allows to be associated with him the counsel of the private party who has been particularly aggrieved; but that is a

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mere matter of courtesy on the part of the district attorney; he can avail himself or not as he pleases of the services of the private party.

606. Lord *Stanley.*] Do I understand you rightly, that the district attorney has nothing to do with the case until after it has gone before the grand jury?—He is not regarded as responsible for it till after he prepares the bill; then it is regarded as specially in his charge.

607. Then it is put into his hands, and he becomes responsible for it?—Yes, he is responsible for the conduct of the case as a private counsel would be in a private case.

608. He acts as a public prosecutor?—Yes.

609. If there is a case which he, on behalf of the public, thinks is not a case to go into court, and which he refuses to have anything to do with, is the private party, who considers himself aggrieved thereby, debarred from prosecuting his own case?—Entirely so.

610. Then it rests with the district attorney to say whether there shall be a prosecution or not?—No; the district attorney can only advise the grand jury; if the grand jury find a bill contrary to his advice, it is his duty to reduce that bill to form, and the party then stands indicted before the court; after he is indicted it is not in the power of the district attorney to discharge the party, except by the entry of a *nolle prosequi*, with the consent of the court.

611. Can he refuse to conduct the prosecution?—No; it is his duty to conduct it.

612. Mr. *Miles.*] In the case just put by Lord Stanley, who conducts the prosecution; does the district attorney, or does a counsel employed by the private party?—The district attorney has the conduct of the case; he carries the case.

613. *Chairman.*] The party injured has a right to call upon the district attorney, and put the case into his hands, after the bill has been found by the grand jury?—The district attorney can exercise his own pleasure whether he will receive any aid *aliundo* his own office or not.

614. Mr. *W. Ewart.*] The person injured cannot continue the prosecution, except through the agency of the district attorney?—No.

615. He may originate it, of course?—He may make a complaint.

616. If I understand you rightly, if I may so say, the power of institution by the constitution is left open to everybody?—Yes.

617. It is not the duty of any specific officer to originate a prosecution?—It is the duty of all officers cognizant of a crime to endeavour to take the necessary steps to have it punished.

618. That is laid down by the statutes?—Yes.

619. Supposing a crime was left undetected or unpursued in a particular district, would the policeman be responsible for the non-prosecution of it?—If a policeman knew of a crime having been committed, and had taken no measures to detect it, it would be just cause for removal, and the appointing power would remove him.

620. The parties themselves, as I understand you, are very often left to institute a prosecution?—Yes, they are at liberty to do so.

621. Are there any cases of collusion between them and the criminals?—There are; but it is, of course, the duty of the public officer to prevent that.

622. Such cases might occur?—They might; but it is made a very serious offence with us to compound a felony, or to compromise it in any way.

623. *Chairman.*] Speaking from your extensive experience, do you think that the necessity for an officer to discharge the duties of your district attorney, is a very cogent one for the benefit of society?—I cannot see how criminal business can be administered safely without it.

624. In your opinion criminal business cannot be safely left to depend upon the prosecution of the party injured alone?—That is not the experience in my country; it is universal to have a public prosecutor, both in the state courts and in the courts of the magistrates.

625. The want of a public prosecutor, in your opinion, would lead constantly to a failure of justice?—It would seem to me so.

626. It would render the certainty of punishment much more precarious?—I should suppose so.

627. Are you at all acquainted with the French system?—I am not; I have not been engaged in criminal business myself.

628. You told my friend Mr. Ewart that you could not tell whether the system

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system in New York was founded upon the Dutch jurisprudence, or whether you borrowed it from the English?—No, I never looked into it for the purpose of determining its origin; I only know that it has obtained since the constitution of our Government.

629. Mr. *Miles.*] Have you any statistical tables of New York, showing the number of persons committed, the number tried, the number acquitted at trial, and the number convicted?—Yes.

630. Have you any of those with you?—No.

631. From general knowledge, can you state the number of convictions upon trial which take place compared with the acquittals?—I cannot: my own professional business has been confined to the civil courts, and has not extended to the criminal. Our chief of police makes a semi-annual report, and all the facts with reference to the city and county of New York are contained in it.

632. Mr. *Philipps.*] You have said that these district attorneys are elected every three years?—Yes.

633. By whom?—By all persons authorised to vote for any of our public officers.

634. Is there often an active canvass?—Yes: it is regarded as a valuable office, and professional men enter the field for it.

635. Mr. *W. Ewart.*] The magistrates are also elected, are they not?—Yes.

636. *Chairman.*] You do not think there was ever a time when an officer corresponding with that of public prosecutor did not exist?—Not in the United States.

The Right Honourable Lord *Campbell*, Lord Chief Justice of England, attending by permission of the House of Lords; Examined.

Right Hon. Lord *Campbell*.

637. *Chairman.*] HAS your Lordship's attention been devoted to the consideration of the appointment of a public prosecutor?—Yes, very much. I had the honour to be Attorney-general for the Crown in England about seven years, and I paid great attention to the subject during the whole of that period. I have since considered it very attentively, with a view to see whether it was possible to introduce into England the system of a public prosecutor, which I know has been found so very beneficial in Scotland. In Scotland I have had an opportunity from my own observation of seeing that the system there established works most admirably, both in the Court of Justiciary, the Supreme Court at Edinburgh, and at the assizes. I have attended in the Court of Justiciary again and again, and the assizes for four counties are held very near my house in Scotland. I am in the habit, when I return from my duties as Judge in England, of attending the assizes there, and I see with my own eyes how the system works; and I confess that I am of opinion that it works most admirably.

638. Does your Lordship think that the want of such an officer tends often to the failure of justice in England?—I think that if the system could be introduced into this great country of England in the same manner, it would be desirable that it should be introduced; but there are most formidable objections, which I was unable to surmount, and which I am afraid may be found insurmountable.

639. Your Lordship is aware that those objections have been surmounted in France, for instance?—In France, I suppose, from very early times they had a public prosecutor. The objections which I found so formidable were, first, that it would be a very great expense, because there must be a functionary in every district corresponding with what is called the procurator fiscal in Scotland. He superintends the taking of the original depositions; then he transmits them to the Lord Advocate, and the Lord Advocate and his deputes, to the number of four, examine them, and then they determine what cases are fit for prosecution, and whether the prosecution should be before the sheriff, or whether it should be before the judge of assize. If it is to be before the sheriff, the sheriff, who is sitting all the year round, immediately takes cognizance of these smaller offences; if they are remitted to the assizes, then the depute advocates examine the depositions, and they prepare the cases for trial, and one of them goes round each circuit and conducts the prosecutions. To have a corresponding staff of officers for England such as they have in Scotland, would require a very heavy expense, and

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and that is one objection. Another objection, which I was always afraid of, is as to the patronage; that it would be most alarming to vest such a patronage in the Crown, and I do not know in what other hands it could be safely vested. Of course there is a danger of jobbing with Crown appointments, but there would be much greater danger, I think, if the patronage were vested in the hands of the lord lieutenant, or any local authority. Then another very great obstacle was the interfering in England with the system which has been long established, because in England every person is allowed to put in exercise the criminal law of the country, and he may employ for that purpose any attorney or any counsel that he thinks fit to select. There are a great number of respectable attornies and counsel beginning their career, and who have made progress in their career, who are in possession of that business, and there would be difficulty in disturbing what may be considered, in one sense, a vested interest in them. Then what I should be afraid of would be, an interference with the independence of the Bar; because if this patronage were vested in the Crown, no one could hold a brief in a criminal court except by the favour of the Attorney-general, or any person who had this patronage in his possession. It might impair that upon which the country depends; I mean the independence of the Bar, which is always the boast of the profession to which I have the honour to belong. These objections deterred me, while I was a Member of the House of Commons, and while I represented the Crown in England, from making the proposal; but at the same time, I by no means say that they are such as should deter others from making the attempt, because the public mind may by degrees become ripe for such a change, and these obstacles may be overcome. I think that the prosecutions are better conducted in Scotland than they are in England, because I have observed that the cases are more carefully got up, and there are very few acquittals, although I see no improper convictions. But there is another reason why I should like to see a public prosecutor introduced into England if it were possible, which is, that the Attorney-general is placed, in England, sometimes in a very embarrassing and painful situation. As the law and practice now exist, he is merely a private advocate, and his services may be professionally required by any person who is accused. Then he appears as a private advocate, and sometimes there may be a clashing between his duties as a private advocate and his duties as public prosecutor, because he is, after all, public prosecutor in a certain sense; for it is his duty to superintend the administration, to a certain degree, of the criminal justice of the country. For example, there can be no writ of error brought without his fiat, and he is bound, if there be any reasonable ground for the application, to grant a fiat; he would be guilty of a misdemeanor in his office if he were to refuse it. In the Court of Queen's Bench last term there was an application made for a mandamus to the Attorney-general, to compel him to grant a fiat for a writ of error, but we said that we had no such authority; that the discretion was left with the Attorney-general. If he is guilty of any misconduct he must answer in Parliament; he may be impeached and dismissed from his office, and a person who would more worthily do the duties of it may be appointed in his place. He may be applied to for a fiat upon a prosecution in which he himself has been counsel for the accused, and there is no doubt that he would do his duty in a very disinterested manner, and perhaps refer the party to his colleague the Solicitor-general, to avoid the embarrassment of deciding the case of his client or of a person who has been his client; still it places him in a painful situation, from which I think he ought to be rescued if possible. Then at present there is this great evil from the want of a public prosecutor in England, that the criminal law is often most shamefully perverted to mere private purposes. Indictments for perjury and for conspiracy are, in a great majority of cases, preferred with a view to extort money; the same for keeping gaming-houses and for keeping brothels. There is at present no sufficient control over these prosecutions, and the criminal law is often perverted to very corrupt purposes. A prosecution for conspiracy is instituted with a view to get money, and when a conviction takes place there is a compromise; sentence is pronounced, but it is not carried into effect; that is, for the want of a public prosecutor who would superintend that proceeding, and see that the prosecution is not instituted except upon just and legitimate grounds, and that if there is a conviction, and if there is a sentence, the punishment shall be endured by the guilty party; I think with that view a public prosecutor is highly desirable.

640. Mr.

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640. Mr. *W. Ewart.*] Has your Lordship ever had occasion to notice the proportion of convictions to commitments in Scotland and in England?—I know that there is a much larger proportion of convictions in Scotland compared to the prosecutions than in England, but I cannot state it exactly.

641. I believe it is a fact?—There is no doubt that it is so.

642. *Chairman.*] Your Lordship has mentioned the expense; will you allow me to call your attention to this point. Every prosecution is paid for; the counsel conducting a prosecution receives his fee upon it. Does your Lordship think that, if instead of a number of different barristers being employed and receiving their fees, those sums were given to a single person, or if a stated salary was given to a single person for doing the duty distributed among all those various barristers, the additional expense would be so very considerable; taking into consideration also the number of prosecutions, of which I am afraid there is too much evidence, which are really instituted for collusive purposes?—I believe that the aggregate expense to put in force the criminal law would not be increased, but then there would, in the first instance, be a large and heavy burden thrown upon the public treasury, because you would be obliged at once to give a salary to your procurator-fiscal, or whatever name you give him, and to all those acting in the capacity of advocates-depute under the Attorney-general or the functionary who prepares these prosecutions; the number would be most alarmingly great; because Scotland, after all, is hardly more populous than the county of Lancaster.

643. Supposing that in two or three, contrary to what would probably be the case, and which is the opinion of several gentlemen of experience who have written to me upon the subject, the country did not save by it; but even supposing the aggregate expense was increased, does not your Lordship think that a purer administration of criminal justice, supposing it should be attained, would well compensate for that?—I think so. I think the objection of expense ought to be surmounted, but I know that if I had brought forward such a proposal in the House of Commons when I was a member of it, and if I had been asked, as I might have been by my friend Mr. Miles, to make a calculation of what the expense would be, I should have been very much afraid to bring out my budget.

644. Lord *Stanley.*] Have you formed any calculation of the number of officers which under such a system would be required?—I have not.

645. It was stated by one witness that one for each county, or in a few of the more populous counties, two would be sufficient for all purposes?—The English counties vary so much in size and population that it could not be done by counties at all; it must be done by districts. In the county of Lancaster, as you know well, there would be a greater number of functionaries required than in the whole of England south of the Thames.

646. *Chairman.*] With regard to the patronage, I admit that that is a considerable difficulty, which has always staggered me?—It is a very formidable one.

647. Does not your Lordship think that if those officers were appointed *dum bene se gesserint*, and excluded from Parliament, that difficulty would be very much diminished?—It is a most formidable obstacle. I do not see how it is to be got over.

648. Has your Lordship considered at all the history of the French bar?—Not particularly.

649. Your Lordship knows that at the very time when the independence of the English bar, in the time of the Stuarts for instance, was at its lowest ebb, the French bar exhibited very remarkable proofs of independence?—The French bar and the French magistracy at all periods of French history have shown great independence.

650. But that was under this very system?—Still I do not know that that compliment could be paid to every procureur-general, because, holding as they do during the pleasure of the existing government or dynasty, I think it is hardly possible that they should not be influenced by selfish motives.

651. Mr. *Philipps.*] Your Lordship said something about prosecutions being improperly instituted; that the sentence was not carried into effect; what stops the sentence being carried into effect?—A compromise between the prosecutor and the party convicted. When the sentence is pronounced, according to our procedure, sometimes the defendant who is convicted is not actually present; then the sentence is pronounced, and a warrant is obtained under the hand of the

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the Chief Justice to arrest him, and to send him to prison under the sentence. The prosecutor says, " Pay me 1,000 *l*. and I will not put this in force."

652. Lord *Stanley*.] Can you suggest no means of preventing such compromises, except by the appointment of a public prosecutor?—We, in the Court of Queen's Bench, set aside a writ of error very recently upon the ground that it had been obtained with a view to a compromise; but still, if there were a public prosecutor whose duty it was to superintend all such proceedings, the peril would not arise.

653. Mr. *Miles*.] Might not it be obviated by a slight alteration in the law, namely, obliging the defendant to be present before judgment was pronounced?—We have done a great deal to amend the criminal law. After Mr. O'Connell's case, Lord Lyndhurst introduced a Bill which had a most salutary object, which was to prevent a sentence of imprisonment being put in force pending a writ of error; and that gave great facility to these compromises for a time. I brought in a bill to amend that, which received the approbation of the House of Commons, it having been introduced in the Lords; and it has very much mitigated, or almost effectually prevented the abuses to which Lord Lyndhurst's Bill first gave rise.

654. Your Lordship has been kind enough to state to us the difficulties which occurred to your mind in bringing forward such a Bill as has been proposed by our Chairman to the House of Commons, when you were Attorney-general. Do you think that the same difficulties still exist, in preventing the Government bringing forward a measure of this kind?—I really think that it would be a very bold thing in a Government to bring it forward at present; if I were still Attorney-general, I should hardly have the courage to recommend it.

655. The alterations which have occurred between the time when your Lordship was Attorney-general and the present time, do not lead you to conceive that a bill so brought forward would be at all more acceptable to the country now than it would have been then?—I do not think that the circumstances have very materially changed, or that public opinion has materially changed since that.

656. I understood your Lordship to say that prosecutions are better conducted in Scotland than in England?—I really think so.

657. Is that as far as regards their primary state, before they come to trial?—They are better got up.

658. When they come to trial, they come into the counsel's hands. You do not prefer the way in which they are then conducted?—No. In the criminal courts, where I have the honour to preside, I find the business conducted with the greatest possible propriety, both by the counsel for the prosecutions and the counsel for the prisoners.

659. *Chairman*.] Taking the poorer classes of society, does not your Lordship think that the want of a public prosecutor operates very much to the hardship of the poor and the helpless, who cannot afford, for instance, to retain a solicitor to manage the prosecution, in the case particularly of children who are ill-used?—I think not.

660. Has your Lordship never known a case where there was great difficulty as to who should incur the expense, for instance, of prosecuting in a case where a child had been ill-used; whether it should be this parish, or whether it should be that parish, or who should take it up?—We have had questions of that sort before the Court of Queen's Bench.

661. Actually a dispute as to who should pay the money?—Yes; but still I do not think that offences go without investigation in England for the want of a public prosecutor.

662. Lord *Stanley*.] In the case to which your Lordship referred, you had a dispute as to who should pay the expenses of prosecution, but the prosecution went on nevertheless?—It was after conviction.

663. *Chairman*.] Was the attorney in that case obliged to advance the money; in your Lordship's opinion, would it not often happen, that although a case might be investigated, it would not be so thoroughly investigated where expense was requisite, as if such an office as that of public prosecutor existed?—That is not an evil which I have observed in England from the present system.

664. Is it not the case that the attorney for the prosecution is often obliged to advance the money for the investigation of offences?—Yes; he is often obliged to bring witnesses, and so on; but the attorneys are always very ready to do that, because they are sure of being reimbursed.

665. Has

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665. Has your Lordship never known a case where an application has been made for expenses, and there has been difficulty about it, and application has been made to the court about it?—I have myself again and again refused the expenses where I saw that the prosecution has been instituted for improper purposes, and very likely with a view to run up a bill, and to put money improperly in the pocket of the attorney.

666. With regard, also, to cases of murder, for instance, where there is no person, very often, on whom the duty immediately devolves, does not your Lordship think that the want of a public prosecutor has been felt?—No; I must say that the cases of murder in England are always got up in a very efficient manner. I know of no exception to that observation.

667. Mr. *W. Ewart.*] The procurators fiscal in Scotland are in some cases appointed by the sheriff, and in some, I think, by the borough magistrates? —I believe so.

668. Is that a kind of safeguard against patronage?—I should think not; I should think there would be a greater risk of an improper appointment by the sheriff, and by the borough magistrates, than by a functionary acting immediately under the Crown.

669. It would be an exception to patronage by the Crown so far; but your Lordship does not think that it would be preferable?—No.

670. Has your Lordship ever attended to the difference between the French system of public prosecution and the Scotch, which seems to have been based a good deal on the same principle originally?—No. I have been a good many times in the French criminal courts; I have a tolerable notion of their procedure.

671. Has your Lordship paid any attention to the Irish procedure in prosecutions?—No; I know very little about that; for each circuit there is, I believe, an officer appointed.

672. *Chairman.*] Your Lordship is still of opinion that the criminal law is often shamefully perverted to purposes of private interest?—In cases of perjury and conspiracy, and indictment, as I said, for keeping gaming houses and brothels, it is most shamefully perverted.

673. Does not your Lordship think that the police very often, in county towns and at sessions, abuse their powers?—No, I am not aware of it.

674. Mr. *W. Ewart.*] Does your Lordship think it desirable to leave the power of prosecution open to the individual, as well as under the public prosecutor, as is the case in Scotland; or would your Lordship prefer the mode adopted in France, where everything is done by the public prosecutor?—I think myself that it is a privilege which has belonged to Englishmen, and of which they ought not to be deprived if it is properly guarded, to put the criminal law in force by their own authority. I should not like to see a system established here that there should be no prosecution unless instituted by a public functionary; but I think that it is most essential, and I have recommended it to the present Attorney-general, and, speaking most respectfully, I would recommend it to the Members of the House of Commons, to consider whether there should not be some check put upon prosecutions for perjury and conspiracy, and for keeping these gaming houses, and so on. I think that it would be well if these prosecutions could not be instituted unless with the sanction of a public responsible functionary.

675. Mr. *Miles.*] Would it be possible to put that in some shape or other in the Attorney-general's hands?—I think that the Attorney-general, or some person acting under his authority, ought to be the functionary whose consent should be necessary for instituting such a prosecution.

676. By giving the Attorney-general a proper staff there would be no difficulty at all?—I do not think there would.

677. Mr. *Philipps.*] Carrying out your Lordship's suggestion, there would be no new principle introduced, because such is the case with regard to Mint prosecutions; there is a check by the Crown?—There are various Acts of Parliament which impose penalties for certain acts, and no process can be commenced for recovering these penalties without the consent of the Attorney-general. For instance, there was the Religious Titles Act, which was passed upon what was called the papal aggression. I believe that those prosecutions cannot be instituted without the authority of the Attorney-general, and I believe that it would be an extremely wholesome restraint to be put upon those prosecutions to which

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which I have referred for perjury and conspiracy, if the fiat of the Attorney-general, or some public functionary, were required before they were instituted.

678. I think your Lordship said that these prosecutions were shamefully perverted; I suppose we are to understand by that, that the prosecutions are not in themselves, in the initiation of them, unjust, but that they are perverted in their course?—Sometimes they are unjust; more frequently there is some foundation for them; and they are applied to improper purposes, and improper compromises take place.

679. *Chairman.*] Then your Lordship does not agree with the Report of the Commissioners on the Criminal Law, in the year 1845, which is summed up in this way: "The existing law is by no means so effectual as it ought to be; the duty of prosecution is usually irksome, inconvenient, and burdensome. The injured party would often rather forego the prosecution than incur expense of time, labour, and money. The entrusting the conduct of the prosecution to a private individual opens a wide door to bribery, collusion, and illegal compromises." Your Lordship does not concur in that to the full extent?—Not to the full extent, but to a great extent.

680. My Lord Denman, as I observe in his evidence given before the same Commissioners, says very much the same thing. He says that he thinks our system open to very great objections; and he particularly dwells upon the fact of the temptation to collusion which it holds out to the prosecutor?—That does not at all operate, I think, with regard to murders, or burglaries, or larcenies; but it refers to those private prosecutions which arise out of pecuniary transactions. It used to be a common practice, where there was a dispute upon some pecuniary matter, to file a bill in the Court of Chancery; an answer was put in; there was an indictment against the defendant for that answer; it was considered a common step in the procedure. Then, upon the indictment, very likely money may be paid without a trial; and if there is a trial and a conviction, money is paid after the conviction to prevent the sentence being carried into effect.

681. Your Lordship understands that, in the view which I have taken of this business. I never proposed at all to interfere with the right which your Lordship mentions, of allowing a private individual, if he thought proper, to put the law in motion; it would be most desirable that that should continue?—I think so.

682. My view would be, that if a person did it, he should do it at his own risk?—In the cases to which I refer, I think that it should be put under the restraint of the public functionary giving his sanction to institute a prosecution, and that that public functionary should superintend the progress of the prosecution until it is finally concluded, and the sentence has been carried into effect.

683. Generally speaking, your Lordship would not be of opinion that it was proper to interfere with the right which the party now possesses; but in all cases of perjury and conspiracy your Lordship would require the intervention of a public officer?—I think that the following suggestion might act as usefully, namely, that there should be no such thing as presenting a bill of indictment to the grand jury until there has been a previous complaint laid before a magistrate.

684. These are my Lord Denman's words: "Our procedure for the purpose of preliminary inquiry is open to great objection. The injured party may be helpless, ignorant, interested, corrupt; he is altogether irresponsible, yet his dealing with the criminal may effectually defeat justice. On general principles, it would evidently be desirable to appoint a public prosecutor." Does your Lordship agree in that?—Lord Denman, for whose memory I have the highest respect, was Common Serjeant of London, and presided in the Central Criminal Court a great deal, and had better opportunity of observing these matters than I have had; but it has not come under my own observation, that in regard to such offences as larceny or burglary, highway robbery, or any of those offences, certain evil has arisen from the private prosecutor proceeding without the intervention of a public prosecutor.

685. For instance, take the case of a rich man who has received an injury amounting to a criminal injury, and the case of a poor man, does not your Lordship think that the rich man is in a much easier position?—What is the offence?

686. Suppose a case of ill-treatment, personal injury?—I do not think that in England there is any personal injury which may not be brought to justice.

687. If a person can get an attorney to take up his case?—If there is the smallest

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smallest ground for an action, an attorney will take it up without the slightest difficulty.

688. In criminal cases?—I think so.

689. The Criminal Law Commissioners had the evidence of a gentleman, who said that he undertook a prosecution for murder at the particular desire of the magistrates; that it cost him a great deal of time and trouble; that the man was convicted, and that in spite of all his efforts he was 40 *l.* out of pocket?—It is quite clear that either he was to blame or the judge was to blame; but you cannot guard against a judge making an improper decision. The judge who presided there ought to have taken care that he was fully recompensed for all that he had disbursed.

690. Would not it appear to your Lordship better that it should not be left to a private person to advance money for a public object, but that it should be done by the State?—I do not think that any practical injury arises from that. I tried the case of Barthelemy at the Central Criminal Court a few months ago, and after the trial I took very great pains indeed in asking what was to be paid to all who had attended, and to those who had been active in pursuing and arresting the prisoner. I believe that I did no more than any other judge would have done under the same circumstances; I take no merit to myself in the smallest degree; I believe that any one of my brethren would have done exactly the same; and I believe that justice was done to all who claimed either recompense or reward.

691. Mr. *Miles.*] Does your Lordship recollect what the costs amounted to which you allowed in that case?—I do not.

692. Something very large?—I had the very able assistance of the officers of the Central Criminal Court, who are most meritorious public servants, and consulting them, I believe that ample justice was done to all concerned.

693. From your Lordship's general knowledge of the circuits throughout England, do you not think that principle would be acted upon in the same way? —I think so. I believe that the entire confidence which is entertained that fair expenses will be allowed is sufficient encouragement for incurring the disbursements which are necessary before conviction.

694. *Chairman.*] Has it never happened to your Lordship to see a criminal case very ill got up for want of sufficient evidence being brought to convict the prisoner?—Yes, very often.

695. Would not a public prosecutor prevent that?—Most undoubtedly, and therefore I wish to have a public prosecutor; I do not at all recede from my opinion, that if we could have a public prosecutor upon the Scotch system it would be a very great improvement. I see very frequently that cases are very badly got up, and that there are cases where a prosecution ought never to have been instituted, from there being insufficient evidence. There are cases where there has been guilt, but where it is not sufficiently proved before a jury, on account of the case being negligently got up.

696. Therefore your Lordship thinks that it would be desirable, if it could be managed, that there should be a responsible person?—I do.

697. Mr. *Miles.*] Is your Lordship of opinion that it would be very much better that in every petty sessional division one clerk should be alone appointed by the magistrates to act as their adviser?—I should think that highly desirable, because it would give you the best chance of having an intelligent and honourable man; and the jurisdiction of the unpaid magistracy of England, which I believe upon the whole is very beneficial, has been very much improved by a magistrate now never acting, unless in public, and with the assistance of a clerk to the magistrates. Formerly the squire sat in his hall, and he had for his clerk his gamekeeper, and they had in the poacher before them, and then they did with him what they liked; but now there are no sittings, except at petty sessions, and this is done *coram populo*; and there is, I really believe, almost universally a respectable solicitor who acts as assistant and adviser to the magistrates; I believe that, with such advice, justice is now very satisfactorily administered by the magistracy of England.

698. Do you not think that it would be well, in any alteration of the law, to insist that a magistrate should not himself appoint his own clerk, but that that clerk should be appointed, as he generally is in the counties, by the petty sessional division?—I should think that that would be highly desirable.

699. *Chairman.*] Referring to another subject, has your Lordship ever turned your

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your thoughts to the consideration of allowing the prisoners to call their witnesses at the public expense?—That would be in some cases beneficial, but it would lead to great abuse.

700. Suppose, for instance, such a system as this were adopted, that the judge should allow the expenses of a witness at the trial if it appeared that the witness was a material witness and the witness of truth. Mr Davies tells us that that is the system in America, that the judge allows the expenses, and that he has rarely known it abused; I believe he says that he never knew it abused?—I think that worthy of great consideration; I think it would very likely be desirable.

701. With respect to France, I was reading the discussions, and they said that the allowing of witnesses to character had led to very great abuse. They there confine it to witnesses to facts. As your Lordship knows, the Procureur du Roi sends subpœnas to the witnesses for the prisoner at the same time as to the witnesses for the Crown; does your Lordship think that that might tend to establish innocence?—Under proper check, I think that it might be desirable to allow the costs.

702. To give the judge the power of allowing the costs of witnesses for prisoners?—I think that that is a matter to be considered very attentively; I believe that it might be found beneficial; at the same time, I cannot say that in my experience I have seen evil arise from the prisoner not being able to bring forward his witnesses; still there may have been a case without the judge being aware of it.

703. Your Lordship of course has often heard prisoners say, "My Lord, my witnesses were here two days, but could not stay any longer;" no doubt in many cases without being founded on truth, but still it is a painful thing to hear that said?—Yes.

704. The prisoner has said, "I am a poor man, and could not afford to bring my witnesses 30 miles;" or, "They have been here two days." I have known the judge allow that fact to be proved?—Yes.

705. I have always felt a certain degree of pain at its being possible for a prisoner to have such an argument as that?—But it would require very great precaution to prevent what is proposed being abused.

706. Mr. *Philipps*.] If public prosecutors were appointed, in your Lordship's opinion in whom might the appointment safely be vested?—I should say, certainly, in the Crown.

707. *Chairman*.] Supposing they were appointed, would your Lordship be of opinion that they should be appointed *dum bene se gesserint*?—I think that they ought not to go out with the Attorney-general, as they do in Scotland, which surprises me very much; because, when the Lord Advocate goes out, the deputes go out along with him. When I was Attorney-general, I had to resign, that is to say, I was turned out; but those whom I had appointed to act upon the circuits remained in, and I never removed any persons who had been appointed by my predecessors. That is a much better system than the Scotch system. I am surprised to find that there is such a blot upon the Scotch system. I believe, in America, with the President all the functionaries, high and low, throughout the whole Union are changed.

Mr. *Hamilton Richardson* and Mr. *Bertie Markland*, called in; and Examined.

Mr. *H. Richardson* and Mr. *B. Markland*.

708. *Chairman*. (To Mr. *Markland*.)] WILL you state what you are?—A Solicitor.

709. Have you been in practice as manager of the prosecutions for the borough of Leeds?—Yes, along with Mr. Rawson.

710. Are you deputy clerk of the peace?—No, I have nothing to do with the clerk of the peace.

711. You attend in prosecutions?—Yes; we perform the duties which are assigned to the district agent by your Bill, commencing after acquittal.

712. Will you be good enough to tell us how you came to be appointed; what led to your appointment to that office?—I believe it originated in this way, that there had been a great number of abuses committed previously to the appointment being made, both by members of my own profession unfortunately, and also in the shape of police officers taking fees from the attorneys, to get the prosecutor to give

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give them a retainer. That led to an investigation by the borough magistrates, and also by the town council of Leeds in the year 1842; and the result of that investigation was, that Mr. Rawson and myself were appointed, I believe, in the first instance, for one year. That appointment continued for two years, and then an inquiry was made again into the matter how it had acted; and the same appointment was made of myself and Mr. Rawson, and it has continued ever since.

713. Mr. *W. Ewart.*] Was not the idea of establishing you as prosecutors adopted from Liverpool?—That I do not know; inquiries were made at Liverpool at that time, I believe.

714. *Chairman.*] In consequence of finding these abuses, among other abuses, police officers taking fees from attorneys to retain them for the prosecutions, you were appointed to manage the prosecutions?—Yes.

715. Are you paid by a fixed salary?—No.

716. Will you state the course which is adopted?—Directly the case has been committed by the magistrates, a copy of the depositions is forwarded to me by the magistrate's clerk. I prepare the brief, see that the necessary evidence is in the case, give the notices to the witnesses to attend, attend counsel, pay the fees, attend the trial, and pay the witnesses.

717. In short, you perform all the duties which, according to my plan, would fall upon the district agent?—Exactly so.

718. If the case were to fail for want of a witness who ought to have been called, you would be responsible for it?—I should.

719. You say you are not paid by a fixed salary, but by fees, like any other attorney?—Exactly so; there is a certain allowance; 17 *s.* 2 *d.* in each sessions prosecution, out of which we have to pay the clerk to the justices for the copy depositions.

720. You have been continued ever since, from which I suppose that the people of Leeds are satisfied with that system?—Yes. There was a reservation in the appointment, that any private party who was injured should have the option of conducting the prosecution at his own expense, and I believe there have been only two cases in which the public have taken advantage of it.

721. Where it was taken out of the public hands, and the private prosecutor chose to retain his attorney?—Exactly so.

722. There have been only two such cases since 1842?—Yes. We have conducted cases for most of the banks; we conducted cases of forgery upon Beckett's Bank, Brown Janson Barr & Company, and the Yorkshire Banking Company; we have also conducted cases for all the principal merchants and gentlemen in the town; also for solicitors themselves; and I have likewise conducted, from holding that office, a prosecution for another solicitor, where he resided out of the borough and was bound over himself to prosecute, but he wished me to do it in consequence of the practice and experience which I had had.

723. Have you turned your thoughts to the subject of expense; you have been good enough to read my Bill, I believe?—I have.

724. In your opinion, supposing that Bill were carried into effect, would the expense of criminal prosecutions be increased through the country?—I think it would be diminished.

725. Will you state your reasons for that opinion?—In one respect it would be diminished in all cases which are committed to the assizes, by reason of one attorney conducting the whole of the prosecutions, instead of where there are 12 or 14 cases, 12 or 14 different attorneys being employed.

726. Of course that would be a material saving?—No doubt it would be a saving. That would not be the case with respect to borough prosecutions, where the allowance is so small.

727. With regard to frivolous prosecutions, do you think it would have the effect of stopping any frivolous prosecutions?—No doubt of it; and if the district agent attended before the justices, I think it might be a very great saving of expense in the number of witnesses bound over; for necessarily it must frequently be the case that witnesses are bound over before the case is concluded, where it has not been finished in one day; where if it had been finished all at one time, and had been properly looked into, many of them might have been dispensed with. The attendance of the witnesses is a material part of the expense in a prosecution.

728. Does your experience tell you that witnesses are often called only for the sake of swelling costs; that three or four witnesses are brought to prove what perhaps

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perhaps two might prove, and so on?—That is the case sometimes, where the prosecution is got up by a police officer who is ignorant of his duty, or a novice in the matter.

729. Taking another view of it, with regard to the poorer class, do you think that injuries often escape punishment from the helplessness of the poorer people to carry on a prosecution?—An Act of Parliament passed a short time ago which I think rather removed that in cases of assault. In cases of assault now the costs of the prosecution are paid by the public, so that that does not operate as it did a few years ago.

730. With regard to cases where there is nobody who has a direct interest in carrying on the prosecution, as in cases of murder, is there sometimes a difficulty in finding people to undertake them, or to advance the expense?—We have often to advance the expense. I have generally to advance the allowance of witnesses to go, and I have lost that allowance myself in consequence of the disallowance by the judge to the witness.

731. Has it happened to you, for instance, that the judge has disallowed expenses which have been advanced by the attorney?—Yes.

732. Really fair and legitimate expenses?—Yes, what I consider so.

733. Judges take very different views of a case in which expenses should be allowed?—For instance, in a case of perjury, where the party was committed by the magistrates and convicted, one of the judges chose to disallow the expenses altogether. I paid them.

734. There was a case of murder in which I myself was concerned, in which it was exceedingly important not only to get a particular witness, but to get a plan of the premises in which the murder had been committed. In that case the judge said that the county had been already put to great expense, and he would not allow any more. Have you ever known a case similar to that where the judge has refused the expenses of a witness who was really necessary, because he thought that the expense was too great for the county?—I cannot say that I have. I think with us the taxing officer has been very liberal.

735. But it is necessary in many cases for the attorney to advance money for the prosecution?—For the attendance of the witnesses, and to pay the counsel too.

736. And in some cases that amounts to a considerable sum?—No doubt.

737. Does that sometimes produce a tendency to a failure of justice?—Sometimes the witnesses could not possibly go without it.

738. Does that circumstance of the attorney being obliged to advance the money tend to a failure of justice, in your opinion?—If the attorney would not advance the money, no doubt it would; but an attorney would, I think, almost always run the risk of doing that.

739. Mr. *Miles.*] Do not they always do it?—Generally; I cannot say that they always do it; but I have always run the risk myself.

740. *Chairman.*] But you have known what you think fair and legitimate expenses disallowed?—I have.

741. With regard to the cases of children, have you ever known any particular cases of the ill-treatment of children?—No; those would come before the magistrates.

742. I understand you to say that in consequence of abuses which prevailed before your appointment you were appointed, that you have continued to hold that appointment since 1842, and that no similar complaints have arisen?—I have not heard of any.

743. And that you have fulfilled precisely the duties which under my Bill would be assigned to the district agent?—Yes.

744. Do you believe that that has increased or diminished the expense?—I think it has diminished it.

745. And you think, with regard to expense, that if such a system as mine were adopted, it would not add to the expense of the administration of criminal justice?—It would depend upon where the Bill commences.

746. Where would you put it?—Your Bill goes rather further, I think, if I may say so, than could be practically carried out, with respect to what you call a public prosecutor conducting the whole of the cases.

747. You would not have a barrister for a public prosecutor?—I should continue the delivery of briefs as at present.

748. Putting that aside, I am speaking of the particular part of the plan which

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which refers to the duty of the district agent, which is the duty you are now called upon to discharge; in your opinion would the appointment of district agents, having duties similar to those which you now perform, increase the expenditure in the administration of criminal justice?—I think not; I think it would diminish it, especially if the district agents attended before the magistrates before committal; and if any complaint was made to them by the police officer in the first instance, and they saw that the proper witnesses were taken before the magistrates, and no unnecessary witnesses, I think it highly desirable that the magistrates' clerk should be an independent party. Whereas, as is now the case, of course, if a policeman wishes any advice as to what witnesses should be summoned, he has nobody to go to but the magistrates' clerk, and if he advises that certain witnesses should be summoned to attend before the magistrates, he becomes a partisan in the matter rather than otherwise, and it is very desirable that he should be merely there to advise the magistrates and take down the requisite evidence.

749. Mr. *W. Ewart.*] What is the difference between the time when your action as public prosecutor or district agent commences, and the time when it commences by the Chairman's Bill?—In the Bill it commences on apprehension; t does not commence with me until after committal.

750. Mr. *Walpole.*] When you said that you had known that legitimate expenses had been disallowed, I suppose there was some reason assigned by the judge for the disallowance of those expenses?—No doubt he had a reason in his own mind.

751. It was a question of discretion as to whether those expenses had been properly incurred or not?—Exactly so.

752. You would not wish, I suppose, the judge to be deprived of that discretionary power of saying that the expenses ought not to be allowed?—Certainly not.

753. By your answer you did not mean that those expenses which were disallowed, were expenses which were improperly disallowed?—I meant that they were expenses which might have been properly allowed.

754. In your opinion?—In my opinion; it was a case which had been committed by the magistrates.

755. I understand you to say that by the appointment of district agents in different parts of the kingdom in the character of public prosecutors, you think that the expenses of these public prosecutions might be diminished?—I do.

756. In your opinion a public prosecutor should not be a barrister, as I gather from you?—Not the district agent.

757. Have you at all considered how many of these district agents you would require?—No.

758. Have you at all considered what salaries you would have to pay them?—I think the present allowance would very nearly cover the salary which would be required.

759. But arithmetically you have not gone through the calculation, so as to be able to inform the Committee what would be probably the difference of expense under the present system, and under the system by which district agents would be appointed?—As it is at present conducted with us, there could be no additional expense.

760. Why not?—Because we merely receive the same allowance as is paid throughout the kingdom, the taxed costs.

761. That is at Leeds?—Yes.

762. It would not follow that it was so in other places?—In other places they receive the same; in every case of committal there is a certain allowance for conducting the prosecution.

763. But if the committals were less, in consequence of the appointment of district agents, would you not probably have to pay the district agent more in certain parts of the kingdom?—If you took his whole time, you probably would.

764. You have not gone through the calculation so as to be able to inform the Committee of the difference of expense?—I have not.

765. Mr. *W. Ewart.*] Do you think it would be preferable to have fixed officers, who should have the origination of the prosecutions, or do you think it more desirable to leave them open, as now, to private individuals?—I think it would be desirable to extend the action of the district agent, and to make it

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from apprehension instead of from committal. I think that would create a great saving of expense in the number of witnesses bound over.

766. Mr. *Walpole.*] You are appointed by the municipal corporation of Leeds, are you not?—Yes, and the magistrates.

767. Whom would you propose as the persons to appoint the district agents in other parts of the country?—I should not like to give an opinion upon that.

768. Mr. *W. Ewart.*] Your official action dates from committal now?—Exactly.

769. You think it should be extended to the period from apprehension?—Yes.

770. Would you still leave it open to private prosecutors to have the same power individually as would exist in the prosecuting officer?—I think they should not be deprived of the right to prosecute if the magistrates did not choose to commit.

771. Mr. *Miles.*] Do you find that the depositions which come into your hands after the committal of a prisoner, and which are taken before the magistrates, with the assistance of the magistrates' clerks, are slovenly got up?—Certainly not. The clerk to the Leeds justices is a most able and experienced clerk.

772. They are got up without your assistance in any way?—Certainly.

773. After the committal takes place, and the depositions come into your hands, you merely then prepare your brief, and employ counsel?—And get any further evidence that may be necessary.

774. After looking over the depositions sent to you, do you inform the magistrates' clerk that such and such evidence is wanted, and that you think it better to be procured?—No.

775. Then do you, after the examinations have taken place, get evidence which is produced to the Court itself?—Yes, on the trial.

776. Do you find it necessary to do that in very many cases which come before you?—Frequently.

777. Can you at all proportion the cases of depositions which are sent to you perfected, upon which a committal has taken place, and those upon which you afterwards think it necessary that further evidence should be produced?—I cannot now. It might be easily done.

778. Can you give any average?—In every case where there has been any previous conviction of the prisoner there is a witness required to prove that he has been convicted.

779. Is not that the duty of the gaoler?—Certainly not. The gaoler, whoever he is, must be subpœnaed to give the evidence, and it is not his duty to communicate with the clerk of the peace. It is the duty of the attorney to produce the proper witness to prove that conviction, and not the duty either of the clerk of the peace or of the clerk of the arraigns.

780. Then is it generally only in cases of previous convictions that you find it necessary to produce other witnesses than those who have been produced before the magistrates previously to committal?—There are a great number of others; it necessarily must be so.

781. Have you any tabular statement, to show the number of commitments, the number of convictions, and the number of acquittals which took place previously to this new system being introduced into Leeds?—The clerk of the peace will produce those.

782. (To Mr. *Richardson.*) Will you be kind enough to produce them. Will you give the three last years before this new system took place, and the three first years afterwards, or the three last years?—In the three years preceding the new system, that is, up to and inclusive of Michaelmas sessions 1842, there were 993 committals, including all indictments (when I say all indictments, I am speaking of misdemeanors of every kind); 59 bills were ignored; 201 persons were acquitted; 276 pleaded guilty, and 383 were found guilty on trial, being a total of 659 convictions; 18 were sent for trial to the York assizes; eight cases were respited, and therefore to a certain extent have been repeated in the return. Against 37 persons indictments were preferred who were not in custody; upon nine, no proceedings were taken, probably being indictments for some misdemeanor rather of a civil character than otherwise; there were no indictments removed by certiorari; two prisoners died before trial. The result of that is, that of the commitments, the proportion of convictions to commitments is 66·36 per cent. In the three years succeeding the appointment, there were 781 commitments; 39 bills were ignored; 184 persons were acquitted; 123 pleaded guilty,

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guilty, and 367 were found guilty; making a total of 490 convictions; 26 were sent for trial to York assizes, the Quarter Sessions Jurisdiction Bill having come into operation during that period, which occasioned a considerably larger number of cases to go to York assizes than had done formerly. Twenty cases were respited; eight persons were indicted who were not in custody; against nine there were no proceedings taken; three indictments were removed by *certiorari*; in the case of one prisoner, the jury was discharged without having given a verdict, and one prisoner died before trial; making 62·6 per cent. of convictions upon commitments. But as this does not at all do justice to the public prosecutors (and as I am deputy clerk of the peace, of course I am not saying anything personal), I am rather anxious to draw the attention of the Committee to one very curious fact connected with this return; and that is, that from some cause, which it is utterly impossible to explain, in the three years preceding the appointment of a public prosecutor there were more than double the number of persons who pleaded guilty in proportion to the number who pleaded guilty in the three years succeeding it. Therefore, if you take the results of the trials, which, of course, test the mode in which the cases are got up, the total number of convictions were 659 in the three years preceding the appointment; the acquittals were 201, and 59 bills were ignored; making a total of 919 cases actually disposed of by the court of quarter sessions. The convictions on trial were 383, or 41·7 per cent. In the three years after the appointment the total of convictions were 490; the total of acquittals were 184; the total of bills ignored were 39; making altogether 713 cases disposed of. The total number of convictions on trial were 367, or 51 ½ per cent. I am sorry to say I only received Mr. Phillimore's summons on Friday, and these are details which take a good deal of making out. I had them sent up from the country after me, and only received them this morning, so that I have not had time to analyse them properly; but if the Committee will allow me, I will make an analysis of the returns, and forward them to the Chairman afterwards.

783. Will you be kind enough to perfect that paper, and then hand it in?—I will analyse it as far as I can do so, and then send in the result.

784. (To Mr. *Markland.*) You have looked into this Bill proposed by the Chairman of this Committee?—I have.

785. You found fault, as I understood you, with certain parts of the Bill; have you looked at the part of the Bill in which certain persons are to be appointed previously to committal?—I have.

786. What is your opinion upon that part of the Bill?—I think previously to committal it is very desirable.

787. If that part of the Bill was carried into general effect, have you at all looked into the immense sums of money which must be necessarily spent in carrying out that part of the Bill?—I think it would be a saving of expense in the number of witnesses who would be bound over to give evidence.

788. Supposing that you were enabled as district prosecutor to check that, and that when the depositions came before you, you read them over, and said such and such a person is not wanted; do not you think that if that power were given to the district prosecutor it would be sufficient, without employing all these sub-agents?—I think the district prosecutor would not like to take that risk upon his own shoulders, to give a witness notice not to attend when he had been bound over by the magistrates, under recognisance, to attend.

789. You say that the depositions are frequently two or three days in perfecting?—Yes.

790. And I understand you to state, that owing to that time elapsing, when the evidence is perfected, if the magistrates had not bound over certain persons they would not have been bound over at all, because they would then be found to be worthless witnesses?—Yes.

791. In that case it would be very little for the district prosecutor to say, "These persons are not wanted, therefore I will give them notice not to come." Would there be any difficulty in that?—No solicitor would take that responsibility as to any witness who had been bound over to attend.

792. I am talking of new powers; supposing new powers to be given, do you think there would be any difficulty in the solicitor saying, "Such persons are not wanted, and therefore they need not come"?—There might be very great difficulty, because the prisoner expects that every witness who is bound over

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shall be there, and he may wish to ask such a witness certain questions, and his defence may be prejudiced by his not being there.

793. Then you would feel a difficulty in any change of that kind?—I should.

794. Having read over the Bill proposed to the House of Commons, do you find any other difficulties connected with it?—I think that the appointment of a barrister for a public prosecutor, conducting every prosecution, would be perfectly impracticable.

795. There is a power likewise of employing another?—That is only in a second court.

796. Does a large bar attend the Leeds sessions?—Very.

797. Do you find that it is excessively useful in bringing young barristers forward, that different criminal briefs should be put in their respective hands?—Yes.

798. Would not that be totally destroyed if you had a public prosecutor?—By this Bill it would, no doubt.

799. And you think that that would be detrimental not only to the interests of the bar, but to the interests of the public?—Yes, very.

800. Mr. *W. Ewart*.] Has it been found detrimental to the interests of the Scotch bar?—I cannot answer that question.

801. *Chairman*.] Or detrimental to the interests of the French bar?—I cannot answer that question.

802. Mr. *Philipps*.] When a bill goes before the grand jury, do you take any part in it as to the order of calling the witnesses, or what witnesses it may be desirable to call?—Yes; I endorse the indictment with the witnesses in the order they should attend, and of course the grand jury generally call them as they are on the back of the bill; I so arrange them as I think will give them the least trouble; I have been frequently called in before the grand jury to explain, because in a large manufacturing district like ours, we have very serious and very heavy cases frequently occurring.

803. In fact, you assist to a certain degree when the bill is before the grand jury?—If they require it.

804. Mr. *Miles*.] Do you of necessity attend before the grand jury, or are you sent for when you are wanted?—I always attend in an adjoining room, so as to be ready if wanted.

805. From the number of times that you may have been called in, do you or do you not think that it would be an assistance to the grand jury if some person in your situation was to attend generally with the bills, who, if asked questions, should be able to put them right as to any little points which might arise?—I do; I have known cases frustrated, and bills not found in consequence of the want of it.

806. Do you believe that there would be no objection whatever on the part of the grand juries to adopt such a system?—I think not.

807. *Chairman*.] You do not think, as I understand, that it would be desirable to give the office of public prosecutor to barristers, but you assent to that part of the Bill which relates to the district agents?—Yes.

808. Mr. Miles has asked you whether it would not be to the disadvantage of barristers not to hold briefs; supposing that the administration of criminal justice was more efficacious, you would scarcely think that the interests of the barristers at Leeds, or anywhere else, should be put in competition with it?—I think the public interests would be very much prejudiced if the bar were knocked on the head altogether; if there were no nursery, which I consider the sessions to be.

809. Do you think it would be knocked on the head?—I think it would have a very serious effect.

810. Do you think that it has knocked the Scotch bar on the head?—I do not know.

811. Do you think that it has knocked the Irish bar on the head?—I do not know.

812. Do you think that it has knocked the French bar on the head?—I do not know.

813. Give me leave to call your attention to the following passage: "A most atrocious murder took place in my division; the woman who was murdered was a poor labourer's wife, and had several children; the party who was suspected of having

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having committed the murder was a vagabond living close in the neighbourhood, who had been connected with her—I have no doubt improperly—and ultimately got jealous; he shot her and burnt her; she was a perfect skin and bone. The coroner sat upon the body, and one or two of the division magistrates came over to me and said, We think this is a case requiring looking to, perhaps you will see to it. Of course they had no power over me to tell me to do it. There was no person whom I could look to as the prosecutor; the parties were all poor; it was since the operation of the Poor Law Amendment Act, and I knew the parish could not pay. I took the hint and went to work, and upon the exertions which I made, the case was made out upon the evidence of, I think, six witnesses, sufficient to induce the coroner to commit. I saw the magistrates again afterwards, and they said, This is really a case which ought not to go unprosecuted; we do think the thing ought to be taken up. Of course I understood what that meant; it was not anything which compelled me to do it, but still I felt I was in duty bound, as what I should like to see generally the public prosecutor of the division, to take the matter up. I did so. I had occasion to get witnesses from Manchester, where the party was apprehended. I subpœnaed twenty witnesses, independently of those whom the coroner had bound over. The case took from nine in the morning till eight at night; the party was convicted and executed; and I think a clearer case never went into court. I had the satisfaction of receiving the compliments of the judge and the bar, and of my brother clerks, who said the case was well got up, and I had the satisfaction of losing about 40 *l*." Does your experience lead you to think, not of course that so remarkable a case as that often happens, but that a similarity of circumstances, the attorney losing by the prosecution, when he was to advance money by bringing witnesses to the trial, may often occur?—It may occur certainly, but I think not very often.

814. You said that you had known cases where just and legitimate expenses were refused?—Yes; in one case altogether, and in other cases witnesses for non-attendance, or for not giving the same evidence as before the magistrates, and for other reasons.

815. Have you known cases where the attorney has been refused what you have considered legitimate expenses in getting up the prosecution?—Yes.

816. This is one of those cases in a case of murder?—Yes.

817. Mr. *Miles*.] Does not it very often happen that though a witness may be necessary to the case, he is not forthcoming when he is called by the judge?—It does.

818. Does not the judge then almost invariably not allow his expenses?—Yes.

819. *Chairman*.] I am talking of the attorney not being repaid the money which he has advanced in the prosecution. Have you known cases where the attorney has been refused what you consider fair and legitimate costs?—I have.

820. Not such a case as Mr. Miles has just put, where a witness had incurred the judge's displeasure?—No; but where the case went to conviction.

821. Mr. *Miles*.] Have you ever known the case of a witness who has been necessary to the prosecution, who has behaved himself properly, who has not perjured himself, in which the costs were refused?—Yes.

822. Will you name it?—I have named a case where there was a conviction, and the whole of the witnesses' expenses were disallowed; it was a case of perjury.

823. Mr. *Walpole*.] What was the reason?—I do not know.

824. Mr. *Miles*.] Have you ever known it occur in felony?—No.

825. In any way?—No.

826. Mr. *Philipps*.] If the costs were, in your opinion, improperly disallowed, you would think it the fault of the judge or of the clerk of assize, would you not?—I have no complaint to make.

827. Supposing such a case as that to occur, the judge or the clerk of assize would be the cause of it?—I think there must be some reason.

828. In such a case as that, where the judge complimented the prosecutor and disallowed his costs, would you not think the words and the acts of the judge rather at variance?—Yes.

829. *Chairman*.] The judges constantly take contradictory views on that matter?—No doubt.

830. The attorney has to take journeys, and has duties to perform besides bringing witnesses, which occasion proper and legitimate expenses?—Yes.

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831. The question is whether those are to be allowed or not?—Yes.

832. In your opinion, would it be for the benefit of society that that should not depend upon the action of the judge, but that there should be a district agent entitled to superintend that preliminary proceeding?—I think it would.

833. Mr. *Walpole.*] You would not make the public prosecutor the person to determine whether the expenses should be allowed or not, would you?—Of course he would be responsible for his office, and if he abused that office he would be liable to be dismissed.

834. Is not the judge to have any opinion at all upon the question when the case comes on for trial?—An attorney may do his duty, as he thinks, to the best of his ability, and expend large sums of money in so doing, and he may then be deprived of those sums which, if he were sure of being repaid, he would disburse to the best of his ability.

835. Who do you think is to be the person, either under the present system or under any system which you are going to substitute for the present one, to determine whether expenses are to be allowed or not?—I think the district agents might be very safely entrusted with it. It is so in the case of the Mint prosecutions and the Post-office prosecutions.

836. *Chairman.*] And in the Scotch cases?—I do not know; but I know that the solicitor for the Mint and the solicitor for the Post-office both determine that matter; there are certain allowances.

837. Mr. *Miles.*] Upon the present system, as far as quarter sessions go, is there not a scale determined by the magistrates at quarter sessions, and are not the witnesses and attorneys and different persons paid according to that scale?—They are.

838. Is there not likewise another scale by the clerks of assize?—Yes.

839. And are not the different persons paid according to that?—Yes.

840. Supposing it comes to a question of payment of costs or not, is not the chairman in the one case appealed to and the judge in the other, whether the costs are proper?—Yes; costs are never allowed at assizes without an order of the judge.

841. Therefore do you conceive, in any alteration of the law, that the person who gets up the prosecution is the proper person to state the amount which should be paid upon it?—I think he might be safely trusted with it.

842. Mr. *Walpole.*] You would have no check upon the expense which he might think it right to incur?—Of course there would be the check of his appointment being at stake if he abused the office.

843. Mr. *Miles.*] Would you have his accounts audited?—Yes.

844. By whom?—By a person properly appointed.

845. Mr. *Walpole.*] If he audited the accounts, would he not have the power of cutting down the expenses if he thought them improper?—Certainly he might have.

846. *Chairman.*] We are supposing the appointment of a district agent; if the appointment of that district agent prevented the necessity of the attorney advancing money for the prosecution, in your opinion would it be an advantage?—I think it would; but I do not see how witnesses frequently are to get to the assizes without the money being advanced to them, and the district agent must advance that money.

847. The district agent would be paid by a salary?—Yes.

848. And he would have no sort of interest in making any improper allowance?—Exactly so.

849. The expenses of witnesses that he thought necessary would be paid by the public?—Yes.

850. In your opinion, that would be an improvement upon the present system?—I think it would.

851. Do you believe that it would save a good deal of expense which is now incurred?—I do.

852. Have you turned your attention at all towards another point, with regard to the propriety of allowing prisoners to call witnesses at the public expense; enabling the judge to certify that, in his opinion, the prisoner's witnesses were necessary witnesses, and had spoken the truth, and in that case allowing their expenses?—Our attention was turned to that point some time ago; and the Leeds justices frequently, in cases of importance, have bound over the prisoner's witnesses to attend at York, with the hope that thereby they might be allowed

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allowed their expenses, but the judges have refused to allow them. It was thought with us that it would frequently be very desirable to do so.

853. That in many cases the ends of justice would be facilitated by it?—Yes.

854. (To Mr. *Richardson.*) Have you anything to add to what Mr. Markland has told us?—There are some points of opinion on which I do not entirely agree with my friend Mr. Markland; on most of them I do; I believe I can also give a little more accurate history of the circumstances which led to the appointment. My father was elected clerk of the peace in 1836, and since that time, first as his clerk, and subsequently as his partner, and in the last few years as deputy and acting clerk of the peace, I have had the management of almost the entire business of our Court of Quarter Sessions. Prior to my father's appointment, the prosecutions were conducted by the justices' clerk almost invariably, and they were very well managed. The Municipal Reform Act rendered that impossible, and our scale of allowance not being sufficient to remunerate any respectable practitioner unless he had a very large number of prosecutions, it was soon found that the prosecutions got into very inferior hands. The circumstances which Mr. Markland has mentioned were found to exist; many of the police were in the habit, I believe, of receiving something approaching to a market price for prosecutions, which were sent to particular solicitors. It was found that at the assizes where a solicitor was allowed a certain fee upon one prosecution, and a smaller fee for his attendance if he had a number, some of the solicitors were in the habit of borrowing the names of others, in order that they might get the larger fee several times repeated. I was told (I do not know how far it was authenticated) that in at least one case, under different names, the same solicitor had prosecuted and defended the prisoner. A good deal of attention was drawn to this, and the example, as mentioned by Mr. Ewart, of Liverpool and Manchester was quoted, for the appointment of solicitors who should take all prosecutions, one of the heads of the police being bound over, with the understanding that he would employ these gentlemen. In one case which came within my own knowledge, and which I mentioned in a report to the town council at the time, in which one solicitor prosecuted, out of 12 prosecutions which he had at our sessions, in seven indictments either the bills were ignored or the prisoners acquitted. The returns of which I have given an abstract to the Committee, and which I will send them somewhat more fully, will show the result of the appointment. It was found to work exceedingly well, and it was continued because it did work well. The same gentlemen have had the appointment from the December sessions in 1842, when they were first appointed, until the present time, and, as Mr. Markland has mentioned, they are exactly similar to the district agents provided for by the 11th section of the Bill, excepting that they take no part whatever in the preliminary investigation; they have nothing whatever to do with the case until after committal. If the Committee will allow me to make one or two suggestions as to the practical effect of some clauses of the Bill, there are one or two which I am anxious to submit to the Committee. The supervision required to be conducted by the public prosecutors proposed to be appointed by the Bill would require guarding in one very important point, and it is this: supposing in the case of the county of York, which is a county of immense extent, that during the assizes a person were brought up for examination at, we will say, Sedbergh, which is 60 or 70 miles from York, the assize town; unless the magistrates had power under emergency to commit without consulting the supervising officer, the necessary result would be that that man, instead of being tried at the pending assizes, would be imprisoned until the following assizes, and the same thing must occur very frequently at the quarter sessions. In the borough of Leeds of course it would be very easy to provide for that, for although we have a population of above 170,000, all the examinations take place under the same roof in which the sessions are held; but in the county it would be indispensable that a man should be imprisoned from one assizes until the next, if the supervision were made peremptory under such circumstances, in the event of his having to be examined during the assizes at any distance from the assize town.

855. I do not think it is made peremptory, it only says that the public prosecutor shall, if required, give his advice and assistance; it certainly was not my intention to make it "peremptory;" I understand you to say, that if a magistrate had not the power of committing without the sanction of the public prosecutor,

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cutor, it might lead to the hardship which you describe; I never meant to take away from the magistrate the power of committing if he thought proper?—If it be made perfectly clear that the magistrate has the power, it will completely obviate my objection, but the words are, "on the receipt of the statement;" it appeared to me to raise a doubt; I refer to clause 4.

856. Mr. *Miles.*] If anything occurred to the magistrate's mind on which he wished to consult the public prosecutor, would not the same thing occur?—Yes; but then one would assume that the magistrate would consider it a case in which the public interest required that such inconvenience should arise; it would be impossible to avoid it. Another difficulty is one which has been mentioned by Mr. Markland, about the conduct of the cases at the sessions; I am anxious just to mention a few figures to the Committee, which I think will show them the utter impossibility of anything of the kind at Leeds sessions, as that a public prosecutor, with one assistant, should conduct the cases. We have two courts almost always sitting during the whole period that the trials are going on; we have had above 130 cases at one sessions; of course it is impossible to tell who will plead guilty, and therefore it is impossible to tell which cases will be taken in each court or how they can be divided, and it would be inevitable that these gentlemen, if they were to conduct the cases, should make themselves masters of the whole 130 briefs, which I need not say would be utterly beyond the powers of any man to accomplish. Then there is another difficulty, under section 9, also resulting from the same facts, and it is this: it is quite impossible to provide for the emergencies of each sessions until very near the time when the sessions will be held, because within a very short time of the same period at which we had above 130 cases, we had a session at which we had less than 50 cases, and of course the provision which is requisite for one would either be utterly inadequate, or most absurdly excessive for the other.

857. *Chairman.*] Your 130 cases are generally slight cases, I suppose?—A great many of them would be slight cases.

858. The great majority of them are trifling cases?—Yes; a few would be heavy; taking the average of sessions, there would probably be from 8 to 10 per cent. of heavy cases; housebreaking, and cases nearly approaching to burglary.

859. You try cases of horse-stealing too?—Yes. I am likewise anxious to suggest another thing, which is this: there seems scarcely a sufficiently defined distinction between the duties of the attorney appointed by the justices at petty sessions, and of the district agent as to the management of the serious and important cases.

860. Mr. *Philipps.*] To which section do you refer?—Sections 10 and 11.

861. *Chairman.*] It does not appear to you that the district agent is the superior to whom in cases of doubt the attorney is to apply?—It is not sufficiently defined in which cases the district agent is to intervene.

862. Would not that be decided by the attorney himself?—It is desirable that it should not be left in doubt, because otherwise if you had quarrelsome officers, serious inconvenience would arise. I think those are the principal points, but there are also one or two points on which I wish to explain something that my friend Mr. Markland has said. As to previous convictions, probably he may not be aware of the fact that the gaoler always does communicate with the clerk of the peace in Leeds, but although it is the duty of the gaoler to give the information, it is unquestionably the duty of the district agent or the prosecution agent, to get up the evidence, and I have known cases in which there has been a complete failure of proof in consequence of there not being the witness who was requisite to prove a previous conviction; a man has been called who had possibly been present at the trial, but who could not positively swear to the identity. I have a return made to me every sessions by the governor of the House of Correction at Leeds, and also by the governor of the House of Correction at Wakefield, who is allowed his expenses for coming over to look at the prisoners, to see who has been previously convicted. I may also mention as to the prisoner's witnesses, that my attention has been drawn a good deal to that in consequence of our magistrates binding them over, and for a long while I always acted upon the rule that I would allow the costs of the witnesses whom they bound over, thinking it a very grievous hardship upon a prisoner that proper witnesses (and of course I assumed that the magistrates would take care that only proper witnesses were bound over) should not be called without putting him to

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an expense which he could not bear; but of course when I found that the judges at York refused to allow those expenses, I did not consider that I was warranted in allowing them contrary to their *dicta*.

863. Mr. *Miles*.] The principle adopted in Leeds, as I understand, until this *dictum* was given by the judges at York, was, that you allowed the witnesses to come before the justices to state their case as regarded the prisoner, and then with respect to such as you thought were proper to his defence, you endeavoured to take care that they should have their expenses paid to York?—At the borough sessions.

864. Do you not conceive that that would be a great improvement in the jurisprudence of the country?—An immense improvement.

865. To whom would you leave it to say who are the proper persons to be called as witnesses for the prisoner. Would you leave it to the justices before whom the examination takes place previously to the committal, or would you leave it to the judge to determine, after he has heard all the evidence, as to the amount of expenses of the prisoner's witnesses?—My own impression is, that whenever the justices think that a witness should be bound over, and they bind him over, so that his attendance is compulsory, he ought to have his expenses allowed; but that, in addition to that, the judges should have a discretionary power, because it may happen that the prisoner has been committed before he has had time to consider and know properly what witnesses he ought to call.

866. In large towns the persons, for the most part, who commit crimes are resident in or near those large towns; of course they would be enabled, in the preliminary inquiry, to get their witnesses, if they were true witnesses, much more easily than if they were sent to York, would they not?—No doubt they would; but it must be borne in mind that they are frequently illiterate persons; they do not know how to set about it as any one conversant with the administration of justice would do.

867. *Chairman*.] Probably till they have seen their solicitor their mind does not shape itself to it at all?—No.

868. Mr. *Miles*.] Then as I understand, you would make it legal to pay the expenses of the witnesses for the prisoner, and you would allow the judge to determine, if necessary, that those witnesses who had not been called on the previous examination, but who might be examined in court before the judge, for the prisoner, should be paid their expenses?—Certainly.

869. *Chairman*.] With regard to the points of my Bill, which you have been good enough to criticise, you do not think that the line is drawn sufficiently clearly, as I understand, between the magistrate's clerk, who in ordinary cases would perform the duties of the district agent, and the district agent, who would exercise a sort of superintendence over the whole proceeding; are there any words which you would suggest as an alteration?—The distinction is not as respects the magistrate's clerk, but between the attorney appointed under section 10, and the district agent under section 11. I would suggest some words such as these, "upon requisition by the attorney-at-law appointed by the justices, as hereinbefore mentioned," in lieu of the words "where it may be necessary" in section 11.

870. The particular difficulty which you mentioned with regard to the barristers would be obviated by a slight change enabling the appointment of a greater number of deputy prosecutors if it should be necessary?—That undoubtedly would be so.

871. It would not be an objection to the material part of the Bill, but would be a mere matter of arrangement?—That undoubtedly is so.

872. With regard to the general objects of the Bill, have you ever known a disgraceful scramble to take place between attorneys for the management of prosecutions?—That was exactly the cause which led to the appointment of public prosecutors in Leeds; it was the constant practice.

873. There was a constant scramble?—Yes. I may also mention what I have known in my own experience. I believe I never conducted but three prosecutions in my life, but one of those was a case in which I should have been out of pocket if I had only got the county allowance. It was a case of considerable public interest; it was a case of fraudulent bankruptcy, and one involving very great difficulty indeed in getting the evidence together. The man had built up a considerable quantity of his shop goods in an attic, and plastered it over and burnt charcoal in the attic to give it the appearance of old plaster, that it might

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appear as if it were the old wall of the attic. In that case we got an allowance of about 150 *l.*, and we should have been considerably out of pocket if the Court of Bankruptcy had not allowed us expenses, in addition to the county allowance.

James Hemp, Esq. called in; and Examined.

James Hemp, Esq.

874. *Chairman.*] WHAT office do you fill?—I am now Assistant Clerk of Arraigns at the Central Criminal Court, and also Deputy Clerk of Assize on the Oxford Circuit.

875. How long have you held those offices?—I have been about nineteen years at the Central Criminal Court, about nine years on the Oxford Circuit.

876. During that time of course you have had considerable experience in the administration of criminal justice?—I have.

877. Have you turned your attention to the appointment of public prosecutors? I have.

878. Will you be good enough to tell the Committee what your opinion is; whether such an officer is desirable or not, or whether a change in the system is desirable or not?—I think that at present there is a great evil in the system of criminal procedure. There is an absence of responsibility on the part of those who have the conduct of the early stage of the prosecution up to the time of the trial, and there is also a want of uniformity in the general practice with regard to indictable offences. I do not think that the appointment of a public prosecutor to conduct the case in court would lead to any advantage, but I think that the appointment of a district agent might be attended with considerable benefit.

879. What are the evils which you think the appointment of a district agent would tend to remove?—I think it would remove the principal evil, namely, the want of responsibility on the part of those who now conduct the prosecutions.

880. How does that operate disadvantageously in the administration of criminal justice?—It operates in a great number of ways. In what particular respect do you mean?

881. Any way in which you think the administration of criminal justice is injured by the want of a responsible person to perform the functions assigned by my Bill to the district agent?—I think first of all that a private prosecutor, where he employs his own attorney, is necessarily, more particularly in London, put to great expense; that the allowance at the Central Criminal Court, for instance, to an attorney for a prosecution is almost absurd. Beyond the allowance of 2 *l.* or 3 *l.* which he has for the brief, he very frequently has to pay to the attorney a bill of 50 *l.* or 60 *l.*

882. That you consider a great evil?—I consider that it is a great evil.

883. In the case of a poor person would it almost amount to a denial of justice?—In the case of a poor person, unless the magistrate's clerk takes up the case, or it is taken up by a speculative attorney, who may attend at the petty sessions or at the police court for that purpose, there may possibly be a failure of justice. Where it is taken up by a speculative attorney I think it is a great abuse; and where it is conducted by the magistrate's clerk I do not think it is always efficiently conducted.

884. Have you ever known scrambles by attorneys for the management of prosecutions?—I have heard of them.

885. Do you believe that such things take place?—I believe that in large towns there are a number of attorneys who attend at the police offices for the very purpose of getting up prosecutions. I was told of an instance even in London only the other day, I think at Worship-street Police Court, of an attorney who went up to a gentleman who had a prosecution on and handed him his card, and said he should be most happy to attend to the case; the gentleman had an attorney of his own, and repudiated the notion altogether. It exists, I believe, in all the police courts in London.

886. To a great extent?—I should say that there are frequently two or three persons either using their own names or those of others attending the police courts in London. I think it may arise principally from the fact that a very small sum is allowed at the Central Criminal Court, and that respectable attorneys will not undertake a prosecution if that is all that they are to receive for their trouble.

887. With regard to collusion between the prosecutors and the persons whom they accuse, do you believe that the appointment of a public prosecutor or of a district agent would tend to prevent that; do you think that frivolous and collu-

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sive prosecutions are brought?—I do not myself recollect any case where there was collusion between the prosecutor and the party charged.

888. Not of the party charged being bought off?—Excepting in cases of conspiracy and perjury at the Old Bailey; that is, not collusion between the party charged and the prosecutor before preferring the indictment, but where a prosecutor originally prefers a charge from some corrupt motive, for the purpose of ultimate compromise and benefit to himself. That has been done frequently in cases which have been mentioned by my Lord Campbell, cases of gaming-houses, brothels, perjury, and conspiracy.

889. There was a case which Lord Campbell mentioned, in which a writ of error was sought, with a view to a collusive proceeding, in which the Court refused a mandamus to the Attorney-general to allow a writ of error; are you aware of that case?—No; but I believe Mr. Straight will be able to give every information about it.

890. In your experience, if district agents were appointed, would it tend to diminish the expense of criminal prosecutions?—Certainly not; it would tend to increase the expense of criminal prosecutions, but it would be for the benefit of the public. I think, on the Oxford Circuit, and in reference most particularly to the county of Stafford, a great public benefit would be obtained. I have only knowledge with regard to that circuit. I think there are some counties on the Oxford Circuit where little or no change is desirable. There is more crime in the county of Stafford than in any other county in the circuit, and I believe almost than in any other in the country.

891. Are there not a quantity of low attorneys who make a traffic of criminal prosecutions?—There are a great number of attorneys who, I believe, attend the police offices, and get up prosecutions.

892. And you think that although the district agent would be attended with an increase of expense, the benefit to society would more than compensate for that expense?—Very much more.

893. Lord *Stanley*.] What do you consider that the exact functions of the district agent would be?—To get up the case prior to the trial; properly to investigate it; and that in cases of a serious nature, such as rape, murder, robbery, and some of those cases, he should conduct the case before the committing magistrate.

894. Mr. *Walpole*.] As the attorney for the prosecution?—Yes; I do not at all say that he should be a barrister; I rather repudiate the notion; I say a practical man well accustomed to the working and the practice of the criminal law.

895. Lord *Stanley*.] Who is to conduct the trial before the court of justice, according to your proposal?—I think that the district agent should be totally unfettered in his choice of counsel, that he should choose his own counsel, because he would be responsible to the Crown for the proper and efficient discharge of his duties.

896. *Chairman*.] Then I do not undestand you to agree in my opinion, that not only a district agent should be appointed, but that there should be a counsel? —No.

897. You think that a district agent should be appointed, and that that district agent should have his choice of counsel unfettered?—Entirely; because I think the practice in the Mint system is rather bad. In the cases prosecuted by the Mint, up to the time of trial, I do not think they could be much better managed; but in court it has been a matter of observation not only of myself, but of others, that those cases are not ordinarily so well conducted as other cases which come from private instruction. I do not know how that arises.

898. Would you not give immense patronage to the district agent in that way?—I do not think it is patronage, but it is employing the best persons, who I think should be employed.

899. If there were a district agent, one person would have a general superintendence over a vast number of prosecutions, whereas now a different attorney acts in almost every prosecution, and receives his expenses; do not you think that in that respect the appointment of a district agent would very much diminish the expense?—I think that after it had been carried on for a year or two, the expense would equalise itself; you would diminish the number of prosecutions, because no doubt a great number of prosecutions, if there were a public prosecutor, would not be instituted; cases of a trifling character, and cases where

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upon committal the evidence was not sufficient; the large proportion of acquittals in the county of Stafford rather shows that more prosecutions are sent to the assizes than should be sent.

900. In charges of manslaughter upon coroners' inquests, are there not occasionally trifling prosecutions?—Yes, but that cannot be very easily obviated, because you have the finding of the coroner's jury, and the prisoner must be brought to trial.

901. Have you ever known cases where the coroner has been the attorney who has brought the prosecution to the assizes?—That cannot be done now, because he is prevented by Act of Parliament.

902. How long has it not been the case?—I cannot say. I have known a case of manslaughter committed by one coroner and prosecuted by another, and in some cases, I believe, the coroner's partner conducts the prosecution; so that, virtually, it is an evasion of the Act of Parliament.

903. Lord *Stanley*.] You say that the plan suggested would lessen the number of prosecutions, but I do not understand you to propose to take away the right of the private party to prosecute?—Not by any means; but as to costs it would be subject to an order of the court afterwards.

904. *Chairman*.] The party would bear his own expense?—Unless the court thought afterwards that it should be borne by the public.

905. He would do it at his own risk?—Yes.

906. You have had an opportunity of observing the practice of various judges; do not judges hold different views as to the allowance of the expense of prosecutions?—They differ very much, as all men do.

907. One judge will make a larger allowance than another?—In some cases, certainly.

908. Does not that create a certain amount of risk on the part of the attorney who advances a considerable sum of money to carry on a proscution?—I do not think, generally speaking, an attorney will incur any risk. I do not think an attorney, generally, will expend a larger sum than that which he well knows will be repaid.

909. Suppose the interests of justice require it, as in the case which I have quoted with regard to an attorney who was 40 *l.* out of pocket?—I should very much like to hear the answer to that before I give an opinion upon it; because I think very likely the clerk of assize, or the gentleman who taxed the costs, might have had a very good reason for disallowing those costs.

910. Do you think that the conviction of a criminal should be dependent upon the zeal of an attorney in advancing the money for getting up the case?—Certainly not; I do not think it is. There are some exceptional cases of course. In one case of murder in the county of Stafford, a gentleman was called upon by the magistrates to conduct the case. I do not know that he was out of pocket, but he had to expend a large sum upon the occasion.

911. It might not have been in his power to do so?—No; but I suppose that those who instructed him would have furnished him with the means; still I do not think it should be open to that.

912–13. In your opinion, it is an evil that the administration of justice should in any way depend upon the circumstance of an attorney advancing money to get up the case against the prisoner?—I think it is a great evil that there is not some responsible officer; but I should not put it as depending upon the attorney advancing money; I think that, generally speaking, without reference to any particular class of cases, it is a great evil that there should be no one responsible to the state for the proper conduct of all criminal cases.

914. Mr. *W. Ewart*.] I understand that you would limit your prosecuting agent to prosecuting the case, and that he should not originate the case as in Scotland, where the case is originated by the procurator-fiscal?—I speak of his conducting the case after receiving the information which he has from the police of the county.

915. You do not propose that the district shall have the power of originating the case, as in Scotland or in France? In Scotland the procurator-fiscal is the party who does it, and there is a corresponding agent in France. You would leave it to the individual to originate the prosecution, and to the district agent to conduct it; but you do not give to any Government officer authority to originate it?—No; he should have a statement made to him of the offence. I do not exactly understand what you mean by the initiation of the prosecution.

916. The

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916. The taking up of the case?—First of all the offence is committed; then information that the offence has been committed is conveyed to the police.

917. By the law in Scotland and in France, that is not left to the contingency of either the individual or the police taking it up, but the Government officer is bound to initiate it himself?—I take it that that would be so, but I do not think that in this country any crime is unnoticed where it comes to the knowledge of the police; they immediately institute inquiries.

918. Have there been any objections made to its being done by the police?—Not well-founded objections, I think.

919. Then you do not agree with those witnesses who have stated that the police have behaved ill?—I am not aware of what evidence has been given; I do not think, as a general rule, the police take up cases which should not be taken up; and it would be subject to the discretion of the district agent afterwards whether or not he should proceed with the charge.

920. *Chairman.*] Have you turned your attention to the consideration whether it would be desirable to allow prisoners' witnesses to be summoned at the expense of the public?—I think it would be well that the judge should have power either to allow or to disallow the expenses of their witnesses.

921. It was adopted by Mr. Markland, at the suggestion of Mr. Miles, that if the magistrates bound over witnesses, their expenses should in all cases be allowed; and that in other cases, if the judge thought it proper, the expenses of witnesses should be allowed?—I think that in all cases where witnesses are called to facts on behalf of the prisoner, the judge should have it in his power to allow their expenses, whether bound over or not. I think that the judge should always have a discretion as to allowing any expenses.

922. Mr. *Walpole.*] You would leave the judge who tried the case to judge of the propriety of allowing or disallowing the expenses of the trial?—Quite so.

923. Would you do that with reference to the expenses incurred by the district agent?—I think the present system should be continued with regard to the expenses; that they should be taxed, as they now are, either by the clerk of the peace at the sessions or by the clerk of assize at the assizes.

924. As I understand you, the great advantage which you think would arise from the appointment of a district is, that it would do away with that want of responsibility and uniformity which now exists in prosecutions?—Yes.

925. As I understand you, that want of responsibility and uniformity is not felt in the same degree with reference to the barrister who conducts the prosecution?—I do not think it is.

926. Consequently so much of this Bill as relates to the appointment of district agents you approve of, in order get rid of those two objections?—Yes.

927. And so much of this Bill as relates to the appointment of barristers as public prosecutors you think unnecessary, because those two objections do not apply to that part of the prosecution?—I do not think they apply.

928. Mr. *Miles.*] You likewise think that the preliminary part is now sufficiently well conducted up to committal?—In what cases?

929. Cases of felony, generally speaking?—I cannot say that now.

930. Would you then adopt the first part of the Bill, namely, as to agents being appointed by the magistrates? The clause allows the magistrates to appoint the clerks of petty sessions in a subordinate capacity, to manage the cases?—I do not see that that would be necessary, if you had a regular district agent.

931. *Chairman.*] The only question is, whether the district agent could attend to every case?—He could not; but I think, first of all, that if the clerks of the magistrates were placed upon a salary, there would be no objection to their conducting cases of a simple nature. I should not propose that the district agents should conduct all cases before the magistrates; merely those cases which were of a difficult or serious description.

932. Mr. *Miles.*] Then if I understand you, in a small county there would be about one district agent required, and in large counties two, or perhaps three?—Yes.

933. They should be only consulted when cases of difficulty arose, and they should be then consulted by the magistrates' clerks, who should advise with the magistrates?—I think that might be so.

934. *Chairman.*] With regard to counties, we should propose to divide th country into districts; it would be quite impossible to proceed by counties, as the

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population varies so very greatly?—I think the proportion of very serious cases in all counties is somewhat small compared to the aggregate number, and that therefore you would not require a great number of district agents in any one county.

935. You might have local districts; you are not bound by the county?—Not at all.

936. Does it appear to you that there would be any objection to the clause enabling the magistrates to appoint their own clerk at petty sessions, who should not be paid by fees, but by a salary, as a sort of subordinate district agent, to get up the evidence; and, in case of need, to apply to the district agent?—I see no objection to that.

937. Mr. *Miles*.] Do you think there would be any probability, if they were paid by salary, that they would not be so active in getting up cases as now?—If you paid the magistrates' clerks by salary, I think it would reduce the number of prosecutions. I think, in very many instances, on account of their being paid by fees, a greater number of persons are committed than would otherwise be sent to trial.

938. And that would be done without any danger to the public interests?—I think so.

939. I understand that your observations as to the arrangement proposed by this Bill, simply apply to the metropolis, and to the county of Stafford; not so much to the country districts?—Most especially to Staffordshire; but I think in other counties there should be some officer to conduct prosecutions of a serious nature.

940. Then you would recommend it to be generally adopted?—I think there ought to be one general system throughout the country.

941. *Chairman*.] But the abuses in Staffordshire are serious?—Very serious; and I think that Captain Hatton, the chief constable of police at Stafford, could give the Committee valuable information with regard to the want of some such officer.

942. Mr. *Miles*.] Would you prefer dividing the duties of these officers into counties, or into districts?—I have not considered that.

943. *Chairman*.] I am afraid you differ with me as to barristers?—Yes, and I will give my reason; I think, as to the Mint prosecutions, they are ordinarily not better, if so well conducted, as other prosecutions.

944. Have you turned your attention at all to the Irish or the Scotch system?—Not at all; I think you destroy altogether the independence of the bar; for instance, with a public prosecutor in the borough of Leeds you would almost leave prisoners without counsel, for no gentleman would go from London to Leeds upon the mere chance of getting a guinea to defend a prisoner.

945. Mr. *Walpole*.] In your view of the case, the same reason does not apply to the appointment of a barrister to act as public prosecutor, as to the appointment of a district agent to get up the evidence?—I think they are totally distinct.

946. *Chairman*.] You spoke of the independence of the bar; are you aware whether it has had any serious effect upon the independence of the Irish bar, or upon the independence of the Scotch bar?—From what I have heard, I think that the system works badly in Ireland.

947. You think that it is unfavourable to the independence of the Irish bar?—I have never deeply considered the question as regards Ireland; but I must confess that from time to time I have noticed cases which could not be called satisfactory.

948. Are you aware that this is the only civilised country where a public prosecutor, of the nature which I suggest, is not appointed?—I am not.

Mr. *George Leeman*, called in; and Examined.

Mr. *G. Leeman*.

949. *Chairman*.] WILL you state what you are?—I am Clerk of the Peace for the East Riding of Yorkshire.

950. How long have you held that office?—About 12 years.

951. During the time you have held that office have you had opportunities of seeing the administration of criminal justice?—I have, and for many years previously.

952. In

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Mr. *G. Leeman.*

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952. In what occupation were you before you entered your present office?—A solicitor, practising in the city of York, and I do so still.

953. Have you turned your attention to the subject of public prosecutors?—I have.

954. Will you be good enough to tell us what is your view upon the matter?—My opinion is decidedly against this Bill, with the exception of two clauses of it.

955. Mr. *Walpole.*] Which are the two clauses?—I think a modification of clause 10, and the last clause in the Bill, would effect the whole purpose which I apprehend is the object of the parties bringing in the Bill. I may state generally that, so far as the county of York goes, I am acquainted, not only with the East Riding, but with the administration of the law in the North and West Ridings, and also at our own assizes for Yorkshire, which I need not say is the largest county in England. I think that the system of a public prosecutor would be so very inconvenient and unworkable in country districts, that though I have given considerable attention to it, I have never been able to bring my mind to any mode in which it could be practically worked out. This Bill, in the first place, by clause 8, appointing one barrister to conduct all prosecutions at sessions, destroys the nursery for the English Bar, which I take the Court of Quarter Sessions to be. I heard the evidence given by Lord Campbell in that respect, and I perfectly agree with his Lordship in the views which he expressed, so far as that goes. My opinion is, that if authority were given under clause 10 to the justices in their several petty sessional divisions to require their own clerk to see to the due prosecution of all cases sent to the quarter sessions, the administration of justice would, in all the agricultural districts of the north, I feel quite assured, be secured by that clause. I agree in the desirability of preventing magistrates' clerks being paid by fees. I think it is very desirable to avoid the payment of any public officer by fees, and not to give him an interest in the prosecutions which are brought before magistrates; but I think if power were given to the justices in the several petty sessions to authorise their clerks to conduct prosecutions at the quarter sessions, and if they were paid by salary, then in most of the agricultural counties of England all the objects would be attained.

956. Would you not retain clause 11, which relates to the appointment of the district agents?—No, I see no necessity for the appointment of district agents. In most instances, in the north of England, the gentlemen who are the clerks to the justices are the principal solicitors of the particular towns in which the petty sessions are held. At all events, in the East Riding I may say that they are the most respectable of the professional men of the riding. I think those gentlemen might be very safely entrusted with the prosecution of all the cases which arise before the justices, and then I do not see any necessity, I confess, for the district agents. I may say, with regard to the latter clause of the Bill, which gives authority to the public prosecutor to issue subpœnas gratis for the purpose of compelling the attendance of witnesses for prisoners, that that again, I think, may be so modified as to entrust that authority to the clerk to the magistrates, who could do it just as well. With reference to a question which has been put to some of the witnesses, as to vesting discretion in the judge who tries the case to grant expenses to witnesses for prisoners, I think that is highly reasonable and proper; and I am quite sure that I have very often seen cases where there has been a failure of justice, because poor persons have not been in a condition to bring witnesses. I think it will require the exercise of great discretion on the part of the chairman at quarter sessions, or the judge at assizes, but that may be assumed; and I think if you give them discretionary power either to allow the expenses or to refuse them, all will be done which seems to have been the object of some questions which were put. I also heard the evidence of Mr. Markland, from Leeds, and I do not at all agree in what he said as to what would be the effect at the county assizes. If I understood him, the effect of the appointment under this Bill of one public prosecutor would be to prevent the necessity for the attendance at the assizes of more than one solicitor; that could not be so in a large county, as will be seen at once. Take towns like Sheffield, from which you sometimes probably have half a dozen prosecutions at one assizes; that is 60 miles away from other parts of the county; the same is the case with Huddersfield, Wakefield, and Bradford. It generally happens that these prosecutions from the large towns are conducted by one or two solicitors of those towns, and I do not see how you could prevent the necessity for the attendance of those solicitors who have got up the particular cases in the particular towns.

 I take

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Mr. *G. Leeman.*

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I take it that it would be the same at the court of quarter sessions. For instance, in the East Riding, which from one end to the other is a distance of above 60 miles, it cannot be expected that one solicitor alone should be able to attend at the quarter sessions, and conduct the prosecutions for the whole of that riding.

957. Mr. *Miles.*] Do you think that any difficulties occasionally occur at the grand juries from not having a person immediately in the room whom they may consult if they think it necessary?—Yes. I think it is very desirable indeed that there should be the appointment of such a person to whom the grand jury could refer.

958. Whom would you indicate as the proper person?—I am not sure that the clerk of the peace, or the clerk of arraigns, or their respective deputies, might not be appointed.

959. You would recommend that they should have the power of consulting the clerk of the peace whenever they required?—Yes. I have very often been called in, in my own riding, by the grand jury when difficulties have arisen. I feel that if the clauses in this Bill were passed, a large expense would be unavoidably incurred, which I should look upon as altogether unnecessary. For instance, I observe that by one clause, it is proposed to appoint an assistant prosecutor, who is to be a barrister, at an expense of 300*l.* in each district; all that would be cost, I feel quite assured, of an unnecessary character.

960. Mr. *Philipps.*] Do you think any abuses arise from the practice of getting a bill preferred at the grand jury where magistrates have not committed in cases of assault?—I think there is one improvement in the law, which is very necessary, and that is to prevent any bill being preferred to the grand jury in which the prosecutor has not first gone before a magistrate. I think that is a defect, certainly. I have seen great abuses arise from it. I believe, however, that by far the greater number of those cases are to be found in this metropolis. I think also, with regard to what fell from my Lord Campbell as to prosecutions in cases of gaming-houses, and of perjury and conspiracies, those are to be found to a far greater extent in London than we have them in the country. In cases of perjury his Lordship suggested that it should be necessary to have the fiat of the Attorney-general, which would be a proper check against prosecutions for mere extortion in cases arising here, undoubtedly; but we have had a great number of cases of perjury in the country since the County Court Acts came into operation, in which no such fiat could be conveniently applied for. Those cases sometimes arise from the commitment of the county court judges themselves, who have themselves heard the evidence, or by magistrates or judges before whom perjured testimony having been given, they direct the prosecutions.

Robert Marshall Straight, Esq., called in; and further Examined.

R. M. Straight, Esq.

Witness.—I WISH to be permitted to make one addition to the evidence which I gave at the last meeting of this Committee. I referred to several stages of the prosecution, but I omitted to mention one and perhaps the most important, namely, that of trial; I wish to bear my testimony to the efficiency with which cases are now prosecuted upon trial by the counsel retained in the case, and I am fortified in that by what Lord Campbell has said to-day. I am also desirous of explaining to the Committee what is the amount of the allowances made in respect of counsel's fees, the duties of whom have been described by Lord Campbell to-day as having been performed to his satisfaction. I find that at the Lent assizes in 1855, upon the Home Circuit, 283 prisoners were committed for trial. My clerk has ascertained for me what was the amount of fees paid to counsel in respect of those prisoners. It is a rough calculation, but it is substantially correct; it amounts to 397*l.* only.* I was also desirous of ascertaining what the allowances to attorneys were; those amounted to 473*l.* I ought to state, that I quite-

* The Witness afterwards transmitted to the Committee the following Return:

HOME CIRCUIT, LENT, 1855.

Number of prisoners	283
Number of prosecutions	265
Number of prosecutions in which professional assistance was rendered	216
Total amount of allowance to attorneys	£.461
Total amount of allowance to counsel	£.416

Marshall Straight.

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R. M. Straight, Esq.

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quite concur with Mr. Hemp, that occasionally, although solicitors are not called upon to pay sums of money out of pocket, as the question was put to me upon the last occasion, they do not make a profit out of prosecutions by being allowed such full costs as in some cases they ought to have. I think this happens only in exceptional cases. Upon the last occasion I stated that I thought there were some defects in the preliminary stages of the prosecution. At that time I had not seen Mr. Phillimore's Bill; I did not understand what the district agent was, or what were to be his functions; I have now seen the Bill, and I think the appointment of district agents with the duties defined by the Bill, would conduce to the more effective administration of justice, and to obviate the defects referred to. I, however, think it has escaped the notice of this Committee that it will be highly inconvenient if these district agents are appointed for too large districts. If a district agent is appointed for the whole of a county, it will be inconvenient and expensive; for it must be recollected that the witnesses must be seen by the district agent before they go to court; and, if he performs his duty, he will examine those witnesses to see whether what they state is true.

961. *Chairman.*] The view of the Bill is not to take a county, but to make districts?—In that I perfectly concur, but they must not be too large. In looking at sections 3 and 4 of the Bill, I think that a public prosecutor, to perform the functions therein mentioned, but not to appear in court (because I am opposed to any interference with the bar, as it at present exists), would be an advantage in the administration of justice. I was also asked as to the propriety of the public prosecutor having a veto upon prosecutions. I instanced certain cases in which I thought that the old constitutional way of submitting the case to the grand jury ought still to be preserved. There are two cases which I omitted to mention, which are within my own experience, namely, one which was for perjury before an Election Committee of the House of Commons, in which, for obvious reasons, no officer appointed by the Crown should have any veto at all; the second was an indictment which came within my own personal knowledge, for bribery and conspiracy to bribe at an election for a Member of the House of Commons. In such cases I think it is obvious no officer of the Crown ought to have any right to prevent or stifle inquiry by a grand jury.

962. Mr. *Miles.*] Then, as I understand you, you are for the appointment of district agents, and not to go further?—Certainly, subject to the control of some superior officer (who is Mr. Phillimore's public prosecutor) to whom cases in the preliminary stages should be submitted, in order that he may direct whether the district agent should proceed with them or not. If the district agent does not proceed under the direction of the public prosecutor, I think that the private prosecutor, if he proceeds, ought to do so at his own risk. If the case be properly instituted and properly prosecuted, the court would probably allow the expenses; if it should not be properly instituted and properly conducted, he ought not to have his expenses.

963. So that the district agents, supposing the Bill adopted, would be numerous throughout the country?—I think they must necessarily be so.

964. But you would have, as I conceive, one person or two persons in London who should be referred to in case any difficulty arose, and who should be called the public prosecutor?—Yes; and I entertain the conviction that, unless these district agents are appointed for small districts, such as petty sessional divisions, the expenses will be greatly increased, and great inconvenience will arise by reason of the inaccessibility of the district agent to the various witnesses. If he takes upon himself the responsibility of conducting the prosecution, he ought to be able to see the witnesses, to examine them, to ascertain that they are not likely to be shaken in their evidence, that they are the witnesses of truth and of good credit, and that they are not mistaken; because, if he cannot rely upon those witnesses, he ought to seek further evidence. This entails an extra attendance of the witnesses, and increased costs for loss of time and travelling. The nearer the witnesses to the district agent the less cost.

965. Mr. *W. Ewart.*] And therefore there should be a subordinate agent?—My views are directed to a district agent being appointed for every petty sessional division.

966. *Chairman.*] You think that the public prosecutor should not be allowed to appear in court to conduct the prosecution?—I do not say that, but I do not think it would be an improvement upon the existing system, or more economical.

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Jovis, 21° *die Junii*, 1855.

MEMBERS PRESENT.

Mr. J. G. Phillimore.	Mr. Napier.
Mr. Attorney-General.	Mr. Philipps.
Mr. Watson.	Lord Stanley.
Mr. William Ewart.	Mr. Miles.

JOHN GEORGE PHILLIMORE, Esq., IN THE CHAIR.

Henry Leigh Trafford, Esq., called in; and Examined.

H. L. Trafford, Esq.

21 June 1855.

967. *Chairman.*] WILL you state what you are?—A Barrister. I was called in 1834. In 1845 I was appointed stipendiary magistrate for the division of Manchester and the borough of Salford.

968. What population does that comprise?—I cannot speak of that accurately; I should think between 100,000 and 150,000 inhabitants. It is formed of the populous villages round the city of Manchester.

969. Are there any other stipendiary magistrates besides yourself, or does it all devolve upon you?—There is a stipendiary magistrate for the city of Manchester.

970. Whose jurisdiction is concurrent with yours?—It is concurrent, but I do not act for the city of Manchester; nor does he act for the county, though he is qualified.

971. Will you be kind enough to state whether you have turned your attention to the subject of the appointment of a public prosecutor?—I have. When I was first appointed at Manchester, the prosecutions arising in the county, as distinct from the borough of Salford, were open to any attorney; and those which were not claimed from the magistrates' clerk by the prosecutor's attorney were handed over to a gentleman to conduct.

972. To anybody?—To one person. I found great irregularities and carelessness in conducting those prosecutions at the sessions.

973. Failures of justice?—In one or two cases they were so carelessly attended to that the chairman complained to me about them; the attorney to whom the prosecutions not claimed were handed over turned out to be a very improper person.

974. A disreputable person?—A disreputable person. In one case of murder he received costs for the various witnesses to the amount, I think, of nearly 70 *l.*, which he failed to pay over to the various witnesses entitled to it.

975. He embezzled the money?—He embezzled the money. In consequence of that, I directed the constables to hand over all prosecutions not claimed by the prosecutors' attorneys to one gentleman; and since that period, I believe he has conducted every prosecution which has been sent to either sessions or assizes from that court.

976. Was the consequence of that alteration an improvement in the administration of justice, in your opinion?—I consider a very material one.

977. With regard to expense, have you turned your attention to the subject of a public prosecutor, as concerns expense?—Am I to understand by a "public prosecutor" a gentleman to conduct the cases in court?

978. We will take the district agent first?—I do not consider a district agent necessary. I consider that it would be very advisable that the magistrates in petty sessions assembled should have power to appoint a gentleman to conduct prosecutions arising within the petty sessional division.

979. Have you looked at the clauses of the Bill which provide for that; and if so, would you suggest any alteration?—The clause in the Bill, of which I most approved (if I may use the expression) is the 10th.

980. That is the clause which gives the justices of petty sessions power to appoint such an officer as you have described?—Yes.

981. You think that that would answer all the purposes?—I do.

982. With regard to the appointment of a prosecutor to conduct cases in court, what

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what is your opinion upon that subject?—That it would be unadvisable. I have seen the system at work in the county of Chester, when I was young, before I was called to the Bar. I remember associating a great deal with the barristers and the magistrates at that time, and I have frequently heard the system which was then in use at Chester very much condemned.

983. Was the gentleman who held that office a person of ability?—I am not able to answer that question.

984. Were there complaints that he was not?—There were complaints.

985. That he was unequal to his functions?—I do not say that he was incompetent.

986. Unequal to his functions?—No, I will not say that; but I say there was a little carelessness, a want of time to give proper attention to the cases; a want of emulation, knowing that he must have a brief in every case.

987. Then in consequence of those causes you consider that the business was not so properly done as it might have been?—I heard complaints. I am not able to form an opinion as to their correctness.

988. Was it not the fact with regard to that particular district that he was employed in other places on some occasions, in order that the prosecution might be conducted by some one else?—You are perfectly right. I remember one case only in which that took place.

989. You would hardly take that as a standard by which to estimate the propriety of appointing a public prosecutor?—It is the only instance which has come to my knowledge.

990. That is the instance upon which you form your opinion?—Yes.

991. With regard to frivolous prosecutions, is it your opinion that many frivolous prosecutions are brought in consequence of the want of some responsible person?—No. Many cases that appear frivolous are sent to the sessions in consequence of magistrates entertaining an opinion, in which I believe they are correct, that wherever a case of felony is proved, they are bound by law to send it to the sessions.

992. Then you do not think that low attorneys bring frivolous prosecutions?—I do not.

993. That was not one of the evils which you endeavoured to remedy when you began to act?—No, it was the management of the prosecution.

994. Have you ever witnessed a scramble among attorneys for the management of prosecutions?—I have.

995. Do you consider that that contributes to the administration of justice?—I do not, or I should not have made the alteration which I did.

996. Then your reason for making the alteration was to prevent the scramble of attorneys to manage the prosecutions?—To obtain the assistance of an efficient and respectable attorney.

997. Which was not the case before?—It was not; after the cases left the magistrates' clerks' hands, nobody appeared to be answerable for them.

998. We have been told by a gentleman of considerable experience at the Old Bailey, that in London a vast number of prosecutions are left to the management of the police; was that the case at all at Manchester?—No; because ever since I knew the Manchester sessions, attorneys have always been employed to conduct prosecutions.

999. Did it not fall into the hands of the police to get up the case at all at Manchester?—I will state how a case is presented to the magistrates. The prisoner is apprehended; the constables then state the evidence in court, and produce all the witnesses who are examined before the different magistrates. In case of committal, the prosecutions are handed over to the magistrate's clerk in one court in which I act; he conducts the prosecutions either at the sessions or assizes, and has always done so. In the other court the depositions are handed over to the prosecuting attorney, and he then is answerable for the management of the case. Up to that period the constable who apprehends the prisoner is directed to procure all the evidence upon which the charge is supported.

1000. That is to say, the police constable is directed to procure all the evidence?—Yes.

1001. Is the choice of the attorney sometimes in the selection of that constable?—Not in my division.

1002. But in any division with which you are acquainted, is it dependent at all

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all upon the discretion of the policeman what attorney is employed?—Certainly not; not in the court over which I have jurisdiction.

1003. But in any within your knowledge?—I think not at all.

1004. You do not think that it ever happens that the policeman has the power of employing what attorney he thinks proper?—I have known cases where attorneys have given policemen money to introduce them to the prosecutor, which is tantamount to the same thing, but in the Lancashire police force a man would be immediately dismissed who was ever known to do such a thing.

1005. But it is possible that such a practice might exist some time before it was detected, is it not?—It is impossible always to detect roguery; it may go on for some time.

1006. You consider that to be roguery?—I do.

1007. And roguery in the administration of criminal justice?—I do.

1008. Mr. *Miles.*] And it is invariably punished by the authorities when discovered?—By dismissal from the force; I have known an inspector dismissed from the force for that very thing.

1009. *Chairman.*] Whenever it is discovered?—Yes.

1010. You have no doubt that such a thing has existed before it was discovered?—One inspector was dismissed for it, and therefore I presume that existed.

1011. With regard to the expense, have you looked at this Bill?—I have.

1012. Confining yourself to the district agent, do you think that such appointments as those of the district agents would add materially to the expense of criminal proceedings?—I do.

1013. Then the only point which you recommend is the clause relating to justices at petty sessions?—It is.

1014. Lord *Stanley.*] Is it within your knowledge that the costs allowed for prosecutions vary greatly in amount in different counties?—It is.

1015. Do you conceive that it would be an improvement if a uniform scale were fixed?—That is a very difficult question, because the allowance to witnesses must vary so much with the different counties in which they reside, the different districts from which they come, and the different trades and so on which they follow; it is impossible to lay down a satisfactory scale to be adopted in all counties; an agricultural labourer attending a prosecution would be well satisfied with his 2*s.* a day; a mechanic would think himself badly paid with 4*s.* a day.

1016. Nevertheless it is stated in some papers on this subject, which have been laid before Parliament, that the expenses of prosecutions are generally heavier in the counties than in the borough; is that within your knowledge?—Yes, it is.

1017. What reason do you assign for that?—The witnesses have so much further to travel; they are at so much greater expense altogether in attending the various courts which they attend.

1018. It is also stated in evidence that there is a considerable difficulty in enforcing the recognizances when parties are unwilling to prosecute; is it your opinion that that is the case, and that the law requires amendment in that respect?—It does; there is a difficulty in enforcing all recognizances, either for one purpose or the other, and I think if an easier mode of enforcing recognizances was adopted it would be advantageous to the country. It is necessary before a recognizance can be estreated, that it should be returned from the court which orders it to be estreated to the Exchequer in London; the Exchequer in London then sends down process to the sheriff's officer, who then levies the estreat. The parties have power to traverse that estreat.

1019. Then may it not be from the complexity and inconvenience of these forms, as much as from the want of a public prosecutor, that failure of justice frequently takes place?—I do not consider that failure of justice does take place, except in the difficulty in enforcing recognizances, which I believe the appointment of a public prosecutor would not affect. If a summary jurisdiction were given to the quarter sessions immediately to enforce recognizances, I think it would be sufficient.

1020. Do you think that it is desirable that there should be no power in the hands of the party aggrieved to overlook an offence committed against him?—I think it would be very undesirable in cases of felony.

1021. I am not aware that we are dealing exclusively with cases of felony?—In misdemeanors, parties have power to arrange them.

1022. *Chairman.*]

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1022. *Chairman.*] Some misdemeanors? - Some misdemeanors. They have power to settle out of court cases of assault, and various cases. You have not power to compel a prosecutor to come forward in a case of assault. You have in cases of felony, because the offence is against the public and not against the individual.

1023. If a citizen is improperly assaulted, is not that an offence against the public?—It is not so considered in the law.

1024. Lord *Stanley.*] I see it stated by one witness in answers contained in the 8th Report on Criminal Law, that if prosecutors were not bound over, 19 in 20 cases would be compromised; that is to say, that there is a general reluctance to prosecute, and that the parties aggrieved are only induced to do so by the legal compulsion upon them; is that your opinion?—My opinion is that a great many cases would be compromised by the friends and relations of the prisoner; those compromises are prevented by the recognizances being entered into.

1025. Mr. *Watson.*] The compromise is by paying a large sum of money, I suppose?—Yes.

1026. In which the prosecutor, being a poor person, a large sum of money induces him to forego the prosecution?—Yes. Frequently cases occur before me where I am compelled to summon the prosecutor to appear, because the property of which he has been robbed is returned to him, and he wishes to forego the trouble; this is the case most frequently in the cases of old and repeatedly convicted offenders.

1027. Lord *Stanley.*] There is no power, I think, given to a police magistrate to order a counsel for the prosecution?—No.

1028. Do you think it desirable that such a power should be given?—Do you mean to attend before him on the examination before commitment?

1029. To give a brief to counsel to conduct the prosecution?—In Lancashire it is invariably done in all prosecutions for felony and misdemeanors.

1030. Mr. *Watson.*] Is it not so all round the Northern circuit, both at assizes and sessions, that there is never any case of prosecution without a counsel for the prosecution?—I think there never is.

1031. Lord *Stanley.*] Then the practice varies in different parts of the country?—I am not conversant with the practice on the various circuits.

1032. Mr. *Napier.*] Do you think that the previous inquiries, before cases go to trial, are sufficiently entered upon?—I think it would be a great assistance to the magistrates, in cases of importance, had they the power which would be given by section 10, of directing an attorney to appear before them to conduct the cases, in cases of importance, serious cases.

1033. To have all the preliminary inquiries fully made?—To get up the evidence, and lay it before the magistrates in proper form, to marshal it.

1034. Upon what principle do you distribute the cases between the sessions and the assizes?—Serious cases and cases defined by the Act of Parliament all go to the assizes; cases of stabbing, wounding with intent to kill or maim, murder, manslaughter, and burglary.

1035. Have you been in the habit of attending at the assizes?—I have, for 10 years.

1036. From what you have observed there, do you think that any serious cases have failed from the want of proper preparation and proper conduct at the assizes?—I cannot call to my recollection any one case.

1037. Do you confine your remedy simply to that assistance to the magistrates?—I do.

1038. You think that that would effectuate every object?—I do. I remember investigating a long case of murder by poison, which afterwards took one or two days to try at the assizes, and I had great difficulty in getting the evidence properly shaped to lay before the magistrates; little facts kept turning up, in the course of the examination, day by day. The witnesses were brought up; they were not examined before they came into court by any person; it was said that they could speak to certain facts; they were brought into court; then those facts, perhaps, were taken in the middle of the case, when, in point of time, they ought to have been detailed at the end; and a great deal of difficulty and expense of witnesses attending before the magistrates was incurred, in consequence of not knowing how each little portion of the evidence would dovetail into the others. Had it been properly investigated by some competent gentleman, that would not have been so.

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1039. Would you propose that the person employed by the magistrates should follow the case afterwards into the court of assize?—I think it would be advisable.

1040. And that he should be a local person?—Yes, and appointed by the magistrates in petty sessions; that he should have a salary for conducting the prosecutions arising within the petty sessional division for which he was appointed.

1041. Would you allow him, when he came afterwards to the assizes, to choose his own counsel?—Certainly. I think if one barrister alone was employed, it would diminish the strength of the Bar very much indeed; and I do not think one barrister would conduct every prosecution at the assizes efficiently, he would not have time to get up his briefs; and I dare say an old acquaintance of mine, Mr. Watson, would concur with me in the opinion that it is impossible to go from case to case and keep each distinct, and the minute circumstances on which a great many cases depend, in his mind.

1042. Mr. *Philipps.*] In one of your courts you say the prosecutions are entrusted to one gentleman?—To the magistrate's clerk for the borough.

1043. And in the other court it is different?—They are there entrusted to an attorney unconnected by office with the court; to an attorney selected by the presiding magistrates.

1044. Have you observed any difference in the successful mode of conducting them in the two courts?—I have not.

1045. Mr. *Miles.*] Then am I to understand you that the prosecutions in both courts are equally well conducted, though conducted on a different principle?—I think so; they are conducted by different gentlemen.

1046. And upon different principles?—Yes, as far as the selection of the attorney goes.

1047. In the one case the magistrate's clerk conducting the prosecution, and, in the other case, it being left to any person whom the individual may choose to conduct his own prosecution?—It has never been done so. The attorney selected by the court has always since his selection conducted the cases, though any gentleman may, if he chooses, claim to employ his own attorney; that has never happened.

1048. Mr. *Watson.*] You were asked a question as to the cases which go to the sessions and those which go to the assizes; is not that now regulated by Sir James Graham's Act?—In a great measure.

1049. Mr. *Miles.*] Will you look at the 10th clause of the Bill. It states that "it shall be lawful for the majority of the justices, at each petty sessions, to appoint an attorney of law, of not less than three years' standing, to act either separately or, in cases of importance, in concert with the district agent hereinafter mentioned." From the knowledge which you have of the magistrates' clerks, generally speaking the petty sessional clerks, do you think that they would be very proper persons to employ in that way, or would you employ a second person; they themselves, I believe, invariably being attorneys, and attorneys of good standing, would you employ a second attorney to supervise the depositions taken by the magistrate's clerk?—Not except in cases of great difficulty and great length. I would say that in important cases I would employ a person independent of the magistrate's clerk to discover, collect, and arrange the evidence to be laid before the magistrates; that is to say, I would employ a gentleman as assistant to the magistrate's clerk, the magistrate's clerk being employed in taking down the evidence as it is given, and the other gentleman in examining the witnesses.

1050. Have you at all looked to the enormous expense which would take place upon an additional attorney-at-law being named for all the different petty sessional divisions in England to assist in that manner?—I do not think that the additional expense would amount to the fees payable to the attorneys at the various quarter sessions for conducting the prosecutions at sessions and assizes.

1051. Any gentleman who may be so appointed must always hold himself in readiness to attend, when ordered, any petty sessions whatever held in the country, must he not?—There seems to be a strong feeling in the House of Commons against magistrates' clerks conducting prosecutions. I would appoint a gentleman to conduct the prosecutions at the sessions and assizes for each petty sessional division. I would pay him a salary, and in cases of importance I would call upon that gentleman to marshal the evidence before the magistrates.

1052. In

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1052. In a county having 18 petty sessional divisions, how many gentlemen who were attorneys-at-law would you appoint to act in concert with the magistrates' clerks of the different petty sessional divisions?—I would appoint one gentleman to conduct the prosecutions out of each petty sessional division.

1053. And he should not be the magistrates' clerk?—I hold the opinion that the magistrates' clerks are very proper persons to conduct prosecutions; my own opinion is, that the magistrate's clerk is perfectly competent and able to conduct all prosecutions, and that he would do it very satisfactorily in the agricultural counties.

1054. Mr. *Watson.*] I suppose you would put a proviso upon that, that he must be paid by a salary?—Yes, to be fixed by the magistrates either in quarter sessions or in petty sessions.

1055. Mr. *W. Ewart.*] But you think that in serious cases there should be a prosecutor specially appointed?—Yes, to marshal the evidence before the magistrates.

1056. Mr. *Miles.*] Barring this one clause, do you object to the whole Bill as it stands?—There is another clause which I think very beneficial, namely the 18th, allowing the prisoner's witnesses' costs.

1057. Have you been present here during two or three examinations?—On Tuesday I was present the whole day.

1058. Do you, generally speaking, coincide in the evidence then given, that it would be desirable to allow the expenses of prisoner's witnesses?—I do.

1059. Whom would you name to allow those expenses; would it be the judge or chairman who tries, or should the magistrates first of all hear as much as they can, and at once bind those witnesses over?—I should propose that the magistrates give a certificate, as they do now, at the examinations for the costs of the attendance of witnesses before them, the same as they do under I think the Act of the 6th Geo. 4; that that certificate should be subject to the revision of the presiding judge, and that he should have the power of allowing additional costs for their attendance at the trial.

1060. In short, that they should be placed precisely in the same situation as witnesses for the prosecution?—Yes.

1061. Supposing a person is found who may not have been examined before the committing magistrates on the part of the prisoner, would you likewise give the judge or chairman the power of also allowing his expenses, supposing he should be a competent and reasonable witness?—I would, the same as is the case now, where a witness for the prosecution appears upon subpœna.

1062. *Chairman.*] The proper administration of criminal justice is one of the great objects of society in your opinion, is it not?—It is.

1063. Do you not consider the state of things which you have just described, to be degrading to the administration of criminal justice?—Do you refer merely to the scramble by attorneys?

1064. I refer entirely to what you yourself have said; to any part of the evidence which you have given which you choose to select. Do you not consider that the description which you have given us, is degrading to the administration of criminal justice?—If I thought so, I would not continue to hold my present office.

1065. Then you do not consider it so?—I do not.

1066. No part of the evidence which you have given?—I consider that the scramble for prosecutions, which I have described, is disgraceful.

1067. And does not that exist at present?—I do not think it does to any extent; it does not exist in Manchester.

1068. Does it exist at all?—Not in Manchester, with which I am thoroughly acquainted; nor in the county of Chester, I believe.

1069. You have given the description; did you not use the expression yourself, a "scramble" for the prosecutions?—I think it was a word which you suggested.

1070. Then you do not know any case where there has been a scramble for the prosecution?—Yes; I say that when I was first appointed they were scrambled for.

1071. In your particular district?—They were.

1072. And you changed the system in consequence of that?—I did.

1073. Then you consider that degrading to the administration of criminal justice?—A scramble for prosecutions, I do.

1074. Supposing

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1074. Supposing that to exist in any other part where the change which you made has not been made, do you consider it degrading to the administration of criminal justice?—Wherever that practice exists I consider it degrading to the public interests.

1075. In your opinion would it not contribute to make justice more or less venerable if there were one person responsible for the prosecution of offenders in each district, instead of leaving it to the chance of the attorney, whom the injured party may think proper to select, conducting it properly?—I do not think so.

1076. Have you ever studied the system of jurisprudence in any other country besides this?—No, not particularly.

1077. Mr. *Philipps*.] You have not said a word about the grand jury. Do you consider that there would be any advantage in a professional man being always in readiness to assist the grand jury in the way of marshalling the evidence submitted to them?—I do. I consider that it would be a great improvement in the discharge of the duties of the grand jury if the attorney for the prosecution went into the room and examined the witnesses, and gave an outline of the case, and let the grand jury determine upon the case.

1078. Have you ever known any abuse result from the power of the grand jury to find a bill without the previous commitment of a magistrate?—No.

1079. In a case of an assault?—No.

1080. Mr. *Miles*.] Is it not in the power of any person first of all, if he has been assaulted, to bring the assault before the magistrates?—It is.

1081. They may discharge it, not thinking that there is sufficient ground for the accusation; has he not the power, if he happens to be a witness in any case at the sessions or assizes, of preferring, upon his own word, a bill of indictment against the party for the assault?—Not if the case has been heard before two magistrates.

1082. Supposing that fact is held back, and there is no gentleman upon the grand jury cognizant of the fact, he has that power?—Yes; it is the privilege of every Englishman to present a bill to the grand jury.

1083. Do you not think that that is a power which is very frequently abused?—I do not; that has not come within my knowledge; I believe that the practice of preferring what you may term vindictive or malicious indictments is chiefly confined to London, and I think that the practice which Lord Campbell complained of, of compromises, might be very much done away with, if the court before whom a conviction took place, took the matter of issuing an execution or warrant for imprisonment into their own hands, and let the complainant have nothing on earth to do with it.

1084. Mr. *W. Ewart*.] How would you ensure their doing that?—By directing the process from the court itself to some officer of the metropolitan police, if in London; if in the country, to the constables at large all over the country.

1085. Must you have a legislative enactment to enforce that being done?—The Chief Justice of the Queen's Bench can issue a warrant into every county in England.

1086. Why does not he do it?—I am unable to say. The Court of Queen's Bench do not issue a warrant for imprisonment, I understand, until it is applied for by the party who has instituted the prosecution. I should say that that power of compromise which Lord Campbell complained of so much the other day would be very much lessened if the court, of their own motion, issued a warrant immediately on conviction, the same as they do on a bill being found by the grand jury.

1087. The point is, to set that power in motion?—I think the court itself ought to set that power in motion, the same as the court of assize does.

1088. Do you require a legislative proceeding to set this power in motion; because it is evidently a concession on your part that a power somewhat resembling public prosecution must be set in motion; can it be done as it is, or is it necessary to have a legislative Act to set that power in motion?—I think it would not be necessary, because the court have power to issue execution on the application of the party; and I do not see why they have not power equally to do it of their own free will.

1089. The power is not the question; putting the power in motion is the question?—I think the court should put their own power in motion immediately on conviction.

1090. *Chairman*.]

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1090. *Chairman.*] You were good enough, the last time you were here, to offer yourself for examination, were you not?—I did so. I happened to be cming to London for the holidays, and wrote to Mr. Brotherton. I also felt arxious to be examined, because I do not think that an irresponsible public p osecutor ought to say what prosecutions should be conducted over the heads of magistrates, who are responsible for their conduct.

1091. You were anxious to be examined, that you might express that opinion? —Yes, and for other reasons.

Charles Hay Cameron, Esq., called in; and Examined.

C. H. Cameron, Esq.

1092. *Chairman.*] YOU were Legislative Member of the Council in India, I believe?—Yes.

1093. You succeeded Mr. Macaulay, I think?—No; Mr. Amos succeeded Mr. Macaulay; I succeeded Mr. Amos.

1094. I think you have been on several commissions in England of considerable importance; you were on the commission with Lord Wrottesley, were you not?—Yes, I was on the commission for inquiring into charities with Lord Wrottesley.

1095. Have you turned your attention a good deal to subjects connected with legislation and jurisprudence?—Yes, very much; for nearly the last 25 years I have been occupied on those subjects.

1096. Are you not now engaged in framing a code of laws for India?—The Law Commission in India, of which I was the president, made a great variety of recommendations for the reform of the law of India. The home authorities did not feel themselves, I believe, competent to decide whether those recommendations were fit to be adopted or not; and the present commission was appointed with a view of taking those recommendations into their consideration, and coming to a decision thereupon.

1097. Have you turned your attention to the subject of the appointment of a public prosecutor for this country?—Not at all for this country.

1098. But, generally speaking?—I have considered it with reference to India, and with reference to Ceylon, where I also had to legislate.

1099. And you have a knowledge of English law?—I have a knowledge of English law, from having been at the bar in former days.

1100. You were at the English bar?—Yes; I am still of course a member of the bar, but it is 26 years since I practised there.

1101. You studied with professional accuracy English law?—Yes.

1102. And you have turned your attention to the subject of a public prosecutor?—I have not turned my attention to it with reference to English institutions, with a view to consider how it should be adapted to the other institutions in this country.

1103. But having studied English law with professional accuracy, and also considered the subject in the way you mention, what is your opinion of the appointment of a public prosecutor?—My opinion is very strong and decided, that a public prosecutor would be a very great benefit to the administration of criminal justice in England.

1104. Will you be good enough to say what evils you think it would prevent? —I think that the business of criminal prosecution is one in which the public are so deeply interested that it is very wrong to entrust it to the feelings and caprices of individuals; tnat it is the proper business of a government officer.

1105. Mr. *Miles.*] Did you go to the circuit?—I did for a short time.

1106. For how many years?—I was called to the bar in 1820. I went the circuit till 1826, I think.

1107. What circuit?—The northern.

1108. From what you saw then of criminal jurisprudence, commencing *ab ovo*, do you think that it is necessary that a public prosecutor should be appointed in England?—Yes, I do; but I ought perhaps to tell you, that I never held a criminal brief, and that I never attended any sessions; therefore my practice in criminal law is absolutely nothing; but from my observation while I was on the circuit, my opinion was very strong in favour of having a public prosecutor, and it has always been so.

1109. Possibly, though you had not much practice, you will tell us upon what you founded that opinion?—I have founded it upon what I have already stated; namely,

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namely, upon the general doctrine that this is not a thing to be left to the feelings and to the caprices of individuals; it is a great public function, which ought to be performed, I should think, by a public functionary; I do not believe it can be well performed otherwise.

1110. Supposing you were to throw the whole of the criminal business into the hands of only a certain number of lawyers, do you not think that such a proceeding would be a great injury to the bar in general?—You mean that it would dimish the emoluments? I dare say that it would.

1111. Do not you think it is a great thing to give rising men every chance you possibly can as to practice in their profession?—Yes; but not at the sacrifice of the public interests.

1112. Do you conceive from your recollection of the English bar, that by any conduct of the barristers on the northern circuit there was a sacrifice of public interests?—Not by the conduct of barristers, that I know of; I do not say that I observed that, but I should think that from the conduct of private prosecutors there must have been great injury; I do not say that even that is matter of observation which I made; it is my general opinion upon the theory of the subject.

1113. Then as I understand, having no particular experience in England, it is more from your theoretical view of the subject than from any practice whatever in England, that you now state that a public prosecutor is necessary?—It is so.

1114. Lord *Stanley*.] Assuming the appointment of a public prosecutor, would you leave to private parties the power of taking up cases which the public prosecutor had refused to take up?—The law of Scotland, as far as I understand it, seems to me to be quite right upon that subject. There, I believe, if the Lord Advocate does not choose to take a case up himself, the private party may take it up with the concourse of the Lord Advocate; and the Lord Advocate has it not in his power to refuse that concourse capriciously, because he is subject to an appeal to the Supreme Court upon that point, and may be compelled to give his concourse, if it is a case in which his concourse ought to be given. That seems to me to be a good condition of the law.

1115. Nevertheless, you would not allow the absolute unconditional right of prosecuting by a person conceiving himself aggrieved without some such permission?—No.

1116. Mr. *Miles*.] Relative to the jurisdiction of Scotland, has it come to your knowledge that in some cases the Court of Justiciary has made procurators-fiscal, who are the inferior jurisdictions, pay expenses to the private party when they have acted improperly?—Yes, I believe that is so.

1117. So that they are not immaculate?—No, I do not presume that anybody is immaculate.

1118. Mr. *Watson*.] What was your post in India?—My last post was legislative member of the council there.

1119. Had you any superintendence over the administration of criminal justice in India?—No direct superintendence; we were the Legislature of India, and the kind of superintendence which the Legislature exercises we exercised.

1120. Had you any post in India to bring you in contact with the administration of criminal justice in India?—I first went to India on the Indian Law Commission, which was a commission intended to examine the whole law and judicature of India, including of course criminal law, and to make recommendations thereon.

1121. How is the criminal law conducted in India?—When a complaint is made of a crime being committed, the case is taken before a magistrate, and the charge or indictment is drawn by him, and he is in some sense a public prosecutor, though not by any means in all senses; he exercises a discretion as to whether he shall frame an indictment, and send it up to the sessions court to be tried or not; or if it is a case, the trial of which is within his own cognizance, he exercises a discretion as to whether he shall try it or not; but in both cases subject to appeal to the sessions court, and ultimately to an appeal to the Supreme Criminal Court, which is the Court of Nizamut Adawlut.

1122. Who prepares the case and brings it to be tried?—Generally speaking, the private prosecutor, with the assistance of the magistrate.

1123. Have you anything in the nature of a public prosecutor in India at all?—Nothing more than that there is an official in India who is called the Government vakeel. I should mention that there are two perfectly distinct systems existing

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existing in India; in the Presidency towns there is a system copied from England in some respects, and in the Mofussil, as it is called, there is a system totally distinct; I am now speaking of that. There is in the Mofussil an officer called the Government vakeel. His principal business is to conduct revenue cases on the part of the Government; but sometimes when the magistrate thinks that a case cannot be fitly conducted by a private prosecutor, he will desire the Government vakeel to conduct it himself. In such a case as an affray, where there has been a battle of clubs, which frequently happens, and both parties come to complain, the magistrate doubts perhaps which ought to be the prosecutor, and which ought to be the defendant. Then the course which he adopts is to make both defendants, and to direct the Government vakeel to conduct the prosecution.

1124. Mr. *W. Ewart.*] Is he not a native clerk?—A native attorney and barrister.

1125. A magistrate in India is more an administrative officer than he is in England, is he not?—Yes.

1126. More under the Government?—Yes.

1127. Having been an English barrister, and connected with the department in India, do you see any reason why the general principle of public prosecutors should be excluded from England more than from any other country?—No, I see no reason whatever; there may be more practical difficulties perhaps in adapting that system to the existing institutions of England, but excepting that there is no reason whatever.

1128. *Chairman.*] You said that during the time that you were at the English bar you were an observer of the proceedings in the courts of criminal justice; you paid attention to the subject?—Yes.

1129. You said that you thought that a sacrifice of the public interests was the consequence of not having a public prosecutor; you did not mean by that to make any reflection upon the English bar, but to speak of the inevitable working of the system?—Just so.

1130. I dare say you are acquainted with the French law upon the subject?—But imperfectly.

1131. Have you ever read the article in "Merlin's Digest," *Ministère Public*?—No, I never have.

1132. Do you agree with this, the writer is talking of the effect of a public prosecutor: "Crimes can no longer remain unpunished; a citizen is not exposed to the burthen and expense of a prosecution, or responsible for the event; the punishment inflicted on crime is a matter in which the public have an interest, and it ought to follow crime as the effect follows the cause. A minister of the law watches over all society to prevent and to chastise crime, and for that purpose he is invested with the whole public authority." Do you approve of that sentiment?—Entirely.

1133. Mr. *Miles.*] Still the system of French jurisprudence is very different from our own, is it not?—Very different indeed.

1134. There are preliminary inquiries of the prisoner; would you recommend that that plan should be adopted?—I cannot answer that question without knowing more accurately what the proceeding is; I think there should be more examination of the prisoner than we have in this country. I am not prepared to say that I should adopt the whole French system upon that subject.

1135. Mr. *W. Ewart.*] Do you think that the circumstance of the system of public prosecutions in France having been established under the ancient monarchy, and having passed through the changes of a republic and a constitutional monarchy, is a proof of the general approbation by the French people of such a system?—Yes.

1136. *Chairman.*] Mr. Miles asked you whether the system would not be detrimental to the interests of the English bar; do you think that the Scotch bar suffers from the system which prevails there?—Probably, if the present Scotch system were done away with, and the English system substituted, more barristers would receive fees, or some barristers would receive more fees than they do now.

1137. Then in that respect it would be detrimental to their interests; it would lessen the emoluments of the Bar?—Yes.

1138. Does it appear to you in any other way detrimental to the interests of the Bar?—I think not.

1139. Mr. *Philipps.*] Do you think that a public prosecutor is most required, for

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for positive or for negative reasons, to check prosecutions improperly instituted, or to promote prosecutions improperly withheld?—I should think that he is necessary for both purposes; I am hardly prepared to say for which he is most necessary.

Mr. *John Hughes Preston*, called in; and Examined.

Mr. J. H. Preston.

1140. *Chairman*.] WILL you be good enough to tell us what your profession is?—I am a Solicitor.

1141. You were employed, I believe, by the Government to examine into the expense of criminal prosecutions on the Oxford Circuit?—I was.

1142. On any other circuit besides the Oxford Circuit?—I have not gone on any other circuit than the Oxford Circuit on behalf of the Government, but I am acquainted with the practical working of the entire system, and have been so for the last 25 years.

1143. Have you turned your attention to the subject of this Bill, the appointment of a public prosecutor?—I have.

1144. Will you be good enough to tell us, from your experience, what you think of the expense, and how far a remedy might be applied to it?—I think the appointment of a public prosecutor would effect a very considerable remedy. I am sorry to say that my experience points out that very corrupt practices are going on under the existing system. I regret to observe, on the part of attorneys, justices' clerks, and the police, a desire to augment, to the greatest possible extent, the costs of criminal prosecutions. Great abuses are committed in making out the certificate of expenses before the committing magistrate; and it is to be regretted that, in too many cases, the magistrates do not exercise control, but appear to take for granted that all has been done upon the certificate submitted to them for signature, allowing heavy expenses under the heads of "costs of apprehension," "search after prisoner," "getting up case," to an extent which is frequently enormous, and clearly an excess of jurisdiction on the part of the committing magistrate. These expenses are becoming a serious evil, and most unnecessarily aggravate the costs of prosecutions.

1145. Then, in your opinion, the practices which take place amount to roguery?—I am sorry to say that that is my decided conviction.

1146. The practices which take place between attorneys and policemen, in consequence of the want of a public prosecutor?—Unquestionably so.

1147. You in no way mean to reflect upon the conduct of the magistrates?—Certainly not.

1148. Does it appear to you that frivolous prosecutions are brought?—Unquestionably; frivolous and groundless prosecutions are frequently brought.

1149. Does it appear to you that prosecutions are made use of as a means of extorting money?—I believe they have been; in point of fact, I have known of such instances.

1150. Did it ever happen to you to pay attention to the way in which prosecutions are managed; does it appear to you that there is a failure of justice from the want of some responsible person to take care that the proper evidence is brought?—I think that there is often great mismanagement in conducting cases under the existing system; I find that the police, in concert with some low attorney, get a majority of cases, except those cases which are conducted by the magistrates' clerks.

1151. Mr. Straight, from the Old Bailey, has told us that a vast number of cases are managed by policemen in London; does your experience correspond with that?—It does.

1152. Mr. Straight also told us, that he thought the policemen about the worst people possible to have such a trust delegated to them; does your experience coincide in that?—It does.

1153. Mr. *Attorney-General*.] Can you give us your reasons for that?—My reason is this, that I find on the part of the police an anxiety to get up cases, and to put themselves in communication with attorneys and different parties, and I am afraid that in their hands there is often not only a failure of justice, but that also corrupt influences are at work.

1154. Mr. *W. Ewart*.] Are you aware that those corrupt practices by the police are not confined to London?—They are not confined to London; I would beg to instance a case which came under my observation at Shrewsbury. The practice

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practice with the Bank of England is to pay the costs of all prosecutions subsequent to committal; but the costs under the magistrate's certificate are paid by the Treasury in the ordinary way. I find magistrates' certificates in these cases very heavy charges, where police officers on their own mere impulse have been permitted to take long and expensive journeys to collect information, as they phrase it; and on their representation they are allowed expenses amounting to 50 *l.* and upwards.

1155. Mr. *Attorney-General.*] There can be no doubt that it is very desirable that in many cases such journeys should be taken for the purpose of obtaining information?—No doubt of it.

1156. But you probably mean that it ought to be done under the regulation of some superintending authority, who may be the judge of what is fitting and what is not?—Clearly so; I find, in some instances, that these police officers, not being instructed by any one, and as it were on speculation, have made those journeys and received those allowances.

1157. Do you think that in doing so they have been influenced by any desire of abuse?—No doubt; to put money into their pockets.

1158. Mr. *W. Ewart.*] As I understand you, the magistrates allow too liberally these large expenses to police officers?—I think they do; and that the practice which prevails of putting policemen into cases and allowing them expenses under the magistrate's certificate, where they are not witnesses, but merely introduced for the purpose of getting them up, is improper.

1159. Mr. *Attorney-General.*] Do you agree in this, that both courts and juries are inclined to give great credit and weight to the testimony of policemen, as being officers acting under public authority?—They do.

1160. And another thing which experience shows is, that prisoners, when taken into the custody of policemen, are very apt to make communications to them?—They are.

1161. Which communications of course are repeated for the purposes of justice at the trial?—Yes.

1162. Under those circumstances is it your opinion that the policemen ought to be removed from all motive for unfairly pressing a prosecution?—Undoubtedly; there is too much eagerness, I think, on the part of the police to gain the information referred to.

1163. *Chairman.*] Have you considered this case: There are many cases in which it is necessary that an attorney should make a considerable advance of money in order to get up the evidence for the prosecution?—Undoubtedly so.

1164. Do you consider that that necessarily tends in many cases to a failure of justice?—Clearly so; it is improper; an attorney should not be in such a position as to be called upon to do any such thing.

1165. Does it not often happen, from a peculiar view which the judge may take, that an attorney may be actually out of pocket, and not be repaid the expense which he has a fair right to ask for getting up a prosecution?—Frequently.

1166. You have known such cases?—I have.

1167. There is a remarkable case which has been quoted several times, and which I therefore will not repeat to you, but in substance it is, that an attorney got up a case of murder, which was one of very great difficulty; he was complimented by the judge, and the result was, that he lost 40 *l.* by it; do you think, from your experience, such a case at all impossible or improbable?—I think it quite possible. There is another point which I would mention, namely, the number of separate indictments preferred against the same prisoner, which appears to me to be a great abuse. I had a case on the Oxford Circuit, a case of forgery, no doubt a wholesale case of forgery, but upon that occasion 12 distinct indictments were preferred, and costs were claimed in respect of each. The prisoner was convicted upon the first indictment.

1168. And there were 11 more?—There were, and there were sets of fees claimed upon each.

1169. Mr. *Watson.*] Do you travel the circuit regularly now?—I do not.

1170. You have only gone upon one or two occasions?—Yes.

1171. And that, I suppose, was to tax the fees after the termination of the case?—Yes.

1172. Have you found that you have been able to reduce the expenses of prosecutions very much?—Considerably.

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1173. And I suppose there were considerable abuses in that way, before the Government adopted the system of sending gentlemen like yourself, acquainted with the criminal law, to tax the expenses at assizes?—Undoubtedly so; the expenses were enormous.

1174. I know that you were many years in business as a solicitor at Newcastle; did you practise in the criminal law, either in prosecuting or defending, there?—I did.

1175. Did you become acquainted with the practice of the criminal law from the time of committal to conviction?—I did.

1176. Did you find such abuses as you have stated existing during the time of your practice in the north?—I found considerable abuses existing; but certainly on the Northern Circuit, they did not amount to the extent which I experienced on the Oxford Circuit.

1177. I believe I may say that the prosecutions are, generally speaking, in very respectable hands both in Northumberland and in Durham?—Yes.

1178. On the Oxford Circuit there is a large amount of crime from the county of Stafford, I believe?—Yes.

1179. Does that part of your evidence which points to those corrupt practices apply principally to Stafford?—Yes; but no doubt elsewhere there might be a reduction of expenses.

1180. The more respectable the hands into which the case comes, the higher the rate of expenses allowed?—Yes.

1181. Are you aware that formerly, in Durham, the clerks to the magistrates from Sunderland and all those places used to conduct all the prosecutions?—Yes.

1182. Do you think that a good system?—I do not think it is a good system for the magistrate's clerk to conduct the prosecution; I think it is exposing him to the temptation of unnecessarily multiplying evidence and increasing the expense.

1183. If he were paid by a salary, it might be another thing?—Clearly.

1184. And that would come nearly to the case of a public prosecutor?—I consider that a public prosecutor would insure a sound and effectual administration of the criminal law.

1185. Mr. *Attorney-General.*] Do not you consider that it is part of the duty of the magistrate's clerk, in many cases, to advise the magistrate as to the propriety of committing?—No doubt of it.

1186. Do you think that that sort of *quasi* judicial function is consistent with the function of public prosecutor?—I think not.

1187. Lord *Stanley.*] Do not the costs of prosecutions vary in different counties? —They do considerably.

1188. To a great extent?—To a considerable extent.

1189. Do you conceive that it would be possible to reduce them to anything like a uniform scale?—It is quite capable of being done.

1190. Is it a fact that prosecutions are in general more costly in the counties than in the boroughs?—Necessarily so, because witnesses come from greater distances in the counties.

1191. Is any increased authority wanted to pay witnesses for lost time?—I think not. I am afraid that they very often are not paid at all by the prosecuting attorney. I have had many opportunities of observing it.

1192. Mr. *Attorney-General.*] You mean that the attorney embezzles the money?—Positively so.

1193. Lord *Stanley.*] You do not think that there is any want of authority to pay them?—No. In many places the practice prevails that the witness alone shall sign the order for payment, and that secures to a certain extent payment to the witness. In other places the attorney receives the entire amount, including the allowance to witnesses.

1194. I find it stated in an official document that the expenses of prosecutions in England and Wales increased sixfold between 1821 and 1841; that they were about 60,000*l.* in 1821, and nearly 360,000*l.* in 1841. Is that consistent with your experience?—That I cannot answer. I only know that since the Treasury have paid the entire amount of costs on prosecutions the expenses have increased very considerably.

1195. Does that increase represent a proportionably greater efficiency in the criminal law?—I am afraid that there is a want of supervision, which existed when the counties had a moiety of the expenses to pay. I do not think there is the same amount of supervision which formerly existed.

1196. You

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1196. You recommend the appointment of a public prosecutor?—I do most decidedly.

1197. Do you mean a district agent only, or a public prosecutor also residing in London, and exercising a general supervision?—My notion is of having the country divided into certain districts, and a public prosecutor attached to each district.

1198. *Chairman.*] According to the Bill which you have read?—Not exactly according to the details of that Bill.

1199. Lord *Stanley.*] Do you or do you not consider it necessary that there should be one central authority in London at the head of this system?—My opinion is that the object could be attained by the appointment of public prosecutors distributed over the country; dividing the country into certain districts.

1200. *Chairman.*] Subject to the Attorney-general?—Subject to the Attorney-general.

1201. Mr. *Attorney-General.*] By that I presume you mean some one who shall prepare the cases for trial?—I do.

1202. In the answer which you gave to Lord Stanley's question, you did not mean any one to conduct prosecutions at the sessions or the assizes in the way of counsel; but some one to get up the cases and prepare them for trial?—To get up the cases.

1203. Mr. *W. Ewart.*] Do you think that that would be sufficient without having the central assistance of a public prosecutor, as they have in Scotland?—They would essentially be public prosecutors; it would be the authority, as it were, spread over a given number of public prosecutors,

1204. In Scotland it is not only spread over, but it is concentrated also?—It is.

1205. You would not recommend that system of concentration, as I understand you?—I do not say that.

1206. *Chairman.*] I take Mr. Ewart's question to be, in fact, this: would you or would you not recommend that not only district agents should be appointed to manage and prepare the evidence, but that there should be persons appointed to conduct the cases in court as barristers?—I think there should be responsible parties to manage and prepare the evidence, and barristers to conduct cases in court as at present.

1207. Subject, of course, to the controlling power of the Attorney-general?—Yes.

1208. Mr. *Attorney-General.*] If I understand you rightly, you have directed your attention principally, so far as the necessity of a public prosecutor is concerned, to the preparing of the case for trial?—Yes.

1209. Is it your opinion that, under the present system, cases are often brought to trial without sufficient preparation?—They are.

1210. You have no doubt of it?—I have not the slightest doubt of it whatever.

1211. And justice fails in consequence?—Very frequently.

1212. Besides that, I understand you to say that you think that the system of allowing these prosecutions to be got up and brought to trial as they are, is radically wrong?—I think it is a scandal to the country.

1213. Mr. *Miles.*] You find fault with the certificates granted by magistrates for the apprehension of prisoners; whom would you recommend as the party to be the judge of the expenses requisite for bringing a criminal properly to justice, the magistrates, or some other power; and if so, what power?—I think the magistrates allow too liberally expenses of that description. At present they are not empowered by law to allow the mere costs of apprehension, costs in search of a prisoner, or costs of getting up evidence. The policeman ordinarily employed receives his wages or salary for the services he actually renders, and what money he is out of pocket he ought to have, but nothing more.

1214. You are aware that it is not in above one-half of the counties of England that there are police, are you not?—I am.

1215. Supposing an unpaid constable is equally zealous with a policeman, and eventually after a long search brings a criminal before the magistrates, do you think that he is paid too much?—I think he is. I think the employment of an unpaid constable is a great evil, because it leads to his claiming excessive expenses.

1216. I understand you first of all to state as to a paid policeman, that you think because he receives a salary he ought not to be paid so much; and I wish you to institute a comparison between the paid and the unpaid constable. Do you

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you not conceive that there ought to be a power given into the hands of the magistrates as to the unpaid constable?—Yes, they have that power; and I complain, that in too many instances they do not exercise it with that caution which ought to be expected.

1217. In such a case I must ask you to give instances?—I would mention a bank case to which I have referred.

1218. Where did it take place?—Some detectives at Birmingham brought in a large bill in respect of long journeys they professed to have undertaken for the purpose of procuring information against the prisoners in that particular case; they claimed very heavy expenses. They were allowed what appeared to be reasonable and proper; but when they undertake unreasonable journeys, and evidently by way of speculation, of course these expenses are disallowed.

1219. Who are to be the judges whether these journeys are unnecessary; the magistrates before whom the cases are brought, or the taxing officer of the court, who merely taxes the costs afterwards?—In these cases I have found that the subject has not been gone into at all; and entirely on the representation of the police officers the allowances were made. I find in numerous cases that annexed to the magistrates' certificates particulars are not furnished, setting out the details of the expenses incurred by the officers, which renders it impossible to tax them.

1220. Supposing these long journeys should have taken place, and these expenses should have been incurred, and, owing to these long journeys and these expenses so incurred, evidence has been adduced which has led to the conviction of the prisoner, do you think they ought not to be paid?—In all cases reasonable expenses are paid; whatever is fitting and proper.

1221. Who is to be the judge as to the fitness of the proceedings; the gentleman before whom the criminal is brought, or a gentleman who is not connected at all with the county, who knows not the police, and sees a bill coming in for the whole of the case?—The magistrate ought to be the judge; what I say is, that I find that he too liberally allows; that he does not inquire into all the particulars, which are essential to ascertain, as to the propriety of the charges made.

1222. Do you say that from personal cognizance?—I do.

1223. You say that you have been in a magistrate's court when these expenses have been allowed, and that the magistrates have allowed too much in that case?—I have known magistrates' certificates which have come before me, and which I have investigated, where certainly far too much had been allowed.

1224. *Chairman.*] Which you were appointed to investigate?—Yes; and I had the parties before me, and did so with instruction to allow everything which was reasonable and proper.

1225. Mr. *Miles.*] But you could not touch the original certificate of the magistrates?—Yes, I could.

1226. In what way?—Under the 14th & 15th Vict. s. 6 the magistrate's certificate is not conclusive.

1227. Had not it been previously paid by the treasurer of the county?—No; it is never paid until the final order is made for costs.

1228. Mr. *Napier.*] The remedy which you propose is, that you would have those expenses checked by the person placed over the district; you would have them put under his surveillance?—Clearly so; the public prosecutor appointed for the district.

1229. Mr. *Attorney-General.*] I suppose you would include in that that no such journey as you have mentioned should be undertaken upon the mere motion of a policeman?—Clearly so.

1230. Before he took upon himself to make an expensive journey, he should first apply to the public prosecutor to know whether he ought to do it?—Unquestionably so.

1231. Mr. *Miles.*] Is the district prosecutor to undertake the duties of magistrate?—The public prosecutor will have to point out and direct what evidence is necessary in support of the case.

1232. Is it not very much better at once to have stipendiary magistrates, and to do away with the unpaid magistracy immediately?—That is a matter of opinion entirely.

1233. Mr. *Napier.*] As I understand you, you would have the magistrates' clerk to take the informations?—Yes.

1234. And then to lay them before the district prosecutor, and he would say whether

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whether further witnesses were necessary?—Exactly so; I would have the magistrates' clerk transmit to him copies of the informations, and he would say whether or not it was a prosecution proper to go on.

1235. *Chairman.*] As I understand you, it is no part of the purpose of your evidence at all to interfere with the duties of the magistrates as they now exist? Certainly not.

1236. You do not draw the inference which Mr. Mills has drawn?—Certainly not.

1237. Mr. *Miles.*] The public prosecutor would still have to order, if necessary, the police to search for further evidence?—No doubt of it.

1238. And you would give the public prosecutor the power of granting the expenses?—Undoubtedly.

1239. Would you not be taking what is now done by the magistrates out of their hands?—No.

1240. Namely, first of all, the ordering the police to search for further evidence; and next, the determining what amount should be paid to the police for that further search?—The magistrate would have the power of making an order, subject to the public prosecutor making the payment.

1241. Then you would place the magistrate directly under the public prosecutor?—No, I would not, certainly. I would merely give him power that if, for instance, a magistrate had allowed too much upon his certificate, he might have an opportunity of correcting it.

1242. Would not that override the power of the magistracy?—I think not; it is done so now; it is done so on the Northern Circuit, on the Oxford Circuit, and also upon another circuit, where taxing officers have been appointed.

1243. *Chairman.*] If the attorney for the prosecution finds further evidence necessary now, does he not give the police direction to search for it?—Undoubtedly he does; and there is often a great amount of evidence imported into the case after the prisoner is committed by the magistrate. In point of fact, I fear that that is far too much abused.

1244. Mr. *Miles.*] Did not the observations which you made in answer to my questions, relate not to any evidence which may be procured after the prisoner is committed, but to evidence which takes place previously to the committal, and when he is under examination before the magistrate?—I would leave to the magistrate all the power which he at present possesses of determining the case before him, and committing the prisoner; his clerk should then send the depositions to the public prosecutor, who would decide as to whether or not it was a case to be prosecuted.

1245. Mr. *Attorney-General.*] If I understand you, what you mean is, that the magistrates should exercise judicial functions so far as to determine whether or not there was a case to send for trial, but that the getting up of the evidence should be left to the public prosecutor?—Yes.

1246. Mr. *Miles.*] Would you adopt any other suggestion in the Bill, except as to the district prosecutor?—Yes. It is a mere question of detail; probably I am influenced by an opinion that the principle of the Bill might be less expensively worked out.

1247. Will you be kind enough to state in what way it could be less expensively worked out?—It has occurred to me, that if public prosecutors were appointed to certain districts, they should have within their district the necessary machinery for conducting the cases, and seeing that they are properly carried out; that that would be a less expensive mode than the one contemplated by the present Bill. I think that the appointment of public prosecutors in various districts of the country, who would have the means by their own staff to conduct cases to trial, would be less expensive than the mode contemplated by the present Bill.

1248. What do you mean by "their own staff"?—A public prosecutor would undoubtedly require a clerk or clerks to do what is necessary for enabling the case to be taken to trial.

1249. Then, in a large county, would it not be necessary to have two or three public prosecutors?—I think not.

1250. How would you distribute them?—It is a question of detail; it has occurred to me that, in some of the circuits, for instance, two prosecutors would be sufficient; it is a mere question as to the number, but the principle is the same.

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1251. The greater the number, the greater the expense would be, if you had efficient men, would it not?—The greater the number, the greater the expense; but I think the expenses would be lessened, because district agents, in that case, would not be necessary.

1252. Then, possibly, you would not appoint those officers contemplated in the 10th clause at all?—I think, if my view was carried out, they might be dispensed with. At the same time I think it is a very valuable part of the Bill to have officers of that description.

1253. Would you place the briefs of the public prosecutor in the hands of one person at the assizes?—I would not.

1254. How could you prevent favouritism by the public prosecutor in distributing the briefs to his own particular friends?—I think the prosecutor should have the power of nominating his own counsel if he thought fit.

1255. Mr. *Attorney-General.*] You mean the private prosecutor?—The private prosecutor.

1256. Mr. *Watson.*] I suppose a public officer would select the best gentlemen he could find, and distribute the briefs, subject to a species of public opinion?—I have no doubt he would.

1257. On the Northern Circuit does not a gentleman regularly attend to tax the costs?—Yes.

1258. Is that the case on any other circuit?—It is the case on the North Wales and Chester Circuit, and I believe it is in contemplation to have them generally.

1259. Are you aware of the result on the Northern Circuit of having a gentleman to attend for that purpose?—The result has been most beneficial.

1260. Is there a reduction of expenses?—A very large reduction of expenses.

1261. Mr. *Miles.*] Have you any document which will show us the costs claimed by different parties on the Oxford Circuit, and the costs allowed after taxation?—I am sorry I have not; as a practice prevails there of not having any printed bill. In point of fact, attorneys give a list of witnesses, with their distances put down, and their briefs, but they do not make out a bill, and the duty of the taxing officer is to ascertain how far the allowances claimed by the proseuting attorney and the distances are correct. I am sorry to say that I have often found them very much aggravated in point of distance, and mileage claimed instead of railway fare.

1262. Could you, from memory, tell us at all what in your recollection was the difference between the charges made and the costs allowed?—I could not give an average, but very considerable reductions have been effected, very much depending upon the character of the party entrusted with the prosecution. I may mention that I have made a list, showing the number of persons committed for trial, the number of convictions, acquittals and bills ignored upon that circuit. I beg to call the attention of the Committee to Stafford. At the last spring assizes 93 prisoners were committed for trial at Stafford; 54 were convicted, 33 were acquitted, and six bills were ignored, making very nearly one half.

1263. *Chairman.*] Do you attribute that state of things in any degree to the misconduct of attorneys and policemen?—I do.

1264. Gross misconduct?—Gross misconduct; and many of those cases really ought not to have gone to trial.

1265. Mr. *Miles.*] As you have given us what occurred in Staffordshire, will you give it for the other counties, and show us how the acquittals and convictions stand there?—I will begin with the county of Berks.

1266. Mr. *Attorney-General.*] Do you speak of one circuit?—Yes, the last spring circuit. I find that there were committed for trial in Berks 51 prisoners; 34 were convicted, 13 acquitted, and four bills were ignored.

1267. That is 17 upon 51?—Yes.

1268. Mr. *Philipps.*] Half the number of the convictions?—Yes.

1269. Mr. *Attorney-General.*] And one-third of the whole commitments?—Yes. The Oxford committals were 57; there were 46 convicted, there were eight acquitted, and three bills were ignored.

1270. *Chairman.*] There is no police in Oxford?—That is so. Worcester, 55 committals; 40 convicted, 12 acquittals, and three bills ignored.

1271. Mr. *Attorney-General.*] That is 15 upon 55?—Yes. In the city of Worcester, 24 were committed, 21 convicted, and three acquitted. Then I come to

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to Shropshire; 31 were committed, 20 convicted, nine acquitted, and two bills were ignored; that is 11 out of 31.

1272. *Chairman.*] That is about one-third?—Yes, on the whole you will find it is about one-third. Hereford, 16 committed, 10 convicted, three acquitted, and three bills ignored. Monmouth, 38 committed, 25 convicted, 11 acquitted, and two bills ignored. Gloucester, 61 committed, 41 convicted, 16 acquitted, and four bills ignored.

1273. That is one-third again?—Yes.

1274. Will you give the total numbers?—The total is 426 committed, 291 convicted, 108 acquitted, and 27 bills ignored.

1275. That is to say, there were 426 committals, and out of those 135 parties escaped punishment?—Yes.

1276. Mr. *Attorney-General.*] Do you ascribe that proportion of persons not convicted to improper prosecutions, or to prosecutions imperfectly got up?—I ascribe it to improper prosecutions, and, in several instances, to their being improperly got up; in point of fact, the presiding judge in several cases refused costs, considering them improper to have been brought before him.

1277. Mr. *Napier.*] Where the bills have been found, were many of those improper prosecutions?—I think so.

1278. Do you think that in many of those cases, if they had been properly inquired into beforehand, they would not have been brought forward at all?—I think they would not.

1279. Mr. *Miles.*] Stafford seems to have the pre-eminence in laxity there; to what do you attribute the very lax conduct of criminal prosecutions in Stafford?—I attribute it to a too great eagerness on the part of the police to get up frivolous and groundless cases; and to their being in connexion with low attorneys who conduct them; and hence, in many instances, a failure of justice arises. It is notorious that a great many frivolous and groundless cases are brought forward in Staffordshire.

1280. Mr. *Napier.*] Is there pecuniary temptation to the police?—There undoubtedly is. I have no doubt the police are paid by the attorneys, and they get allowances made to them, and I am afraid that they get money in a very improper manner.

1281. Mr. *Miles.*] Do you conceive that what you have just read to us as to the state of the calendar, and the acquittals and convictions upon that circuit at the last spring assizes, pretty well indicates to us how justice is administered in the different counties?—I do not profess to give an opinion as to the other counties. I believe you will find that the result is about one-third acquittals upon the total amount; I think that is a greater proportion than it ought to be if things were properly conducted.

1282. Mr. *Attorney-General.*] With reference to the expense of appointing district prosecutors; do you think that upon the whole, considering the amounts now allowed to attorneys for bringing prosecutions into court, and considering also the amount which you think is allowed to policemen in excess of what they ought to get, the appointment of an adequate number of district prosecutors would entail any substantial increase of expense upon the country?—I think not.

1283. You think after making the necessary deductions for what would be saved in fees now paid to attorneys, and what is paid in excess to policemen, the result would be that the public would not lose in point of money, while they would gain in point of efficiency in the conduct of public prosecutions?—That is my opinion, and I have gone into the subject very carefully.

1284. Mr. *Philipps.*] Speaking of Stafford, you said that many cases were tried which ought not to have gone to trial?—Yes.

1285. Do you mean by that that the grand jury ought to have thrown out more bills than they did?—I think so.

1286. Do you think that generally the grand jury find bills which they ought to throw out?—It is impossible that the grand jury can know the nature and character of every particular case, and therefore they sometimes send for trial cases which, if they had been acquainted with the circumstances, they would not have done.

1287. Do you think that there would be any advantage gained in a professional man being in readiness to assist the grand jury by marshalling the evidence, or directing them to any particular points of the evidence?—I think it would be useful.

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1288. Mr. *Miles.*] That is done now?—To some extent it is.

1289. *Chairman.*] I understand you to say that you assent to the principle of my Bill, but you differ as to some of its details?—That is so.

1290. Mr. Trafford told us that when he came to the office, which he holds as paid magistrate, at Salford, he found that in many cases the attorneys had embezzled the money with which they had been entrusted to pay witnesses on prosecutions; do you believe, from your experience, that that is often the case?—Too frequently, I am sorry to say.

1291. And yet those very men have the power of superintending the prosecution altogether?—No doubt of it; I have had frequent instances where witnesses have come to me as taxing officer, and stated that they could not get their allowances from the attorney; that they had been told by the attorney that no allowances had been made, whereas he had pocketed the money and not paid them.

1292. You know that there was a Mr. Garbett on the Oxford Circuit, whose name was struck off the list of attorneys from that very circumstance?—Yes.

1293. He had more prosecutions than all of them for many years?—Yes; there are too many persons of that description to be found, I regret to say.

1294. Your attention has been particularly turned to Stafford?—It has.

1295. Have you any doubt that there are policemen there acting in league with low attorneys constantly, and that prosecutions depend very much upon a conspiracy between them?—Undoubtedly; it is perfectly notorious.

1296. Gentlemen have been asked as to the independence of the bar; do you conceive such a state of things as that favourable to the independence of the bar?—No.

1297. That the attorneys who distribute the business should be in league with policemen whom they pay to bring them business?—It is a most improper state of things.

1298. Have you paid attention to the proportion of acquittals in Scotland?—I have not.

1299. Mr. *Philipps.*] In speaking of witnesses as unnecessary, are you allowing for the difference between a judgment formed after the event and a judgment formed before the event; because, of course, after the trial is over, it is very easy to say that certain witnesses were unnecessary?—I have found a needless accumulation of evidence; amounting in fact to nothing but repetition. I have found six policemen introduced into a case where one would have sufficed; and I have found witnesses imported subsequently to committal who were not at all essential to prove any particular facts, but merely introduced into the case to increase the costs.

1300. Mr. *Watson.*] In getting up a prosecution, a public prosecutor would be competent to say what witnesses might be dispensed with, and what witnesses should be subpœnaed, and what further evidence was requisite?—Yes.

1301. In civil causes you always consult your counsel, to know what evidence you shall adduce?—Yes.

1302. The public prosecutor would do all that?—He would, and correct a great many evils which now exist.

1303. Mr. *Miles.*] Are you aware that in some counties individual magistrates appoint their own clerk, besides the clerk of the petty sessional division?—I have known cases of that kind.

1304. And that they take the evidence for prosecutions under their clerk in their own houses?—Yes, I have known that.

1305. Do you think that an advantageous, or a disadvantageous plan?—Certainly not an advantageous course.

1306. Do you not think it would be better at once to prevent that bye-law, and that the petty sessional clerk of each division should be appointed by the whole of the magistrates, than that each individual magistrate should have the power which he now has of appointing his individual clerk?—I think so; I think it ought to be so.

1307. Do you not think that that would lead to the furtherance of justice, and more particularly in criminal prosecutions?—Under the existing system I think it would.

1308. *Chairman.*] Would you consider that at all an adequate remedy?—Certainly not; the temptation on the part of magistrates' clerks would still

remain

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remain to send doubtful cases for trial, and it would not prevent the accumulation of groundless and frivolous cases, the reception of unnecessary evidence, and excessive and improper charges.

Captain *John H. Hatton*, called in; and Examined.

1309. *Chairman.*] I BELIEVE you are chief of the Constabulary at Stafford?—I am.

1310. And have had opportunities of watching the working of the criminal system there?—Yes.

1311. Can you tell us whether, in your opinion, there are any evils in that system which might be removed?—I think there are.

1312. How long have you held the appointment which you now hold?—I have been since 1842 chief constable of Staffordshire; prior to that I was chief constable of East Suffolk; I organised a force in Suffolk.

1313. Will you be kind enough to point out any of the evils in the manner of conducting prosecutions and procuring evidence, which it appears to you might be avoided, if there are such evils?—I think it is very objectionable policemen being bound over as prosecutors.

1314. That is a common practice in Staffordshire, is it not?—It is a common practice.

1315. And you think it very objectionable?—I do.

1316. On what grounds?—On more grounds than one. I do not think it right that policemen should be prosecutors, if it can by any possibility be avoided; but the magistrates out of two evils choose the least.

1317. What was the other evil?—If they bound over the generality of prosecutors, the prosecution would either be compromised or drop to the ground; people would not come forward.

1318. Then the policemen were bound over from the want of somebody to see that the prosecution did not fall to the ground?—Yes, generally.

1319. Have you had an opportunity of observing, with regard to attorneys, whether there is any indecent scramble between attorneys for the management of prosecutions?—Yes, I have been obliged to interfere.

1320. How did you interfere?—When I first organised the force in 1842 and 1843, I noticed that attorneys of a certain class were very often in prosecutions, which I objected to; and I made some inquiries. The result of the inquiries was that I found out that the constables were in the habit of receiving sums of money from them.

1321. From these attorneys?—From these attorneys. I punished the parties. I dismissed some, and gave an order that the names of all prosecutors in future, (being policemen), should be returned to me, and that they should be prohibited from employing any solicitor without my sanction.

1322. The evil appeared to you a very flagrant one?—Very.

1323. Are there many of that class of practitioners at Stafford?—There were at that time many, and I believe there are some still; but I do not allow them now to interfere with the police.

1324. Do you think that the measures which you have taken have effectually prevented that?—I think they have, to a very great extent; still it is not a position which I like to be placed in, or in which I think I ought to be.

1325. So far as your experience goes, have there been prosecutions improperly brought for the purpose of extorting money?—I think there are prosecutions improperly got up. I think prosecutions are got up by thieves and tramps solely for the sake of receiving the money, particularly in towns.

1326. That is the result of your experience?—Yes.

1327. Mr. *W. Ewart.*] For extorting money?—We cannot call it extorting; but it is a species of swindling.

1328. Mr. *Miles.*] It is not extortion?—No, you cannot call it extortion.

1329. *Chairman.*] I suppose if a rogue got up a prosecution for the sake of his expenses, he would do so if he could, in order to be bought off?—I should say so.

1330. Such cases you say are not uncommon in your experience?—They are not uncommon, and the bills in these cases are very often ignored before the grand jury; they generally arise at lodging-houses, from one tramp or vagrant robbing another of a pair of shoes or a hat; in fact, I dare say I could show in the

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the calendar, connected with the county, 30 cases at quarter sessions, all arising out of thieving at lodging-houses.

1331. Is it not almost necessary, under the present system, that very great discretion should be vested in the police, they having very great power if they choose to exercise it?—Certainly.

1332. It is scarcely possible to prevent that, under the present system?—Just so; I take every means in my power to prevent abuse; I have all the returns sent to me, with the names of the prosecutors; and I do not allow a common constable to be bound over; in fact, I found that a great number were bound over, and sent as prosecutors; and I have given orders that the superior officers, in all cases where the magistrates think proper, should be bound over, and one man does for each district.

1333. Do you agree with the last witness that prosecutions frequently fail from the want of the evidence being properly brought before the court?—It sometimes happens; but clerks to the magistrates are generally experienced solicitors, or men versed in the law, so that the cases are generally well got up.

1334. And there the prosecutions are properly managed?—They are properly got up, and pains are taken with them; but in towns where there are trivial and trumpery cases, very often little pains are taken with them, and they are sometimes sent to the assizes, whereas they ought properly to be disposed of elsewhere; that swells our calendar.

1335. Does it ever happen to you to hear judges complain of the way in which cases are brought before them?—Many times; and I have heard also grand juries complain of the cases which have been sent before them.

1336. Mr. *Miles.*] When did you institute those inquiries with reference to Stafford, as to policemen being in connivance with low attorneys?—At the formation of the force.

1337. You are aware that a return of the result of the cases from Stafford on the last circuit has been put in?—Yes.

1338. Did you make inquiries immediately before that circuit?—I have all the returns, but I have not them here; fortunately I have one with me.

1339. What is the date of that?—One thousand eight hundred and fifty-one; I did not exactly know upon what I might be examined.

1340. *Chairman.*] Will you give us that?—April sessions 1850, guilty, 42; not guilty, 10; not true bills, two: total, 54. July quarter sessions, 123 guilty; 24 not guilty; eight not true bills: total, 155. July 18th, adjourned sessions (that is, prior to the assizes), 33 guilty; four not guilty; two not true bills: total, 39. July assizes, 46 guilty; 34 not guilty; six not true bills: total, 86.

1341. Forty escaped, and 46 were convicted?—Yes. October quarter sessions, 133 guilty; 11 not guilty; six not true bills: total, 150. December quarter sessions, 134 guilty; 15 not guilty: eight not true bills: total, 157. March adjourned sessions, 120 guilty; 10 not guilty; seven not true bills; total, 137. March assizes, 92 guilty; 37 not guilty: five not true bills: total, 134.

1342. That is, 42 acquitted and 92 convicted?—Yes. Total for the year, 723 convictions; 145 not guilty; 44 not true bills: total, 912.

Vide Appendix.

1343. Mr. *Miles.*] Then, taking the whole course of criminal business in Stafford, though the acquittals as to the convictions stand very high in assizes, it is not the case in quarter sessions, is it?—No, it is not.

1344. Have you taken out the whole number of those convicted at quarter sessions and acquitted at quarter sessions in that return?—Yes.

1345. Will you give us the total convictions at quarter sessions, and the total acquittals at quarter sessions, and also at the two assizes?—

Vide Appendix.

1346. Then the result of that is, that that table of yours in 1851 gives a very different aspect to the committals and acquittals than that presented to us by the last witness, does it not?—I cannot say. I have returns of all.

1347. Will you be kind enough to that to add the last return which you have?—

Vide Appendix.

1348. *Chairman.*] Mr. Twamlow is still chairman, is he not?—He is. Perhaps it may appear strange that there are so many acquittals at the assizes; but there is an adjourned quarter sessions immediately before the assizes, and often trumpery cases are kept back and sent to the assizes.

1349. What is the motive for that, do you suppose?—The solicitors are not paid at our quarter sessions.

1350. Then

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1350. Then it is for the sake of getting money that these frivolous prosecutions are brought at the assizes?—I believe so.

1351. That is quite transparent upon the face of it?—I have no doubt of it; it is done frequently.

1352. Mr. *Miles.*] Are there no briefs made out by attorneys at quarter sessions?—No, the clerk of the peace prepares all the briefs.

1353. Are counsel employed for the prosecution?—Yes, in every case; the clerk of the peace issues the briefs.

1354. Mr. *Attorney-General.*] That is the rule at Stafford?—Yes.

1355. The clerk of the peace prepares the briefs?—He prepares the indictment and brief.

1356. I suppose that consists in handing over the depositions?—No, there is a brief made out; the depositions are always with the chairman.

1357. Mr. *Miles.*] Is the clerk paid by a fee?—He is paid 13 *s.* 6 *d.* for each case.

1358. Mr. *Attorney-General.*] Are other attorneys excluded?—Except in particular cases; cases may arise where they think that it would require an attorney to watch the case, and in such cases an attorney is employed.

1359. Supposing a private prosecutor desired to employ an attorney, and did so, and that attorney prepared the brief for counsel; would he, in the ordinary course of things, be allowed for the preparation of that brief?—Yes, the bench invariably allow costs in such cases.

1360. Mr. *Watson.*] Is the scale of fees higher for prosecutions at the assizes than at the sessions?—No, it is the same scale; there is the same scale to witnesses.

1361. Mr. *Attorney-General.*] Then why should an attorney prefer going to the assizes?—Those are trumpery cases which are held over, such as stealing a bit of coal or a pair of old shoes, and robberies at lodging-houses; they are often kept back and sent to the assizes.

1362. If those cases came to the sessions, the magistrates would not allow an attorney?—No.

1363. Mr. *Watson.*] I suppose the chairman and deputy chairman of the sessions have long experience, have they not?—Very long; the present chairman 20 years, and the deputy chairman, I believe, about the same standing.

1364. Mr. *W. Ewart.*] Do they sift the cases more scrupulously than the judges; they understand local circumstances?—I dare say they do. I do not think it is very desirable that those paltry cases should be brought before the judges. I may be allowed to explain that it is not the fault of the police in keeping back those cases; but I beg to say that I think the police should have no interest in the prosecution; they ought to be amply paid, but not to have any interest in the prosecution.

1365. Mr. *Miles.*] Do you consider, then, that the police in Stafford are inadequately paid?—I think they are amply paid, as amply as any force in England, and that they are as efficient as any force in England.

1366. *Chairman.*] You think it is their duty, and that they should do their duty and not receive any extra allowance; you think they should be content with the fair salary which they receive?—No, I do not say that; but I think it would be better to pay the police in another way; of course, at present they are obliged to be paid out of the certificate of costs.

1367. At present they have a pecuniary interest in the prosecution?—They have to a certain extent.

1368. And you think that a bad thing?—I do. I think it better to pay them in another way.

1369. Mr. *W. Ewart.*] In what other way would you suggest that they should be paid?—I think it would be better if there could be some understanding about it; that an allowance should come direct from the county, so much a day for attendance, and that arrangement should be made for the amount allowed the police be paid over to the county; it is so in Staffordshire now.

1370. Mr. *Philipps.*] If I understand you rightly many offences occur for which there would be no prosecution instituted if the police did not take them up?—Unquestionably. In Staffordshire there is a large population, upwards of 600,000, which includes a moving population of tramps and vagrants. The greater number of the cases arise from mere stealing in lodging-houses, of which the police and parish constables take cognizance.

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1371. They could not get back their things unless they prosecuted; I suppose that is their motive power?—I would go further than that, instances have come within my knowledge where parties have got up a prosecution themselves, one robbing the other. One wanted to go to gaol; he was labouring under disease; it was a good place for him to go for two or three months; he steals the property of one of his companions; he is apprehended, the property is sworn to, he is sent for trial; he, perhaps, pleads guilty, and gets a month's imprisonment or two, and comes out whole, and his companions get their expenses.

1372. Have you known many such cases?—I think many of them occur in Staffordshire. I happen to have a calendar in my pocket for Staffordshire (*producing the same*).

1373. Mr. *Watson.*] Is that for the assizes?—This is for the sessions.

Mr. *Robert Barr,* called in; and Examined.

Mr. *Robert Barr.*

1374. *Chairman.*] WHAT are you?—I am Clerk to the Justices at Leeds, in Yorkshire.

1375. How long have you been so?—I have been clerk and assistant clerk to the justices at Leeds nearly 40 years.

1376. During that time have you had opportunities of seeing a good deal of the administration of the criminal law?—A very great deal; probably as much as any man in the north of England; and in my early life I had, perhaps, the largest criminal business in my hands there.

1377. Are you in the same district as Mr. Markland?—Precisely; I am the clerk to the justices, and Mr. Markland is one of the gentlemen who take the papers when the magistrates have finished with them, in order to conduct the prosecutions.

1378. Did you hear Mr. Markland give his evidence?—I heard Mr. Markland give his evidence here on Tuesday last.

1379. He told us that in consequence of the abuses which were found to prevail, a different system had been set on foot; is that a correct statement?—That was so no doubt in 1842; upon which I made a report to the magistrates and to the council; and upon that report the appointment of Mr. Markland, and his coadjutor, Mr. Rawson, as public prosecutors, was made, and it has been continued down to the present time.

1380. In your opinion, has that system answered?—I am of opinion that the way in which the prosecutions from Leeds is conducted, both at the assizes and at the sessions, through the instrumentality of those gentlemen so appointed, is most satisfactory, and advantageous to the course of public justice.

1381. Has it put a stop to the evils which existed, which were mentioned in your report?—With relation to the evils which existed anterior to 1842, from the connexion between policemen and persons (with whom they appeared to be associated), which led to a strong supposition that the course of justice was not pure; that has been, I think, effectually cured.

1382. That evil has been removed?—That evil has been removed.

1383. In your opinion, but for that system, would it happen that a failure of justice would take place more frequently; for instance, from the want of getting sufficient evidence, and from the want of cases being accurately prepared?—I am of opinion that those gentlemen, from their constant experience in conducting all the cases proceeding from the borough of Leeds, have become perfectly familiar with the criminal procedure of the country and the legislation connected with it, and that they are now so experienced and so practised that there is every advantage to be derived from their services in the office of public prosecutor.

1384. In your opinion, might such a system as you have adopted at Leeds be beneficially adopted in other parts of the kingdom?—I think it might, though at the same time I do not wish, in giving that opinion, to say that I go the whole length of this Bill which I have before me.

1385. Do you think that the want of some responsible person to superintend the prosecution has a tendency to lead in some cases to a failure of justice?—I think it may have that tendency; and I think it is not possible to find generally professional men so thoroughly up to the mark and conversant with the

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the criminal law as to enable them to conduct those prosecutions with so much efficiency as those gentlemen necessarily can do who are in the constant practice of taking these cases up, and who are always amongst them.

1386. Also, as to the purity of the administration of justice which you have mentioned; do you think that it also might lead to a purer administration of justice?—I think that the public eye is upon those officers. They are directly responsible to the bodies who appoint them, with whom they are in direct communication. These gentlemen must always be conducting themselves respectably, and discharging the duties which they have to perform efficiently, or they could not maintain their position.

1387. Are you acquainted at all with the Scotch system?—I am not, except from report.

1388. Mr. *Philipps.*] Do you know whether the average expense of prosecutions at Leeds is less than at other places similarly situated?—I am not able to answer that question.

1389. Mr. *W. Ewart.*] Has the number of convictions compared with acquittals increased since the introduction of this system of a local public prosecutor at Leeds?—My impression is, that if you get a return of the number of convictions and acquittals from the borough of Leeds for the last six years, it will be found, upon the average, that probably about 80 cases out of every 100 resulted in conviction.

1390. Can you give us any idea of what the proportion was before the alteration took place?—I am unable to answer that question.

1391. Mr. *Attorney-General.*] Through the medium of this system at Leeds, is any assistance given in getting up the cases for trial?—Not before commitment; but I think that the provision made in this Bill, if it could be carried out to that extent, would be a very considerable improvement.

1392. You think that there is still a defect in your system at Leeds, and that you ought to have somebody to superintend the getting up of the prosecutions?—Yes; and I felt that so strongly, that when the Criminal Justice Bill was introduced into the House of Commons, I wrote to the Chairman of that Committee, upon that subject, and I see the defect the more especially now that the justices out of session, namely, in petty sessions, are called upon to decide as to the guilt or innocence of juvenile offenders, which cases seldom go to the sessions; and it is proposed to give a more enlarged summary jurisdiction to the magistrates in petty sessions by the Criminal Justice Bill. I think it is exceedingly injudicious to throw upon the magistrates the entire responsibility of having these cases to investigate in the first instance, without having the slightest information as to the class of witnesses who are to come before them, or the facts they can prove.

1393. The magistrates have the discretion of sending the case for trial?—Yes.

1394. Lord *Stanley.*] Has the total number of prosecutions increased since you have adopted this new system?—I cannot answer that question accurately. Statistics of that description I have not investigated; and there has also been a very large increase of the population of the borough, which comprises a circuit of about 30 miles.

1395. Mr. *W. Ewart.*] From your general knowledge of the subject, do you consider that 80 convictions out of 100 cases is a good proportion?—I think that it is a very fair average proportion; and I think if statistics of that kind were examined, it probably would be found to be a large one; it is four out of five.

1396. Mr. *Watson.*] You said you had made a report in 1842?—Yes.

1397. Have you a copy of that report?—I have a draft of the report which I made in July 1842 on the subject of the appointment of a public prosecutor, and when I was appealed to in 1844 by the council of the borough of Leeds, and by the magistrates, to know in what way the duties had been discharged, I made another report of the 16th of April in that year; and I concluded in this way: "In conclusion I venture to say, that I shall not be surprised to find in a very short time the Legislature making some express provision with respect to the appointments of public prosecutors generally."

1398. The report in 1842 and the report in 1844 are the result of a long acquaintance with the subject, I believe?—In 1842 the report is upon the expedi- ency

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ency of appointing a public prosecutor; and the report in 1844 is the result of the working of it.

1399. Mr. *W. Ewart.*] In consequence of the experience of the advantage of the system of public prosecution at Leeds, have any other towns in Yorkshire adopted the system?—Not, I believe, in Yorkshire, but the same system prevails at Liverpool and Manchester, where prosecutions are in the hands of official gentlemen, and conducted I believe under the direction of such persons representing those places.

1400. Can you tell us whether the same good results have arisen?—I cannot, except from communications made to me by gentlemen from those districts; I can give the opinion entertained by them; it is in consonance with the one which I have expressed. When I speak of public prosecutors, I mean the gentlemen who take the cases immediately after they leave the magistrates, and who take the entire charge of the prosecutions until the parties are disposed of upon their trial. I do not mean in that way to leave it to be inferred that I think it desirable to appoint public prosecutors, to have the conduct of the cases at the assizes and the sessions, in the office of advocate, with whom by this Bill I would not interfere. I wish to limit my opinion, and any recommendation I may be allowed to give, entirely to what is called in this Bill, a district agent.

1401. Mr. *Watson.*] Have you followed up the cases to the assizes, which have been sent from Leeds to York?—I have occasionally attended to prove examinations; but since the Municipal Act passed, 20 years ago, I have not had anything to do with the prosecutions themselves, because the clerks to the justices in boroughs are prohibited from taking a part in those prosecutions.

1402. Can you give the Committee any information with respect to the expense at York?—No; I have been there frequently on occasions of trials, but I have taken no part in them.

1403. You are aware that the York Assizes last generally a fortnight, and sometimes as long as three weeks?—I am.

1404. Does any inconvenience and expense arise by reason of the witnesses having to come twice to the assizes, namely, to go over before the grand jury, and to come afterwards to the trial?—I think arrangements have been made of late years by which that inconvenience has been removed. The facility of communicating with the most distant parts of the country, and the rapidity with which witnesses are brought up, render it now unnecessary for them to go to York before about the period when they are wanted, and so the business is despatched in that way much more regularly.

1405. You keep the grand jury longer, I believe, now than was the case formerly?—I am not aware that it is so; from about Monday to about Friday is the average time, or five or six days.

1406. Do you know anything with respect to the working of the system of sending down a taxing officer from the Government?—Not personally. I have been told by gentlemen that it has worked advantageously. I do not know it of my own knowledge.

1407. Mr. *Miles.*] In this report which you made to the magistrates at Leeds, you stated, did you not, that the more respectable part of the profession of attorneys did not agree with you in that report?—Yes. I believe in the first instance they viewed the appointment of those gentlemen as public prosecutors as interfering with their legitimate professional duties.

1408. Mr. *W. Ewart.*] Are you speaking of the first report?—I am speaking of the report upon the working of the system from 1842 to 1844.

1409. Mr. *Miles.*] Is it your opinion that if the prosecutions were left in the hands of the highest class of attorneys, there would be no necessity for these district agents?—If it were possible to transfer to the higher class of professional men the conduct of prosecutions, there could be no objection whatever, and they would perform the functions of public prosecutor in the sense I use that term; but I believe that to be practically impossible, because I think it can never be worth the while of respectable men to go either to the quarter sessions or to the assizes to conduct one or two cases; inasmuch as the allowance of costs must be wholly inadequate to compensate them for any services which they would have to perform.

1410. Supposing you were to alter it in this way, to give the committing magistrates the power of appointing an attorney, which attorney should be paid proper

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proper costs; do you not think that it would entirely supersede the necessity of this public prosecutor?—That is the system at present in existence. The magistrates at Leeds have already appointed since 1842 the very men; but embracing a considerable number of prosecutions; viz. the whole of which emanate from the borough of Leeds.

1411. I am now speaking as to the whole country?—I can only speak of what the probable effect would be in the whole country, from my experience of what has been passing within my own immediate district; but I think the system or principle is a very desirable one to adopt.

1412. If what I have now suggested to you were adopted throughout the whole of the country, namely, if the magistrates who commit had the power of ordering a prosecution, and taking care that the brief was prepared by an attorney of respectability, do not you think it would do away with the necessity of the whole host of officers?—I think it would do away with the necessity of many officers who are spoken of in this Bill. I do not think it is by any means desirable to appoint that mass of officers. I think the machinery of this Bill may be very much simplified, and that the 10th section of this Bill, with some additions, would carry out all my views efficiently.

1413. You conceive that by adopting the 10th section we should do almost all that was necessary for the furtherance of public justice?—I think the 10th, 11th, and 12th sections might be so combined into one section as efficiently to vest in respectable men the power of conducting those prosecutions, without the necessity of a public prosecutor, in the sense in which the term public prosecutor is used in this Bill; that is to say, that they shall simply take the charge of the prosecutions from the magistrates' hands, with the depositions; and that they shall have thrown upon them the responsibility of making out the briefs and examining the witnesses, if any extra witnesses should be necessary, as frequently arises. I know very well that in numerous cases it becomes indispensably necessary for a gentleman to take up the depositions, and carefully to look them over and supply these deficiencies, which cannot always be supplied before the magistrates. Events frequently arise afterwards; therefore, in speaking of that class of men, I say that they would be perfectly competent to take the charge of the case when it came out of the hands of the magistrates, and to carry it through to the assizes or to the sessions, prepare proper briefs, and put them into the hands of counsel.

1414. From your knowledge of the profession, generally speaking, interspersed throughout the country, do you think there would be any difficulty in getting men adequately to perform those duties?—None whatever.

1415. Mr. *Attorney-General.*] Then instead of having an officer for each district, you would have a number of attorneys?—Under that system it necessarily would devolve upon a number of attorneys.

1416. You would have a number of attorneys appointed by the magistrates? —I am not looking to the magistrates particularly as the parties concerned; they may be appointed by the magistrates, or they may be appointed by other functionaries.

1417. What functionaries?—Councils of boroughs amongst other bodies or functionaries may do it; the council of the borough of Leeds does it conjointly with the magistrates.

1418. Let us confine ourselves to the county?—I should very much doubt whether you would be able in that case to get any proper appointment made, other than through the magistrates in their sessions.

1419. You think that the Government would not be competent to make such appointments?—The Government, I think, would be quite competent to make such appointments, but they would want a great deal of information, which ultimately, I think, must proceed from the magistrates themselves or other local bodies.

1420. Information as to what?—As to the fitness and qualifications of persons on the spot.

1421. You think they could not get that, except through the magistrates?—I think they would get it best from local bodies, but not necessarily and exclusively so.

1422. As I understand you, you propose that instead of there being district agents for districts, each petty sessional division shall recommend a person who shall

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shall conduct the prosecution?—I do not know as to each petty sessions, for I think that would lead to a great many appointments, and probably too many.

1423. When you say that the magistrates shall appoint, how many magistrates do you think should appoint?—That must necessarily depend upon the size of the district; take the whole of the West Riding of Yorkshire.

1424. Would you appoint one man for the whole of the West Riding?—I think it would be perfectly impracticable for any single gentleman to transact the whole of such business of the West Riding; but I think that the magistrates of the West Riding might appoint at quarter sessions, or at special sessions in their respective divisions, a competent number.

1425. It comes practically to this, you would desire to have agents established for particular districts?—That is my view of it.

1426. Then you would not have each petty sessional division of magistrates appoint a solicitor to conduct the business for that particular division?—I think the course I have suggested already would be desirable.

1427. But you would have the country divided into districts, and have an attorney appointed for each district to conduct all prosecutions?—That would appear to me the only feasible way in which it could be done, viz. in districts, divisions, or boroughs.

1428. As I understand you, the difference between your scheme and that of the Bill of our Honourable Chairman is, that whereas he proposes one mode of appointing these district agents, you would have them appointed by the magistrates?—No, there is a great difference still; when I speak of appointing agents, or in other words, public prosecutors, I mean that their functions shall cease the moment they have their brief ready for counsel, who shall then take the conduct of the case; whereas the public prosecutor, by this Bill, is the person to conduct the prosecutions at quarter sessions or assizes as an advocate.

1429. The district agent is only to act as an attorney?—Merely to do what an attorney is doing throughout the country, and what is done at Leeds, except as I have already suggested, more enlarged powers for assisting in the investigation of cases before justices.

1430. Then the difference between your scheme and that of our Chairman is, that whereas he proposes to leave the appointment in the hands of the Government, you propose that it shall be done by the magistrates?—Yes.

1431. So far as that district agent is concerned?—Yes.

1432. Mr. *W. Ewart.*] Are you aware that in Scotland the procurator fiscal, who is like or nearly like the district agent in this Bill, is appointed, in many cases, by the town council in the boroughs of Scotland, as also by the sheriff?—I am not aware of that.

1433. *Chairman.*] You have not turned your attention to that?—I have not.

1434. Mr. *Philipps.*] Supposing the clerk of the petty sessions were employed to conduct the prosecution, do you think that the fear of the discredit which would attach to a failure of conviction would be quite sufficient to prevent him from doing it improperly?—I am very much inclined to think that the clerk to the justices in petty sessions is not the man to conduct such prosecutions; I think he should not be exposed to the imputation of having cases to conduct at assizes and sessions, and at the same time be the adviser of the justices who commit the prisoners for trial.

1435. You think those functions should be kept distinct?—If not kept distinct, I think every clerk to the justices should be upon a fixed salary.

1436. Mr. *Miles.*] You have given us your views relative to the appointment of the district agent; as I understand, you do not concur in any other parts of the Bill?—I do not carry my views beyond the appointment of competent and respectable men to assist in conducting these cases to the point at which the briefs would pass from their hands into the hands of counsel, or, in other words, adopting the system which prevails at present at Leeds, with the additional powers to which I have referred, except that I would have those gentlemen appointed by proper functionaries, and responsible to them for the performance of their duties.

1437. *Chairman.*] In short, you do not think any other system feasible than that which you have mentioned?—I do not think that it is not feasible, but I think one is preferable to the other.

1438. Have you considered the Irish system?—No.

1439. Have

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1439. Have you considered the Scotch system?—No.

1440. Have you considered the French system?—No.

1441. Have you considered the system of any other country besides this? —No.

1442. And your experience is derived from what has happened at Leeds?—My experience is derived from 40 years' practice and observation.

1443. Mr. *Watson.*] You have experience, in fact, of a public prosecutor?—My duties have made me familiar with such officers.

1444. Mr. *W. Ewart.*] They are public prosecutors, so far as your experience extends?—Yes.

Captain *John H. Hatton,* called in; and further Examined.

Captain *John H. Hatton.*

1445. *Chairman.*] AM I right in saying that in 1852 there were from Stafford 192 persons prosecuted at the assizes?—Yes.

1446. That that cost the county 3,686 *l.*?—Quite so.

1447. That would be at the rate of 19 *l.* a head?—Yes.

1448. Am I right in saying that there were 769 prosecuted at sessions?—Yes.

1449. That it cost the county 5,582 *l.*?—Yes.

1450. And that that would be 7 *l.* a head?—Yes.

1451. That in 1853 there were 144 prosecutions at the assizes, and that it cost the county 3,173 *l.*?—Yes.

1452. Being at the rate of 21 *l.* a head?—Yes.

1453. Seven hundred and five at sessions?—Yes.

1454. Which cost the county 5,579 *l.*?—Yes.

1455. Being 8 *l.* a head?—Yes.

1456. In 1854 were there 182 prosecuted at the assizes?—Yes.

1457. Which cost the county 2,994 *l.*?—Yes.

1458. Being at the rate of 16 *l.* a head?—Yes.

1459. Eight hundred and thirty-one at sessions?—Yes.

1460. At a cost of 5,894 *l.*?—Yes.

1461. Being at the rate of 7 *l.* a head?—Yes.

1462. So that you have never prosecuted anybody at the assizes for less than 16 *l.*?—No, not in those three years. Would you allow me to explain a circumstance connected with the police of Staffordshire. It is impossible that there can be any fraud practised upon any witnesses there. I have a person totally disinterested, who receives all the money, has a room to himself, and every witness is called in, signs his name, and is paid by him.

1463. Not by the attorney?—Nor by the police, when prosecutors.

1464. You take care that it shall be done by a confidential person chosen by yourself; that the money shall pass through his hands to the witness?—Yes; it is paid not as it used to be; the prosecutors used to get the signatures of the witnesses, go into the bank, draw the money, and then deal with them as they pleased.

1465. Then there are many cases in which you would not consider it safe to entrust the attorney who conducts the prosecution with the task of paying the witnesses?—I had heard a great many complaints that witnesses were not paid by prosecutors, and I was therefore obliged to adopt the present system.

1466. Do you think it safe that a person should be entrusted with the management of a prosecution who cannot be entrusted to pay the witnesses?—Certainly not.

1467. Mr. *Miles.*] Do you pay the expenses in every case, or only in those cases in which the police are concerned?—Only those cases in which the county police are concerned.

Mr. *Hamilton Richardson,* was called in; and further Examined.

Mr *H. Richardson.*

1468. *Chairman.*] Have you a return to deliver in?—Yes. I have had returns analysed in the form in which I said I would.

[*The Witness delivered in the following Paper:*]

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Mr. *H. Richardson.*

21 June 1855.

BOROUGH OF LEEDS, IN THE COUNTY OF YORK.

A RETURN of the Number of Persons Tried, or Bills against whom were Ignored, for the Borough of *Leeds*, in the County of *York*, with the Number Acquitted and Convicted, between the Christmas General Quarter Sessions 1839 and the Michaelmas Quarter Sessions 1842, being Three Years immediately preceding the Appointment of Public Prosecutors for the said Borough; and also the like RETURN for the Three Years immediately succeeding the Appointment of Public Prosecutors.

Year ending Michaelmas.	Number of Bills Ignored.	Number of Acquittals.	Number of Convictions.		Total Convictions.	GRAND TOTAL.
			Pleaded Guilty.	Found Guilty.		
1840 - -	20	48	91	116	207	275
1841 - -	21	72	98	151	249	342
1842 - -	18	81	87	116	203	302
	59	201	276	383	619	919
1843 - -	5	69	41	164	205	279
1844 - -	19	64	52	106	158	241
1845 - -	15	51	30	97	127	193
	39	184	123	367	490	713

TOTAL CASES finally disposed of at Sessions in the Three Years immediately preceding the Appointment of Public Prosecutors.

Bills ignored - - - -	59	
Acquittals - - - -	201	
		260
Pleaded guilty - - - - -	276	
Found guilty - - - - -	383	
		919

Or, Bills ignored and acquittals, 28·3 per cent.
Pleaded guilty - - - 30 „
Convictions on trial - - 41·7 „
100

TOTAL CASES finally disposed of at Sessions in the Three Years immediately following the Appointment of Public Prosecutors.

Bills ignored - - - -	39	
Acquittals - - - -	184	
		223
Pleaded guilty - - - - -	123	
Found guilty - - - - -	367	
		713

Or, Bills ignored and acquittals, 31·28 per cent.
Pleaded guilty - - 17·25 „
Convictions on trial - - 51·47 „
100

Mr. *Samuel Johnson Roberts*, called in; and Examined.

Mr. *S. J. Roberts.*

1469. *Chairman.*] WHAT are you?—A Solicitor in Chester.

1470. How long have you practised?—Upwards of 35 years.

1471. Have you had much experience during that time in criminal business?—I have had a large experience.

1472. In your opinion does it happen that an attorney is called upon to advance money for prosecutions?—Never, except in this way; that occasionally after the magistrate's certificate is given, which we consider as practically cash, we pay the witnesses, if they are in indigent circumstances, the sum which is allowed them.

1473. Is it within your experience that an attorney has been sometimes refused his expenses by the judge, and has been out of pocket?—Never where the prosecutor has been bound over to prosecute.

1474. You never knew of such a case?—Never.

1475. Do you believe that that may exist where an attorney may be called upon to advance money for the sake of properly getting up a prosecution?—No, because in weighty cases the judge usually directs an extra allowance beyond the stated scale.

1476. You do not think that possible?—No; the scale is so strictly and plainly defined, that I think he cannot err if he is a man of common prudence.

1477. Then

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1477. Then you differ with the witnesses who have been examined to-day, who tell us that it is very commonly the case?—I have never met with it.

1478. Mr. *Miles.*] Have you looked at this Public Prosecutors Bill?—I have.

1479. Do you assent to the provisions in that Bill generally?—I think that a great alteration is requisite in reference to the criminal practice of the country, and that it would be mainly met by making the magistrates' clerks independent of the motive which they have in conducting prosecutions.

1480. Do you mean by that, by the payment of salaries instead of fees?—I do, by preventing them, in short, upon the principle of the Municipal Act, from conducting prosecutions at all.

1481. Do you think that with that alteration the prosecutions would be better conducted, and conducted more often to conviction than they are at present?—I do not think that particularly, but I think that considering the motive (I am speaking of my own profession of course) and habits of magistrates' clerks, conducting as a matter of course, which they almost always do, the prosecution, it is a temptation with the profession to multiply prosecutions unnecessarily, and I have very frequently seen it.

1482. And you think that an alteration of the mode of payment, namely, the payment of salaries instead of fees, would obviate that?—To a large extent.

1483. Would you make any other alteration?—I think that some governing power is wanted, particularly in thinly-populated districts, such as Wales, where I think a great failure of justice often occurs from the want of a particularly close police inspection; and that from the parties knowing each other, and being on intimate terms, they are bought off. I do not mean pecuniarily, but by friendly influences, they are induced to give up prosecutions.

1484. How would you meet that case?—I think, in those cases, from a public prosecutor a great advantage would result.

1485. Mr. *Attorney-General.*] What do you mean by a public prosecutor?—There must be some person with a control to see that where a crime is committed it is brought to justice, and that no sinister influences are allowed to prevent its being brought to public justice.

1486. Do you mean that that should be in the hands of the magistrate's clerk?—I doubt that.

1487. You before suggested that a change should be made in the position of magistrates' clerks; and I understood you to say that that was all you thought necessary?—No. I think that if the magistrate's clerk were quite independent of the question of prosecutions, it would place him in a higher position with reference to the administration of justice than he is now in, when he has a personal interest in conducting them.

1488. Mr. *Miles.*] Whom would you put intermediately between him and the court?—I think that it would be highly desirable that there should be a recognised agent for conducting the prosecutions of every petty sessions; or, in order to avoid the multiplication of officers, one person (which could be the case where the population is not very thick), comprising a hundred of a county.

1489. Then that would be a person almost representing what the district agent would?—Exactly so.

1490. Have you heard the examination which has taken place to-day as to the boroughs?—I have.

1491. Do you think that that would be a good person to put between the magistrate's clerk and the court?—I think that such a person would be desirable in boroughs; from my own experience I know that the law is practically violated perpetually.

1492. Mr. *Attorney-General.*] In what respect?—In reference to the Municipal Act; the Municipal Act, as you well know, prevents a magistrate's clerk from conducting prosecutions; but it is done as directly as if it were done by himself.

1493. It is still done notwithstanding that provision?—It is still done in defiance of all that.

1494. *Chairman.*] The Act is evaded?—It is practically evaded; I know a case (and perhaps the Committee will excuse me mentioning names) where a dissolution of partnership took place in order to enable the partner to conduct the prosecution whilst the original person continued clerk to the justices, the business being practically done by the same person who had done it before, and that person conducting the prosecutions.

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Mr. *S. J. Roberts.*

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1495. Mr. *W. Ewart.*] Is that a single instance, or do you think it a specimen of other instances?—I do not know whether the same means are taken to obtain the same end, but I know that the same practice exists at other places.

1496. Mr. *Miles.*] How would you pay your district agent; would you pay him by salary or by fees?—I think that he would be amply paid, from my own knowledge of the emolument for a prosecution, by the county allowance, inasmuch as I see that the most respectable men in the profession are now contented with it.

1497. Mr. *Attorney-General.*] Do you not think that it would be better to pay him a salary, so as to give him no motive for multiplying the prosecutions?—I should say so, if he had any control in seeing which case should be carried on and which should not; but if the responsibility of that rested with the magistrates, then I would let him take the county allowance.

1498. Mr. *Miles.*] Do you conceive that in all parts of the country gentlemen eminent in their profession as solicitors and attorneys would be willing to accept that payment, and to conduct the prosecution to a conviction, or to an acquittal? I have not the least doubt of it, inasmuch as they do it now in my county to an almost universal extent.

1499. Mr. *Attorney-General.*] Supposing a gentleman to be appointed to conduct the prosecutions in a district, which is what you say you think desirable, would not his time be quite sufficiently occupied if devoted exclusively to the conduct of those prosecutions?—No; a question was put in the early part of the day with reference to magistrates taking depositions at their own houses, which is a very common practice, even though the same person who takes those depositions may not be their petty sessional clerk. If the cases were heard before magistrates' pretty much upon the plan that they are now in boroughs on stated days, then the time of the attorney would not be so fully occupied as to absorb it, and prevent a respectable man thinking it worth his while to conduct the prosecutions.

1500. You are not speaking of magistrates' clerks now?—No; I would prevent the magistrates' clerks doing it. I refer to a district officer to conduct the prosecution, independently of the magistrate's clerk.

1501. Do you contemplate that a gentleman appointed for the whole district, with the number of cases which would come before him, should also practise his own profession, independently of that?—Yes; I think that no man of standing and mature ability will ever be found who will abandon his general practice merely to conduct prosecutions. I see that the Bill proposes three years. I think a man is totally incapable of conducting important prosecutions of that standing only in the profession. I think that you would not get men who are really competent to conduct prosecutions properly, whose sole business it should be, unless a salary were given, such as I think ought not be given, and need not be given.

1502. You would give a salary commensurate to the services performed?—Exactly so.

1503. If you took up the whole of a respectable man's time to conduct the prosecutions of a district, you would pay him a salary equal to the services which you demanded of him?—I think it would not require any respectable man's time, except in peculiar cases.

1504. *Chairman.*] Surely the mere mechanical process of being in court would occupy a very large amount of time sometimes, though the intellectual labour might not be very great?—In a very large and populous district it would be so.

1505. Mr. *Miles.*] As I understood you, the proceedings would go on precisely as they do now, up to a certain point; the magistrates would take the depositions, the magistrate's clerk would be there; if they committed the man, then the depositions would go before the district agent?—Exactly so.

1506. So that all the preliminary part would have been done to his hand?—Exactly so.

1507. All that he would have to determine would be, whether upon those depositions there was evidence enough to convict the man; if not, he would have to seek for other evidence?—Whether it was a case which ought fairly to go before the grand jury.

1508. And that, with a gentleman who has been seven or eight years in his profession, would be no difficulty whatever, and would scarcely interfere with his private business?—I think it would not, in most districts.

1509. Mr.

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1509. Mr. *Watson.*] Upon the question of salaries and fees, although you had a very respectable gentleman who was carrying on a very good business, there might be some little inducement to increase the expense of a prosecution, if he were paid by fees?—He could not do so, because the scale is so closely prescribed that all motive has gone by.

1510. Supposing the magistrates had committed, and it was necessary to get up a good deal more evidence, he must be paid for finding out that evidence, and bringing it to the assizes or sessions wherever it might happen to be, and he would charge for it?—He does not now, nor to my knowledge does he receive anything for it.

1511. Is he paid for the brief?—The brief is limited to a small sum, to a guinea, in all ordinary cases at sessions.

1512. At the sessions?—At the county and at our city sessions.

1513. Have you the scale of fees for the expenses of prosecution at the sessions and assizes in Cheshire?—I have not got a printed bill; but I have a bill copied from one for the assizes. There is a printed one for the city (*producing the same*).

1514. These are the expenses allowed for the city prosecutions?—Yes, in all ordinary cases.

1515. Have you either a printed or a written statement of the expenses allowed in prosecutions in the county of Cheshire?—I have, and this is it (*producing the same*).

[*The Witness delivered in the following Papers:*]

PROSECUTIONS, CHESTER.

COSTS of ASSIZE and SESSIONS PROSECUTIONS from 1850 to 1854, both inclusive.

ASSIZES.			TOTALS.	SESSIONS.			TOTALS.
		£. s. d.	£. s. d.			£. s. d.	£. s. d.
50: ending October.	Prosecutions at assizes -	4,146 17 3		1850 -	Prosecutions at sessions -	6,581 8 –	
	Marshall's fees, &c. -	269 18 2	4,416 15 5		Constables attending as witnesses - - -	530 2 2	7,111 10 2
- -	Prosecutions at assizes -	3,881 – 2		1851 -	Prosecutions at sessions -	7,948 8 9	
	Marshall's fees, &c. -	241 11 10	4,122 12 –		Constables attending as witnesses - - -	632 2 2	8,580 10 11
- -	Prosecutions at assizes -	4,833 9 8		1852 -	Prosecutions at sessions -	7,901 8 4	
	Marshall's fees, &c. -	299 8 2	5,132 17 10		Constables attending as witnesses - - -	666 13 3	8,568 1 7
- -	Prosecutions at assizes -	4,483 12 5		1853 -	Prosecutions at sessions -	7,954 17 9	
	Marshall's fees, &c. -	274 – 10	4,757 13 3		Constables attending as witnesses - - -	658 17 8	8,613 15 5
- -	Prosecutions at assizes -	3,013 4 3		1854 -	Prosecutions at sessions -	8,990 14 5	
	Marshall's fees, &c. -	223 6 4	3,236 10 7		Constables attending as witnesses - - -	840 4 6	9,830 18 11
		£.	21,666 9 1				42,704 17 –

Note.—The Sessions Prosecution Costs are exclusive of 80 *l.* a year payable to the clerk of the peace for arraigning and discharging prisoners.

	£. s. d.
Gross Cost of Prosecutions at Assizes, including Marshall, Crier, and Clerk of Assize Fees - -	21,666 9 1
Gross Cost of Prosecutions at Sessions, including Constables' attendance as Witnesses - - -	42,704 17 –
	64,371 6 1

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AMOUNT Paid for PROSECUTIONS at SESSIONS and ASSIZES in the County of *Chester*, taken from the Published Accounts.

SESSIONS.					ASSIZES.				
		£.	s.	d.			£.	s.	d.
1850	For the year ending 10th October - -	7,111	10	2	1850	For the year ending 10th October - -	4,416	15	[illegible]
1851	- - ditto - - ditto - - - -	8,580	10	11	1851	- - ditto - - ditto - - - -	4,122	12	-
1852	For the year ending 29th September - -	8,568	1	7	1852	For the year ending 29th September - -	5,132	17	11
1853	- - ditto - - ditto - - - -	8,613	15	5	1853	- - ditto - - ditto - - - -	4,757	13	[illegible]
1854	- - ditto - - ditto - - - -	9,830	18	11	1854	- - ditto - - ditto - - - -	3,236	10	[illegible]
	TOTAL - - - £.	42,704	17	-		TOTAL - - - £.	21,666	9	[illegible]

CHESHIRE.

COPY BILL on PROSECUTION for FELONY, received by me in London 15th June 1855.

Assizes 1854.

The Queen, on the prosecution of

Against

For

	£.	s.	d.
Expenses attending examining before magistrates, as per certificate - -			
Instructions for indictment - - - - - - - - - - -	–	6	8
Paid for indictment and breviate - - - - - - - - -			
Paid for certificate of prior convictions (when necessary) - - - -	–	6	8
Paid agent's charge and correspondence - - - - - - - -	–	6	8
Paid swearing witnesses and discharging recognizances; crier's fees - -			
Paid bailiff of grand jury, with indictment - - - - - - -	–	2	6
Examining witnesses, and taking instructions for brief - - - -	–	6	8
Drawing brief in ordinary cases - - - - - - - - -	1	1	–
Fair copy - - - - - - - - - - - - - -	1	1	–
Paid Mr. and his clerk - - - - - - - - -	2	4	6
Paid Mr. and his clerk, where two briefs are allowed - -			
In cases of extraordinary length and importance, when the brief exceeds 10 sheets an extra charge may be made, and extra fees paid to counsel, to be fixed by the proper officer, accompanied by a special note, stating the number of sheets contained in the brief, and that the extra allowance is reasonable - - - - - - - - - - - - - -			
Paid clerk of assize and clerk of arraigns - - - - - - -			
Attorney attending court, if resident, 13*s.* 4*d.* per diem, and if non-resident, 1*l.* 1*s.* per diem, up to and including the day of trial - - - -			
When the attorney is employed in more than one prosecution, he is to be allowed one half only of the foregoing charge for his attendance in each case, but so as not to receive less than one guinea per day, nor to charge for time in more than one prosecution against the same prisoner - -			
No charge to be made for time in more than six prosecutions.			
Attorney, for time and expenses of travelling, 6*d.* per mile to and from Chester, where the distance travelled does not exceed 20 miles; but where it exceeds that distance, then he is to be allowed his actual coach-fare or railway-way-fare; but in the event of there being no public conveyance, he is to be allowed 6*d.* per mile to and from Chester, whatever the distance travelled, except he be resident in another county, in which case the mileage is to be calculated from the confines of this county only - - - -			
No allowance whatever for time, mileage, or travelling expenses to be made to any attorney, except on the appearance of himself, or an efficient clerk to attend to his particular cases only.			
Paid for subpœna - - - - - - - - - - - - -			
Service, 6*d.* per mile, and copies - - - - - - - - -			
Expenses of witnesses, including constables and police officers; if resident, 3*s.* per day; if non-resident, 5*s.* per day, to be charged in one indictment only - - - - - - - - - - - - - -			
Mileage			

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	£. s. d.
Mileage for travelling expenses of witnesses to and from Chester, 4*d.* per mile each way, where the distance travelled does not exceed 20 miles; but where it exceeds that distance, then the prosecutors and witnesses are allowed their actual expense of coach-fare or railway-fare, with reasonable expenses for maintenance on the road not exceeding 3*s.* per day; but in the event of there being no public conveyance, witnesses to be allowed 4*d.* per mile each way for expenses and mileage, whatever the distance travelled - - - - - - - - - - - - -	
Attorneys attending as witnesses only, and medical and other professional men, to be allowed one guinea per day for their attendance, and the same mileage as in the cases of attorneys attending to conduct prosecutions, to be calculated from their respective residences - - - - - - -	
Paid for order, 1*s.*; prosecutor, 6*d.* each witness to clerk of assize - -	
Paid bailiff attending jury in cases where they retire to consider their verdict, 2*s.* 6*d.* - - - - - - - - - - - - - -	
£.	

THE SCALE of FEES under MUNICIPAL ACT.

Borough and City of Chester to wit. } QUARTER SESSIONS.

The Queen on the Prosecution of
against

AN ACCOUNT of COSTS and EXPENSES craved by the Prosecutor.

DEDUCT. £. s. d.		£. s. d.
	Attending prosecutor, and taking instructions for indictment -	- 6 8
	Attending to leave the instructions for the indictment with the clerk of indictments, and afterwards for the indictment -	- 3 4
	Paid for indictment - - - - - - - - - -	
	Certificate of prior conviction - - - - - - -	
	Paid bailiff of the grand jury with indictment - - - - -	- - 6
	Paid swearing witnesses; prosecutor 1*s.*, each other witness 6*d.*	
	Examining witnesses, and taking instructions for brief - -	- 6 8
	Drawing same, 13*s.* 4*d.*, or 8*d.* per folio; but not exceeding 1*l.*	
	Fair copy for counsel, 4*d.* per folio; not exceeding 10*s.* - -	
	Paid counsel - - - - - - - - - - - - -	1 1 -
	His clerk - - - - - - - - - - - - -	- 2 6
	Attorney attending court, if resident, 13*s.* 4*d.* per day, days	
	Ditto, if engaged in more than one prosecution, 6*s.* 8*d.*, days	
	If non-resident, 1*l.* 1*s.* per day - - - - - - - - days	
	If more than one, 10*s.* 6*d.* per day - - - - - - days	
	Expenses of witnesses resident, 3*s.* 6*d.* per day* - - days	
	If more than three miles distant, 4*d.* per mile each way for travelling expenses, in going to and returning from court (in one case only) - - - - - - - - - - - -	
	If detained all night, and non-resident, in addition, per night 2*s.* 6*d.*, nights - - - - - - - - - -	
		(*continued*)

* The expenses of the superintendent of police and inspector (if witnesses) are not to be recognised by the attorney.

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Mr. S. J. Roberts.

21 June 1855.

DEDUCT. £. s. d.		£. s. d.
	Arraigning prisoner, recording verdict, &c. - - - -	
	Order for costs - - - - - - - - - - - -	- 1 -
	Calling, swearing, and counting jurors - - - - - -	- 4 -
	Abstracting indictment for recorder - - - - - -	
	Witnesses before grand jury, 6 *d.* each - - - - -	
	The like in court, 1 *s.* each - - - - - - - - -	
	Sixpence on each Witness, order for expenses - - -	
	Subpœna - - - - - - - - - - - - - -	
	Taxing and allowing costs - - - - - - - - -	- 2 -
	Costs prior to conviction, as allowed by magistrates' certificate -	
	Filing ditto - - - - - - - - - - - - -	
	Discharging recognisances - - - - - - - - -	- 3 6
	Order for gaoler - - - - - - - - - - -	
	£.	

Note.—No witness to be allowed upon more than one prosecution on any one day, although he may be a witness on several.

All prosecutors and witnesses who receive salaries or wages from the town council are to be allowed not more than 2 *s.* per day for attendance in court and before committing magistrates.

But nothing to be allowed for costs of attendance before magistrates previous to commitment in felony, unless upon the production of the committing magistrates' certificate.

*** The charge for time not to be made on more than one prosecution against the same prisoner.

1516. How long has this scale of fees been in use in the city of Chester?—Ever since the Municipal Act came into operation.

1517. That does not apply to the county?—No.

1518. In the county, how long has it been in operation?—I cannot say with certainty, but the scale has been very much reduced in the county, and that is the lowest scale now acted on.

1519. You have stated that these are in ordinary prosecutions?—Yes.

1520. There are, of course, extraordinary prosecutions?—There are.

1521. Some require a great deal of time and trouble, and to search out fresh evidence after commitment?—Yes.

1522. I presume that that is to be taken into consideration by the proper taxing officer?—That is taken into consideration by the recorder or the judge of the court.

1523. That is to say, whether there is to be an extra allowance beyond this scale?—Exactly so.

1524. Is the recorder the person who taxes the costs?—No; he gives directions to the clerk of the peace that in a particular case he sees reason for an extra allowance, and he gives a general notion of what he thinks should be the extent of that extra allowance. I had a case at the City Sessions only a very few weeks ago, in which the allowance came to 80 *l.*; it was a very weighty and important prosecution.

1525. Are there also extra allowances in the county as well as in the city of Chester?—Yes, but they do not often occur in the county. Murder cases, and cases of that description, I have known cost 300 *l.* or 400 *l.*

1526. Do you not think, under all those circumstances, looking to the fact that there may be extra charges and allowances made, that it would be better to pay professional men by salary rather than by fee?—It would, if it were possible to ascertain fairly what should be the amount that a man ought to receive in a particular district, but that would be exceedingly difficult. For instance, if you appointed a public prosecutor in Wales and appointed him at a salary, such
as

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such as a competent man would require, it would amount to very nearly the entire cost of the prosecutions of that district.

1527. Take a part of your own county, Birkenhead, which is a populous part, and where there is a great deal of low population and a great deal of crime; there the public prosecutor might be paid by salary?—I think so; and in Stockport and the northern division of Cheshire.

1528. The city of Chester is under the Municipal Corporation Act?—Yes. I beg leave to direct the attention of the Committee to what I think will show them the importance of the point which I put to them in reference to avoiding the multiplication of prosecutions. I hold in my hand a table prepared from the published accounts of the county of Chester, showing from 1850 to 1854, which will be five years, the cost of prosecutions at assizes and at sessions, which is almost appalling. With a view to prevent impositions as to charges for witnesses, their expenses are put distinct from the general costs of prosecutions, that is, as to sessions' prosecutions. That table is for eight sessions, four quarter sessions and four intermediate sessions. Upon an average, at our borough sessions, a prosecution costs from 6 *l.* to 8 *l.*

1529. Is the city of Chester a county of itself?—Yes; but there is a recorder, and it is a borough.

1530. Do the judges hold assizes there?—They sometimes do, but there is no business done. I noticed, when I was here last week, the question particularly mooted by the Committee, and I have heard it mentioned to-day also by one or two gentlemen, with reference to making police officers prosecutors. I have seen it done frequently, in defiance of the wish of the actual prosecutor, and from a very obvious motive, to enable the magistrate's clerk to get up the prosecution.

1531. Mr. *Miles.*] You would obviate that by a direct enactment?—Yes, most stringently.

1532. Preventing any policeman or constable from being the prosecutor?—Yes.

1533. And that, from your knowledge of what has occurred, is the only way of obviating the evil?—Yes, because I cannot conceive it can ever be that there should be, in any case of a flagrant crime, a deficiency of a prosecutor, independently of a policeman.

1534. Mr. *W. Ewart.*] Would you allow a policeman in small cases?—I would not allow him in any cases to be public prosecutor.

1535. Mr. *Watson.*] He is a zealous man at any time to convict, I suppose, and becomes ten times more so if there is any emolument?—Yes. In our county the policemen are not paid for any duties which they perform except out of their districts; it is to avoid the temptation to their being improperly zealous in the performance of their duties; but I find that, in practice, almost every policeman takes care to have cases at the assizes; it is a kind of public occasion, on which they meet each other and enjoy themselves.

1536. He generally combines the office of policeman with that of witness I believe?—Exactly so; for the very purpose, he takes care to make himself a witness either for confession purposes or otherwise.

1537. Mr. *Attorney-General.*] And also as inquisitor, because he generally asks questions of the prisoner under confinement, and proves his statement upon the trial?—Yes.

1538. Mr. *Philipps.*] Captain Hatton stated, that in all the cases where the police constables were the prosecutors, there would be no prosecution at all if they did not prosecute, and that that was the reason why they were employed as prosecutors?—My experience is quite the contrary. I do not know that I have ever seen a policeman made prosecutor when it has been actually requisite to do so.

1539. Mr. *Attorney-General.*] By that I suppose you mean that the aggrieved individual would come forward as prosecutor?—I have often seen him in the very room ready to become so.

1540. Is a private individual, in your opinion, always competent to conduct a prosecution with efficiency?—Not alone; and my experience does not go in any one instance to a case in which a prosecution has been conducted without professional aid, as I have heard stated in this room; and I have never myself seen that aid wanting where the parties have been bound over. The attorney knows that he will of course get, small as this scale is, from the county, that remuneration which is recognised by the published scale of charges.

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Mr. *S. J. Roberts.*

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1541. Have you never had experience of cases being insufficiently got up, and brought to trial in consequence of the smallness of the remuneration of the attorney?—I think not; but I have known them very frequently deficiently got up where the magistrate's clerk has mechanically, if I may so term it, conducted the prosecution and merely put in the hands of counsel, as I have seen in scores of instances myself, a copy of the depositions without a single comment or direction to counsel what the points of the case were.

1542. That is very commonly done, is it not?—Almost universally.

1543. They are content with the evidence as it leaves the magistrates; and so far as the instructions of counsel are concerned, they merely hand over to them a copy of the depositions?—Yes, and may blunder through it as they like.

1544. *Chairman.*] Do you think that that is the way in which the criminal law of a great country ought to be administered?—I think it is a very improper way.

1545. Mr. *W. Ewart.*] I did not understand Captain Hatton to say that the police officers were indispensable in all cases, but in certain cases, such as stealing from common lodging-houses?—Not in all cases.

1546. Mr. *Philipps.*] With reference to the payment by salary or by fees, if I understand correctly what you have said, I think you have expressed an opinion that there would be no great difficulty in fixing the amount in populous places, but that there would be a very great difficulty with regard to thinly populated places?—If it were contemplated to take a professional man's whole time, it would be necessary to do so in thinly as well as densely populated districts; I think there might be great evil also connected with the appointment of a public prosecutor; I am speaking of the Bar; that it would tend very much to throw a monopoly into the hands of a public prosecutor, as against the rising talent of the Bar, and operate very unfairly towards them. We had an instance in our county, where the Attorney-general, the late Mr. Hill, had the monopoly up to a very few years ago; every prosecutor was obliged to put a brief into his hands, and the result was, as it would probably be everywhere if it were endeavoured to make a monopoly of conducting prosecutions, that it was most miserably done.

1547. *Chairman.*] Are you aware how the business is done in Scotland?—I am not, practically.

1548. Are you aware how the business is done in Ireland?—I am not, except by report.

1549. Are you aware how the business is done in France?—I am not.

1550. Mr. *Miles.*] You know how it is done in England?—I am perfectly well aware how it is done in England, and in Wales also.

Martis, 26° die Junii, 1855.

MEMBERS PRESENT.

Mr. J. G. Phillimore.	Mr. William Ewart.
Mr. Attorney-General.	Mr. Napier.
The Lord Advocate.	Mr. Philipps.
Mr. Watson.	Mr. Miles.
Mr. Solicitor-General for Ireland.	

JOHN GEORGE PHILLIMORE, Esq., in the Chair.

Henry Revell Reynolds, Esq., called in; and Examined.

H. R. Reynolds, Esq.

26 June 1855.

1551. *Chairman.*] YOU are Solicitor to the Treasury?—I am.

1552. How long have you been so?—I have been solicitor since 1852; I was assistant solicitor since the end of 1842.

1553. You are acquainted with the share which the Treasury takes in conducing

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ducting prosecutions?—Yes; we have had several prosecutions, but they are principally directed by the Home Office.

1554. Unless directed by the Home Office, do you take any part in them?—The other branches of the Government which are placed under our legal care also send directions for prosecutions; but even in those cases they frequently go through the Home Office. We are employed by the Board of Trade, for instance, in cases under the Mercantile Marine Acts.

1555. Mr. *Attorney-General.*] Whenever any Government department prosecutes, it is through you that it is done?—Yes, any of the departments to which our office is attached; but our principal functions are with regard to State prosecutions.

1556. *Chairman.*] You say that sometimes the Board of Trade send to you, without the intervention of the Home Office?—I believe the form is generally to write to the Secretary of State, to ask whether it is a proper case to prosecute; but the case I referred to emanated, in the first instance, from the Board of Trade.

1557. What is the course adopted by you?—The course we follow is this: in cases where the parties are in custody, we attend the police courts at which they are brought up, and have the depositions taken; then, if the parties are committed for trial, the depositions are sent and examined in our office. If we consider that no further evidence is necessary, the counsel for the Crown are instructed to draw the indictments; we prepare the briefs; and then the prosecutions are conducted by permanent counsel, who in the Central Criminal Court are appointed for that purpose. In cases in the country, the directions of the Attorney-general are taken as to the counsel to be employed.

1558. You said that you attended before the magistrates; do you mean that you and Mr. Greenwood attend there?—Not personally, except in cases of great importance; we have clerks who attend.

1559. Unless applied to by a Government office, you take no share whatever in the case?—No.

1560. Can you state about what is the expense of the prosecutions conducted by you in the course of a year?—I cannot state it exactly. The general expenses of our office altogether are about 30,000 *l.* a year; they vary; they have been very much higher; we have paid nearly 49,000 *l.* in one year.

1561. How large a portion of that would be expended in criminal prosecutions?—I cannot form any idea off-hand. I should say that in many of these prosecutions we get the costs allowed by the county, and only pay the difference out of the funds given to us for law purposes.

1562. What difference?—The difference between the proper costs which are incurred and the costs which are allowed on taxation.

1563. Then the costs allowed on taxation are not always sufficient to pay the legitimate costs of the prosecution?—Not always.

1564. Do you generally find that there is a difference?—There is frequently so; but we employ two counsel. I do not say that we give them a larger fee; but in cases where the county would only allow one counsel we employ two. In the Mint prosecutions, which are cases conducted in our office, we have always two counsel.

1565. Do you yourself see the attorney who manages the prosecution in those cases?—There is no attorney who manages the prosecution; we do it ourselves. In cases in the country we employ agents, and we communicate with those agents; the cases are got up under our directions, and where we see that fresh evidence is required we point it out to the agent to get it.

1566. Does it ever happen to you that it is necessary for you to point out that fresh evidence is requisite?—Yes; the evidence as it comes up may appear to be insufficient for the prosecution.

1567. If there were not a person in your situation able to superintend the management of such prosecutions, would they often fail?—No; I do not think that that would follow, because the agent whom we employ is supposed to be competent to conduct that business, but inasmuch as he is our agent, we feel it necessary to exercise a superintendence.

1568. Is it sometimes necessary to advance money in order to get the requisite witnesses?—Yes. In cases where seafaring witnesses are brought to this country in prosecutions for offences committed on the high seas, those men are anxious to go abroad again; they are bound over, but they say, unless you pay me my wages in

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in the mean time, I must go. In those cases we direct the agents to pay them what is reasonable and proper; they are sent to the Sailors' Home, or otherwise cared for.

1569. In short, it is necessary to advance money in order to ensure the prosecution of criminal cases?—Yes, in certain cases.

1570. And if that money were not advanced the prosecution would fail?—The witnesses might take upon themselves to go away, and then probably we should make an application for the case to stand over.

1571. Were you solicitor to the Treasury at the time of Frost's trial?—No; it was before my time.

1572. Have you been concerned in any of those great trials for high treason? —Yes, I was in all the cases of the Chartist trials in 1848; they were in London.

1573. Do you recollect, some years ago, a trial which excited a good deal of attention at Stafford. The circumstance consisted of Socialist agents endeavouring to prevent people from working for a certain sum of money?—I took no part in that prosecution.

1574. With regard to the Chartist trials, will you state what was the course which you took?—The course then was, that we received information from the Secretary of State that certain persons had assembled under circumstances which were supposed to amount to the crime of high treason; that they were about to levy war against the Queen; they were taken into custody, and taken to Bow-street for examination. The police in communication with our office furnished us from time to time with a statement of the evidence which could be adduced in support of the charge; we attended before the magistrates, conducted the case before the magistrates, and when the men were ultimately committed for trial we got up the case for the prosecutions, and, I believe, succeeded invariably in every case. Sir John Jervis was attorney-general, and I believe those prosecutions were almost uniformly, if not entirely, conducted with success; they were for several offences, not for high treason; they were under the late Act for feloniously compassing to levy war against the Queen.

1575. Do you ever interfere in grievous cases of murder?—Yes, frequently. I should say that most of the important cases for murder which have occurred within the metropolitan district for the last few years have been prosecuted in our office. We prosecuted the Mannings, and also Belany for the murder of his wife, and the Goodes; the cases of burking, and other similar cases were presented by us.

1576. Mr. *Philipps.*] Will you take any one case and state what your first step was, and how you proceeded?—The course was very similar to that which I mentioned just now with regard to the prosecutions of the Chartists. We receive a letter from the Secretary of State, directing us to take charge of the prosecution of certain parties. In some cases they are already committed to Newgate; in other cases the examination of witnesses against them is going on before the police court. If they are already committed to Newgate we obtain a copy of the depositions from the magistrates, and lay them before counsel to advise as to the sufficiency of the evidence, and to prepare the indictment. Then we conduct that case before the grand jury, and on the trial at the Old Bailey, or wherever it is.

1577. *Chairman.*] I observe that all the cases which you have mentioned are London cases?—Yes.

1578. Are you ever applied to to take up cases in remote districts?—There is a great distinction between London and country cases. Cases in the country, however important, have not as a general rule been prosecuted by our office. For instance, in the case of Rush, in Norfolk, which was a very important case, and difficult to get up, we did not prosecute. The only case of late in which we had the prosecution, was that of the Birds on the western circuit.

1579. That was a case of starving to death?—Yes; they were originally indicted for murder before Mr. Justice Talfourd, and acquitted; they were afterwards indicted for assaults, and then a very important question of law arose which it was desirable to have discussed before the Court of Queen's Bench, and I presume on that account alone we were directed to prosecute. I should state that I have no knowledge of the grounds upon which the Secretary of State directs us to prosecute; we are simply directed to prosecute.

1580. You

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1580. You do as you are bid?—We do as we are bid; we obey our directions.

1581. And the instance of the Birds is almost the only instance in which you have had to prosecute in the country?—Yes (except in murders and grave offences committed on the high seas, when the prisoners are arraigned at the port of their arrival); and there we only prosecuted the case for the assault, not the murder, in the first instance.

1582. Was it with a view to put and end to any question about the costs that you were directed to prosecute that case?—No; it was in order to have a very important point of law properly argued.

1583. With regard to the assault?—Yes, with regard to the construction of the Act respecting felonies, including assaults.

1584. Do you ever receive orders to take up cases where children have been ill-used in the Metropolis?—I cannot remember any case at present; but I think such a case would come within the principle of our prosecutions if it were one of very great public interest.

1585. In Jane Wilbred's case did you pay the costs of the prosecution?—I think not; I do not recollect it.

1586. Who paid the costs; were they thrown upon the parish?—I do not recollect; I do not know whether it was a case in which the costs of the prosecution were allowed.

1587. All you do is, that when you receive directions from the Secretary of State, you do your best to conduct the prosecution effectually?—We take up the prosecution and conduct it.

1588. And so far as you know you are confined to cases in the metropolitan district, with very few exceptions?—Yes.

1589. Have you turned your attention to the general administration of criminal law?—Not particularly; I have not considered what is proposed by this Bill.

1590. Are you a barrister?—I am.

1591. Does it appear to you that the want of such persons as yourself in other parts of the country must occasionally obstruct the administration of criminal justice?—I think it is possible that criminal justice may be obstructed from the want of a proper person to superintend the prosecutions.

1592. To do what you do in London?—Yes, I think it possible that cases may arise similar to those which we prosecute in London, in which from the want of a similar person justice may be defeated.

1593. You say that about 30,000 *l.* is the amount of the expenses of your office?—Yes, including those of the Mint prosecutions, the expenses of our office vary very much indeed.

1594. Mr. *Attorney-General.*] Do you know any reason why your office should not interfere in important cases in the county, just as it does in important cases in the Metropolis?—I am not aware of any reason except the great additional work which it would give to the office, which is already sufficiently loaded with our general business. I think we should want an increase of staff to undertake those cases.

1595. Then it is from the weakness of your office?—That may be the reason; we should not be able to undertake those cases without an accession of strength; but why we have never been directed to interfere I cannot say.

1596. Do you know upon what principle it is that the Home Office directs prosecutions in particular cases; is it mere matter of discretion with them, or is there any fixed rule?—It is matter of discretion with the Secretary of State where it is a case of particular interest, or there is any difficulty, or there is a representation by the magistrates that the parties bound over to prosecute would not do it efficiently.

1597. In important cases in the Metropolis in which you have interfered, has it been done by the Home Office *ex proprio motu*, or has it been at the request and at the instance of persons soliciting them to prosecute; if they found that a great murder had been committed, would they take it up spontaneously, or would they wait till they were applied to by the parish?—I think they would be applied to, or a representation would be made by the magistrates that it was a case in which it was expedient that a public prosecution should be had.

1598. Are applications of that kind made from time to time to the Home Office to prosecute in the more important cases, with a representation on the part

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part of the parochial or other subordinate authorities, that the ordinary means of prosecution are not efficient in those cases?—I can hardly take upon myself to answer that question satisfactorily; it is a matter upon which I have not been much consulted by the Home Office. I think the Under Secretary at the Home Office will be able to give an explanation upon that point.

1599. The reason why you take up these more important cases is, that in these cases it is felt that the prosecution would be more efficiently conducted by some public authority than by the private prosecutor?—I should presume that that is the reason.

1600. *Chairman.*] That it is a case of such importance that the State ought to interfere?—That would seem to be the principle with regard to those prosecutions which we conduct.

1601. The *Lord Advocate.*] With respect to the expenses of prosecutions in the country, how are they defrayed?—They are defrayed in the first instance by the county rate, and afterwards by a vote in the annual Estimates.

1602. So that in fact, the public substantially pay the whole expenses of the criminal prosecutions?—Yes; that is the case, I apprehend.

1603. Supposing your staff were sufficient, would there be any difficulty in your conducting a greater proportion of important criminal cases, both in London and in the country, in the same way that you conduct those which you take up now?—I apprehend that our staff must be very considerably increased, even almost to the extent of having a high officer in the counties to superintend the cases. I think that the solicitor, or the assistant solicitor, could hardly undertake the superintendence of all the cases in the country.

1604. But substantially the expense would not be greater than the expense of the present system to the country?—The expense would be so far greater, as I have pointed out, in regard to the prosecutions which we conduct; we go to a greater expense than is allowed on taxation, therefore I suppose that those who now conduct the prosecutions in the country are not very likely to expend a sum which they would never be allowed on taxation.

1605. That probably is because you take up cases of importance?—It is because we take up cases of great importance, in which we feel it to be our duty that no expense should be spared which tends to the effectual administration of the law.

1606. Then you would imply from that, that the expense which is at present incurred is not in all cases sufficient to vindicate public justice?—I am not aware of any cases where there has been a failure of justice in consequence of an unwillingness to incur expense.

1607. *Chairman.*] But you do not spend more money than you think necessary?—Never.

1608. The money which you spend you consider necessary for the administration of public justice?—No doubt.

1609. And more money is spent than you are allowed?—No doubt; we certainly spend no more money than we consider necessary for the proper conduct of the case, and we do expend, in many cases, more than is allowed on taxation.

1610. Mr. *Solicitor-General for Ireland.*] In those cases which the Treasury prosecutes, and which are cases of great importance, do you take the directions of the Attorney-general?—We do not, as a general rule, take the directions of the Attorney-general. If a case presents any points of great difficulty, we generally lay the case before the Attorney-general to advise us what to do.

1611. Then it is altogether a matter in the discretion of the Solicitor to the Treasury whether he lays it before the Attorney-general or not?—Quite so.

1612. He does not look to him as the public prosecutor?—No; we have a general discretion to consult the Attorney and Solicitor-general.

1613. But otherwise, the Attorney-general exercises no control over your prosecutions?—None over our general prosecutions; in State prosecutions, of course, he would be consulted throughout.

1614. In cases of high treason, or cases of that character?—Yes.

1615. Is the Solicitor to the Treasury paid by salary?—Yes.

1616. Then no portion of his profits depends upon the amount of business which is done?—No.

1617. The only additional expense which the public would incur in entrusting a large number of prosecutions to your office would be in the increase of your staff?—That is all.

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1618. The solicitor gets no bill of costs?—No; but I should mention that there are cases in which we are obliged to employ an agent, and in those cases we have to pay the agent's bill. We had to prosecute some cases of nuisances over the water, bone-boiling establishments, and so on; they were very heavy cases, the hands in the office were fully employed, and I was obliged to employ an agent to conduct those cases, and had a very heavy agent's bill in consequence.

1619. You say that you have permanent counsel to conduct the prosecutions in London?—Yes.

1620. And that on the circuit you consult the Attorney-general as to the counsel whom he wishes to employ?—Yes.

1621. Mr. *Philipps.*] Does information of the offence which you are instructed to prosecute always come to you in the first instance from the Secretary of State, or is it ever brought to you in the first instance?—Never. If it were brought to me, I should decline to undertake it; I should say, "I have no authority to interfere; you must go to the Secretary of State, and he will give me directions."

1622. You would not interfere in the way of making a representation to the Secretary of State?—I should not feel it my duty; I should say, "It is your duty to request the Secretary of State to interfere; it is for you to make application to him, and he will instruct me, if he thinks proper."

1623. Then you only act ministerially?—Yes.

1624. In the country you occasionally employ an agent?—Yes, when I am directed by the Secretary of State to prosecute.

1625. Have you a general agent in the country?—No; I employ the best men for the service.

1626. By an agent you mean a solicitor?—Yes.

1627. *Chairman.*] Has it ever happened to you that any one has made application to you to take up a criminal case, and that you made the answer which you have stated to us?—No, I cannot recollect a case.

1628. Mr. *Philipps.*] In your judgment, are the prosecutions which are conducted by you rather more expensive than those which are not conducted by you?—So far as I have stated, they are more expensive, inasmuch as certain costs are occasionally incurred more than those which would be allowed on taxation; but I do not know that the same costs would not probably be incurred if the cases were conducted by another party; only then the prosecutor would have to pay them.

1629. Mr. *Solicitor-General for Ireland.*] I suppose in addition to conducting criminal prosecutions as solicitor to the Treasury, you have other very important duties with reference to the civil rights of the Crown?—Most important duties; I am solicitor to the Treasury, and for the offices of the chief Secretaries of State, the War Department, the Board of Trade, the Board of Control, and several others; in short, the criminal part of our business is almost the least important that we have. We have to watch all claims for peerages, cases of patents, cases before the Privy Council, where applications are made regarding public servants abroad, and a great variety of cases; and in a multiplicity of cases we have to advise.

1630. Mr. *Attorney-General.*] And matters with relation to the revenue?—To certain branches of the revenue.

1631. Mr. *Solicitor-General for Ireland.*] You might be appropriately called the Crown solicitor?—Yes.

1632. In consequence of those onerous duties which you have to perform, do you think that if the Treasury solicitor had the general conduct of public prosecutions, not only his present staff would be insufficient to perform those duties, but some superior officer should be appointed to oversee the conduct of those prosecutions?—No, I am not prepared to say that, if an adequate increase were made; for those prosecutions which have been entrusted to our charge have been efficiently conducted, without detriment to the business of our office. But such a change would alter the whole character of the office.

1633. Supposing the Treasury solicitor had the duty, generally, of conducting the prosecutions throughout the country, do you think that then not only an additional staff would be necessary, but some head of that staff to superintend those prosecutions?—I am inclined to think so; some efficient person; a person somewhat more efficient than a common clerk.

1634. *Chairman.*] With the office in its present state, you do manage the prosecutions

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prosecutions with which you are entrusted?—Yes; but if they were generally to be entrusted to us, and we had to state what was to be done in every particular case, I think our time, which should be devoted to other business, would be too much interfered with.

1635. Mr. *Attorney-General.*] I take it that, independently of public prosecutions, your hands are quite full with the civil business?—I may say that they are pretty full, certainly. We do this business, and we do these prosecutions besides; therefore I cannot say that we are unable to do them.

1636. *Chairman.*] How many in a year of these Crown prosecutions have you, on the average?—I cannot say, without reference to my books.

1637. Do you think that you have as many as five criminal prosecutions in the course of a year?—Very many more than five.

1638. Will you give us some idea?—There are other prosecutions than those I have mentioned; we have all the prosecutions connected with the commissioners of police; we have all cases of assaults upon constables. The business of the commissioners of police is very numerous. We have a number of cases of prosecutions of a summary nature. It has been our duty to endeavour to put the Smoke Act into operation, and to lay informations before the magistrates, in numerous cases, for the purpose of enforcing the Smoke Act. Then, with regard to illegal lotteries, it has been my duty for the last two or three years, not only in London, but in several places in the country, to put in force the laws made for the suppression of lotteries by laying informations against parties summarily, in order to procure them to be convicted as rogues and vagabonds. That is the course we have pursued, though there are several other modes of punishing persons who have illegal lotteries; however, that is a class of prosecutions which we have had of late.

1639. Putting aside those questions which are rather questions of police, and affecting local and municipal regulations, taking cases of criminal prosecutions before a judge, how many do you suppose, in the course of a year, fall to your share; where you instruct counsel, for instance?—Including those in London, I should think about 40 in the year, independent of the Mint prosecutions of the county.

1640. Not less than 40 in the year?—I should think not.

1641. In those cases your interference is required for the administration of the criminal law?—They are cases where we have been directed to prosecute.

1642. Which you have set in motion?—Yes.

1643. Mr. *Attorney-General.*] Is there any particular class of cases as to which a rule exists that you shall take them up and prosecute them; for instance, does the Home Department say you must put down the smoke nuisance, or you must do your best to put down lotteries? Is there any general rule with reference to the classes of cases which come under your jurisdiction; or is it merely that the Home Office from time to time interferes, and directs you to prosecute certain cases?—With the exception of Mint prosecutions, by which I mean prosecutions of offences relative to coin, which are a class, there is no general rule.

1644. Does not the solicitor to the Mint conduct Mint prosecutions?—I am solicitor to the Mint; there is no solicitor to the Mint as there used to be; that office has been abolished, and we have an assistant called the assistant solicitor for criminal prosecutions, and for offences relating to coin. Mr. Powell, who was assistant solicitor to the Mint, is now in our office; he is not solicitor to the Mint. The Mint, like some other departments of the Government, has been placed under our charge.

1645. What departments of the Government conduct their prosecutions or their business through you; because there are various departments which have solicitors of their own?—I ought to have made out a list, in order to answer that question. There is, first, the Treasury, in all its ramifications; the others are, the Secretaries of State for the Home, Foreign, and Colonial Departments; any business arising in any of those departments would be sent to us. There is the old War Office, and now I have cases from the War Department. The other day I had to prosecute a person for offering me payment of a sum of money for a commission in the militia. Then there is the Board of Trade.

1646. Supposing there were a prosecution for practices contrary to the Slave Trade Acts, it would be conducted through you?—Yes, there is a case of that sort going on. Then there are several other of the minor departments of the Government.

1647. *Chairman.*]

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1647. *Chairman.*] Your duty, I suppose, also implies the task of looking into the expenses of witnesses, taking care that too many witnesses are not employed, and so forth?—Certainly. In the getting up of a case, if we saw that a witness was in our opinion clearly unnecessary, we should not have him subpœnaed.

1648. Then when your agent's bill came in you would examine it with reference to that subject, to see whether he had employed too many witnesses, and so on?—The witnesses in most cases are bound over by the committing magistrates.

1649. Other witnesses are also often called, are they not?—If we thought other witnesses necessary we should pay them their expenses

1650. Do you exercise any part of the duty of taxing costs, and taking care that too much expense is not incurred?—We tax the costs of our agent's bill, and some other bills referred to us for that purpose; we desire the parties to send up their briefs, and vouchers, and necessary papers.

1651. And by so doing you save the public money?—By so doing we have a check over our agents.

1652. You save the public money?—We save the public money by not allowing our agent to spend more than we consider to be proper.

1653. In your knowledge, does it very often happen that in prosecutions witnesses are brought who are unnecessary?—All attorneys' bills for prosecutions are liable to be taxed.

1654. I am not talking of the liability, but of the fact. Do you not know as a fact, that it often happens that witnesses who are not necessary are called, and also that more witnesses are called than are required; for instance, that where one witness might prove a fact, two or three are called?—I am not aware of any cases of that sort; it is possible, of course.

1655. You say it is necessary that you should exercise a certain degree of control over the bills which are sent in to you as to witnesses, and so forth?—No doubt we exercise a control over the business which is sent to us; we disallow whatever we consider unnecessary for the prosecution.

1656. The *Lord Advocate.*] When you take up a case which has occurred in the country, how do you conduct the investigation on the spot; who does it?—We do it through an agent who is a solicitor; he takes the same course under our directions as we do in cases in London. We write to the agent and say, "We request your assistance in the conduct of this prosecution; if anything occurs in the course of it in which you want advice, refer to us."

1657. *Chairman.*] Mr. Waddington, I suppose, is the person whom we must ask as to the Home Office?—Yes.

1658. Mr. *Solicitor-General for Ireland.*] You, as solicitor to the Treasury, only interfere where you are put in motion by the head of some public department?—Yes.

1659. Is there any mode of bringing under the notice of the head of a public department the cases which occur in the country?—It is competent to any magistrate who has cognisance of a case which has been brought before him, or to any other person who is employed in the investigation of that case, to lay a statement of it before the Secretary of State.

1660. Mr. *Attorney-General.*] But is it any part of his duty to do so?—No.

1661. Mr. *Solicitor-General for Ireland.*] It depends very much upon chance?—Yes: I am not aware that it is the duty of any party to make an application to the Secretary of State to direct me to take up a prosecution.

1662. Or to bring the case under the notice of a public department?—No.

1663. Mr. *W. Ewart.*] Is there any want of such a power; do you think it desirable?—That is entering into the question of the advisability of a public prosecutor, more than, perhaps, from the consideration I have given to the subject, I am prepared to do at present.

1664. Mr. *Solicitor-General for Ireland.*] With us it is the duty of the resident magistrate, if anything occurs out of the ordinary course, to make a report upon it to the Executive Government; I understand that no such duty is cast upon any person here?—I am not aware of any such duty.

1665. Mr. *Watson.*] All communications are made to the Home Office?—Yes.

1666. Mr. *Philipps.*] Does it often happen that prosecutions which you are directed to inquire into are abandoned upon further inquiry?—No, very seldom. Cases do occur where after investigation it is found that you are not likely to obtain a conviction, and then they are abandoned.

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1667. Is that upon your advice?—Occasionally upon our advice; occasionally we should consult the law officers. Sometimes it is obvious, when a case is examined into, that you cannot carry it any farther; that you could not procure a conviction. I have had to investigate cases of accidents in mines, to see whether they amounted to sufficient for an indictment for manslaughter, and so on. Cases of that kind have failed.

1668. Mr. *Watson*.] You also enforce the Act of Parliament by civil action, do you not?—We have not done so in cases of mines, but we have in factory cases.

1669. Mr. *Philipps*.] Are you often applied to, to interfere upon statements that the magistrates have refused to interfere in, in the country?—No. If such an application were made to us, we should not have authority to entertain it.

Mr. *Francis Hobler*, called in; and Examined.

Mr. *F. Hobler*.

1670. *Chairman*.] WHAT are you?—A Solicitor.

1671. Of how many years' standing?—From 25 to 30.

1672. During that time, has your attention been a good deal occupied in the administration of the criminal law?—A great deal.

1673. Where have you been employed?—My place of business is in the City, near the Mansion House, and I have never been away from that spot.

1674. You have been engaged largely in criminal prosecutions?—Yes, very considerably.

1675. Have you turned your attention towards the question of the appointment of a public prosecutor?—I have not particularly, because I have never met with any one who has explained to me sufficiently what the desire of the Government would be; I can only collect it from the Bill, which was sent to me last night.

1676. Will you be good enough to tell us what, in your opinion, are the evils, if there are any evils, in the present system?—I do not know exactly how to answer that question.

1677. Does it appear to you that the present system requires any alteration in any respect?—I think that some amendments might be made which I conceive would be beneficial.

1678. Will you be good enough to say what those are?—I should propose that for the purpose of doing away with a great deal of the remarks which are made, of cases not being properly taken up at the different police courts of the Metropolis, some solicitor be attached to the court.

1679. Mr. *Attorney-General*.] You are starting at once with the remedy: before we come to the question of the remedy, we wish to know what are the existing defects of the present administration?—The want of some person of that kind, to whom the magistrate could refer either in a case of difficulty, or at least in a case where the evidence did not run smooth, and where the police, who take upon themselves to act very much as public prosecutors, have felt themselves at fault from the want of legal knowledge.

1680. Do you know that such instances do occur?—They must necessarily occur at times; they cannot get on without some professional assistance. I will give one instance in which I was engaged. There was a man named Gould who was charged with the murder of Mr. Templeman. I speak of many years ago. I used to do business for the Home Office at that time. The prosecution was a private one, and it failed; he was prosecuted for murder; Mr. Chadwick Jones, who is now dead, was the counsel engaged for the prosecution; he undertook to prove too much, and the consequence was he failed; the man was set at liberty, and he was afterwards taken into custody by Sergeant Otway, who was subsequently made a superintendent of police; and being in custody, I was instructed to prosecute him; I prosecuted for burglary; for breaking into the house. Mr. Bodkin was the counsel; the police could not get the case up entirely themselves; they felt the want of assistance, and I was at Bow-street upon all the examinations. The case was ultimately got together, and the point which Mr. Jones had failed upon was one which I did not trouble myself about, because it was a perfectly immaterial point; the man was convicted and sentenced to transportation for life.

1681. *Chairman*.] Was it a burglary connected with the murder?—Yes.

1682. Had the man who had committed the burglary in all probability committed the murder?—No doubt he was the same man, but Mr. Jones undertook to

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to prove more than was necessary, and failed. The police were engaged in it, and the police finding themselves at fault, I was sent for to set them right, and assist them through the case.

1683. Mr. *Attorney-General.*] Do you cite that as an instance how a man coming and interfering in the getting up of a case, may put it into such a shape as to ensure conviction at the trial?—Yes, if he has the experience to know how to go about it; but if it falls into inexperienced hands, as it did in the first instance, the man escapes.

1684. Are you aware that at the present time many prosecutions are brought to trial by the police?—I have no doubt there are a great many.

1685. Do you know of any inconvenience or evil which results from that practice?—It interferes with the duties of a professional man very much, and gives the police a power and authority which I do not think is consistent with their duty simply as police.

1686. Do you know of any instances of abuse?—I do not know of any instances of abuse at this moment, but I speak of it as a general principle.

1687. Do you think that prosecutions are occasionally brought into court without having been sufficiently got up, and that they fail in consequence?—Yes, that sometimes arises from the sessions being too quick upon the commitment, so that there is not time to get the evidence together or to look over the evidence, and supply deficiencies where it is capable of being done.

1688. Independently of that, do you believe that from the want of the intervention of some competent person to get up the case, prosecutions which ought to end in conviction occasionally end in acquittal?—I have no doubt of it; that an acquittal often takes place where, from the want of sufficient intelligence in getting up the case, it fails.

1689. Do you also believe as the result of your experience that cases are sometimes improperly compromised from the want of a public prosecutor?—Yes; one cannot tell what a man may say before the grand jury; and if there is not a solicitor conducting the case, who would keep himself quite aloof from any practice of the kind, a man may be induced to say before the grand jury what is quite subversive of the ends of justice.

1690. Is it the fact that there are persons practising in the Central Criminal Court, and sometimes conducting prosecutions, who are not persons of the highest class?—Yes, even some who are attorneys. There is one barrister whom I have known, whose name I need not mention, but I am given to understand that he will conduct a case at the police court for half-a-crown and a pot of half-and-half.

1691. *Chairman.*] Such things are said?—Yes, and that man is still living.

1692. Mr. *Attorney-General.*] The same applies to the attorneys who practise there?—They are very indifferent; and men occasionally who are not attorneys get the name of an attorney, and so they practise.

1693. I am speaking now of persons practising in the conduct of prosecutions as well as in the defence of prisoners?—Yes, I have reference to that.

1694. In your opinion, is there any safety for the conduct of a prosecution to a successful issue in the hands of such practitioners as those?—I would not guarantee a prosecution or a defence in the hands of such people.

1695. Then it is the result of your experience that there are persons conducting prosecutions in those courts to whom prosecutions ought not to be entrusted, with reference to the proper conduct of them?—Yes; I may mention an instance which occurred a few years ago, wherein a prosecution for a robbery in the Borough took place, and two very improper people were engaged, one for the defence, and the other for the prosecution; the result was, that the prosecution failed; it was natural to expect it, when you knew the names of the parties.

1696. *Chairman.*] You believe that that failed in consequence of collusion?—I have not the slightest doubt of it in my own mind. One of those men soon after fled to America with another man's wife, and the other put an end to himself.

1697. About how long ago is that?—I do not know the exact time.

1698. Is it within these 10 years?—I should think it was within 10 years.

1699. Then, in your opinion, there are a great number of disreputable practitioners, to whom, under the present system, the conduct of criminal prosecutions is entrusted, who ought not to be entrusted with such a duty?—There are several now, and I have no doubt that cases do occur; but it is not so common now as it used to be; it is much better than it used to be.

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1700. The *Lord Advocate*.] You have had great experience, I suppose, in the investigation of criminal cases?—I have.

1701. You spoke about a man saying before the grand jury what was altogether inconsistent with the ends of justice; have you known instances of many innocent persons being accused before the grand jury, and bills found against them?—Taken off-hand in this way, I cannot refer to cases; but I have felt satisfied in my own mind that cases have been brought before the grand jury in which I have had something to do which ought not to have been brought.

1702. Should you say that those cases were numerous?—Not numerous; they have occasionally occurred.

1703. If there were a proper functionary for the purpose of conducting and investigating such prosecutions, do you think that the grand jury would be an assistance or an impediment to such investigations?—I think the grand jury a great assistance.

1704. In what way?—Because they are not bound by the strict rules of evidence, which a magistrate or a judge is; and they can inquire into any circumstances that may fall from the lips of a witness before them which may tend to elucidate the subject into which they may have to inquire. They have not the depositions before them, and therefore they are guided solely by what the witness pleases to tell them.

1705. Mr. *Attorney-General*.] Only that that evidence so received by them, if not received according to the rules of evidence, would not be available afterwards?—But the grand jury in London, which I am most conversant with, are generally very good men of business, and I may say that with half an eye they will see the bearing of a case.

1706. Supposing they should come to a certain conclusion, that a man ought to be put on his trial upon evidence not strictly admissible, of what use is it when the evidence upon which they have acted cannot be received in the court in which the man is to be tried?—It tends to unfold to them the surrounding circumstances of the case, and enables them to form a judgment as to the propriety of the prosecution having been instituted.

1707. What is the use of its doing that to them; if it could be a clue to anybody else it would be valuable; but as it is limited to the grand jury there present, and cannot be used afterwards, I do not quite see the use of it, unless it may assist as a clue to those who have the conduct of the prosecution in getting further information?—The reason why I mention it is from that circumstance.

1708. The *Lord Advocate*.] Supposing you had an officer who had the power of examining witnesses upon oath in the preparation of a prosecution, do you or do you not think that it would be a better means of ascertaining the truth than the examination before the grand jury?—No, I do not think it would; there must be a certain confidence on both sides.

1709. With regard to the coroner's inquests, do you think that they do or not tend to the elucidation of crime?—Certainly; the coroner's inquest is one of the most important tribunals which we have in this country.

1710. You are not of opinion that the publicity given by a coroner's inquest enables the guilty to escape?—No, not at all times; if the man is in custody, of course the evidence, if it is conclusive against him, ensures his committal; if he is not in custody, evidence may be obtained by which he may be very shortly put in custody by the facilities of communication which now exist from place to place.

1711. Mr. *Attorney-General*.] What is your opinion with regard to the police; are they, do you think, a body who are given to collusion or abuse in these prosecutions?—Upon the whole, they act very fairly.

1712. Do you think they are a body that can be safely entrusted with the conduct of prosecutions?—No; I should say it would be derogatory to the justice of this country that it should be thrown into the hands of a police inspector or a police constable.

1713. Are cases brought to court by policemen?—Very often, and they are of great assistance; but it would not do to give them the power of conducting them.

1714. *Chairman*.] Mr. Straight told us that a great portion of the prosecutions were actually managed by the police?—I have no doubt they are; they assume to themselves the duties of the attorney, and therefore they bring a great many cases before the court.

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1715. In your opinion, are they proper persons to exercise such a function?—I think it is derogatory to justice that they should have the exercise of that duty; it should be put into the hands of a properly authorised person.

1716. The *Lord Advocate.*] Does it often happen, especially where parties are of wealth or of position, that the prosecutor does not appear upon the trial?—I do not know. I have never met with a case myself.

1717. Speaking generally, you have not known many cases fail by the prose cutor not appearing on the day of trial?—No.

1718. Mr. *Watson.*] You have been engaged a great deal in London?—I have; and occasionally in the country, having been sent for.

1719. Do you see any difference in the mode of conducting prosecutions, down to the time of trial, between the cases in the country and those in London?—No, I have not seen much difference.

1720. The London magistrates are all police magistrates, and are well acquainted with their business, I apprehend?—Yes. In the country they are many of them county magistrates, and they seem pretty well versed in the nature of the business, and they have the assistance of the clerk.

1721. Has it ever come to your knowledge, or have you made any observation as to the prosecutions which are brought in order to answer private purposes, such as indictments for conspiracy and other proceedings of that sort?—Such things do occur at times, I have no doubt.

1722. Have they attracted your observation?—Not particularly.

1723. There was a case which we read in the newspaper the other day, the case of Howell and James, of Regent-street, for conspiracy?—I saw that there was such a case, but I did not enter into the particulars of it.

1724. Do you not think it advisable that there should be some officer to control that class of proceedings?—That involves a good deal of legal difficulty.

1725. *Chairman.*] In the course of your professional duty, has it happened to you to be called upon to make considerable advances in getting up prosecutions?—I am called upon for advances, but I endeavour to obtain from the party who employs me a sufficient sum to cover the expenses of the counsel.

1726. Suppose that party happened to be an extremely poor man, and unable to furnish you with the sum you require?—I should be tempted to tell him, "I cannot afford to take up your case."

1727. Is not that a disadvantage under which the poor man now labours, as the law exists?—Yes, it is a disadvantage so far.

1728. Is it not a very considerable disadvantage, that if a man without any money at all, who had received a considerable injury, were to come to you and to request you to investigate his case, and to bring the proper evidence, you would decline having anything to do with the case?—I should decline it upon this principle, that I could not afford to spend my time in investigating a matter which might prove fruitless, a merely speculative action or indictment.

1729. Has it ever happened to you to be out of pocket by any prosecution in which you have been engaged?—Yes, I have lost money by it at times.

1730. Occasionally?—Occasionally I have lost money.

1731. Have you any doubt that that must be the case with many attorneys who manage prosecutions?—I have no doubt that many attorneys have lost money by prosecutions.

1732. Mr. *W. Ewart.*] That deters them from undertaking such cases?—I have lost, myself, a considerable sum in a prosecution which I conducted, and I should be very loath if the same parties came to me again to take up their case in the *con amore* manner in which I did.

1733. Mr. *Miles.*] Was that a criminal prosecution?—Yes.

1734. *Chairman.*] Was the prisoner convicted?—Yes.

1735. And you were considerably out of pocket by it?—Nearly 300 *l.*

1736. Mr. *Miles.*] Were those very extraordinary expenses which were not allowed by the judge at the trial?—No; it was a case wherein the court could not allow the expenses.

1737. What was the case; was it a felony?—No, it was a misdemeanor.

1738. *Chairman.*] Have you ever known any disputes arise as to who should defray the expenses of a prosecution in cases where, for instance, children have been ill-used?—Such discussions have frequently taken place.

1739. In your opinion, may not that state of things lead to a failure in the administration of justice altogether?—It may, because a person would say directly,

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directly, "If you do not choose to guarantee me the expense, I will have nothing to do with it."

1740. Does not it occur to you that that is not the state in which the criminal law of a great country should remain?—It would naturally give rise to the exclamation, "It is a pity that such a fellow should escape."

1741. Mr. *W. Ewart.*] Have you known any cases of compromise?—I cannot say that I recollect any at this moment.

1742. What practical remedy has occurred to your mind for the evils of which you complain?—I confine myself as to the actual remedy to London, because I have seen the working in London more than in any other part.

1743. What is your suggestion?—My suggestion would be to have the metropolis divided into districts, and a solicitor to each of those districts, and the magistrate to send the depositions to that solicitor; there should be a superintendent barrister, if I may so say, to whom, if the magistrate thought fit, he might refer the question, whether he should send the case for trial or not, or any question which might arise in the case; the attorney would then get up the whole of the case and prepare his brief, and deliver it to such counsel as he thought most likely to conduct the case with proper effect.

1744. You confine your attention to the metropolis?—Mostly to the metropolis.

1745. Mr. *Attorney-General.*] Where there are stipendiary magistrates who are supposed to have a certain knowledge and experience of those matters?—Yes; and the business is very well conducted.

1746. *Chairman.*] Therefore the evils would be less there than in a remote district?—Much less.

1747. Mr. *Miles.*] But you merely speak of that by analogy?—I am solicitor to the Society for the Protection of Trade. The metropolis is divided into three districts, and a solicitor attached to each district. So many police courts are given into the hands of each solicitor. I am one of those. I think we take five police courts each, and if the case of a subscriber to that society arises, the solicitor who belongs to the district has the case handed over to him, and he prosecutes; I have prosecuted, and successfully.

1748. Having been in that office, and held it for some time, taking the prosecutions under it, can you at all draw a comparison of your successes and failures as against the common prosecutions?—I should say that they were more successful when taken up in that way than in the ordinary course of things.

1749. In what ratio?—I have never sat down to make a calculation; but I should say that the generality of cases would be more successful when placed in the hands of a proper person.

1750. Relative to the police taking up prosecutions: in the metropolis must not the police, of necessity, almost be the first persons applied to by any person who has been injured in any way?—Not always; a solicitor is sometimes the first person.

1751. But if you want the caption to take place immediately, does not the person go to the police court to state his complaint?—Yes.

1752. And then does not the police officer who is there, if he sees sufficient ground, immediately order the person into custody?—The course usually is, for the party to go to the station-house, or to the police court if it is sitting, and state the circumstances of his case: it is looked into, to see whether it is one which they can act upon immediately, and if the party is found to be respectable, and there is no doubt that his complaint is just, instructions are immediately given for an officer to be at his service.

1753. That is the case with the police court?—And also at the station-house.

1754. Suppose the police court is not sitting?—The station-house would do just the same.

1755. Of course, in the multiplicity of criminal cases which arise in London, a great number of the preliminary investigations must take place at the police station?—No; there is merely the inquiry as to who is making the charge; against whom the charge is made; what are their situations in life; and what is the nature of the charge.

1756. Supposing the charge was one of murder, or any gross violation of the law, would not the police inspector sitting there act at once upon the evidence which he had, and immediately have the person taken into custody?—I should say he would, if he had confidence in the party giving him the report.

1757. Then

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1757. Then London stands in a very different position from what other parts of the country do?—Certainly.

1758. And consequently the original depositions must be taken in a great measure by the police inspectors, must they not?—No; they never take depositions; they would make a memorandum in a book, as I have said before. I have never been present when a charge has been made, for I always avoid mixing myself up with it, that I may not be supposed to come there from personal interest, but the course is for the parties to make their accusation, and the inspector writes it in a book.

1759. Then you would not alter that part of the preliminary investigation at all?—Certainly not.

1760. But according to your ideas, the police having made these investigations, and the person having being taken into custody, previously to the case being carried to the police court for committal you would place it in the hands of a respectable attorney?—Almost the same day that an application is made at the police station I would send on an officer to the solicitor to say that such a charge has been made, and that directly the party is in custody he shall be informed of it.

1761. Who are the gentlemen who act as clerks to the police magistrates in London?—I think there are 15 courts, at each of which there are two gentlemen, the first and second clerk; all of them are very respectable men, and they know their business well.

1762. Are they in the profession?—No, they are not professional men.

1763. Do you think that there would be any advantage in having those clerks professional men?—Not at all, because I do not think you will find more efficient business men than the clerks of the metropolitan police courts.

1764. Still, not being professional men, may they not occasionally err in difficult cases?—They might do so; but in difficult cases the parties generally attend with their solicitor, and the magistrate being a barrister, is always referred to.

1765. As far as committal goes, the public have the best guarantee that public justice is exercised well in the Metropolis?—Certainly. I have no occasion to find fault, the least in the world, with the manner in which justice is administered in the Metropolis. Whenever I have had to attend at the police courts, I have found gentlemanly conduct on the part of the magistrates, and all the assistance in the cases which they themselves or their clerks could render, and the business carefully conducted.

1766. Still, from what I heard stated before in your evidence, it must be in the police courts that a great number of these prosecutions break down?—It is very likely.

1767. Mr. *Attorney-General.*] Would it not be useful to have some one besides the magistrate, who of course can only exercise his magisterial discretion upon the evidence brought before him; would it not be desirable, besides the magistrate and his clerk and the policeman, to have some one who, in the more difficult cases, may see that all the evidence necessary is brought before the magistrate; and if any should be wanting, to take means for supplying it?—Yes, I think it would be useful to have some one to be referred to, to assist in putting the case in a proper manner before the magistrates; the magistrates should have authority to send for a person in that character, either a regular attorney or a barrister; the attorney would be the proper person.

1768. In short, whoever is entrusted with the conduct of a public prosecution?—Just so.

1769. Mr. *Miles.*] You would not shut out, in the preliminary inquiry, any individual acting by his own attorney before the magistrate, would you?—I would not shut him out, but I would have the advantage of any information or assistance which the magistrate might obtain from other sources.

1770. Then would you have this district agent always in attendance upon the magistrate?—No, not unless the magistrate found it necessary to send for him.

1771. Supposing a poor person got hold of one of these disreputable gentlemen in the profession, and you gave him the necessary power regarding that man's case, what reason have you to think that justice, if not administered through the district prosecutor, would not be administered very much as it is now?—If it falls into private hands in that way, you cannot tell what may happen out of court.

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1772. *Chairman.*] If you think that a district agent would be desirable in the cases in London, where the magistrates are professional men, must it not apply with much more force to the country, where they generally are not so?—The clerks to the magistrates in the country are nearly always attorneys, therefore they have an assistance which the London courts do not require.

1773. In the country the magistrate is not a professional man, and the clerk is, and in London the clerk is not a professional man, and the magistrate is?—Yes.

1774. Mr. Straight told us, in answer to a question of mine, that a great number of important cases are conducted and prosecuted by policemen at the Old Bailey. Does your experience concur in that?—I have no doubt it is so.

1775. Mr. Straight said that he did not consider them the proper body in whom such a trust should be reposed; do you agree in that?—I do.

1776. Have you any doubt that in a great many cases it leads to an improper administration of justice?—I think it is interfering with the administration of justice, that the police should take up those cases as they do.

1777. Mr. *Attorney-General.*] You say that the society for whom you are acting as attorney, employ three attorneys to act on their behalf throughout the whole metropolitan district?—Yes; we divide the 15 courts into three districts.

1778. Is it found by experience that that is a cheaper mode of proceeding to them than if an individual attorney were employed in a case in which any individual member was concerned?—Much cheaper.

1779. And more efficient?—And more efficient.

1780. In your opinion, would the same principle obtain as regards the community generally prosecuting in like manner by constituted individuals, instead of prosecuting by in each case the private individual having his private attorney?—Quite so; I should say it would be a great gain and a great boon to the public.

1781. Mr. *Miles.*] Do you think that in case of the Legislature adopting the provision of public prosecutors, the gentlemen who now divide the Metropolis into these portions and take the business between them, would be enabled to conduct all that would be required of them?—No; for this reason; the demands upon a private society are small compared to what the demands of the public would be; therefore I should increase the number. There are about six of us who are known to the public, and have been known for many years, and I think I may say we have the confidence of the public, that if our names appear the thing is properly conducted.

1782. Supposing the provisions of this Bill to be adopted, into how many divisions would you divide the Metropolis?—I should divide it into six districts, and attach one of those solicitors to each district.

1783. Would he be able not only to do the whole of the business, but likewise to conduct his own business?—No; if he is expected to do the public business, he must receive an adequate remuneration to put aside his private business, because the emoluments in a case in his private business at a district court might pay him as well as his whole salary for attending to the public business.

1784. Looking to those who generally conduct the private prosecutions, supposing such a set of men appointed, about what salary would be necessary?—I think it would not be an unfair salary to give them 1,000 *l.* a year, at the lowest, if they gave up their business.

1785. Do you think you would then get the most respectable men to act?—Yes, I think you would ensure the services of men who have stood for many years before the public, and are fairly tried men, men whose name and character are too high to be put in jeopardy for a trifling thing, men of integrity.

1786. Mr. *Philipps.*] Is the remuneration of yourself and the other gentlemen who act for the Society for the Protection of Trade upon each case, or have you a fixed salary?—We get upon each case a certain sum, because, as I said just now, the claims upon the society are small compared to what the public demands would be.

1787. *Chairman.*] You have told us that there are several disreputable practitioners necessarily engaged in the criminal prosecutions at present?—Yes.

1788. Have those disreputable practitioners the power of enabling criminals to escape?—I have not the slightest doubt that that power is exercised sometimes if they are engaged.

1789. Mr. *Watson.*] There is always the means of doing it?—There is.

1790. Mr.

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1790. Mr. *Solicitor-General for Ireland.*] In addition to the objections which have been pointed out to having the police as prosecutors, is there not this danger that the policeman becomes a partizan anxious to secure a conviction, and not to ascertain the truth?—I knew an attorney, who is dead, in whose case whenever a police constable came down to his house and told him that he was wanted at Bow-street, Marlborough-street, or elsewhere, there was a fee put into his hand for bringing down business. That of course opens to me the manner in which the business would be done by police officers.

1791. I suppose the metropolitan police receive promotion according to their general efficiency?—Yes, I believe it is so.

1792. Might not a man be considered inefficient to some extent who had taken up prosecutions and failed in securing a conviction?—He might, and he must occasionally fail from the very nature of the circumstances, and from want of knowledge how to put those circumstances together.

1793. That would necessarily operate upon the mind of a policeman conducting a prosecution, so that his own interest creates an anxious desire to secure a conviction?—Yes.

1794. In place of having a public prosecutor, whose sole motive would be to ascertain the truth and see the justice of its course, you would have one who would have an interest, not in ascertaining the truth, but in securing a conviction?—Yes, or in letting a man escape.

1795. Would you not consider that a very serious objection on public grounds to allowing a policeman to have the conduct of a prosecution?—Most certainly; I consider it a most serious injury to the public to let the police interfere so much as they do.

1796. Mr. *W. Ewart.*] In the case you mentioned the police officer would have a double interest, a pecuniary one, and that of sustaining his character as an active policeman?—Certainly.

1797. Mr. *Miles.*] Has it ever struck you that it would be an assistance to grand juries if this gentleman whom we call the public prosecutor was in the room at the time when the grand jury were sitting and finding bills, in order to give them any instructions when asked for?—That is a matter which was tried some few years ago at the Old Bailey, and I believe that for two or three sessions Mr. John Clark was kind enough to sit with the grand jury to give his assistance when they required it; but the intelligence of the grand jury is so considerable in the Metropolis, that they generally dispense with that; they occasionally now, if a question arises, send for Mr. Clark, and either Mr. Clark or Mr. Straight attends them.

1798. Has it ever struck you that it would promote the interests of justice to allow expenses to witnesses for a prisoner, in certain cases?—In certain cases it might; but the witnesses for the defence are very seldom called, and the remark of "my not being able to bring my witnesses" is very often used as a pretext.

1799. Do you not think that if there is a real defence to set up, prisoners very often, from want of funds, are unable to bring witnesses to that fact?—I have not the least doubt of it; it will happen so.

1800. Do you think in that case that it would have cry good effect if, in certain cases, the expenses of witnesses for prisoners were allowed?—Where it was a real defence, and intended to be a real defence, and not a mere pretext for the commiseration of the court, "had my witnesses been here, they could have proved a different story." When the case is made out to the satisfaction of the court, although from certain circumstances the defence may fail, yet the man having had a fair trial, and not being able to say, "had my witnesses been here, I should not have been convicted," I think the man ought to have the expenses of his witnesses.

1801. With whom would you leave the allowance of those expenses, the judge?—No, the clerk of assize.

1802. You would not allow the presiding magistrates, before committal, to determine that?—Certainly not.

1803. *Chairman.*] We have in view some scheme of this sort, that the judge, after hearing the evidence, should say, "I think those witnesses were properly called, and I allow the expenses"?—Yes, the judge might do that; and it is desirable that he should say, "The defence has failed, but the prisoner's wish has been complied with, and the witnesses who have been brought have spoken very fairly, though not to the point sufficiently to convince the jury; therefore they

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they ought to have their expenses." Those expenses should be settled by the clerk of the court.

1804. The amount of the expenses should be so settled; but the fact whether the expenses should be allowed or not might be left to the judge?—Yes.

1805. Mr. *Miles.*] Would not there be then a difficulty, unless it was known that the witnesses for prisoners would be allowed their expenses, in poor men in the country getting persons to come from a great distance to speak to what might be very useful in their defence?—No, I think not; it seems to me that here would be the great difficulty, namely, some shabby fellow of an attorney or an attorney's clerk in the neighbourhood, saying, "I will get up the defence," and then bringing the witnesses up, getting them to sign their names to the order for payment of the expenses, obtaining the money, and paying them just what he liked.

1806. Do you not think that that might be guarded against by ordering the payment to the individual, and not paying the attorney?—The witness must sign his name to the order, to be presented to the treasurer of the county, and therefore the payment is supposed to be made to him.

1807. *Chairman.*] Is not that very often now done in cases of prosecutions?—Yes.

1808. That the attorney embezzles the money?—Yes. Mr. Goodman and Mr. Avery, and I dare say Mr. Straight, can refresh you upon those subjects better than I can, because they go circuit.

1809. You were saying just now that the cry was very often used by the prisoner, without real ground for it, "My Lord, I could have proved so and so, only my witnesses could not stay;" does not it occur to you, that if the prisoner had the means of calling witnesses, it would take away that outcry?—Certainly.

1810. Mr. *Philipps.*] I think you said that there was an advantage in the examination before the grand jury, in the grand jury receiving evidence which was not strictly according to the rules of evidence, but which still would afford them a clue to further discoveries?—The witness attends before the grand jury. I need hardly remind you that he is entirely alone; he may travel out of the record as he pleases, but the grand jury are men of business in the Metropolis, and mostly what they would say is, "We have nothing to do with that. What do you know of this matter?" putting the question to him. Then if he could give any information, though not strictly within the rule of evidence, the grand jury would not refuse it I have no doubt, because they would say, "We have to inquire into the circumstances attending this case, to see whether the man should or should not be put upon his trial, though the magistrate has committed him."

1811. The Attorney-general asked you what would be the advantage of letting in evidence before the grand jury which would not hold in court?—It is not let in; it is given voluntarily and the grand jury seeing the tendency of it, it may enable them to form a better opinion of the previous answers by the witness, and may lead them to go on a little further than they otherwise would do. But in most cases I will say that the witnesses in the Metropolis are so well examined before the magistrates in the police courts, that in many cases where you may have 8 or 10 witnesses on the back of the bill, the grand jury are satisfied with two or three.

1812. Mr. *Miles.*] With those who wish to do away with the grand jury, the argument is, that on account of the way in which the magistrates' business is conducted in the Metropolis, the grand jury is not wanted?—I know it is the argument, but there may be cases in which a magistrate may be mistaken, notwithstanding all his vigilance; and the grand jury is always a shield to protect the accused party, especially in cases where a magistrate has not been called in in the first instance.

1813. Then you would not do away with the grand jury?—Certainly not, though I only swore them in on the first day to do nothing, as is the case in the Court of Queen's Bench, and called them on the last day to be discharged; it is the great bulwark of English liberty.

1814. Mr. *W. Ewart.*] Do you think that the grand jury sometimes defend innocence, as well as lead to the punishment of guilt?—Yes; they often throw out a bill when they, as men of business, think that a man is not telling his story properly; they say, "If that man were in my service I would not trust him." They often throw out a bill upon very good grounds.

1815. They get a greater insight into the case, though they may argue upon

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upon the same principles that the magistrate does?—Yes, because the magistrate is a gentleman who is bound up in the law, and the grand jury are men of business, and look at things in a business light, and form conclusions and make remarks which do not cross the mind of the magistrate.

The Right Hon. *Joseph Napier*, a Member of the Committee; Examined.

1816. *Chairman.*] YOU were Attorney-general for Ireland, I think, under the Administration of Lord Derby?—I was, in 1852.

1817. Have you had a good deal of experience in criminal business?—Yes, from an early period of my being at the Bar I have paid a good deal of attention to it.

1818. Will you be good enough to explain to us the system of conducting prosecutions, as it now exists in Ireland?—It is founded on the principle, which I think is a right one, that the Executive Government is properly, and I would say primarily charged, with the security of society; that the security of life and property belongs peculiarly to the Executive Government, and that all prosecutions ought to be conducted by responsible public officers. The way that we manage it in Ireland is this: the Attorney-general is at the head of the department; then there are a number of Crown solicitors; there is a Crown solicitor for the Dublin district, and there are Crown solicitors for each of the circuits; they are appointed by the Lord Lieutenant, but they hold their office during good behaviour; and though they are appointed by the Lord Lieutenant, he generally consults with the Attorney-general as to their appointment. Then, in addition to the Crown solicitors, there are what are called sessional prosecutors in every county; they are appointed by the Attorney-general. Then there are counsel on each circuit, who represent the Attorney-general; generally one or more leading counsel, who are Queen's counsel; and in addition, there are others who have general practice; but on every circuit there are two or more, who conduct all the prosecutions. The prosecutions at the quarter sessions are conducted by the sessional prosecutors, who, I believe, are always solicitors, and they take charge of that class of cases which goes to the sessions; but the other cases, which are generally of a more important description, and go to the assizes, are under the care of the Crown solicitor, with the counsel who are appointed by the Attorney-general. They do not, however, go in and out of office with the Attorney-general; that has always been the usage. When the Attorney-general comes in, he finds them there, and does not disturb them. He sometimes makes some new arrangements, or adds two or three supernumeraries, but they are not supposed to go in and out with the Attorney-general. When a vacancy arises by resignation, or some other cause, whoever is the Attorney-general for the time being exercises his discretion in appointing a proper person. The way the business is managed is this. When informations are taken through the different localities, the magistrates distribute them between the sessions and the assizes, and those which are intended for the assizes are sent to the Crown solicitor of the circuit, according to what locality they arise in. Then he at certain intervals makes them up, and he submits them to the Attorney-general for his direction; so that every set of informations in each case is submitted to the Attorney-general, and he considers them. He then states his opinion whether it is a fit case for the Crown to prosecute. Of course it depends upon the kind of opportunity which he has of giving attention to it; but his duty is, on reading each case, not merely to signify whether the Crown should prosecute or not, but to point out where there are deficiencies of evidence, and matters which may occur to him in that way, so as to get the case made more complete where he thinks it can be done. Those cases which are marked by the Attorney-general to be prosecuted are taken charge of by the Crown solicitor; and when the circuit time comes he has the proper bills prepared and the briefs given out to his counsel on the circuit who exclusively attend to them. The cases which the Attorney-general does not interfere with, the private prosecutor may take up, as is done in some instances. It is not very usual, because it is considered that the case, having been rejected by the Attorney-general, he does not deem it a fit case, or one with sufficient materials for a prosecution; however, it is open to the private prosecutor, and I have known cases so conducted by the private prosecutor.

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Right Hon. *J. Napier*, M. P.

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1819. Does it appear to you useful for the proper administration of justice that there should be such officers as you have described?—I think the practice in Ireland is founded upon a right constitutional principle. I think it is open to very great improvement in many of its details, but I think that it is a part of the duty of the Executive Government to attend to the prosecutions for public offences. The public are interested in them; the peace of society depends upon them; and it should not be left to the caprice or to the neglect, as one may say, of private prosecutors. People do not like to take the burthen of prosecuting; it is expensive and tedious, and it leads to a great many collusive arrangements. There are a class of cases, such as bank prosecutions; and in the north of Ireland, where the people are wealthy, I have known cases of embezzlement and cases of that kind where the parties take charge of them themselves. Then again, there is a separate class of cases belonging to public departments. The Post-office have their own solicitor, but they always lay the papers before the Attorney-general of the day; and I must say (though my experience is limited in that respect) that I never saw anything better got up than their cases. I was quite struck with them; of course, it is a very high class of solicitor who attends to their general business, but they take such pains and care with their business that their cases hardly ever fail. I never saw anything better than the Post-office cases. I would select them particularly.

1820. I understand you to say, that at the quarter sessions the matter is conducted by a sessional prosecutor?—Yes.

1821. He is an attorney?—He is a local attorney.

1822. And he conducts the business in court as well as out?—He does. There is a defect, I think, connected with that. It might be made a great deal more complete; it is rather a modern arrangement, having the sessional prosecutors introduced to the extent to which we have them now; but I think they are put under very great disadvantage, and I think they are a class of men who are exceedingly useful. I thought them an exceedingly useful class of men, but very badly paid; and though the system, I think, is a most admirable one, yet it could be greatly improved, and many deficiencies arise in it from the way in which it is at present managed. When the cases are to be sent to the sessions, the informations are returned to the sessions; the sessional prosecutor has then the informations handed to him, and he is obliged, without any other assistance, to do the best he can with them; he is obliged to consider whether an indictment shall be sent up, and how it shall be prepared, and to conduct the whole thing. I think that part is defective. When informations are taken before the magistrates, I think they should all be returned to the Crown solicitor of the circuit, and that he should, as being the proper responsible person, take the advice of the law officer upon all the informations, and give the sessional prosecutor who conducts his share of the business, advice, as he gets for himself in those cases which go to the assizes; and then that the sessional prosecutor getting the cases would have the opportunity of arranging the proper evidence, having got the proper direction, and of having the cases conducted in an efficient way.

1823. Do barristers attend the sessions in Ireland?—Very rarely.

1824. Then the sessional prosecutor is an attorney, and has only attorneys to encounter, generally speaking?—Yes. We have had for a long time what we call our civil bill courts, which are like the county courts, and we have a very respectable class of chairmen. The assistant barrister who presides there is also the chairman of the quarter sessions, and presides over the criminal business; so that he gathers about him in that way many respectable local practitioners to practise in his court. One of those is selected as the sessional prosecutor, and he takes charge of all the business that is done at the quarter sessions.

1825. Is he paid by a salary?—He is, and very insufficiently paid; I have expressed an opinion, both in and out of office, that the sessional prosecutors are very inadequately paid for the services they perform.

1826. Mr. *Solicitor-General for Ireland.*] Are you aware that it has been under the consideration of the Executive for some time, that the position of the sessional prosecutors ought to be improved; I think it was under your own consideration?—Yes; when I was in office, I quite resolved to have a change in it; the Crown solicitors I think are very liberally paid; I do not say they are overpaid; they are very respectable men, and some of them very efficient men, and they conduct the business admirably; but I think comparing their duties with those of the sessional prosecutors, considering the actual duties which the sessional prosecutors

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cutors have to discharge, and the importance of that sessional business, the latter are most inadequately paid for the services which they have to perform.

1827. In fact, in many instances, it happens that the salary which the sessional Crown prosecutor gets, scarcely pays his travelling expenses?—It is very small.

1828. Take a large county, where six quarter sessions take place: he has to attend the six quarter sessions to conduct the prosecutions, and his salary is 100 *l.* a year?—It is quite inadequate. I also think that Crown prosecutors should not be engaged in private cases, so as to be in one case prosecuting, and in another defending, but then the salary would not be sufficient if you deprived a man of his private practice. I think the true plan is, that the public business should be efficiently done, and sufficiently paid for; and I have always thought, with respect to these criminal cases, that a great number of cases fail because the care is not taken with them which is taken in a civil case, where the interests of private parties are concerned. With the care and attention taken in a private case, justice seldom fails compared with public cases, because the same attention is not paid. I think it is the duty of the State to see that the greatest care is taken in the preparation of cases which come into court, and in the conduct of them; and the more so because, in the criminal courts, the verdict is a final one, and I think ought to be final. In a civil case, you can remedy any error by a new trial, but generally speaking, in criminal cases you cannot; therefore I think there should be, before a case comes into court, the fullest inquiry to see how it really stands, and that, when it is in court, it should be responsibly conducted by a person representing the public.

1829. *Chairman.*] In Ireland, I understand you, that at the assizes there is always some one person responsible for the management of every prosecution?—Yes; there is on every circuit a counsel, on some of them two; there are men of very considerable eminence; a high class of men.

1830. Are they paid by salary?—No, they are paid on the briefs; probably it would be a better plan, and I rather think that a suggestion to that effect was made, to pay them by salary. They ought always to be a high class of men; because in conducting criminal proceedings there is often a very large discretion. It is often important for the administration of the law that a case should not be unduly pressed; there are often matters of right feeling and principle which require a man of a very high class, and he is considered as having the power of the Attorney-general; he has the power of entering a *nolle prosequi* upon the proceedings; he has a large and ample power over life and liberty, and a man in that position ought to be of a very high class, and they generally are so; but I think it a fearful thing to leave anything of that sort to mere private considerations.

1831. Speaking as a jurist, you think it is a great evil that, in criminal cases, private feeling should have anything to do with the administration of justice; you consider that it ought to be entirely a matter for the State; and, that when conducted by the State, great advantage results?—That is my deliberate opinion.

1832. Mr. *Solicitor-General for Ireland.*] I believe the theory of our practice in Ireland is, that the Attorney-general either personally conducts every prosecution, or conducts it by some one appointed by him, and for whom he is responsible?—Precisely.

1833. And the party who represents the Attorney-general, whom I call the senior Crown prosecutor, is armed with all his powers; he may apply to postpone the case if he thinks the evidence not sufficient to sustain it; it would be his duty to apply to the judge to postpone it?—Just so.

1834. Or he may enter a *nolle prosequi*; in fact, he may exercise all the discretion that the Attorney-general would, if present?—Precisely.

1835. Do you approve of that course?—I think it is founded upon a right principle.

1836. With reference to the appointment of the Crown prosecutors, and the gentlemen at the bar whom the Attorney-general nominates to act for him on all the circuits in Ireland, do you not think there is a great advantage obtained in these nominations in directing the attention, especially of the junior prosecutors, to the study of the criminal law?—Clearly it may be so.

1837. In that way, and by their frequent changes, you train up a class of men who have made the criminal law their study, and who become acquainted with all its bearings on every circuit?—Just so; you may do it.

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1838. And men who, if they did not hold these situations, would have devoted themselves perhaps exclusively to the law as regards civil subjects?—I think so; it may be an encouragement.

1839. From your great experience at the bar, and your experience as Attorney-general, do you conceive that the independence of the bar has been in the least degree affected by giving the Attorney-general the power to nominate those parties who represent him?—I think not; I do not believe it has hitherto in any way.

1840. I believe those gentlemen who so represent the Attorney-general, not paid by salary, but by fees, are paid by very moderate fees?—Yes, they are very moderately paid.

1841. However, they are quite content with the payment which they get?—I never heard them complain of it; they are moderately paid by the fees on the actual business which they do. There have been some matters of detail, a little variation of practice, as to giving them briefs at a particular time. I thought that in all these cases the same pains and care ought to be taken in a Crown case that you would take in a civil case, and that there ought not to be any small peddling, if I may so say, of holding back a brief, but that they should have full power of preparation in all cases to be prosecuted under the direction of the Attorney-general.

1842. By the system in Ireland, from the moment a crime is committed, there is some public officer who has it in charge, and to see that justice is administered?—Yes.

1843. The resident magistrate first takes it in charge?—He frequently takes the informations.

1844. And if there is anything out of the ordinary course, he reports to the Executive?—Yes.

1845. In addition, if there is anything out of the ordinary course, it is sent at once to the Crown solicitor, and by him brought under the attention of the Attorney-general?—Just so.

1846. So that from the beginning there is not one moment till the verdict of the jury is given, in which that case is not in the charge of some public officer?—The best assistance is available.

1847. Mr. *Miles.*] In cases before the magistrates, is it only in peculiar cases that the committing magistrate applies to the Attorney-general for advice?—Only in peculiar cases; generally speaking, the magistrate discharges the duty of taking the informations, but there may be something critical or difficult, and if he feels a difficulty, he of course communicates with the Castle.

1848. If we have the power as magistrates now, in cases of difficulty, of applying to the Home Office, we are placed in nearly the same position as the magistrates are in Ireland, are we not?—Not exactly; for instance, the sessional prosecutor is a local person; he is at hand, and the facility of getting official direction is greater. On one or two circuits, a few years ago, they tried the change of making a local person the Crown solicitor, instead of having one Crown solicitor for the entire circuit; and on one or two of the circuits, they broke up the circuit into portions, and gave the Crown solicitorship to local persons, with the intention that they should act as advisers to the magistrates.

1849. Was that system continued?—The gentlemen who were appointed still remain, with one exception. One died, and the successor appointed was not a local person.

1850. Are they very effective?—I do not think that that part of it has worked well, but it may not be the fault of the system; I think it is capable of improvement. My own opinion about it was that the sessional prosecutor being a local person, should be the adviser of the magistrates, because the kind of cases in which the magistrates are more particularly interested which come before sessions, would be the cases that he would be conversant with; but with regard to that class of cases which are proper for the assizes, I thought it always better that the Crown solicitor conducting them should not be locally connected. At the assizes where there is anything religious or political, it is far better to have a staff not in any way connected with the locality; it creates less suspicion; therefore it occurred to me that the best plan was to have a Crown solicitor for the whole circuit, going through the whole circuit and not connected with any locality, and having his staff of counsel in the same way, going through the whole circuit; but the sessional prosecutor, if properly paid, living on the spot, should be

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be the person, if the magistrates thought it necessary to ask his aid in taking informations and all those things, and then I think it far better that the duty of the magistrates should be confined to the ministerial office of taking the informations; they may have to sit upon them afterwards at the sessions. I think, in the intermediate steps between committal and attendance at the sessions, it is better for the magistrates not to interfere; they have a ministerial duty and a judicial duty; they should be assisted in one by the local person, whoever he may be, and in the other by the chairman of the quarter sessions.

1851. Did you endeavour to carry out that system of breaking up your counties into sessional divisions?—It was only tried where the Crown solicitor of a circuit died; we could not kill the others. On the Munster Circuit, Sir Matthew Barrington, the Crown solicitor, is a most valuable man; on the North-Eastern Circuit, Mr. Maxwell Hamilton in the same way; on four of the circuits there are gentlemen who hold those appointments, and while they are there no change can be made: of course if any of them die or resign, it will be open to the Executive Government to consider whether they should make a change or not.

1852. Knowing our system as well as the Irish system, what recommendations would you make as to the preliminary inquiries before magistrates; would you hold that what is termed the district prosecutor in the Bill should assist the magistrates in difficult cases?—Certainly.

1853. Would you pay that district prosecutor by fees, or by salary?—Upon these matters of detail my opinion may not be very valuable. I would pay him by salary.

1854. What number of petty sessional divisions do you think he should have under his control for advice when required by the magistrates?—He would attend to all within his district; it would not be necessary for him, however, to be going from place to place unless when required.

1855. He, of course, would only be applied to in difficult cases?—Just so. Then he would see first that there was a proper case; and if necessary, he could take the direction either of the Attorney-general or of some person whom the Attorney-general should appoint. Then, after that, he could see that the proper evidence was procured. Most of these cases fail from the want of that kind of decent attention which is indispensable in efficiently getting up the case; and I think juries are often blamed for their verdicts in criminal cases, when the real cause of the failure is the slovenly, slobbering manner in which cases are presented to them.

1856. You have been asked relative to the Irish system not at all injuring the independence of the Bar; do you not think that there is this one fault in it, that only a certain number of persons ever have the different sorts of business of the Crown placed in their hands?—I do not know as to that; the criminal law is very important, and I think its importance is quite underrated; in that way it has very often fallen into the hands of an inferior class of practitioners, whereas I think the criminal law opens the door to the exercise of the highest powers. Then it is important to have men of very great experience who understand the criminal law well, and give their attention to it, and at the Bar, unless a man has some inducement to do that, it is merely considered as a kind of adjunct. I remember when I first went circuit, it was not much attended to by those who were in civil business; they would go in occasionally if they were wanted, but myself and some others on the circuit paid attention to it as a study; and it does appear to me, that having men whose peculiar duty it is to attend to it is of great importance, and that they become experienced in the working of it. On every circuit in Ireland we have experienced men who attend to it with great benefit to the public.

1857. Then it encourages the division of labour at the Bar, and is to the public benefit you think?—I do.

1858. *Chairman.*] You think that your system is favourable to the improvement of the Bar?—I think it can be made so; in every system there may be more or less of abuses, and people will see ways of improving it. It occurred to me when I was Attorney-general to do this: I directed the employment of what we call supernumerary prosecutors; they are not often employed, but they sometimes get a stray brief when there are a number of cases in a town, and what I directed was to ascertain in each circuit who were the barristers who had been the most diligent in their attendance in the Crown Court, and looking after the cases, to observe them, and I made out a list of them for the purpose of having

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having them as the supernumerary prosecutors, so as to reward the persons who had been giving attendance in that way, and endeavouring to make themselves familiar with the law, and so to train up as well as one could a class of men some of whom might take the places of the permanent counsel.

1859. Mr. *Solicitor-General for Ireland.*] I believe what you mean by super numerary counsel are gentlemen named by the Attorney-general to be taken in occasionally from the weight of the business requiring it, or from two courts sitting at the same time, when the permanent prosecutors are not sufficient. The Attorney-general appoints to each circuit a Crown gentleman, called his permanent counsel?—Yes.

1860. But from the weight of business, or from the fact of the two judges being both trying criminal cases at the same time, the permanent prosecutors may not be adequate to carry on the prosecutions, and the Attorney-general names supernumerary prosecutors to be taken in from time to time, as occasion may require?—Just so.

1861. They depend altogether on the occasional briefs which they get?—Just so.

1862. But that inducement is quite sufficient to make them study the criminal law?—It may be of use; and I directed such of the junior Bar to be selected as had been in the habit of giving more diligent attendance, so as to encourage and reward them.

1863. *Chairman.*] Do you think that it would be an improvement on your system, with a view to the independence of the Bar, if prosecutions and the management of prosecutions were flung into the hands of policemen, and a low class of attorneys?—Certainly not.

1864. Mr. *Watson.*] Upon the whole, do you consider that the Irish system works well?—I do; but I think it is capable of very considerable improvement.

1865. I suppose you very rarely attribute a failure of justice to the want of properly getting up a case?—There are cases where justice has often failed, even with our system; therefore I say it can be greatly improved, but at the same time I think a great deal of the business is admirably done. We have some very efficient men. Wherever you have efficient respectable men, depend upon it the business will be well done, and public justice will be satisfied.

1866. And there is no chance whatsoever of a prosecutor being bought off, or of an improper compromise in your system?—There cannot be; sometimes the witnesses, in spite of all one can do, will be tampered with; but as the public officers have the conduct of the proceedings, there can be no likelihood of collusive arrangement of any kind.

1867. And I suppose there is no reason to imagine that the Crown prosecutors ever unnecessarily press a case so as to obtain an unfair conviction?—It is considered to be the duty of those who represent the Attorney-general to administer justice in a becoming way, and never unduly to press a case, and never to exercise any severity which the purposes of justice do not require.

1868. And thoroughly to sift the case both before and during the trial, I suppose?—Yes. First the informations are submitted to the Attorney-general; then, if he thinks the informations disclose a sufficient case, he marks upon them his order to prosecute on the part of the Crown. Then the Crown solicitor is obliged to see the witnesses himself, and examine them, and then, if he requires any further directions on the circuit, he has the counsel of the circuit, who represents the Attorney-general, to direct proofs, or to make any additional suggestions.

1869. Under all these circumstances, do you think that the public criminal justice of Ireland could, on any system, be rendered cheaper than it is at present; do you suppose that any unnecessary expense is incurred?—I do not know that there is; I am not aware of any.

1870. From what you have heard, I suppose the cost of prosecutions in Ireland is not, on the average, more than it is in England?—I do not know; I agree in the principle of which we hear in the House of Commons, that the first thing is to have efficiency; but I am not aware of any undue expenditure of public money.

1871. There is a strong feeling in England of an undue pressure upon the county rates sometimes?—All our staff is paid out of the Consolidated Fund, and I think that the expenses of the witnesses generally come off the locality, which is a very fair arrangement. The general staff for the benefit of the public is paid out

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out of the general Consolidated Fund, but the expense of witnesses, being a local thing, is paid by the locality.

1872. When you were Attorney-general, did you exercise any power in allowing the witnesses for the prisoners to be brought up at the public expense?—Yes; cases came before me, when I was Attorney-general, about the expense of defending prisoners. It is very rarely allowed, because, generally speaking, I think you find that they manage somehow or other to be pretty well defended. But there were cases, and I remember one case particularly, which occurred at an assizes when I was attending myself; for the Attorney-general in very important cases attends in person; I think it was the case of a woman charged with child murder, or something of that kind. She had no one to defend her, and the judge (I think it was Judge Ball) thought it was a case in which she ought to have some person, and I gave directions to the Crown solicitor, as the judge thought it a proper case, to allow, I think, 5*l*.—to allow a certain reasonable sum for attorney and counsel to have her properly defended.

1873. In Ireland, what is the general opinion and feeling as to the mode of conducting prosecutions; is it popular, or are there law reformers there anxious to change it?—There are matters of detail which are capable of very great improvement, and I thought when Mr. Phillimore's Bill was introduced, considering the mode of proceeding in Scotland, and the mode of proceeding in Ireland, that, by a kind of review of the whole, we might get at least for England and Ireland a very improved system. There are many matters, I think, in Ireland which are capable of considerable improvement, but I think the system right in principle.

1874. Do you see any reason why the Irish system, or the Scotch system, or a combination of the two, could not be introduced into England?—I think an improved system is quite attainable. I of course speak with great deference. In introducing a new system great care should be taken in England to avoid coming too suddenly in collision with what people have been accustomed to; but it does strike me that all matters fit for public prosecution should be taken charge of by responsible public officers, and that the Executive Government should be charged with the duty of seeing them adequately conducted and carried out. With respect to a new trial in criminal cases, I quite agree with Lord Denman, that the great object should be before a case is brought into court to take every means and precaution in having it sifted and examined before the case is presented to the petit jury; but that when it comes there a man should never be brought to trial again, that it should be final; that involves a greater necessity for examining into all preliminary matters.

1875. Mr. *W. Ewart.*] You think that in criminal cases a very careful previous investigation of the evidence is preferable to giving a power of appeal?—I do. I have a strong opinion upon it.

1876. I think you stated that the Crown solicitors are appointed *quamdiu bene se gesserint*?—Yes.

1877. Are the Crown counsel so appointed also?—Yes, the Crown counsel do not go in and out with the Attorney-general.

1878. Mr. *Solicitor-General for Ireland.*] But it is quite open to the Attorney-general when he comes into office, if he pleases, to remove all the prosecutors?—He may do it, but it never has been done.

1879. The Crown counsel on the circuit simply represent the Attorney-general?—Simply, and not the individual.

1880. He is responsible for them, and he may remove them?—Yes.

1881. In reference to the careful preliminary investigation of which you have spoken, as a general rule is it not the fact with us, that according to our system the case does receive a very careful preliminary sifting?—It does generally.

1882. And are you aware that in the exercise of the discretion of the Crown counsel, if he thinks the case has not been properly sifted, he has authority to apply to the judge to postpone the case?—Yes.

1883. And does so?—And does so frequently.

1884. In order that it may be made perfect, and that a man either may not be unfairly charged before the jury, or may not escape, if guilty?—Yes; a very remarkable instance of the necessity for such deliberation occurred in a celebrated case; Kirwan's case, which is instructive. It made a good deal of stir in England. It was a case of a man who was charged with the murder of his wife, at a place called Ireland's Eye. There was a coroner's inquest held on the body, and

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and they returned a verdict of accidental drowning. There was a good deal of murmuring in the neighbourhood, and much dissatisfaction among the common people; they had a general feeling that she had been murdered. A very active magistrate, Major Brownrigg, heard something of this from some of the constabulary there. He applied to me (I was then Attorney-general), and we prosecuted some further inquiries. It turned out that the coroner had examined as the medical witness a man who had never seen a drowned body; the man got his fee upon the inquest, and the jury, aided by his medical opinion, returned this verdict of accidental drowning. Major Brownrigg, from what he heard about it, followed up the inquiry, and had the body disinterred, and an examination of it took place at rather a late period. I believe that if it had been properly examined at the first, the case would have been put beyond all doubt; but he had a surgical examination I think a fortnight or three weeks, or perhaps more, after the body had been buried. The case then assumed a new aspect, and bills were sent before the grand jury, and they were found. I then ordered the case, it being so very peculiar a one, to stand over, and not to be allowed to be tried at the then sittings in Green-street, as perhaps we might discover some additional evidence. There was additional evidence got, and the consequence was, that afterwards that case was tried before two of our most experienced judges, and a verdict of guilty was returned, and I believe most properly so.

1885. *Chairman.*] We were told by the last witness that it might not impossibly happen that a poor man, who had been injured, might go to a solicitor, and the solicitor might say, "I cannot attend to the conduct of your case;" could that happen in Ireland?—No, it does not happen in Ireland, because either the sessional prosecutor or the Crown solicitor or the constabulary are at hand to take it in charge; it is their proper duty; it is not the case of A. B. or C. D.; it is the case of the public.

1886. Such a thing could not happen?—No.

887. Mr. *Solicitor-General for Ireland.*] The party who has been injured does not want a solicitor, for the Crown solicitor conducts the business for him, as part of the public business?—He attends to every proper case.

1888. Can you tell us the origin of the Irish system of appointing prosecutors? —I do not know, I never deliberately studied it. The Attorney-general has the power as representing the Crown; he could, of course, as he could in England, stop any prosecution; he could enter a *nolle prosequi* upon any prosecution in the Queen's name; he has by the constitution all these powers, and he may appoint persons to represent him.

1889. I believe, whatever the origin was, it has been established as long as the memory of living witnesses goes back?—Yes. I remember looking into it to this extent: a question arose about the appointment of Mr. Kemmis, on the Leinster Circuit; he is a barrister; he is the only Crown solicitor who is a barrister; his father was, and is still, a very eminent Crown solicitor; he had assisted his father for a great many years, and had taken charge of the Leinster Circuit; his father had both the Dublin Circuit and the Leinster Circuit, and the son was appointed to the latter, but an objection was made, by some persons saying that he was only a barrister, and in that way I investigated the powers of the Crown, and I thought quite clear that it was competent to the Crown to appoint any person to act. He is one of our very best men.

1890. The Attorney-general, in fact, with us exercises in practice the powers which the Attorney-general for England has in theory?—Yes.

1891. The Attorney-general has for each circuit, or for each town on the circuit, if he pleases, what is called a senior prosecutor?—Yes.

1892. He is generally a Queen's counsel?—Yes.

1893. And is selected on account of his proved efficiency?—Yes.

1894. There is another permanent prosecutor under him, either for the whole circuit or one for each town?—Yes.

1895. And it is the duty of that second man to prepare the indictments, and see that the evidence is all correct?—Yes.

1896. Then you have the supernumeraries in addition to those?—Yes.

1897. All armed with the powers of the Attorney-general?—Yes; the senior man, of course, controls the juniors.

1898. With reference to the preliminary investigation, you have stated that each bundle of informations is sent by the Crown solicitor to the Attorney-general?—Yes.

1899. For

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1899. For his direction, which is generally given in the words "Prosecute," or "Do not prosecute"?—Yes.

1900. But if he thinks fit, he adds further directions?—Precisely; and I think he ought to do so, where the case requires it.

1901. I believe the expense to which the public is put in fees for that duty is not very large?—No.

1902. The Attorney-general, in fact, for performing that duty, is very inadequately paid?—He is paid one thing with another. I take his payment altogether; he is very fairly paid, I think, upon the whole.

1903. But for the performance of that duty the public is not onerated to any large extent?—Certainly not. The Crown solicitor marks what he thinks a suitable fee, according to the number and the probable result of the cases; and, generally speaking, they are as fairly managed as if it were a case the expense of which came out of the pocket of a private individual.

1904. In sending the informations of a whole circuit to advise upon, perhaps he would give the Attorney-general a fee of 50 guineas?—No, I think not so much.

1905. What would be the fee for all the informations of a circuit?—I do not think I ever saw so large a fee as 50 guineas; they vary from 10 to 15 and 20 guineas; but they may be more according to the number of cases. Informations come in batches, and that is a part of the thing which I thought wrong. Sometimes, immediately before the assizes, they gather up a whole heap, and then send them all at once; whereas I thought that the right plan would be, that as informations are taken from time to time, they should be distributed properly between the assizes and the sessions, being first sent periodically to the Attorney-general. I think he should get them, say, every fortnight. The advantage of that would be that it would not fling at him a whole mass of papers at once; he would get his directions properly distributed, and it would also give ample time to supply any defects which sometimes arise in the cases. I remember that in the summer circuit of 1852 cases came to myself where I thought the evidence was quite insufficient; cases of some nicety, and in which I thought that something more should be done to make the case complete; but they could not get the proper evidence in time, and the result was that as there was no circuit till March 1853, the cases were thrown over.

1906. Are you aware that at present that system has been altered, and there is now a rule that the Crown solicitor shall, as the cases arise from time to time, send them to the Attorney-general?—That is quite proper.

1907. You stated that the Attorney-general conducts the prosecution personally where the case is of great public importance?—Just so.

1908. In doing that, he is only directed by his own discretion?—Just so. There is a class of cases of great public consequence, where it is considered that his attending in person gives weight and authority, and sometimes he takes the Solicitor-general with him; for instance, there was a recent case of a prosecution directed by the House of Commons.

1909. When you were Attorney-general, you had some cases in the north of Ireland, I believe?—Yes, cases growing out of the Ribbon system on the Northern Circuit.

1910. You thought those of sufficient importance, involving great public consideration, that the Attorney-general should himself attend and prosecute in person?—Yes, and there was one case in the county of Monaghan that had been already made the subject of a special commission before I got into office. Then there were two cases in the county of Louth and the county of Armagh; those were Ribbon cases. Great observations had been made before about the reluctance of juries to convict. I took a great deal of pains with the evidence; probably I did what I used to do when I was junior counsel, namely, to look carefully myself into the case. The result was, that we got verdicts in both the counties without difficulty. I must say also, with regard to the jurors, that they acted without fear, favour, or affection.

1911. I believe, in addition to having the case properly prosecuted, it has a great public effect, when the Attorney-general, representing the Crown, is seen to go down in person, and in that way to show the determination of the Executive?—Yes; when there has been some peculiar offence of a public kind, it shows the determination of the Executive Government that they will grapple with that particular system. In the very cases which I have mentioned, we heard afterwards

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wards that more than 200 of the persons connected with the Ribbon system had emigrated from the country after the convictions.

1912. Before you were yourself Attorney-general, I think in the year 1848, do you remember that the counties of Limerick and Clare were very much disturbed, and that there were great outrages committed ?—Yes.

1913. The Attorney-general went down and prosecuted people thereon, and we have had those counties since in a state of peace ?—Yes; I believe that a firm and fair administration of the law in Ireland is of the highest public consequence.

1914. In addition to what you have stated, I believe the Executive in Ireland are very much assisted in the administration of criminal justice by those officers whom we know as resident or stipendiary magistrates ?—The stipendiary magistrates, like all bodies of men, are both good and bad; but there are some of them very intelligent and respectable men.

1915. They are appointed by the Crown, and paid by salaries ?—Yes.

1916. And it is their duty to report to the Executive Government when anything out of order occurs ?—Yes; they are very useful; and also the constabulary are most useful; for instance, in one of those very cases of the Ribbon system at Armagh nothing could exceed the activity and the vigilance of the constabulary; in Mr. Chambre's case at Armagh.

1917. When confined to the performance of their proper duties ?—Quite so.

1918. Not in conducting a prosecution, but in assisting the proper officer of justice in conducting it ?—Quite so. They have such a good class of inspectors and officers over them, and the head of the department, Sir Duncan M'Gregor, is such a valuable man, that they are most able assistants in the detection of criminals.

1919. Mr. *W. Ewart.*] But you would very much object to their interference in criminal matters ?—They are never allowed to interfere, more than assisting in the way in which the Solicitor-general for Ireland has stated. They are not allowed to do anything on their own responsibility.

1920. Mr. *Solicitor-General for Ireland.*] I believe the assistance derived from our very efficient constabulary system most materially reduces the expense of administering criminal justice ?—I think it does. I think it is most important for the peace of the country.

1921. For instance, they collect the witnesses together and bring them in ?—Yes; and they are so well acquainted with the different localities, and all the people in them, that when a crime is committed they know almost instinctively where to go to look for the party committing it.

1922. And the people have great confidence in them ?—I think they have; I think in Ireland, generally, you find that there is no feeling against the persons who are charged publicly with those duties. They are expected to perform their duty, and I think there is no feeling whatever against the public officers.

1923. Mr. *W. Ewart.*] In what proportion are the stipendiary magistrates distributed throughout Ireland ?—They have them in various places. There are parts of Ireland where it is very difficult to get an unpaid magistracy, and in other places there is a class of stipendiary magistrates who assist the gentry. I think they work very well together upon the whole.

1924. Then, if I understand rightly, it is the reverse of the system pursued in England, where in remote districts the only magistrates are the unpaid magistrates ?—In Ireland we have a great many unpaid magistrates, but in some places it is difficult to get persons of a proper position to be unpaid magistrates; and also the stipendiary magistrates assist the others.

1925. If I understand rightly, in Ireland the private prosecutor may proceed, notwithstanding the existence of a public prosecutor ?—In one sense he may, but they never do except after the Attorney-general has had the case; the Attorney-general's power of stopping any case takes it out of the hands, in the first instance, of the private prosecutor.

1926. If the Attorney-general fails to prosecute, is there anything which should prevent the private prosecutor from proceeding ?—No, nothing.

1927. In Ireland this is not a local system of prosecution; it seems to me to be more connected with the circuits; it is not local as in Scotland and in France, where the prosecutor is generally a local officer who lives very much in the country ?—The sessional prosecutor is a local officer, and two or three of the Crown solicitors should be so; but generally speaking, it is not so.

1928. Do-

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1928. Do you think it more desirable to have at least a certain degree of independent action not connected with the locality?—The circuit staff generally is not connected with the locality, and of that I approve.

1929. Do you think that preferable to having a greater degree of connexion with the locality?—There is one class of cases for which the local staff is better adapted; and there is another class of cases where I think it better to have what I call the central staff; I think that both together act usefully.

1930. How would you draw the distinction?—There are cases of local political excitement, or growing out of religious differences, or agrarian matters, where it is often important to free the administration of justice from any suspicion as to the parties who are carrying on the prosecution being locally connected; a local respectable man will have a good deal of private connexion. He may be doing business for some of the proprietors, supposing it is a case of some agrarian disturbance, or some political matter. Where he happens to have a private connexion of this kind, and is also a public officer, people will suspect and think that he is carrying out the views of his friends. In this class of cases, I think it far better for public justice that the persons who are conducting them should only appear in their character of public prosecutor.

1931. Mr. *Solicitor-General for Ireland.*] Is it your view that these prosecutors, representing the Attorney-general, the permanent Crown counsel, should be debarred from practising in the civil court on circuit?—A question has arisen about that; what I thought was this: I did not think it right to lay down any absolute bar against it. I thought that when they accepted the office, it should be upon the complete understanding that the Crown business would receive their primary and proper care. But there are instances, for example, in a circuit town, where the Crown business is unimportant, and it is probably over the first day; then it is a matter, I think, for the consideration of the counsel. Of course, if he is attending to civil business in any way interfering with the discharge of his duty to the Crown, I think it is a matter in which the Attorney-general should interpose, but not beyond this.

1932. Do you think that the Crown prosecutor should be bound exclusively to attend to the Crown business as long as there is Crown business to attend to?—I think his Crown business demands his first care, and that he should not allow anything to withdraw him from it, or interfere with the efficient conduct of the prosecutions.

1933. At the court of quarter sessions a great deal of our criminal law is administered?—There is a great deal done at quarter sessions.

1934. And the magistrates have all the advantage of having a gentleman of great skill as the chairman of quarter sessions?—They have.

1935. So that, in fact, they have always, as chairman of the quarter sessions, a skilled barrister presiding?—They have men of the most competent class, some of them quite fit to fill the highest judicial office.

1936. I may mention one in particular, Mr. Jonathan Henn?—It has always struck me as a singular thing, that one of the ablest men I ever knew in the profession should only be an assistant barrister.

1937. If we have in the quarter sessional court the advantage of a gentleman fit to fill any position of experience, and if at the quarter sessions in Ireland you think it advisable that the court of quarter sessions should be assisted by having a public prosecutor there, where the chairman is an experienced barrister, is it not much more so in this country?—The chairman in Ireland, of course, has more professional experience than one would expect here; though I believe that some of the chairmen of quarter sessions in England are very competent men.

1938. But your judgment is, that in Ireland it is advisable to have the court assisted by the presence of a public prosecutor?—I think so.

1939. If that is your opinion as to Ireland, I do not doubt your opinion is that in this country the court of quarter sessions would more need assistance, not having a barrister presiding?—I think so; I think that whoever conducts the prosecutions ought to be for the time a public officer, and responsible to the public for the discharge of his duty.

1940. Is there any one filling the position of a prosecutor at all at the court of petty sessions in Ireland?—No.

1941. There is no one in Ireland at petty sessions who fills that position?—No; at petty sessions some cases occurred, in 1852, I think, on the Connaught circuit, of

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of rather a peculiar kind, and I ordered the sessional prosecutor there to attend. What I always advised the magistrates at petty sessions was, simply to take the informations; in religious and political cases they frequently got involved by having speeches made, and I advised them never to allow the parties to raise a religious question at all, but to inquire merely whether there had been any infraction of the peace, or any violation of the law; I said, "All you have to do is, to take the informations, and do not allow any party to raise a religious question, for you are to know nobody but A. B. and C. D. here;" and in that way I discouraged those kind of hearings, and I directed the sessional prosecutor in some cases to attend and simply to see that the informations were properly taken against every party who happened to have violated the peace, and that all were treated alike.

1942. You are aware that in Ireland there is an officer filling the position of petty sessions clerk?—Yes.

1943. Elected by the magistrates?—Yes.

1944. Subject to the approbation of the Executive?—Yes, I think the Lord Lieutenant has the power of dismissing him under the Act.

1945. How is that officer paid?—I think he is inadequately paid also: they are very proper men, but I think it important to secure a respectable class of officers in that department.

1946. They are paid by fees?—Yes.

1947. Are those officers attorneys?—No, I rather think not; in some of the places they are attorneys, but I do not think that the rule is universal.

1948. Am I to understand, in your view, that in the evidence at petty sessions the magistrates ought to have the opportunity, if they feel it necessary, to call for the attendance of the sessional Crown prosecutor to assist them?—I think they ought.

1949. Then, without having a permanent officer for petty sessions, you would give the magistrates there the power, if they thought fit, to call in the aid of the local sessional Crown prosecutor?—I think so; that he, being on the spot, and having charge of the business at the sessions, and of the business which the magistrates are particularly interested about, he should be there as their adviser and assistant, and to conduct the cases afterwards.

1950. That would not add to the public expense, because that officer is paid by salary?—He is paid by salary, but I think, and I repeat it, they ought to be a great deal better paid than they are.

1951. Mr. *Miles*.] Can you tell us what is the ratio of convictions and acquittals in any year in Ireland?—I cannot; that is a matter of detail. The Crown solicitor of each circuit makes a return to the Attorney-general of all the cases either within his circuit, or, if he belongs to a branch of the circuit within his district, he states the time of the committal and other particulars. There are a number of columns, giving all the details; what bills are found or ignored, and whether there is a conviction or acquittal, and what takes place.

1952. My reason for putting the question to you was, to discover whether in Ireland, where you have this public prosecutor, the convictions are greater as compared to the acquittals than they are in England?—That might mislead a good deal, because there are so many peculiar circumstances. There are a class of cases connected with the composition of juries; there are a number of other circumstances in that way, so that I do not think a comparison of those results would be a safe rule to go by; but this I say, that whenever you have the prosecutions attended to as they ought to be, I think there is seldom a failure of justice.

1953. Our sessions are conducted in a different way from yours; we have invariably a bar, and a considerable bar, at sessions. Would you appoint one of those barristers so attending to hold temporarily the office of Attorney-general in that respect?—If we had a bar attending, I certainly would; I would do the same there as at the assizes. I think the criminal business ought to be conducted by a person responsible to the public, and of course I would get the best class of men that I could find.

1954. *Chairman*.] Exactly the same reason applies in one case as in the other?—I think so.

1955. Mr. *Miles*.] Have you ever turned your attention to the propriety of having your district agent with your grand jury, so that he might give them his advice if asked for in criminal business; do you think that would be a good plan?—I do not see any objection to it. The functions of the grand jury are, I think, very important; I should be very sorry to see the grand jury dispensed with.

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with. I think that a person who is put upon his trial ought to have the protection first of a careful investigation by a public officer, the Crown solicitor, the magistrate, and so on, and the Attorney-general, and also the protection of the grand jury. I also think that it is of great importance bringing the country gentlemen to take an interest in the state and good order of their neighbourhood. Therefore, as to the district agent, whom I assume to be a respectable and intelligent person and a public officer, I think it might be very advisable to give the grand jury the benefit of his assistance.

1956. Do you not think, in fact, that it not unfrequently happens that the witnesses before the grand jury give very different evidence from that which they have given before the committing magistrate, there being no one there to watch what they do say?—Before the grand jury, except in very peculiar cases, their evidence is not sifted very strictly.

1957. It has sometimes occurred to the experience of any gentleman who has sat on grand juries in England that when they have come afterwards to look at the depositions, not having found a bill upon the evidence produced before them, they have found that the evidence which has been produced before the magistrates has been very different from that which has been produced before the grand jurors?—I believe that is so; but sometimes a good deal depends upon the taking down of the depositions; that is one reason why I thought that the magistrates should have a very competent person to take the depositions.

1958. Does not that sometimes arise from collusion between the prisoner and the witnesses for the prosecution?—Indeed it does; it requires a great deal of watching in that way, and it also requires a great deal of watching not to take down too many depositions, but only to take so much as to start the case, as I may say.

1959. If the district agent was with the grand jury, he could put all that right at once, could he not?—He could.

1960. And it would be conducive to the ends of justice that such should take place?—I think so.

1961. Mr. *Philipps*.] You would not wish it to be compulsory on the district agent to be in the room with the grand jury, but you would give the grand jury an opportunity of applying to him if they liked?—I think so; they might apply to him if they found it advisable.

1962. His presence, as a matter of course, would be objectionable?—It might be so. I understood Mr. Miles's question to be, that they should have an opportunity of getting his assistance; they probably would not ask it excepting in a peculiar class of cases.

1963. Mr. *Solicitor-General for Ireland*.] The Attorney-General in Ireland, in regulating his discretion as to what cases he will prosecute in, is of course guided by the circumstances of each case?—Yes.

1964. For instance, if he thinks that the prosecution has been got up with a view to promote some private object, he says, "Do not prosecute"?—Yes, he must consider when he orders a prosecution that the purposes of public justice require it, and that there is a sufficient case.

1965. There is a class of cases, I believe, in which he does not prosecute; for instance, offences against the Bank, forgeries of bank notes?—The Bank themselves take those cases in charge.

1966. He thinks it right that they should incur the expense?—I have been employed on the circuit in that way for the Bank; there is no necessity for a public prosecution where it is a matter directly connected with a local interest of that peculiar class.

1967. His general rule is, to see that the prosecution is for the purposes of public justice, and not to work out any private object?—Certainly.

1968. And in those cases he prosecutes?—Yes.

1969. Did you not yourself, as Attorney-General, find the sessional prosecutors in their present defective and bad state and bad organisation still a very good class of officers?—I found them an excellent class of officers, and I encouraged them in every way that I could. I encouraged them to communicate with me in any difficulties which they had, and I suggested matters for them in the way of their conduct of their cases, and they were very grateful. I think they are an excellent class of officers.

1970. But badly paid?—But badly paid. If I had had my will, I would have made

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made very great alterations. I had a plan. One of our Crown solicitors, an exceedingly experienced and efficient man, Mr. Seed of the Home Circuit, by my direction sketched out a good many points. I have the whole of his plan, and amongst other things a part of it was to alter the salaries of the sessional prosecutors, and in some respect to alter their duties. I intended to prohibit them from taking private practice in criminal cases, and that they should be prepared to assist the magistrates whenever they were needed; and that they should devote themselves, as far as criminal matters were concerned, exclusively to the service of the public.

1971. What was your proposed scale of salaries for those officers?—I have a scale which I could furnish to the Committee; some of them at present, I believe, are paid 70 *l.* a year, and others 80 *l.* and 100 *l.* a year.

1972. The highest, I believe, at present is 200 *l.*?—I do not know whether any one comes up to that.

1973. Or 175 *l.*, I believe?—Comparing the quantity of business done at the sessions and at the assizes, I was quite struck in comparing the way in which a man was paid for doing very heavy business, and a great deal of it very important business.

1674. I believe with us the salaries vary from 75 *l.* to 175 *l.*?—I believe so.

1975. Is it not the case upon our system, that at quarter sessions you may have the most important cases tried, transportable felonies?—Yes, and misdemeanors, a very important class of cases, and they do them remarkably well, considering how they are situated. The Crown solicitor has the assistance both of the Attorney-general's direction, and the assistance of the counsel of the circuit; whereas the sessional prosecutor has the assistance of neither; he has the informations given to him at the time, and is obliged to make the best he can of them.

1976. And he is very often paid by a salary which does not recoup his expenses?—That fact is one of the points for improvement; I think that all these things could be improved, and that the Irish system could be made a very admirable plan.

1977. The Attorney-general for Ireland has the full power to regulate all points excepting the payment; he cannot touch the Exchequer?—But the payments are a very important point; probably in some cases he might reduce. With regard to the petty sessions clerk, I thought that in all cases where informations were taken, the petty sessions clerk might make out copies of the informations, and be paid so much for it, and then return those informations to the Crown solicitor, and that the Crown solicitor, upon his responsibility, might pass them to the assizes and the sessions, taking the direction, where he required it, of the law adviser or the Attorney-general. It could be made very perfect. With regard to the Scotch system, I remember getting a book from Sir William Gibson Craig; it was a book on the Procedure in Scotland; that suggested a good many things to me as to the value of the Scotch system; that the man who starts the thing follows it up; he has an interest; he is made responsible, and all the merit of success, or the demerit of failure, attaches to him.

1978. You have mentioned that after each circuit the Crown solicitor is bound to give to the Attorney-general a report, stating the result of each case?—Yes.

1979. With his observations upon it?—Everything.

1980. So that the Attorney-general has an opportunity of seeing, from that document, whether the business has been properly conducted?—He has ample means of checking it; and by communicating with the counsel who represent him, whom I found a very superior class of men, and they communicate pretty freely to him what they see wrong.

1981. If a prisoner has been acquitted against whom there was an apparent case, the Crown solicitor in his observations ought to state some reason to the Attorney-general for it?—He does.

1982. As for instance, that there was a conflict of evidence, and the jury decided in the prisoner's favour?—Yes, or that some witness was improperly spirited away.

1983. And when the Attorney-general gets that report, it is his privilege to make such observations as he pleases upon it, commenting upon the conduct of the prosecution, or otherwise, for the future direction of the Crown solicitor?—Yes, that is his duty.

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Mr. *Samuel Wilkinson*, called in; and Examined.

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1984. *Chairman.*] WHAT are you?—A Solicitor.

1985. You are also town clerk of the borough of Walsall, are you not?—Yes.

1986. How long have you been so?—About seven or eight years.

1987. How long have you been a solicitor?—A little longer; nearly 10 years.

1988. Have you during that time had much experience in criminal business?—Yes, pretty well.

1989. In your opinion, does the present system of the administration of criminal justice require improvement?—I think it does.

1990. Will you be good enough to tell the Committee in what respects?—That has been elaborately gone into by the previous witnesses; my experience comes pretty much to the same result as that of the witnesses who have been previously examined. I think there is frequently a failure from the want of some competent party to make a searching investigation, even before the case comes before the magistrates. I can recollect a number of instances within a short period in which, for the want of some party having had the conduct of the case, there has been an evident failure. Then, again, for the want of a similar officer, prosecutions have been instituted with a view to obtain personal and selfish ends, and the criminal law has been used for that purpose; such, for instance, as a prosecution, where a warrant has been issued, and the warrant not handed to any officer, but retained in the private custody of the prosecutor, and suspended over the head of the offender until money, probably, has been paid. I do not assert that, but that is my belief; and then no appearance is made by the prosecutor.

1991. Both classes of cases which you have mentioned have happened within your own knowledge?—Yes.

1992. The failure of justice in those cases was from the want of a competent person to manage the prosecution, and also the abuse of justice for purposes of extortion?—Undoubtedly.

1993. Will you be good enough to say whether you agree with this statement, that the consequence of the present system is very often to fling the management of prosecutions into the hands of a lower class of practitioners?—More generally my experience goes to this, that it is left to take its chance.

1994. Merely leaving it to take its chance, creates an opportunity for a scramble among the lower class of practitioners, does it not?—That is so, more particularly as to counties than to boroughs.

1995. Do you know instances where policemen have been in the pay of attorneys?—I cannot say that.

1996. Do you believe that it is the case, that attorneys have given fees to policemen to bring to them prosecutions?—I cannot say that.

1997. Have you any doubt that such is the case?—I think it is likely, but I have no personal knowledge of it.

1998. With regard to the escape of criminals; is it your opinion that criminals escape from the want of a person directly interested on the part of the public in the management of the prosecution?—I have no doubt of it; I have two or three cases in my mind at this moment. One particularly, of a very serious robbery, in which a poor man was robbed of all the property he had in the world; a poor Jew. He had a box of jewellery, worth about 20 *l.*, stolen from him, and from the want of some investigation at the time the prosecution failed. The parties were arrested, but the principal witnesses got out of the way, and they were tampered with by friends of the prisoners. I was concerned in the case, and I have, therefore, full means of knowing; and I am satisfied that justice failed there entirely from the want of somebody to have taken charge of the case in the first instance.

1999. Some one to whom the injured person might have gone and said, "I have received such an injury; do you investigate the facts"?—Yes.

2000. With regard to the outlay which is sometimes requisite by attorneys in prosecutions, is it within your knowledge that it is often necessary for an attorney conducting a prosecution to advance money for the purpose of procuring the requisite evidence, and so forth?—Yes, he has to do that sometimes.

2001. In your opinion, is that an evil?—I cannot say that I know any particular injury to have arisen from it.

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2002. Suppose an attorney were to say, "I would rather not undertake any such risk"?—It would be an evil then.

2003. A poor man could not guarantee him his expenses, and there might very well be a failure of justice?—There is no doubt in the world that many prosecutions are not gone into, on account of the poverty of the prosecutor; he will not undertake the labour and trouble and cost of the prosecution, because he has not the means.

2004. That applies to many prosecutions, which it is for the interest of society should be investigated?—Undoubtedly.

2005. You think that there is no doubt that many such cases are not investigated at all, on account of the poverty of the prosecutors?—I do.

2006. What is your opinion upon the subject of allowing the expenses of witnesses for prisoners; do you think it desirable that prisoners should be allowed to call witnesses to fact at the public expense?—I think it is a power which should be exercised with very great care.

2007. You think it should be left to the judge?—Yes; I think it should be left to no one but the judge, who in every case should give an express order; the money should not be paid as a matter of course; I think it would otherwise be liable to great abuse.

2008. I am not speaking of witnesses to character, I am speaking of witnesses to fact; is it your opinion that by that precaution of vesting the power in the judges to grant or withhold the expenses, as he thought proper, such a power might safely be conferred?—Yes; and I think then it would promote the ends of justice.

2009. Is it within your knowledge that policemen are often employed for the management of prosecutions?—Undoubtedly; ordinarily it falls to their lot to do it.

2010. Do you think that they are a proper class to be so employed?—Certainly not.

2011. Mr. *Miles.*] Do you act as magistrates' clerk?—I do for a small sessional division of the county as well as town clerk for the borough.

2012. What county?—Stafford.

2013. Are all the criminal cases conducted at sessions by attorney and counsel in that county?—I think they are; I am not sure that attorneys are employed, I rather think that attorneys are not employed at the sessions, because the briefs are delivered out by the clerk of the peace.

2014. The depositions are sent to the clerk of the peace, and are then handed over to the counsel?—Yes.

2015. That is the general practice?—That is the rule.

2016. You stated that you think an attorney or a district prosecutor should be employed for the sake of getting up cases, and that there is frequently a denial of justice, and that at the same time cases often break down from the failure of the attendance of witnesses; how is that to be altered any more than it is now, supposing a public prosecutor should be determined upon?—In this way: the prosecutor goes to the magistrates' clerk's office and obtains a warrant; before the time of hearing, the friends of the party arrested have been with him and softened him, or it may be that they have used improper means to do it, and he makes no appearance; therefore the prisoner is discharged. The magistrates can do nothing with that; but if in the first instance, instead of having to apply to the magistrates' clerk he had to apply to the public prosecutor, the public prosecutor would then inform himself of the evidence on which the charge was founded, and he would, I apprehend, enforce the attendance of these witnesses.

2017. How would he enforce the attendance of those witnesses?—By summons.

2018. We are talking now of the trial. When the trial takes place the prosecution breaks down from the failure of a witness; that witness being a material witness to the case is spirited or kept out of the way, and the consequence is, that the prosecution breaks down; how would you meet that so as to render the attendance of such a witness certain, supposing you had a public prosecutor?—I am speaking first as to the petty sessions; it is there that the failure principally takes place, because the prosecutor does not from some motive or other persevere with his charge; several days may have elapsed between the time of the apprehension, in the first instance, when perhaps his feelings of resentment were at full swing, and the time of the hearing before the magistrates something has happened to keep him from prosecuting the charge.

2019. Then

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2019. Then the observations which you previously made were with reference to the transactions which take place at petty sessions?—Chiefly in reference to that.

2020. If not chiefly, can you tell me how a public prosecutor could keep the witnesses better together than the attorney could, or how they might be kept together by being bound over to appear?—It is not necessarily as to their being kept together, but as to being summoned, in the first instance. Supposing a competent authority had charge of the case before the magistrates, it would be his duty to see that there was a sufficient amount of testimony. Sometimes magistrates commit on an amount of testimony which the jury think insufficient. A public prosecutor would have insured the attendance of witnesses, whom the magistrate has had no opportunity of examining or of binding over.

2021. Where the magistrates have sitting immediately under them a gentleman who is an attorney-at-law, conversant with criminal business, do you think that, generally speaking, they commit upon such evidence as in all probability would not lead to a conviction?—I will not say generally speaking, but I have no doubt it frequently happens.

2022. Have you looked over this Bill?—I cannot say that I have looked at it very closely; I have cursorily looked at it.

2023. Would you go any further than having a district prosecutor, to whom in cases of difficulty the magistrates might apply?—I cannot say that I have studied the subject very closely, but certainly I have come to this conclusion long ago, that it is not for the interests of public justice that its enforcement should depend upon mere private impulse or passion; and that seems to me very much the case now.

2024. Is that the case in the immediate locality which you know?—It is so in many instances; I do not mean to say there are not instances in which parties do not prosecute merely from feeling.

2025. And the cases are so many as to lead you to think that a change in the administration of justice is desirable?—The cases are so many of the withdrawment of prosecutors from one cause or another, that I do think it is desirable.

2026. You have a police in Stafford, I think?—Yes.

2027. Do the police conduct the prosecutions in many cases in your county? —At the petty sessions sometimes there are attorneys.

2028. But the police go no further than petty sessions?—I think not.

2029. Then so far as conducting the cases at the petty sessions they are useful, are they not?—They are better than nobody, I think, but in that respect only they are useful.

2030. If they did not bring prosecutions at the petty sessions, who would?—Then the prosecutor would obtain his warrant from the magistrates' clerk's office, and he would act himself with no attorney, bringing such witnesses as he thought necessary.

2031. But in some cases where caption takes place immediately upon a criminal offence, the police of necessity become the prosecutors?—They do; but even then sometimes there is a failure; I know of an instance which occurred very lately.

2032. *Chairman.*] Do you know anything about the practice at Stafford?—Yes, some little.

2033. Do you not know that there are many proceedings which are quite scandalous with regard to the police at Stafford; that it is the subject of general complaint?—I hear it by way of rumour, but personally I have not had very much to do with the criminal business of Stafford.

2034. Mr. Miles has asked you about a public prosecutor keeping the witnesses together; would not it be the fact that if there was a public prosecutor, the witnesses would know that if they did not appear there would be somebody to punish them afterwards for it?—Yes, and besides that, this seems to have been overlooked, that if there were a public prosecutor, the attendance of witnesses in the first instance at the petty sessions would be secured, and a sufficient number of them to make out the case; but if, instead of five, there are but four, and the fifth is an important link in the chain, and there is a committal upon that, and that fifth party never appears, he has never been bound over by the magistrate; he has never been asked to attend.

2035. The prisoner is committed upon evidence which is *primâ facie* sufficient for the magistrate, but not sufficient to secure his conviction?—Yes.

2036. At present, if a witness stays away who should attend, it is not any one's business to look after him?—Frequently.

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2037. Mr. *Miles.*] If he does so, does he not forfeit his recognizances?—Not if he fails to attend in the first instance.

2038. In the second instance, when called, if he does not appear to give his evidence, are not his recognizances estreated?—Undoubtedly.

2039. Is that an efficient way of making a witness attend?—No doubt.

2040. *Chairman.*] The case which I put was the case of a man who, from some mistake, had not been called upon, and who had not entered into recognizances, but whose evidence was still important; are not such cases very frequent?—Very.

2041. If such a man stays away, there is nobody to look after him, and nobody knows anything about him?—No.

2042. Whereas, if there was a public prosecutor, he would know if a man had misconducted himself?—Yes, and the man would be there in the first instance, and would be bound over along with the others.

2043. Mr. *Solicitor-General for Ireland.*] If a witness is bound over and summoned, and fails to appear at the trial, is there any one whose proper duty it is to see that his recognizance is enforced?—Yes.

2044. Who is that?—The clerk of the peace.

2045. By whom is it enforced?—The clerk of the peace makes a return to the sheriff.

2046. What does he do upon that return?—He levies for the amount of the recognizance, and, failing to obtain it, apprehends the party.

2047. Mr. *Miles.*] Is that often practised?—It is, occasionally.

2048. Is there not a good deal of difficulty in that?—There is.

2049. And do not those difficulties lead to a failure of justice?—I think not. In the course of three or four years I have had to do it as clerk of the peace of the borough of Walsall several times; but I must say, in two instances, I think, the sureties of the parties were never found, so that it was a failure so far.

2050. Do you see any objection at all to the judge or the chairman presiding at quarter sessions, issuing process?—None in the world. I think it would be much more effective.

2051. Do you not think that it would lead to the attendance of witnesses, and that the law would be certain to be carried into effect?—I think it would; but I do not think there is much failure of justice from the want of attendance of those witnesses who are in attendance in the first instance. At the petty sessions they may not be bound over, but where they are bound over, there are very few instances in which they fail to attend, so far as my experience goes.

2052. In the primary case would you have your district prosecutor attend at the petty sessional division when the preliminary evidence is taken?—That seems to me to be a most important stage.

2053. Looking to the immense number of petty sessional divisions, would not that lead to an enormous expense if you had a gentleman conversant with his profession?—I think there could be some means by which it could be ascertained beforehand whether there was any business of importance. Sometimes a petty sessions will be held when there is no criminal business.

2054. Have you ever thought of what, upon the average, the expense would be?—It has never struck me. I think a single officer could take a considerable area, if he did nothing else.

2055. Would you pay him by fees, or by salary?—By salary.

2056. Should he be exclusively engaged in that public business, or would you allow him to be engaged in private business?—That would depend upon the extent of his district.

2057. *Chairman.*] In your opinion, does it often happen that frivolous prosecutions are set on foot for the sake of the costs, under the present system?—I cannot say that I have seen that.

2058. Not in your borough?—No.

2059. Do you believe that it happens?—It has not, in my experience, happened in my borough.

2060. Not within your personal knowledge?—No.

2061. Whether it happens or not elsewhere you do not know?—No; I have often known of collusive compromises, undoubtedly.

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Jovis, 28° *die Junii*, 1855.

MEMBERS PRESENT.

Mr. J. G. Phillimore.	Mr. Napier.
Mr. Attorney-General.	Mr. Philipps.
Mr. Solicitor-General for Ireland.	Lord Stanley.
Mr. William Ewart.	Mr. Miles.

JOHN GEORGE PHILLIMORE, Esq., in the Chair.

Horatio Waddington, Esq., called in; and Examined.

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2062. *Chairman.*] YOU are Under Secretary of State at the Home Office?—I am.

2063. And had been before that time for a considerable period practising as a barrister?—I had for a great many years.

2064. Will you be good enough to say whether in your opinion any improvement would take place in the administration of criminal justice by the appointment of a public prosecutor?—I am afraid, before I could express a decided opinion upon that subject, that I must ask for some explanation of the nature of the plan by which a public prosecutor is to be appointed.

2065. Are there any evils in the present system which you think require alteration?—Yes; I think there are undoubted evils in the present system.

2066. Will you be good enough to point out what they are?—I think the great objection to the present system, or rather the absence of system, is the entire uncertainty in what mode a particular prosecution may be followed out; one system prevails in the metropolitan districts, another system prevails in counties where there are police; there are hardly two boroughs, I believe, in which precisely the same system is adopted, and, generally speaking, I may say that the mode in which a person will be prosecuted who is accused of a particular offence will depend, not upon any general practice established by law, but upon some accident connected with the jurisdiction within which the offence is committed. That may be illustrated, but I dare say the Committee is already in possession of facts which illustrate it.

2067. We shall be much obliged to you for any facts which occur to you?—I may state that in the metropolitan districts, generally speaking, no attorneys attend the courts to carry on and undertake the prosecutions, as is done in the country by the magistrates' clerks. The Committee is aware that the clerks to the metropolitan magistrates are not attorneys, and do not practise. There are no attorneys who attend those courts, I believe, who are at all regular practitioners at the Central Criminal Court or at the sessions, and the result is that the police are bound over to prosecute in most cases, unless in cases connected with property, where there is a prosecutor who is willing to take the prosecution upon himself; but, generally speaking, for the ordinary sort of offences, the police are bound over to prosecute, and it is only in certain cases that an attorney is employed. I may mention that there are certain cases in which, when the police apply to the Secretary of State for legal assistance, it is given them; but those are extremely few. I can give the Committee, if it is thought desirable, the actual numbers of them; I have had them made out, but they are so extremely few that they can hardly be considered as being an exception to the general rule. They are confined to cases of murder and manslaughter, and to cases of violent assaults upon the police themselves. In those cases the police, when they are bound over, almost invariably apply to the Home Office for legal assistance; they generally get a recommendation from the committing magistrate, and I have always required that the application should be accompanied by the depositions in the case; and if, upon the perusal of those depositions, it seems to me that it is a case in which public justice requires that attorney and counsel should be employed, I always advise the Secretary of State to give that assistance, and it is always done; but those cases are

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are so extremely few, that I think they may be considered as being a very small item indeed. In London, therefore, almost all the cases are conducted by the police up to the moment of a bill being found by the grand jury; and the judge sometimes, I believe, at the Central Criminal Court, and also at the Middlesex sessions (particularly when counsel are employed for the defence), points out that it is a case in which counsel should take part, and the depositions are handed to counsel, and the expense is allowed by the officer of the court upon taxation.

2068. Does it appear to you that such a practice as that which you have described must necessarily lead to a failure of justice in many cases?—I should have thought certainly, *à priori*, that it would have led to a greater failure of justice than I understand it really does. I was going to observe that, strange as that system appears to be, still I have not in my official position heard any complaints of a serious and general failure of justice. Though it certainly would appear that it is a very loose mode indeed of conducting the criminal business of the country, yet I am not prepared to state, from any complaints which have come to my knowledge, that the cases are so badly conducted as to lead to any decided failure of justice. I may also add, that in the great number of cases which are brought under the review of the Secretary of State, which are tried at the Central Criminal Court and at the Middlesex Sessions, in which we always see either the depositions or a printed report, it does not seem to me, from reading those, that there is frequently any great want of care in getting up the case; the evidence generally seems to be tolerably well arranged, and the proofs are of very much the same nature as we find in the cases which are tried at the assizes, where they are, generally speaking, got up by attorneys. But I believe it varies in some counties; even with respect to the assizes; attorneys are not invariably employed, I believe, even there.

2069. The magistrates in the district to which you alluded just now are generally professional men, are they not?—All of them.

2070. That would perhaps account in some way for the evidence being sufficiently accurate without any interference of an attorney, would it not?—Certainly; that is a very great advantage, no doubt.

2071. The objection would apply then with greater force in cases where the magistrates are not professional men?—Undoubtedly. It is impossible, I think, for any one to say how it would work, supposing the magistrates in London were not professional men.

2072. Do you consider the police, in whom so much trust is reposed by the practice now prevailing, to be a proper body of men to exercise those functions?—One should say, certainly, *à priori*, that they ought not be the persons who should conduct the prosecution, but that their functions should be confined to investigating the case, finding out the witnesses, and taking care that they appear at the proper time and place; that they should not be the persons for marshalling the evidence. I should undoubtedly say so. But still, I think that the police do exercise generally a great deal of skill and a great deal of good judgment in the mode in which they do it. Probably the Committee would get better information upon that subject from the gentlemen who preside at the Middlesex Sessions and the Central Criminal Court. I have certainly heard no complaints of the conduct of the police, but it is a very great responsibility to throw upon them undoubtedly, and we have proved our sense of that by granting them legal assistance in the more important cases in which it has been thought (in a case of murder, for instance) that it would not be desirable that it should be left entirely to the policeman who is bound over to prosecute to prepare the case and conduct the case.

2073. On what system does the Home Office proceed in granting assistance; Mr. Reynolds told us that he could not give us a very accurate account of it; have you any particular rule by which you are guided in giving or withholding legal assistance?—The history is a short one, and I can give it. When the metropolitan police was established, which was in the year 1829, the magistrates commenced the practice of binding the policemen over in these serious cases; they used before that to bind over the overseers or parish officers to prosecute. I am speaking of cases of murder, which are very rare, I am happy to say. When the policemen were bound over, they very naturally applied, through the commissioners of police, to Lord John Russell, the then Secretary of State, for legal assistance; there was some hesitation in granting it at first, but it was done and went on. In the first instance, those prosecutions, the police prosecutions,

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prosecutions, were conducted by Mr. Stafford, the clerk of Bow-street, the Government paying the extra expenses out of the police funds, but not employing themselves any Government solicitor to get up the evidence, or to conduct the prosecutions. The next change was, that a gentleman of the name of Hobler was employed in conducting them; he went on, I think, till Mr. Vizard was appointed, which was about the year 1839. Mr. Hobler conducted the case of Courvoisier, which was taken up as a police prosecution; these were then called police prosecutions; they were not conducted by the Government solicitor, and the costs not allowed by the court on taxation were paid, and indeed are still paid, out of the police funds. Mr. Vizard was appointed in the time of Lord Normanby, as solicitor to the Home Office, as distinguished from the solicitor to the Treasury. He conducted these prosecutions for a short time when he was solicitor, one of them being the celebrated case of Lord Cardigan, which happened in his time. When Mr. Vizard's appointment was put an end to, which was about the year 1841, they were transferred to the Treasury, and from the year 1841 up to the present time the solicitor to the Treasury has conducted them, and occasionally has employed the law officers of the Crown in important cases, the Attorney and Solicitor-general, to conduct the cases at the Central Criminal Court, which was not done until it came into the hands of the Treasury solicitor. The principle on which legal assistance is granted is precisely the same now as it was in the first instance. It is granted only in cases of violent assaults upon the police, where the magistrate thinks that counsel should be employed, and in cases of murder and manslaughter. I have had a short list made for the last five years, of the actual number of cases.

2074. Suppose a case where a poor workhouse child was savagely treated, without any one to take up the case, would you interfere in such case as that?—I cannot quite answer that question. I am very much inclined to think that I should, according to the present practice.

2075. Have you ever been applied to in such a case?—Not in the metropolitan districts. There was a case in the country.

2076. The case of the Birds?—Yes. That was an entire exception to our general rule; but it was a case which I thought myself justified, under the very peculiar circumstances, in advising the Secretary of State to take up as a Government prosecution.

2077. How was it brought under your notice?—It was brought under our notice by an application, in the first instance, from the magistrates in Devonshire; they wished us to take it up in the first instance as a Government prosecution; it was a prosecution for murder. The Committee are aware that the husband and wife, who were the masters of the poor child, were first tried for the murder. This being a poor workhouse child, the magistrates applied to the Government to take it up as a Government prosecution. That was declined, upon the ground that the Government has invariably refused to conduct prosecutions at the assizes, except in cases connected with the public peace; and no doubt if that had been adopted, we must have followed it out in other cases. The Committee are aware of the trial of the Birds, and of the ground upon which they were acquitted. Then we were informed, and very justly, that the only thing which remained was to indict them for an assault, and even that was subject to a very doubtful and difficult point of law, whether they could not plead, as an answer to the indictment for an assault, their previous acquittal. I was consulted at the moment, and it struck me as such a very shocking case, and so great an evil to the public if these parties were not punished, so far as the law would allow, that we did depart from the general rule. Perhaps I was wrong in that; but though I thought the point of law a very doubtful one, I certainly supposed we should succeed in it, (which we ultimately did, though by a very small majority of the judges,) and therefore I gave instructions in that case. That was a poor child; and in an indictment for an assault the costs would not have been allowed, and therefore it was impossible to suppose that any one would prosecute it unless the Government did.

2078. If no such application to the Home Office had been made by the magistrates, supposing it had not occurred to them to do so, the thing would have taken its chance?—I think so.

2079. And the prosecution for the assault, which you think most properly so essential to the administration of justice, would never have taken place?—No.

2080. Which

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2080. Which would have been a great evil, would it not?—I think so. I think it would have been a national disgrace.

2081. Judging not only from your experience as Under Secretary of State, but from your experience while at the Bar, does it happen that the want of a public prosecutor leads to collusive prosecutions?—I think it does. I think that the appointment of a public prosecutor, supposing that the public prosecutor would have the power of a veto, would prevent prosecutions for the purpose of extorting money, which undoubtedly are unfortunately brought now.

2082. They are not uncommon?—They are not very common, I hope, but still they do unquestionably take place occasionally.

2083. Do you think also that there are scrambles among low attorneys for the management of prosecutions in country districts?—I should think it very possible. I hope not frequently; for I have generally understood that respectable gentlemen who are clerks to the magistrates have, in most cases, the conduct of prosecutions; that used to be the case in the counties on the Midland circuit.

2084. If that were not so, the consequence would be mischievous, in your opinion?—I think so undoubtedly, if the prosecutions got into the hands of an inferior class of attorneys, that so far would be an evil.

2085. We had the evidence of the chief constable of Stafford. Stafford being, as you are aware, a very populous district, and he said that there was a perpetual scramble among low attorneys for the prosecutions?—I am not at all prepared to contradict that.

2086. Also Mr. Trafford, who came from Manchester, said that he had adopted a system which had put a stop to it, but that, before he had adopted that system, that had been the case in Manchester, the district where he was magistrate. Supposing that to be the case in many parts of England, would such a system contribute to the independence of the Bar?—No; it would be bad, I think, in every respect; it would be impossible for anyone to defend it. If possible, the person conducting the prosecution should be responsible to some authority; and therefore, though some people have frequently complained of the magistrates' clerks conducting prosecutions, I confess I never was of that opinion. The magistrates' clerks being under the immediate eye of the magistrates, I think it very desirable that they or their partners should conduct the prosecutions, they holding their offices only at pleasure.

2087. Does not that give to the magistrates' clerk a great interest in the number of prosecutions?—To a certain extent, no doubt, it might have that effect, but I should hope it has not.

2088. In the evidence which was taken before the Committee upon the administration of criminal law, some years ago, several witnesses stated distinctly, that in their opinion that system led to many frivolous prosecutions?—I cannot undertake to say that it may not, in some instances; but I confess that I think, if that evil had been at all widely spread, we should have had serious complaints of it at the Home Office. We have had complaints of it, undoubtedly, but very rarely; we have had as many as one or two in a year, or something of that sort. I think the complaints have generally come from rival attorneys, which would rather, perhaps, bear out what you have said about the attorneys scrambling.

2089. There is another part of the subject to which I wish to call your attention; namely, the necessity under which attorneys often are of advancing sums for the management of prosecutions; do you think that a state of things which is desirable?—I do not think that a desirable thing, certainly; but I am not aware of any great evils which have arisen from it.

2090. We were told the other day by an attorney who seemed to be in some business (Mr. Hobler was the gentleman who gave us that evidence), that if a poor man came to him to conduct a prosecution requiring expense, as many do, if he found that the individual could not afford to advance him the money he should decline having anything to do with the prosecution?—I should think that might be so, and undoubtedly that would be one argument in favour of a public prosecutor, that supposing a poor man wished to prosecute in his own case, which the law at present allows, he would not be able to do so with the same success and the same facilities as a man of larger property; it tends to a certain irregularity, no doubt, in the administration of justice.

2091. Is it not impossible to exaggerate the importance of the purity of the administration

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administration of criminal justice?—I think nothing can be more important than that, certainly.

2092. What is your opinion of the system of appointing district agents very much in the manner of the county courts, they being appointed on each circuit, say two barristers. Supposing such persons were appointed to conduct prosecutions, and also that some officer was invested at each petty sessions with the duty of sending the depositions to the district agent, would such a system, if adopted, in your opinion add very much to the expenditure of the country in the administration of criminal justice?—That is a question which I am not in a situation to answer. The present costs of prosecution vary so excessively in different parts of the country, and are altogether so very anomalous, that it is impossible to say whether a new system, if it were uniform, might not, though more expensive in some cases, be less upon the whole.

2093. That anomalous state of justice is in itself an evil, is it not?—It is not calculated to promote the interests of justice; but it may not be such an evil as is supposed.

2094. In your opinion, would it be desirable that the prisoner should have the power of calling witnesses to fact, and that if in the opinion of the judge who tried the case the witnesses were honest witnesses, and witnesses who spoke to material facts, their expenses should be allowed?—That would be a very humane provision indeed, and one which I should be most happy, I am sure, to approve, if it were not likely to have very serious effects upon the administration of justice. It is quite a novel principle in the English law undoubtedly.

2095. You are aware that by the French law the *Procureur du Roi* has sent to him by the prisoner the witnesses whom he wishes summoned, and the *Procureur du Roi* always summons them. That does not apply to witnesses to character, because it is very remarkable that in the discussion upon the French code, they found that the system had been to summon witnesses to character, but that there had been such an abuse from it that they abandoned it. In your opinion would the evil of such a system outweigh the good?—I cannot give a decided opinion upon that subject; my experience both at the Bar and since has been that it is extremely common, under the present system, for prisoners to call perjured witnesses for the defence, and there can be no doubt that paying their expenses would be an encouragement to that; which is at present an evil. I should certainly hesitate to make so important a change; but at the same time upon the face of it, it appears so very just and fair that the witnesses for the prisoner as well as for the prosecution should be paid, that I should be unwilling to condemn such a proposition entirely; it is, I think, a matter of very considerable doubt.

2096. You are not aware that it is the fact that that system prevails in America?—I am not, nor am I aware how it is in France, whether they pay the witnesses.

2097. They do. Does not it appear to you as a matter of abstract justice, that a prisoner has a right to call upon society to furnish him with the means of proving his innocence?—I really do not know that that could be made out as an abstract proposition. I think if you give him that right, he has also a right to have counsel and attorney employed for him.

2098. Has not society as deep an interest, in your opinion, in proving the innocent to be innocent, as in proving the guilty to be guilty?—I can hardly answer that question. The interest of society, no doubt, must be to get at the real truth of the case; but you cannot put it precisely in so simple a form as that, because we know that, particularly in our system, which requires the jury to be unanimous, if you were to enable the prisoner to put forward a plausible defence, it would very frequently produce the acquittal of a guilty person. We unfortunately know that that takes place at present. If we had the French and the Scotch system of taking a majority of the jury, there would be a stronger reason for the proposal.

2099. Does not it strike you as a great anomaly that the wealth or poverty of a prisoner should have any effect upon his means of proving his innocence in a court of justice?—I cannot say so, because I know that the property of persons even in civil suits, has frequently a very great effect upon the mode in which their case is conducted, and its ultimate success.

2100. Is it not desirable that that should be reduced to the utmost possible limits?—It would be desirable, unless you introduced other evils of a countervailing description.

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2101. As I understand you, you say that you do not feel inclined to give any positive opinion upon the subject, whether it would be desirable or not?—I should be sorry to pronounce a positive opinion, but I must say that at present I should hesitate to introduce such a change. I think it would lead to very serious consequences, if we maintain our law of requiring a unanimous verdict; that, no doubt, has now a very serious effect upon the administration of justice, of which, as we all agree, the object ought to be to arrive at the truth, no doubt a great number of guilty persons are now acquitted; and if you gave them greater advantages, I should really tremble.

2102. If there were no longer a necessity for a unanimous verdict, would that alter your view upon this particular subject?—It would undoubtedly take away that objection; I do not think it would entirely alter my view, but it would, to that extent, modify it.

2103. Is it not very painful to hear a prisoner in a court of justice, whether truly or falsely, say that he could not afford to keep his witnesses, or that he could not afford to bring his witnesses?—No doubt.

2104. Do you not think that such an argument as that has often a certain effect upon the jury, particularly if put by an ingenious counsel?—Yes, supposing the jury to believe it;. but I should myself hesitate to do so upon the mere statement of the prisoner; it would have very little effect upon me; still juries, no doubt, sometimes do act upon it.

2105. It might be true in some cases?—It might be, and that would be an unfortunate thing. I may mention, that we have a vast number of applications to the Home Office for pardon upon that very ground; indeed, it is continually put forward, and, I am afraid, very frequently without the least foundation in point of fact; that there have been such cases I believe and know, because we have had them subsequently investigated by the committing magistrates, who have very kindly undertaken to do it, and they have changed the aspect of the case, no doubt. I think it right to mention that; but those cases have been extremely rare; perhaps not more than one in comparison with a hundred where the statement has come to nothing.

2106. You cannot give the exact proportion, but you say it is inconsiderable?—I cannot; I should state that the majority of cases in which it turns out not to be established is very large, because as I stated, it is made use of so frequently, it is quite a common form. "If I could have got my witnesses, I could have proved so and so."

2107. Suppose the fact of a very poor man being innocent; suppose that by very great exertions he brings witnesses and establishes his innocence, do you not think it a hard thing that he should have to pay the expense of bringing those witnesses?—No doubt; and if it could be confined to those cases only, and if we paid the expenses in those cases, I should be most strongly in favour of it.

2108. Mr. *Attorney-General.*] Do you not think it might be safely left to the public prosecutor, upon the prisoner stating the case which he proposed to prove, and the public prosecutor feeling that there was a reasonable possibility that that case might turn out to be correct; might it not be left to his discretion, subject to an appeal, in case he decided against bringing of the witnesses at the public expense, to the court before whom the prisoner was tried, so that the man might be relieved from this possible, and where it happens, most painful position, that he is conscious of his innocence, and has witnesses by whom that innocence can be established, but no pecuniary means whereby he can bring them to the trial; is not that a great grievance, and a state of things which ought in some way to be remedied by the public?—I think it ought; do you propose that the public prosecutor should have the power to put off the trial?

2109. Just so: or that it should be done before the trial came on. Might not there be some mode adopted whereby the evils of abuse might be prevented, and at the same time the great grievance of a man being able to prove his innocence if he had the means, but who is without the means?—It would be most desirable that such an attempt should be made, certainly; and undoubtedly if a public prosecutor should be established, that would be an argument in favour of it; namely, that it would give a mode of attempting to make arrangements of that sort; how far they would turn out to be practicable, I can hardly say. I do not know whether anything of the sort is done in Scotland.

2110. *Chairman.*] I think the Lord Advocate told us that in most cases he had

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had the discretion of calling witnesses, and did call witnesses for the prisoner?—That raises another question which has often occurred to me, namely, the power of adjournment of a trial in a criminal court after it has commenced; the absence of that power frequently leads to acquittals which should not take place.

2111. Mr. *Attorney-General.*] I dare say it has come under your knowledge that a judge when he holds official functions, as recorder and so on, is sometimes placed in a painful position, and he has no power of adjourning the trial?—Certainly.

2112. Mr. *W. Ewart.*] Have you many instances at the Home Office of a sort of appeal made to the Home Office in consequence of proof in favour of the prisoner not having been given?—Yes, very frequently. One great cause of complaint, which the gentlemen of the bar will easily understand, is, that the prisoners have witnesses present and that their counsel decline to call them. That is one of the most frequent complaints, I think; and that puts us in a painful position; but still we have no hesitation whatever in saying that they must abide by the acts of their counsel, unless they can show grounds to induce the Home Secretary to make some further investigation; to desire the committing magistrate to hear what the witnesses have to say. That has been done in some cases, when many of the respectable persons in the neighbourhood have come forward and stated that there was a strong opinion in favour of the parties.

2113. Suppose, after the trial, circumstances are stated which may induce the belief that evidence has not been given for the prisoner?—That is the case which I put where the prisoner had actually witnesses in attendance, and where the counsel, to avoid a reply, which probably is the usual reason, and perhaps fancying that they might not prove what was stated, declined to call them.

2114. In such a case is the case sent back?—No, we have no power to do that. We endeavour to get out the facts as well as we can, in a very insufficient way I admit, and it is only where the case comes out very clearly and with the approval of the committing magistrate, or of more than one if we can obtain it, that we grant a pardon.

2115. Who sits in judgment upon such facts?—The Secretary of State is the only person.

2116. In his own office?—Entirely.

2117. Is not that an exception to the universal rule of English justice that trial *pro tanto* shall have publicity?—It is an entire exception to the rule, and can hardly be considered as a trial.

2118. I call it a sub-trial?—Most undoubtedly; still it has to a certain extent the effect of a trial, because it very often throws doubt upon the evidence of some of the witnesses for the prosecution, and that is a very painful part of it; you are obliged to throw doubt upon those witnesses without hearing them in open court.

2119. That would touch upon the question of a court of criminal appeal?—It would, no doubt.

2120. Upon the whole, are you of opinion that such a public prosecution as has been referred to would be advantageous to the country, to public justice, to the protection of innocence, and the detection of crime?—I am inclined to think that it would. I mean the system of public prosecutors which I should propose myself, not a number of irresponsible agents, but a minister of justice at the head, who should be a person of very high legal attainments, and upon the same footing as the Secretaries of State, corresponding with the Minister of Justice in France, and to whom all these agents should be responsible, he being responsible to the public; such a system, if carried out very carefully in all its details, would be an improvement.

2121. And would you mingle with the elements of the French system to which you have alluded, the elements of our English institutions, that such minister should be a member of the Legislature, responsible to Parliament and to the public?—It would be a very great responsibility, and I should like to put him in as eminent a situation as possible. I do not think it is necessary that he should be a Member of Parliament for that purpose. I cannot give a decided opinion upon that. I think he should be a very high minister.

2122. *Chairman.*] Not differing from you as to the existence of a minister of justice, which I think desirable, does not the Attorney-general, as the matter stands,

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stands, discharge the functions of a minister of justice?—I do not think the Attorney-general, with his other functions, is able to do it. The Lord Advocate of Scotland undoubtedly can do so; but the duties of the Lord Advocate of Scotland are very different from those of the Attorney-general.

2123. The Attorney-general is the person really responsible, because all prosecutions being conducted in the name of the Crown he can go down at any moment?—He is not practically responsible, because he has nothing to do with them; but the minister of justice that I propose would have to exercise his discretion in all cases of any importance.

2124. Not in individual cases?—No, not in all individual cases, but in important cases; and I think that would be quite sufficient for one person.

2125. Would you take away from the Attorney-general the power which he now has in that respect?—That no doubt would be one of the difficulties, to reconcile the duties of the Attorney-general as public prosecutor, who exercises a discretion in certain grave cases, with the discretion of the minister of justice. If that were to be done, I think the better plan would be, to put the Attorney-general in the same situation as the *Procureur-general* in France, and to make him subordinate to the minister of justice. I think that would necessarily follow.

2126. Mr. *Attorney-General.*] If there were a minister of justice, the Attorney-general would be immediately responsible to him?—Precisely; and all the inferior parties would be responsible to the Attorney-general as the *Procureurs du Roi* in France are; I believe there are a vast number of them. I confess I should be very unwilling to make a change at all, unless we introduced a complete system of that description. Even then I do not mean to say that it is not open to very great objections. There is the objection of its throwing additional responsibility upon the Government; there is the creation of a vast number of places, which of course must be an increase of patronage to the Government. I am only expressing my opinion. I think that that plan, in so far as the administration of justice is concerned, would be an improvement.

2127. *Chairman.*] The administration of justice being the chief object for which society exists?—It is one of the chief objects, no doubt.

2128. Mr. *Philipps.*] I think you have said that you are not prepared to state from any facts within your cognizance, that there is any general failure of justice?—I am not; I have been undoubtedly surprised, knowing the irregularity of the system, at there being so few complaints.

2129. From any facts within your own cognizance, are you aware of any general discreditable scramble for business amongst attorneys?—No; I have had occasional complaints, but I have stated, generally speaking, that I thought the prosecutions at the assizes were carried on by respectable attorneys.

2130. Mr. *Attorney-General.*] Excepting your general superintendence at the Home Office, do you see much of the practice?—Not a very great deal. On the Midland Circuit I think I can say they are generally very respectable attorneys; they are most of them clerks to the magistrates.

2131. Mr. *Philipps.*] With regard to magistrates' clerks having the conduct of prosecutions, do you think there would be a very strong objection to their having the whole of the conduct of them?—No. Upon the whole, I thought that the objection mentioned by the Chairman, as to their inducing the magistrates to commit in improper cases, was rather overbalanced by the fact of their being under the surveillance of the magistrates, and under their control, and being responsible to them.

2132. Do you not think that there would be an advantage in entrusting the undivided responsibility of the conduct of the whole affair, from the beginning to the end, to the same person; he would advise upon the commitment, and would also be responsible for the conduct of that commitment to a successful issue?—I do not know that there would be much advantage in that, if you could get an equally responsible person; I think that where the prosecutor is a man of property and entrusts the prosecution to his own attorney, it is generally conducted as well; the great thing is to secure a respectable practitioner.

2133. Do you think that there would be an advantage in the magistrates throughout the kingdom appointing a person at their sessions to conduct the prosecutions, independently of their clerk; do you think that there would be an advantage in their appointing a regular attorney or person to conduct the prosecutions, whose name, of course, should be known at the Home Office?—I do not think that would be a bad system; I believe that it has been adopted in certain large

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large boroughs; I rather think at Liverpool and Leeds, and some other large towns, the magistrates bind over the chief officer of police to prosecute, upon the understanding that he employ an attorney nominated and appointed by them, and he is generally a very respectable man; I believe that has answered very well.

2134. Mr. *W. Ewart.*] In what cases did you state that the solicitor to the Treasury is employed?—I did not understand the question to refer to what were strictly called Government prosecutions, such as political cases, and so on; those he prosecutes for the Attorney-general; there are also other cases, such, for instance, as the prosecutions which are to take place at the next assizes against the officers of the Birmingham prison for cruelty to the prisoners; those are prosecutions for the Attorney-general, and they are conducted by the solicitor to the Treasury out of the sums voted for Treasury prosecutions; those are not the cases of which I was speaking, namely, cases prosecuted in London upon the application of the police as police prosecutions, such as all the murders that take place in the metropolitan district, and bad cases of manslaughter; such cases as that of the Mannings, the case of Barthélemy the other day, and Buranelli; those are prosecuted by the solicitor to the Treasury; but the excess above what is allowed upon taxation is not paid out of the Treasury funds, but out of the metropolitan police funds.

2135. Mr. *Philipps.*] Should you think, from the facts which are within your own cognizance, that there is most need of any additional assistance with a view to investigate those prosecutions which are not taken up, or to conduct them when taken up?—I have considerable doubt as to the prosecutions which are not taken up; I think those are very rare indeed, because in almost all large towns I believe the police are invariably bound over to prosecute, and an attorney is invariably employed in the provincial towns. In London, as you have heard, an attorney is not generally employed; but I should think there are very few cases within the metropolitan district in which there has been a failure from the want of prosecution of some sort or another. I hardly ever heard of such a case; there may be such cases in the country, I cannot answer as to that.

2136. *Chairman.*] Your experience does not lie in the country?—No; I can speak to it much less, because it is so very rare that we interfere in a prosecution in the country.

2137. Mr. Wilkinson, who is town clerk of the borough of Walsall, told us as follows: "I can recollect a number of instances within a short period in which for the want of some party having had the conduct of the case, there has been an evident failure;" he also told us, "There is no doubt in the world that many prosecutions are not gone into on account of the poverty of the prosecutor; he will not undertake the labour, and trouble, and cost of the prosecution, because he has not the means;" and he stated that that applies to many prosecutions which it is for the interest of society should be investigated. I do not understand you to say that your experience enables you to contradict that?—No. I cannot contradict that as to Walsall; but I think I can contradict it as to most of the large towns, owing to the practice which I have stated of binding over the police; it is to avoid that, I dare say, that such a practice has been adopted. If you threw it upon a prosecutor who was a very poor man he would not be able to conduct the prosecution. I may also mention that there is a very large class of cases in which summary convictions take place for offences not strictly punishable in a summary way; for instance, it is extremely common in the metropolitan district, in order to avoid trouble and expense, to punish picking pockets under the Vagrant Act; and I believe it is so in the country.

2138. Is not that an evil?—I confess I have always thought it a very wrong practice.

2139. What you have said reminds me of the evidence given before the Committee for the investigation of the Criminal Law, eight or nine years ago. One of the police magistrates (I think Mr. Broughton) said that there was a very cruel case of a man who had broken into a widow's house, and seized all her furniture under a false pretence; that he punished him summarily because the poor widow could not incur the expense of a prosecution; whereas, if it had been a rich person, he should have sent the man to take his trial at the assizes. Is not that an evil?—Certainly, as far as it goes. There are also sailors and persons whose business calls them away immediately, and who cannot be forced to prosecute without a very serious loss, and there being no provision for their expenses in the meantime, the magistrates very frequently convict summarily in cases of felony,

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felony, which is an improper practice, no doubt. I ought to mention that there are other cases which are prosecuted as Treasury cases, both at the assizes and in the Central Criminal Court; those are cases of murder and manslaughter upon the high seas; that is a practice which has prevailed for some years, and has been found necessary, from the very cause which I have mentioned, namely, the necessity of keeping the witnesses in the country and paying their expenses; otherwise, of course, these seafaring men could not be brought to give evidence at all; they would starve, or would abscond and set their recognizances at defiance. Therefore the Government takes up those cases and makes an allowance to the witnesses, and prosecutes both at the assizes and the Central Criminal Court.

2140. Supposing it to be established that attorneys are in the regular habit of paying fees to policemen, to induce the policemen to give them prosecutions, would you consider that a very great evil?—I should indeed.

2141. And one likely to interfere with the purity of the administration of justice?—It would be quite a scandal, no doubt, upon the administration of justice.

2142. It is in evidence before us that such a practice is by no means uncommon in the metropolitan districts, and exceedingly common in Stafford?—I should doubt the existence of it in the metropolitan districts to any extent; I should very much like to know the facts, in order that we may inquire into them.

2143. Mr. *Philipps.*] I presume, if you found such a case, you would immediately represent it to the commissioners of police?—We should have it inquired into, and the parties would be punished, beyond all doubt.

2144. The policeman would probably be dismissed, in such a case?—Decidedly.

2145. *Chairman.*] If you like to refer to the evidence of the chief of the constabulary force at Stafford, the evidence of Mr. Hobler, and also, I think, the evidence of Mr. Straight, you will see it stated that such a practice exists; particularly in the evidence of the head of the constabulary force at Stafford?—Captain Hatton. I know the gentleman very well; he is a very active officer. I should think that Mr. Hobler must have been referring to some years ago; I think I should have heard of it if there had been anything of that kind of late.

2146. However, if such a thing did exist, you would consider it a very gross evil, requiring interference?—Certainly.

Mr. *Samuel Robert Goodman*, called in; and Examined.

Mr. *S. R. Goodman.*

2147. *Chairman.*] WILL you be good enough to tell the Committee what you are?—I am Chief Clerk to the Lord Mayor at the Mansion House.

2148. How long have you held that situation?—Since the year 1843.

2149. During that time you have had, of course, considerable experience in criminal affairs?—My entire time has been devoted to it. Prior to that I was clerk of indictments, on one or two of the circuits, for some years.

2150. Does it appear to you that there are any evils in the existing system?—I would rather give you facts than opinions, if you will allow me.

2151. If you please?—I will just mention one or two circumstances which occurred when I was on the circuit.

2152. On which circuit?—On the Norfolk circuit. I am speaking now about expense. I hardly know whether I am right in speaking upon this subject. I recollect a small prosecution for stealing a petticoat (I cannot give dates, because I have not had an opportunity of ascertaining them), where the expense was about 50 *l.* for stealing a petticoat of the value of a shilling.

2153. Mr. *Philipps.*] Where was it?—At Norwich, on the Norfolk Assizes.

2154. *Chairman.*] Can you account for that in anyway?—No, except by the distance which the witnesses had to travel.

2155. Is that within the last 10 years?—No. I have been at the Mansion House since the year 1843; therefore it may have been one or two years previously to that. Another case I will instance of stealing a duck; that was at Buckingham or Aylesbury, I am not quite sure which; it was in the county of Buckingham; there I think the magistrates' certificate alone was about 14 *l.* or 16 *l.* for stealing a duck of the value of 1 *s.*

2156. How do you account for that?—There were a great number of witnesses bound over to appear, and upon laying the certificate before Lord Denman, who was

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was the presiding judge, he directed the clerk to pay his own fees, and to pay the witnesses for coming there as well.

2157. So that, in fact, the country had not to pay that?—No.

2158. But that was the claim?—That was the claim, and it was considered so trivial a prosecution, and with so many unnecessary witnesses, that the costs were not allowed.

2159. Did the clerk to the magistrates in that case conduct the prosecution?—He did.

2160. Mr. *Philipps.*] How long ago was that?—It must have been about the year 1840 or 1841. I merely refer to these instances to suggest the expediency of giving a magistrate summary jurisdiction in small affairs of that kind.

2161. *Chairman.*] Have you any other facts to state to the Committee?—I have known instances where the solicitors for the prosecution have brought their witnesses in a van, for instance, and have then received the amount of the costs of the prosecution, and paid the witnesses according to their own estimation.

2162. That is to say, the attorney received the money as if they had come separately, and paid the expenses of the carriage which brought them all together?—I have no doubt that that was the arrangement, because we had complaints in one or two instances. That was at Cambridge. My suggestion with respect to that would be, that every witness should receive his own expenses; that is to say, that the taxing officer should do as he does in London, namely, tax the amount of costs, and take a separate receipt from every individual witness. In the case of Greenacre, I taxed the costs when I was at the Central Criminal Court. I served my articles to Mr. Clark at the Central Criminal Court before I went to the Mansion-house. In that case, the solicitor for the prosecution who conducted it was, I think, about 180 *l.* out of pocket in getting up the evidence. I am speaking now only from memory.

2163. But certainly upwards of 100 *l.*?—Considerably so. At that time the costs of a prosecution were not allowed by the Poor-law Commissioners. He conducted it as the vestry clerk of Paddington, I think; he afterwards presented a petition for an addition to the usual allowance of costs, and some small amount was given to him.

2164. But still he was considerably out of pocket?—He was.

2165. That Greenacre case was a case as important, and requiring as much investigation as probably any case in your experience?—It was a most difficult case in getting up the evidence.

2166. There was no responsible person on the part of the public to do so?—Except the vestry clerk who undertook it; whether he eventually got paid by any other means I cannot tell. I merely speak from what I know in my official capacity. I would also refer you to a case which was prosecuted by Mr. Gray, a merchant in the City, at the Central Criminal Court, for conspiracy, which was rather an important case; he told me after the prosecution was over, that the costs of that prosecution had been to him between 500 *l.* and 600 *l.*

2167. Did he convict?—He convicted. He afterwards petitioned the Court of Common Council, setting forth the whole of the facts; and I believe that Court granted him a small sum on account of the enormous expense.

2168. That had nothing to do with the public?—No.

2169. As far as the public were concerned, he had to pay that money for getting up that case in which the persons were convicted?—Yes; the court not having power to award any costs in a case simply of conspiracy to defraud.

2170. What merchant is Mr. Gray?—He has recently died.

2171. What was his business; was he a merchant of respectability?—Yes. He told me afterwards that it was almost his ruin; that and the loss which he sustained. He was a rope-merchant.

2172. Then he would have been a considerable gainer if he had been content to let the thing pass without investigation?—No doubt of it.

2173. Have you any doubt that it often happens that an attorney is called upon to advance a considerable sum of money in investigating a prosecution?—I think it a very isolated case indeed.

2174. But it does happen?—Very few instances have ever come to my knowledge.

2175. Greenacre's case being one?—I mentioned that as a case in point.

2176. And Mr. Gray's another?—Yes. Greenacre's case, you must recollect, was

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was a case of murder, where the court had the power to grant the costs; and the other was a case of conspiracy, where the court had no such power.

2177. With regard to the want of any responsible person to manage the inquiry in criminal cases, any person to whom the public has a right to look; in your opinion, does that sometimes lead to the case finding its way into the hands of an inferior practitioner?—I think many persons are very anxious to keep the conduct of their own case in the hands of their own solicitor.

2178. Suppose a poor person, who knows nothing about solicitors?—Then if he made his application to a magistrate, poor or rich, it would make no difference.

2179. But supposing he did not make his application to a magistrate; supposing he was a poor man, utterly ignorant; is it your opinion that he might fall into the hands of some low attorney, who would be glad to make money by conducting the case?—I cannot call to mind any particular instances in which that has occurred.

2180. You do not agree then with the evidence which we have had from Mr. Straight, and also from other parts of the country, in which the witnesses say that it is not an uncommon thing for policemen to be in the pay of attorneys, to bring them prosecutions?—I have heard of such things being done, and I once investigated a charge of that sort, but could not trace it home to the parties; I gave them notice that if I ever found out anything of the sort, I should deem it my duty to make a special report upon the subject.

2181. In your opinion, does it happen that policemen are bound over to prosecute?—All parties are bound over to prosecute.

2182. But does it happen that policemen especially are bound over as the persons to manage the prosecutions?—No doubt.

2183. Do you consider policemen the proper people to be so entrusted?—I do, and I will tell you upon what ground; they are bound over in common cases of prosecution; but where it is a case of any importance a solicitor is almost invariably employed. In common cases a constable gets up his evidence; an inspector is always in court to report that which the constable does; he has the power of going to the inspector for any further information, or to his superintendent; or, if he felt any difficulty, he would come and ask me any questions as to what witnesses were necessary for the prosecution.

2184. You are speaking merely of what takes place at the Mansion House?—I am speaking now of the City.

2185. Mr. *Attorney-General.*] Do you think that a policeman is a fit person to have the conduct of a prosecution?—He does not conduct it, I apprehend, at all; the magistrate conducts it, in my judgment.

2186. I am speaking of the prosecution at the trial; of what stage are you speaking?—I am speaking of the time before trial; after the commitment the depositions are returned, the whole of the evidence is completed, and each witness is bound over.

2187. Are you aware that it frequently happens that policemen take cases into court, and act in that respect as attorneys to conduct the proceedings, and sometimes even hand the depositions to counsel?—Not in London, that I am aware of.

2188. Are you not aware that policemen do take cases into court?—No doubt of it.

2189. Have you ever known of a policeman taking a case into court, naming the attorney, and having the name of that attorney put at the back of the depositions?—I paid the expenses for a great many years at the Old Bailey, and I never knew such a case.

2190. But they do take cases into court where counsel are employed?—At the request of the prosecutor frequently the depositions would be handed over to a solicitor, and that solicitor would come and receive his fee for his brief.

2191. I am speaking of cases where the policemen collect the witnesses and the evidence, and bring the case before the grand jury and take it into court. We certainly have been led to suppose by the other witnesses that that happens? —I cannot see what they have to do, because every one is bound over to prosecute, and every one is bound over to give evidence, and all that the constable has to do is to take his instructions and to marshal his witnesses, to see that they are at the indictment office door and come up to the clerk of indictments.

2192. *Chairman.*] Do you think the policemen proper parties to do that?—I think they are.

2193. Mr.

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2193. Mr. Straight, at Question 508, says that the police are very frequently intrusted with the prosecution at the Old Bailey and on the Home Circuit, and at Question 492, he says that there are a great majority of prosecutions conducted and brought to the court by policemen. He was then asked whether that was a desirable state of things, and he said no?—It depends on what meaning you put upon the words "conducting the prosecution."

2194. Whatever the policemen do, do you think it desirable that that should continue?—I think they would do it if a solicitor were employed.

2195. Do you think it desirable that that should continue?—I see no objection to it.

2196. Mr. Straight was asked, "You do not consider them a proper body in whom such a trust should be deposited?" to which he said, "No."—"Do not you think that they are exposed in many cases to pecuniary temptation, taking a vast number of them? I never knew any fact which would justify me in coming to that conclusion; I think they take a per-centage off the allowance to witnesses." Do you believe that?—I do not, because I used to pay the witnesses.

2197. Then you do not consider that the police are exposed to pecuniary temptation with regard to the witnesses by taking a per-centage. Do you think that the police do take a per-centage off the payment to witnesses?—I never heard of it.

2198 Do you think that the police can be safely exposed to the temptation to which the power of doing that would expose them; have they the power of doing it?—I think the police, as a body, act in an exemplary manner.

2199. Do you think they are people to whom, if they had the power of taking a per-centage off the payments to witnesses, such a power might be left?—I do not think they would abuse that trust more than ordinary individuals or solicitors.

2200. You think they would not be more likely to do so than respectable solicitors?—I do not.

2201. You think that a policeman is to be trusted equally with a respectable solicitor?—I do not mean to say that they are persons of equal standing, but I mean to say that, as far as I have been able to judge, they are equally to be trusted.

2202. Mr. *W. Ewart.*] You place sufficient confidence in their knowledge to think that they are proper men to marshal the evidence?—Their duties are very simple; all they have to do is to lead the witnesses from one office to the other, from the indictment office to the court to be sworn, from the court to the grand jury room, from the grand jury room back again to the office, to ascertain whether there is a true bill, and then to the court.

2203. *Chairman.*] If they are entrusted with anything more than that, are they fit for it; if they are entrusted with anything not simply ministerial, and such as you have described, which is exceedingly simple, are the police fit for it?—I think not beyond that; I would not entrust them with getting up the evidence.

2204. Mr. *Attorney-General.*] Do you not know that practically they busy themselves exceedingly about it, and show great zeal?—No doubt there will be a great deal of that in some instances; no doubt they will get up more evidence than the magistrate thinks fit to send.

2205. Do you not know that they do?—Undoubtedly, frequently.

2206. And thereby it causes expense?—No, because the magistrate does not examine those witnesses; he takes sufficient evidence to justify the committal.

2207. Do you think that the evidence got by the police is generally useful evidence?—I do.

2208. Do you not find practically that a policeman, having as it were the conduct of the case, getting up the case, bringing the witnesses, and taking it into court, acquires more or less the character of a partisan; he comes with a zealous desire to convict if he can?—No doubt he does.

2209. Are not the policemen generally witnesses in the cases which they bring up?—No doubt.

2210. Do you think it desirable that a man who has to give evidence, and sometimes very important evidence, should, before he comes into the witness-box, have been mixed up with the conduct of the prosecution, and should have a strong desire to convict?—I do not think he can divest himself of human nature.

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2211. Is not that a reason why he should not have the conduct of the prosecution?—He has no conduct of the prosecution.

2212. You say he brings the witnesses?—If you call that getting up the evidence.

2213. Call it by any name you please, it produces zeal in the case?—I think that a policeman will exercise as great an amount of zeal, whether there is a solicitor in the case or not.

2214. Do you not find that, practically, a man who mixes himself up in the conduct of the case, the getting up of the evidence, the marshalling of the evidence, and the bringing of the case into court, acquires a degree of zeal to ensure conviction which he otherwise would not?—I think it is probable it may be so.

2215. Do you not know that it is so, and that one sees it every day?—You must excuse me if I do not thoroughly comprehend you. I am anxious to give you a right answer if I possibly can. I want to know whether you make a distinction between a solicitor being employed, and not.

2216. I do not ask you as to a solicitor being employed; I ask you whether the fact of a policeman mixing himself up in getting up the case, does not produce in his mind a desire to convict the party?—I think it does.

2217. Do you not think it wrong that a man should be a witness in a case of which he has the getting up; that it is a bad thing that a man should come and give his evidence with such a strong desire?—I think it better that somebody else should take the whole of it, and that the policeman should not.

2218. I therefore asked you the question, whether you thought that the policeman was the right man to get the case up?—I did not understand the manner in which you meant getting up the case.

2219. *Chairman.*] In your belief, are there attorneys who attend police offices for the sake of getting up prosecutions?—I have known instances where attorneys have attended for the purpose, in the hope rather of undertaking the prosecution after committal.

2220. Do you believe that to be uncommon now. For instance, Mr. Hemp, a gentleman of some experience, the assistant clerk of arraigns at the Central Criminal Court, told us, "I believe that in large towns there are a number of attorneys who attend at the police offices for the very purpose of getting up prosecutions. I was told of an instance even in London only the other day;" and then he says again: "There are a great number of attorneys who, I believe, attend the police offices, and get up prosecutions." Do you believe that to be true, or to be a mistake?—I believe it is true.

2221. Do you believe that the class of practitioners who attend are a respectable class?—Some are, and some are not; but the respectable class would not attend for that purpose.

2222. Do you think that the class of attorneys who attend at the police offices for the sake of getting up prosecutions, are a respectable class?—Certainly not those who attend for that sake alone; but I often find that when gentlemen come to ask advice upon various questions prior to prosecutions taking place, the solicitors themselves will say, "Well, I shall hand this case to this gentleman or that gentleman to conduct it; I do not profess to understand criminal law."

2223. It would be a respectable class, respecting whom the solicitor would say that?—No doubt.

2224. And therefore that would not apply to those who were not respectable, about whom I was asking?—Certainly not.

2225. Mr. *W. Ewart.*] Your experience is entirely confined to the City, is it not?—At the present time it is.

2226. Are you not entirely limited to cases in the City?—I have been the circuit as clerk of indictments, but my experience as clerk to the magistrates is entirely confined to the City.

2227. How long have you been so engaged?—Since the year 1843.

2228. Mr. *Solicitor-General for Ireland.*] Is there any practical impediment to paying to each witness his own expenses?—None; the practice at the Central Criminal Court is, to put on the order for costs the name of every witness, with the amount to which he is entitled; and each witness has to sign that, and he sees then what he has to receive.

2229. To whom does the attorney go for payment of those expenses?—The officer is in attendance at the Central Criminal Court.

2230. What

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2230. What is the establishment?—It is treasurer of the county, or the treasurer of the city.

2231. Would there be any impediment to having a form, stating the name of the witness, and making it payable to the witness?—It is done so there; but on the circuit in many cases it is payable to the solicitor in a lump.

2232. *Chairman.*] The consequence is, that very often the money does not all find its way into the pockets of the witnesses, is it not?—Complaints have been made of that sort. Upon the subject of witnesses for the defence, I may state that our practice is this: if a prisoner says that he has witnesses to call, the witnesses are invariably examined; and if they do not sufficiently shake the evidence for the prosecution, the evidence is returned with the depositions; but the witnesses for the defence are not bound over, and therefore they get no expenses; the witnesses for the prosecution are bound over, and therefore they do get expenses.

2233. What is the course, supposing they do shake the evidence?—Then the magistrate would discharge the prisoner.

2234. Suppose it was a doubtful case?—If it was a doubtful case the magistrates would not put him upon his trial, if the evidence for the defence was sufficient.

2235. Supposing the magistrate said, "It depends upon which of the two speaks truth: I cannot decide which of the two speaks truth:" what would he do?—Then he would in all probability send the case for trial.

2236. Would he bind over the prisoner's witnesses?—No.

2237. He would in no case bind over the prisoner's witnesses?—In no case.

2238. The only effect of the prisoner calling the witnesses in your court is what happens in all courts, that if the prisoner's witnesses upset the case for the prosecution, the case is dismissed?—Yes.

Mr. *Henry Avory*, called in; and Examined.

Mr. *H. Avory.*

2239. *Chairman.*] WILL you state what you are?—I am Clerk of Indictments on the Home Circuit.

2240. How long have you been so?—About eight years. I have been connected with criminal business at the Central Criminal Court the last 14 years. I have also been once on the Western Circuit as clerk of indictments.

2241. Will you tell us what are the exact duties of the clerk of the indictments?—The duties which I perform I can tell you, and I conceive them to be the right ones. I have made it my practice to peruse every set of depositions returned to the assizes, and also to the Central Criminal Court, where I perform similar duties; from those depositions I draw the indictments, unless I receive notice that counsel is doing so. Upon the witnesses coming to the assizes, they come to me at the indictment office. If the depositions do not disclose sufficient facts upon which to found an indictment, I make further inquiries of them, and having satisfied myself, and drawn the indictment, my duty then is to pass it, and to send it to the grand jury.

2242. Then if counsel are not employed, you draw the indictment and see the witnesses yourself?—Yes.

2243. Have you anything to do with taxing costs?—I do perform those duties on the Home Circuit also; we have no separate officer, and I tax all the costs in criminal cases, except at the Spring Assizes, when we have a very heavy calendar, then we have another officer.

2244. You have experience in taxing costs?—Yes.

2245. Does it appear to you that the present system of administering criminal justice requires change in any respect?—I think that very important changes might be made, but that power already exists for making a great many of them.

2246. What are the evils which strike you as existing at present?—One of the evils is the absence of some responsible person to conduct the prosecution from the time of committal to trial, and my own impression is, that the magistrate's clerk is the person of all others to do that.

2247. In your opinion that is an evil?—I think it is a great evil.

2248. Does that, in your opinion, often lead to a failure in the administration of criminal justice?—I think not often, but that it does sometimes; very few instances have come within my own knowledge. In fact, I have endeavoured in vain

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vain since yesterday to bring to mind any one specific case; but I have an indistinct recollection of one or two cases in which a failure of justice has taken place from the want of some responsible person to conduct the prosecution, and to get the further evidence which was necessary.

2249. Have you paid any attention to the general working of the system on other circuits?—I have very little knowledge indeed of other circuits. I quite admit that a failure of justice may arise, and I have no doubt it has frequently arisen.

2250. In your opinion, does the present system lead sometimes to bringing prosecutions into the hands of a lower class of practitioners?—Yes, I think that is so. I can mention, that in the county of Kent especially, I have known prosecutors come to the indictment office to me with their witnesses, perhaps on the evening of the Commission day, when I have been drawing the indictments, without any attorney at all. The next morning, to my surprise, I have found that the prosecution has been in the hands of some attorney of whom I did not entertain perhaps a very high opinion, and I can only guess at the mode in which that has taken place.

2251. Mr. *Attorney-General.*] What is your inference upon the subject?—My inference is, that there is a certain class of practitioners who make it their practice to attend at the assizes and to go round amongst the prosecutors and witnesses, soliciting to be allowed to conduct their prosecutions upon something like the following bargain: "I will undertake this prosecution for you, and you shall have counsel to conduct it; you shall be at no expense; I will be content to take whatever the county allows for counsel's fee and for the brief." Then I have no doubt that a great many prosecutors, perhaps being ambitious of having their case presented by counsel, fall in with that, and so it takes place.

2252. Practically, what is the result of that?—I think the expense is utterly thrown away, so far as the brief goes, because in a majority of instances it is nothing but a copy of the depositions, and that copy of the depositions might just as well be handed down to the counsel by the court, who would conduct it just as efficiently, inasmuch as he gets no other instructions from the attorney.

2253. *Chairman.*] Then you consider that the allowance to the attorney for getting up the brief is altogether flung away?—Quite so.

2254. Mr. *Attorney-General.*] Do you think that in those cases it is desirable that there should be counsel?—My own notion of the matter is, that every case should be conducted by counsel.

2255. You say you think it would be sufficient if the depositions were handed down by the court to the counsel?—Yes.

2256. Do not you think it is desirable that the presiding judge should have a copy of the depositions before him?—Undoubtedly. When I spoke of the depositions being handed down, I should rather have qualified that by saying a copy of them.

2257. Who is to make the copy?—There is no difficulty about that; it is a practice which we pursue at the Central Criminal Court every day. On passing the indictment at the indictment office, I inquire of the witnesses whether there is any attorney to conduct the prosecution; if they tell me no, and it is a case which, in the opinion of Mr. Clark, should be conducted by counsel, we immediately have the depositions copied, and the next morning, when the cases are in the list, the counsel mark their names against the cases in which they are concerned; and if there is any case in which no counsel is employed, a copy of the depositions is immediately handed to some gentleman to conduct the prosecution.

2258. That copy costs something?—Yes; of course we never send the depositions to strangers; we never part with the custody of them, and the practice has obtained of copying them after the usual office hours; so that the only expense to the public is some 2*d.* a folio.

2259. So that there is a considerable difference between the expense to the public of copying depositions in that way, and what it would be by having an attorney?—Undoubtedly.

2260. I believe that is a practice confined to you?—I think it is, so far as the copying of the depositions is concerned; but the practice of handing the depositions to counsel, as you are aware, prevails on circuit; it is, however, open to the objection which you have mentioned, that the judge ought to keep the depositions.

2261. *Chairman.*] Referring to the point of the low class of practitioners, in your

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your opinion is it a great evil that the business should fall into the hands of a low class of practitioners?—I think it is a great evil, because when it has fallen into the hands of a low practitioner he is exposed to temptation from the opposite side, and the prosecution is far more likely to be put an end to than if it were in the hands of the prosecutor or of a respectable attorney.

2262. With regard to the money allowed to witnesses, has it ever occurred to you to doubt whether the witnesses have received the full money allowed them?—I have doubted it on many occasions, but I cannot say I have had very substantial grounds for doubt; I have formed an impression merely from rumour.

2263. Do you know that a class of attorneys are in the habit of attending police courts for the sake of getting prosecutions?—I do not know it of my own knowledge; I have heard it.

2264. Do you believe it?—Yes; and I believe also that a class of persons who are not attorneys do the same thing; that is much more frequently the case.

2265. Do you believe that it leads to improper conduct on the part of the police also?—I have never met with any instance in which I have found any reason to doubt the propriety of the conduct of the police in that respect.

2266. Suppose a policemen received fees from an attorney for bringing prosecutions; have you never met with such a case as that?—No.

2267. Not on the Home Circuit, nor at the Central Criminal Court?—No.

2268. Do not the police manage prosecutions a good deal at the Central Criminal Court?—I have never found any policemen do anything more than any other witness in the case. I have never heard of a case of a brief having been delivered to counsel by a policeman.

2269. Do policemen ever examine the witnesses?—I think so, and I think properly so.

2270. In a case where a policeman is to give evidence himself?—Yes.

2271. Do you think it right that a person who has to give evidence as a witness should be interested in the prosecution as an attorney who takes up the case?—I do not see any more interest in a policeman than in the prosecutor himself, or the attorney, who may be a witness.

2272. With the prosecutor you cannot help it?—If you so far restricted the policeman as to say that from the time of committal he should never see the witnesses till the time of the trial, he would be just as eager for conviction.

2273. You do not think that the circumstance of his getting up the case makes him more eager for conviction. If it is the fact, as we often find it, that a policeman has taken care to arrange the case, and to see that the witnesses are perfect in their parts (I mean, of course, honestly), you do not think, remembering the class of men to which a policeman belongs, that that would give him a bias?—I think in every case he has a bias.

2274. Is it not desirable that that bias should be diminished as much as possible?—Undoubtedly, if it is possible to diminish it.

2275. Does it not tend rather to increase it, if, in addition to his duties as policeman, he examines the witnesses in the case?—As far as the matter has come within my own knowledge, I never heard of a case where a policeman has done more than this: perhaps, in the indictment office, it has been suggested to him that certain evidence is wanting; for instance, upon drawing the indictment, I have perhaps found an absence of proof of the ownership of the dwelling-house, or the ownership of the property, or the name of a corporation; I have then said to the officer, "There is no evidence of this; you must procure it." The officer then gets that evidence; and I do not know any other agent who could be more properly employed. But as to a policeman sitting down to examine the witnesses, or to compare the testimony of one with that of the other, to supply any deficiency, that never came within my knowledge, and I never heard of its being done.

2276. Then you do not think that this is accurate, which we were told by Mr. Straight, for instance; you do not think that it is true that a great majority of prosecutions are conducted by policemen?—I am afraid we are at issue as to the meaning of the term "conducting" prosecutions.

2277. It is something which Mr. Straight does not think desirable. He is asked, "Do you think that that is a desirable state of things?" To which he replied, "No. I think there should be some one who should have the charge of the prosecutions between commitment and presentment"?—I think it is extremely desirable

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desirable that there should be in every case a responsible person to have charge of the prosecution.

2278. You do not think that that, whatever it is, should be conducted by a policeman ?—Certainly not.

2279. Without entering into the question whether policemen are entrusted with it, if it is so, you think it wrong ?—I do.

2280. Mr. *Miles.*] But you do not think it is so ?—The term, "conducting a prosecution," bears a different meaning with me from that which is attached to it by other persons, apparently.

2281. Will you state what your meaning is ?—I understand by the term "conducting a prosecution," that which is done by a man, whether an attorney or not, whose duty it is to present the prosecution before the court in the most perfect form; such business as an attorney would perform. He would examine the witnesses at his office, and if he found the evidence of one witness conflicting with that of another, he would endeavour, by amplifying the evidence, to explain that away, or to see how it arose; and if he found that he could obtain any additional witnesses, he would procure them, take down their evidence, and furnish it to the counsel; but I never heard of a policeman doing any such thing.

2282. *Chairman.*] Without doing precisely what you have said, do policemen perform any other function which an attorney would do ?—Yes, I think they do, because one of the functions of an attorney would be to look up extra witnesses, if necessary; and I think policemen do that, and very frequently get additional evidence, which no one else could do.

2283. Mr. *Miles.*] Therefore that is conducive to the ends of public justice ? —I think so.

2284. *Chairman.*] You think it desirable that it should be a policeman, and not an attorney ?—I do not say that. I think it is more desirable that there should be a responsible and educated person in every case to have charge of the prosecution, whose duty it should be, amongst others, to get those additional witnesses; but I think there is little evil in the present practice.

2285. To do that which you say is done by policemen in some cases now ?—Yes; and I think there is no objection of any importance to policemen doing i at present.

2286. But you still think it would be better if some one was appointed to do it ?—Yes; some one in a superior capacity to a policeman.

2287. Mr. *Miles.*] But even conducted as it is, from your experience, the cause of public justice is not detrimented ?—I think not by any conduct of the police.

2288. Mr. *Solicitor-General for Ireland.*] That is to say, you mean that you are better with the police now than you would be without them ?—Yes. I think it might even arise afterwards, that when we had a superior officer we should find ourselves a little worse off in some cases.

2289. Would you consider it as conducting a case by a policeman if he got up the evidence out of court, and afterwards attended in court with the witnesses, and examined them at the trial ?—I should consider it most indecent for a policeman to be in court examining witnesses before the jury.

2290. Have you never seen that take place ?—Never.

2291. You have spoken of the policeman usually being to some extent a partisan ?—Yes, I think he is in every case.

2292. Do you not think that if he is employed in communicating with the witnesses out of court getting up the evidence, he thereby has opportunities of shaping his own evidence to agree with the evidence of the other witnesses ?—Undoubtedly he has the opportunity, but he would equally have the opportunity if an attorney were employed.

2293. Is it desirable that a policeman who is to be a witness upon the trial, should himself be a party in communicating with the witnesses, having that bias upon his mind, and thus being enabled to warp his own testimony to agree with theirs ?—I do not see any objection to it. The policeman's evidence has been already taken down before the magistrate, therefore if he alters it or endeavours to shape it differently in court, there is always a check upon him.

2294. *Chairman.*] A gentleman who came from Walsall told us as follows: I asked him, "Is it within your knowledge that policemen are often employed for the management of prosecutions ?" He said, "Undoubtedly; ordinarily it

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it falls to their lot to do it." I then asked him, "Do you think that they are a proper class to be so employed?" to which he answered, "Certainly not." Do you agree with that?—There again the question is as to what is meant by the management of prosecutions.

2295. He is not speaking of London, but of what he sees at Walsall?—If he means by the term "the management of prosecutions," merely having charge of the witnesses——

2296. He does not mean that?—Then the difficulty I am in is as to the definition of terms. I mean by the management of a prosecution, such management as an attorney would bestow upon it; but I find that in the majority of cases the police are not bound over to prosecute specially. The ordinary form of recognizance is, that the whole of the witnesses are bound over to prosecute, and to give evidence, and in a great number of cases the policeman never does anything more than the other witnesses.

2297. In the sense, whatever it is, which you annex to the management of a prosecution, do you think it proper that a policeman should be entrusted with it?—I think it would be preferable that some other and more intelligent person should. I have never discovered any improper conduct in a case on the part of the police; and although policemen have been indicted for perjury, I have never, to the best of my recollection, met with an instance of a policeman charged with subornation of perjury, the inference from which is obvious.

2298. Mr. *Miles.*] As far as their management of prosecutions has gone, I believe they have acted perfectly well?—Yes, as a general rule; of course there may be exceptions.

2299. *Chairman.*] Then why do you not think them a proper class to be entrusted with the management of the prosecutions?—Because I think the majority of them are persons of small intelligence and skill; some of them are educated men.

2300. You have your own meaning to the words "management of the prosecution." I do not ask you what that meaning is; but do you think the policemen the proper people to be employed in the management of a prosecution?—I hardly know how to answer that question. I think they are very proper persons indeed to be employed in getting up evidence. I think they are very improper persons to be employed in delivering any instructions to counsel or preparing any written statement for the court.

2301. Mr. *Attorney-General.*] Do you not think that it would be better that the policeman who has to get up the evidence should do it under the guidance and direction of some superior authority?—Yes, I think that would be most desirable that he should receive a limit, as it were, to his duties, and that he should be directed what to do, and to do nothing else.

2302. And also that the person directed as a policeman to investigate and inquire and search for evidence should not be the man who is to be examined as a witness, supposing that a policeman is to be examined as a witness?—I think that it would be preferable that some other person should be employed.

2303. Supposing there was some public prosecutor or agent, he might then employ some police officer in whose integrity and intelligence he had confidence to make those inquiries which might be essential to the elucidation of truth?—Yes.

2304. *Chairman.*] Supposing it was in the power of a policeman to select the attorney to be employed for the prosecution, would you not consider that a great evil?—Yes. I would rather see all power of that kind taken away from the police.

2305. Would it not almost necessarily lead to great abuses?—I think it might, and would.

2306. Mr. *W. Ewart.*] If I understand rightly, your idea of the duty of a policeman is, that it is simply to collect the facts, and appear almost in a mechanical character?—Yes.

2307. Therefore, with regard to the bearing of the facts and their legal tendency, you would consider it necessary to have a superior officer?—Yes.

2308. Mr. *Solicitor-General for Ireland.*] Did you not say that you found police officers act rather as partisans in the case?—I think every policeman must; his promotion is concerned in it, so far as my knowledge goes. I have no very accurate knowledge upon the subject, but the promotion of a policeman I have always understood depends in a great measure upon the number of cases in which

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which he is engaged and the number of cases in which he is engaged successfully.

2309. Mr. *Attorney-General.*] Is that so?—I have always heard so, and that is the impression formed upon my mind.

2310. Mr. *Solicitor-General for Ireland.*] It is looked upon as a test of his efficiency?—Yes.

2311. And he is promoted for his efficiency?—Yes.

2312. On the other hand, if the prosecutions in which he is engaged terminate in the acquittal of the accused, that is rather regarded as a test of inefficiency?—I imagine so; of course I may be utterly wrong in my impression as to the inducement to promotion.

2313. That is what you alluded to when you said that the result of your experience was that you certainly considered a policeman to be a partisan in the prosecution?—Yes.

2314. In other words, that he was actuated by the desire to secure a conviction?—Yes; I do not mean to say dishonestly so.

2315. Still that that was the operating motive upon his mind; that he fancied that a crime had been committed, and wished to secure a conviction?—Yes.

2316. You have given an answer which appears to me rather inconsistent with that; you have stated that in your experience you think that the policemen have acted invariably well?—Yes.

2317. Do you conceive that a man acts invariably well, when the motive of his conduct is to secure a conviction?—It may be a perfectly praiseworthy and honest motive; I can easily believe that a policeman might wish to procure the conviction of a man whom he believed to be guilty.

2318. I should rather imagine that the object of a person of your position and intelligence would be to elicit the truth?—If my impression was that a man had committed a crime, I should wish him to be punished.

2319. If you yourself, in the course of investigating the case, having even that impression upon your mind, hit upon a witness who could give evidence favourable to the accused, I am sure that a person of your intelligence would consider it your duty that he should be called, and examined upon the prosecution?—Certainly.

2320. From your observation, do you think that a policeman entrusted with the management of the case, and actuated by the motives which you describe, if he discovered that there was a witness not necessary for the prosecution, but who could give evidence favourable to the accused, would call that witness?—No, he would not.

2321. *Chairman.*] Do you consider that that would be praiseworthy?—I should consider that he would be guilty of a breach of his duty if he brought up witnesses who were not witnesses for the prosecution.

2322. But suppose that the witness might say something in favour of the prosecution, but still might say something in favour of the prisoner?—That is an instance of the want of some superior officer, to whom the policeman should refer, or by whom he should be guided.

2323. Mr. *Miles.*] In the preliminary investigations, which of necessity are often conducted by a policeman, is he not bound to state all that he knows upon oath, before a warrant is issued, or, if he has the prisoner in custody, what has taken place at the time that the charge has been made?—He is bound to state on oath all that he knows which is evidence, but anything that he had heard about another witness, of course, would not be evidence, and therefore he would not be bound to state that.

2324. Do you not think that it often takes place, for instance, in a serious assault upon the person, such as wounding and maiming, that the policeman inquires of everything which has occurred before he takes the accused into custody, and that that is taken down upon the police sheet by the inspector, and that then evidence is brought for or against?—No; my impression of the practice is, that nothing is entered upon the charge sheet, or at the station-house, except the bare charge; that no evidence at all is taken down at the police station; that the first time any evidence is taken down is at the police court; that is my impression of the matter; I may be wrong, but I never heard of such a practice of taking down evidence at the police station.

2325. Still I understand you, that as far as getting up the evidence goes, you conceive

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conceive that no kind of injury to the administration of criminal law is done by the police getting up the evidence?—I think not.

2326. But that when you come to the management of the prosecution, if they do manage the prosecution they are persons who ought not to do that?—Yes.

2327. *Chairman.*] And you think that in getting up the evidence it would be better if the policeman was under the management of some superior person? —I think so. The reason I would retain the police to get up evidence is this; although I cannot now call to mind particular instances, yet many instances may arise where it is desirable to get hold of a witness who is himself of very bad character, and nobody else but a policeman would be able to get hold of him.

2328. Mr. *Solicitor-General for Ireland.*] They are quite necessary adjuncts for that purpose?—Yes.

2329. *Chairman.*] Captain Hatton, the chief of the constabulary at Stafford, has told us this: "I think in Staffordshire it is very objectionable, so many policemen being bound over as prosecutors; on more grounds than one. I do not think it right that policemen should be prosecutors if it can by any possibility be avoided, but the magistrates out of two evils choose the least;" and then he proceeds to state that the other evil was, that if the policemen were not bound over, people would not undertake the prosecution?—My experience has led me to this conclusion, that on the Home Circuit, whenever the owner of the property is a witness himself, he is always bound over to prosecute, and that it is only in cases where the person injured is a married woman or an infant that the policemen are bound over to prosecute at all.

2330. And you think it desirable that they should not be bound over in other cases?—Yes.

2331. Mr. *Miles.*] But they never are?—They never are on the Home Circuit, except in the cases which I have mentioned.

2332. *Chairman.*] And you think it desirable that they should be confined to those cases?—I think so. I think there is no necessity for binding over the police in any other cases.

2333. In Question 1319, Captain Hatton is asked, "Have you had an opportunity of observing with regard to attorneys, whether there is any indecent scramble between attorneys for the management of prosecutions?" The answer is, "Yes, I have been obliged to interfere to prevent that." From your experience, do you think such a state of things probable generally in a large town?—I think it is probable that there may be a scramble.

2334. Between low attorneys for the management of prosecutions?—Yes; in fact, I think it is so between low attorneys in the circuit towns. I may, perhaps, mention an instance with which I have met frequently when the prosecutor has employed his own attorney to conduct his own prosecution, and then there has come to the assizes, not only the prosecutor's attorney with his brief prepared, but also the magistrates' clerk, with a brief prepared for the same purpose, to conduct the same prosecution; that is to say, the magistrates' clerk offering to conduct the prosecution by virtue of his office as magistrates' clerk, and then the private solicitor of the prosecutor retained by the prosecutor himself.

2335. Mr. *Miles.*] In that case, to which of the two are costs allowed?—To the attorney employed by the private prosecutor.

2336. Mr. *W. Ewart.*] Notwithstanding your confidence in the police, you still think it necessary that, in certain cases, there should be a superior officer to control the collection of the evidence?—I think so.

2337. Why do you think so?—Because I think a person of superior intelligence, a man acquainted with the rules of evidence, and acquainted with the law generally, would be a far better person than a policeman, who is perhaps running about at random, picking up evidence which he thinks material, but which may turn out to be utterly useless.

2338. You think that, in some cases, the policeman is not a sufficient conductor of the case?—I think that is quite so.

2339. *Chairman.*] Have you turned your attention at all to the propriety of allowing witnesses to be called by the prisoner at the public expense?—I have not devoted any great consideration to it.

2340. What is your impression as to that?—My impression of the matter is this, that if the prisoner were called upon to declare before the magistrate at the time of his committal whether there were any witnesses whom he considered essential to be called for his defence; then, upon his declaring that there were, and

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and naming them, giving their addresses, or describing them, so that they could be found, they should be summoned before the magistrate and examined; and if they were found to give evidence which might turn out to be material in the opinion of the magistrate, they should be bound over, and the question of their costs should await the decision of the court at which they were examined.

2341. That if the judge thought they were material and honest witnesses, he should have the power of allowing their expenses?—I think so.

2342. Do you think that that would be a sufficient guarantee to the public?—I think so, if it were made a condition precedent that the magistrate should examine them.

2343. Supposing a case where the magistrate, from mistake, refused to bind over witnesses who really were material in the opinion of the judge, would you in that case allow the judge to certify that the witnesses were material, and that their expenses should be paid?—Yes, I think so; I think an unlimited power of allowing the expenses of prisoners' witnesses would require to be most scrupulously exercised, otherwise it might have an evil tendency.

2344. But you think that with that check it might be safely done?—I think so; I think, it is a great hardship upon prisoners in many instances, although perhaps the Committee is not aware that any one accused at the Central Criminal Court may get a subpœna for 1 *s.*, which compels the attendance of any person upon whom it is served. He can summon four witnesses at the expense of 1 *s.*; and then, whether he be poor or whether he be rich, if he can afford to pay 1 *s.* for a subpœna, his friends can serve that subpœna upon anybody whom he chooses to point out, and the person is liable to be indicted if he does not come in obedience to it, without the payment of a farthing. In criminal cases no tender of expenses is necessary.

2345. Still we know that it often does happen that witnesses go away after waiting two or three days at the assizes?—Yes, I have frequently met with instances when I have been sitting in the office on the circuit taxing costs, where witnesses have come and said that they had not a sixpence or a penny to get anything to eat, and that they must go; in several cases even of witnesses for the prosecution, I have taken upon myself the risk of advancing them money; and in one instance I met with a reward, the witness's expenses were disallowed and I lost in consequence.

2346. Mr. *Philipps.*] I think you expressed an opinion that the conduct of the prosecutions might be safely entrusted to the magistrates' clerks?—I did.

2347. You have heard some objections made to it?—The only objection that I have ever heard is one which I consider a scandal upon them to mention, that is, that the miserable temptation of a few shillings will induce the magistrates' clerk to commit an accused person for trial without sufficient grounds, from the mere hope of having to conduct the prosecution, and getting a guinea or thirty shillings allowed for his brief. I cannot think that such a temptation would be sufficient to induce the magistrate's clerk to send a man to trial upon insufficient grounds.

2348. Supposing such a temptation existed, do you not think that some countervailing influences might be adopted against it?—Undoubtedly. That objection presupposes that the magistrate's clerk is the magistrate; it presupposes that the magistrate's clerk commits, and not the magistrate. The magistrate's clerk advises the magistrate, but the magistrate must always exercise his power of committal or discharge.

2349. Mr. *Attorney-General.*] Do you not think that in the country, where the clerk is generally a professional man, and the magistrate is not, the clerk has a very great influence upon the magistrate?—No doubt he has, and possibly in many cases may almost be the magistrate.

2350. Supposing the magistrate's clerk is far above any liability to be swayed by any such motive, do you not think that, as regards both the accused and the public, the bystanders, it is highly desirable that a man who exercises great influence upon the decision of the magistrate as to committal or not, should be beyond the reach of suspicion at the trial?—Undoubtedly, I think it desirable that he should be beyond the reach of suspicion.

2351. And therefore he should not conduct the prosecution afterwards, if you can find anybody else?—I would remove all ground of suspicion, by removing the inducement suggested.

2352. By putting him upon a salary?—Yes; and then I think you would have

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have to your hand a staff of officers accustomed to these duties, and who would discharge them properly. Of course, that would not apply to the Metropolis, where you could not employ the magistrates' clerks, who are entirely occupied with their duties.

2353. Then you must pay the magistrates' clerks extra salaries, if they are to conduct the case before the magistrate and also collect the evidence?—Certainly. I have known the case of a magistrate's clerk coming 30 or 40 miles, and remaining, perhaps, in the assize town three or four days, and having only a guinea or 30 *s.*

2354. You would increase their salaries considerably?—Yes.

2355. Supposing you had an established officer, whose sole and simple duty it should be to attend to the prosecutions of a particular district, do you not think that he would do it more efficiently than the magistrate's clerk, who has various professional duties?—I think it would be desirable if you had an officer whose sole duty it should be; but I think it would involve an enormous expense.

2356. Do you think it would involve more expense than all these increased salaries?—I have not gone into any figures, but I should imagine that the expense of one would be only one-tenth of that of the other.

2357. That is a mere assumption?—Yes.

2358. Suppose you should be wrong?—Then I think the system which you mention far preferable.

2359. Mr. *Miles.*] Still, considering the station of the magistrates' clerks in the country, and their standing in their profession, as I understand, you think that they would very properly fill the office of public prosecutors?—I think so.

2360. Does not it strike you as to the difference of expense between a public prosecutor, as a distinct person, and the magistrate's clerk; that the magistrate's clerk, whom you already pay by fees a given sum, of course could conduct the cases at much less expense than a person who had to give his whole time to it?—That is my impression. I have not gone into any figures; but it seems to me that if you abolish all the magistrate's clerk's fees, and pay him by a salary for the duties which he at present performs, and then for the additional duties which you call upon him to perform as a public prosecutor, the expense will be considerably less than if you have a separate and independent establishment of public prosecutors; because you must have a man of some position; you must have a man of knowledge and of legal education; and it seems to me that you would require one in every petty sessional division, otherwise the attendance of the public prosecutor might be required at two totally distinct places at the same hour of the same day, and if he could not be there, you would be put to the expense of taking the witnesses back and bringing them again.

2361. *Chairman.*] You have not considered the details?—No, I had hardly considered the subject till the receipt of your summons yesterday.

2362. Mr. *Miles.*] Still you have been some time on circuit?—Yes, about 10 years altogether.

2363. And have a tolerable knowledge in the country of the magistrates' clerks?—I meet them every circuit.

2364. You are able to state decidedly that they would be very proper persons, if paid by salaries instead of fees, to conduct the prosecutions?—It is my conviction that they would be the best persons, unless you had a totally separate and expensive establishment.

2365. *Chairman.*] Are you quite sure that it would be an expensive establishment; have you taken that into consideration?—The very short time that I have bestowed upon the matter, convinces me that it must be very expensive.

2366. If you bestowed a longer time in taking it into consideration, do you think it might change your opinion?—I endeavoured, in vain, to think of any system by which it could be rendered less expensive.

2367. You do not think then that there are a great number of frivolous prosecutions brought now?—There are a great number of frivolous prosecutions, but I do not know how the magistrate's clerk can help it; if the prosecutor makes a frivolous charge before the magistrate of stealing a turnip, the magistrate's clerk has no power of stopping the prosecution, or of ordering an acquittal.

2368. If there were fewer prosecutions, do you think it would save expense?—Considerably.

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Mr. *H. Avory.*

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2369. Are you aware that on the ground of expense alone a report has been presented to the Treasury, recommending the appointment of a public prosecutor, by Mr. Preston and Mr. Wilkins, of the North Wales Circuit?—I am not. If I were made acquainted with the functions of the public prosecutors, as proposed, of course it might modify my views.

2370. You have only considered the subject since yesterday?—Yes, with a view to giving evidence; I have merely thought cursorily upon the subject.

2371. Mr. *Philipps.*] To pursue the subject of entrusting the magistrate's clerk with the conduct of the prosecution, combined with remunerating him by a fixed salary, do you think there would be any inducement the other way; that is to say, not to prosecute cases, inasmuch as he would be paid the same whether he conducted them or not; do you think there would be any danger on that score?—I am very unwilling to assume that any such influences would operate upon the magistrate's clerk, but of course human nature is liable to such temptation.

2372. *Chairman.*] Even the magistrates' clerks?—Even magistrates' clerks, as other persons. If I were paid by a fixed salary for certain duties, I should desire to diminish those duties as much as possible.

2373. Mr. *Philipps.*] Therefore, if the magistrates' clerk were paid by fixed salary, there would be no risk of his recommending the prosecution of persons where it was not likely to end in conviction?—No. Of course there would be a certain class of cases where a considerable amount of local interest was excited, or in which the magistrates' clerk might be a partisan; you must then have some other officer. With respect to the payment by salary, the tendency which has been mentioned would equally apply to a public prosecutor as to the magistrates' clerk; he would desire to do as little duty as possible. There is one case which came within my own knowledge, which I intended to mention to the Committee. I do not know that it bears upon this particular branch of the subject; it is a case which occurred at the Central Criminal Court, and which was committed from one of the outlying districts of Middlesex; a charge of perjury. The depositions were taken before the magistrate, and they were forwarded to the Central Criminal Court. I had to draw the indictments myself; there were three indictments; three defendants were committed, and it appeared clearly upon the face of those depositions that though the defendants had sworn to several matters alleged to be false, only one was material to the issue before the magistrate, and that, therefore, was the only one upon which he could be convicted of perjury. As to that, there was but one witness, yet the case was committed for trial; no conviction could take place, and the whole of the witnesses were brought up, and the expense incurred of their attendance at the Central Criminal Court probably for three days; and the result was that which every one could have anticipated before.

2374. *Chairman.*] Were the expenses allowed?—Yes, the expenses were allowed, because the witnesses were bound over by the magistrate.

2375. Do you know what that cost the country?—About 30*l.*

2376. To what do you attribute that?—An inadvertence upon the part of the magistrates' clerk, or possibly the hope that some other witness might turn up before the trial.

2377. Mr. *Philipps.*] Do you think in the long run, that magistrates' clerks would be content with a fixed salary consistently with the meritorious performance of their duties; do you not think it possible that if they found they were conducting very heavy and arduous cases which involved a great deal of trouble, and they did not receive more than persons holding corresponding situations, and having much less labour, they would become discontented, and neglect the proper performance of their duties?—I think that would be a reason for increasing the salary; if it was found that a man had considerably heavier business than others, his salary should be proportionately larger than that of the man with the lighter business.

2378. Mr. *Miles.*] And if, as is the general case, the appointment of the magistrates' clerk were made by the magistrates, the magistrates themselves would act as supervisors?—I think it very expedient to have some central authority in the Metropolis to whom they could all refer in cases of difficulty. My impression is that such a minister or officer of justice does exist now in the person of the Attorney-general. In that case which I have mentioned, of course the Attorney-general might have entered his *nolle prosequi*; there would then have been no

necessity

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necessity for the witnesses to attend at the Central Criminal Court, because there was manifestly no hope of obtaining a conviction. If there had been a public prosecutor, whether the magistrates' clerk or any other person, he could have communicated with the central authority in London, and said, "Here is a case which I am called upon to conduct, in which there is not a hope of a conviction, why should I incur all the expense of taking my witnesses to the assize town or the court, and there meet with the result which I have already anticipated, when I could save all that expense?" I conceive it desirable to have some central authority in the Metropolis to which all the district authorities could refer in cases of great difficulty or labour.

2379. Whether it is the Attorney-general or the Home Office?—Yes

2380. Mr. *Attorney-General.*] At the present moment the Attorney-general is the only person who can stop a prosecution by entering a *nolle prosequi*, when it is once in motion, and there is no one whose duty it is to call the attention of the Attorney-general to any prosecution which requires that?—That is so.

2381. Mr. *Miles.*] Do you think it would be sufficient if you were to establish generally through the country the magistrates' clerks as public prosecutors, and giving them in all cases of difficulty a reference direct to the Attorney-general?—I think that would answer all the purposes. Of course, under such a state of things as that there must be some staff attached to the Attorney-general's department to enable him to meet the demand which there would be upon him.

2382. From your knowledge of the law, do you think that that would be perfectly efficient?—I think so.

2383. Mr. *Philipps.*] Do you not think that the knowledge which these clerks would have, that their names were well known to some central authority in London, would have a great effect upon their general conduct?—I think so, and that it would be a very expedient thing that a power should be lodged in the court before whom the trials took place, of marking their sense of habitual neglect or carelessness in prosecutions, because such things as those of course might escape the attention of the magistrates; they perhaps never hear of a case after its committal, and then there may be great neglect on some occasions in getting up the prosecutions from committal to trial; I therefore think that the court before whom the trial takes place should have the power of suspending or dismissing any person habitually careless.

2384. The magistrates in quarter sessions?—Either the magistrates in quarter sessions, or the judge at the assizes; or a reference back probably from the judge at assizes to the magistrates in quarter sessions would answer all the purposes.

2385. Mr. *Miles.*] At present all that is done is, that the judge or the chairman of quarter sessions, when a case is very badly got up, merely reprehends the very slovenly state in which the depositions come before him?—Yes; he makes some general observations. You would require some controlling authority, and I think you have it already in the magistrates. As an illustration, probably, of the mode in which things are done, I may mention that there was a case committed from Dover to the last Kent assizes, in which a magistrate himself was bound over as a witness: that was a case of perjury also, and the depositions were sent somewhat in this form. First, there was the magistrate's evidence: "Upon the hearing of an information before me, the defendant swore as follows." It was then set out among other facts that he swore that he was in a public-house on a particular night. Then there was the evidence of two other witnesses, who proved that on that night he was in barracks, and those were the whole of the depositions. There was nothing to lead me as to what the information was about, but there were barely those facts. Then, on the morning after the commission day the magistrate comes with his witnesses, and desires to go before the grand jury. My answer is, "I have had no facts upon which to draw the indictment; you must supply me with them;" and he and his witnesses were detained till the next day, until I could get leisure in the evening to draw the indictment; then the moment it was ready it went before the grand jury, and the moment it got into court the man pleaded guilty, so that the witnesses were detained two days instead of one, merely from the carelessness of the clerk to the magistrates in that particular case.

2386. Mr. *Philipps.*] Was he the regular clerk to the magistrates?—That did not come within my knowledge; but I should, of course, have had my indictment

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ment prepared on the commission day, and it would have been ready the next morning, but from the want of materials I could not do it until the following night.

2387. *Chairman.*] The evils which you have mentioned have long been under your notice?—Yes.

2388. With regard to the remedy, I understand you to say that it is only yesterday that you turned your attention seriously to the subject?—Exactly so.

2389. Mr. *Miles.*] But still, you have now given a decided opinion upon it? —Yes. I thought over the subject last night, and I could not devise any other system which it appeared to me would act better, except one which would be very much more expensive, namely, the one which Mr. Attorney-general has suggested, of having a distinct establishment of public prosecutors.

2390. *Chairman.*] Are you quite sure that a wider and more extended view of the subject might not alter your opinion in that respect?—I will not say that it would not.

2391. Mr. *Attorney-General.*] I understand you to say that, supposing the expense to be out of the question, you have no doubt of the advantage of one plan over the other?—Yes; if expense was not considered, I think it would be far better to have a distinct establishment of persons who should only have that duty.

2392. Perhaps you agree in this, that there is no branch of the expenditure of the State in which expense should be so little considered as the administration of public justice?—I quite agree in that.

2393. Mr. *Philipps.*] Then the sum total of your opinion would be this, that though you think, setting aside all considerations of expense, it would be a great advantage to have a distinct body of men to conduct the prosecutions; still, to entrust the prosecutions to the magistrates' clerks would be a great improvement on the present system?—I think so.

Sir *Alexander James Edmund Cockburn*, Her Majesty's Attorney-General, a Member of the Committee, Examined.

Sir *A. Cockburn*, M. P.

2394. *Chairman.*] WILL you be good enough to tell the Committee what are your views as to the evils of the present system, and the manner in which they might be remedied?—Perhaps you will allow me to state, first, that I have had a good deal of experience with regard to the administration of the criminal law, quite independently of the office which I have the honour to hold. I practised a long while at quarter sessions, and was very extensively employed in the criminal court, on circuit, before I got into civil business. I got into civil business through the means of the criminal business. I was, after that, recorder of Southampton for some years, and have been since recorder of Bristol, so that I have seen a good deal of criminal business in one way and another; and I am satisfied that the present system, although upon the whole it works efficiently, is open to serious exception, and is capable of great improvement. I think it very often happens that cases are brought to trial which are only imperfectly got up, and that they break down from the want of some superintending and controlling power to get the evidence together, and to see that it is complete. Magistrates commit, thinking that there is sufficient evidence to satisfy the legal requirements of the case; and when the matter comes to be sifted in court, upon the cross-examination of counsel and the watchful superintendence of the judge, who is bound to see that not only is there moral proof, but also legal proof of guilt, it turns out that some link or other is wanting which greater experience and knowledge of the subject in the intermediate stage of preparation would have supplied; and then the case breaks down, and a guilty man is acquitted, which I look upon as a very serious evil. Every case in which a man is manifestly, to the observation of the bystanders, guilty, and nevertheless escapes, produces the notion that there is a chance of escape for the guilty, and that no doubt operates as an encouragement to crime. Again, I think that there are many cases brought into court which ought not to come there, in which the offence is either so trifling, or the proof so defective, that it is not desirable that the case should be brought to trial at all. The magistrate hesitates to discharge the accused, because he feels that he is taking a great responsibility upon himself in doing so; he at the same time feels that the case will be more thoroughly sifted, and that the man if

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if he is innocent will be acquitted, and therefore he thinks that the safer course is to send him for trial: the result is again acquittal; and the more acquittals there are, I am satisfied the worse it is; independently of which, you are doing a very grievous injustice to a man who is unnecessarily sent to gaol and put upon his trial. Of course he is subject to the grievance of imprisonment, and to the harassment of a trial, and the degradation which attaches to a man being placed in the dock as a criminal. There is also the contamination of the gaol, whereby, in a great many cases, a man who goes in innocent comes out morally contaminated. I cannot help thinking, therefore, that it would be a most essential improvement in our administration of justice, if there were some superintending authority, which should see, before cases are brought to trial, that the proof is as complete as it can be made, and on the other hand, where cases are sent for trial, which ought not to be sent, might interpose and stop them. Again, I think there are many cases of collusion in which, instead of the prosecutions being gone on with, by arrangement between the parties, either they are not taken before the grand jury, or the witnesses absent themselves, or they do not give the evidence which they ought to do, and so guilty parties get off. I think such cases as those might be very materially diminished if you had a controlling power watching over them. People would not venture to act thus if they knew that there was an officer whose business it was to watch them, and in case of collusion to bring them to punishment. There is a large class of cases also in which criminal justice is resorted to for the mere purpose of enforcing civil rights. A man institutes a suit in Chancery to obtain redress against what he believes to be extortion or other injustice; he is defeated there, and then he then resorts to an indictment for perjury or conspiracy, or one of that class of indictments, and very often he is perfectly right: some gross extortion or other abuse has been shielded by the perjury of the party immediately concerned, or there has been a conspiracy. I have known instances of conspiracies where indictments have been preferred, and true bills have been found; the case has been brought into court, and at the last moment it has been compromised, because the person guilty of the offence, seeing punishment impending, has made terms with his adversary, and so escaped. In all these cases, supposing the prosecutions honest ones, and that offences have really been committed, it is desirable that the parties who have been guilty of conspiracy or perjury, or any offence of that nature, should not escape by merely making a pecuniary arrangement with the prosecutors. I think, therefore, it would be very desirable that there should be a public prosecutor, under whose sanction indictments and prosecutions should be conducted, and without whose sanction they should not be compromised. I know that, on different occasions (I can certainly call to mind two instances), Lord Campbell, from the Bench, with reference to such cases, has publicly addressed me sitting in court as Attorney-general, pointing out to me the necessity of having a public prosecutor to prevent scandals in the administration of justice. It was that which, in the first place, induced me to turn my attention to the subject, and when our Chairman first brought his Bill into Parliament, I at once stated that the Bill would immediately receive the consideration of Her Majesty's Government, and I stated that I was induced to take that course in consequence of what my Lord Campbell had said to me, which I communicated on that occasion to some of the members of the Government who were sitting upon the Treasury Bench.

2395. Mr. *Philipps.*] Do you think that the evil of these acquittals is an entirely unmixed one; do you not think it possible that if persons were not put upon their trial, except there were almost a dead certainty of a conviction, it would lead to a great number of people going about, without, as it were, any notice being taken of them, the public mind being satisfied. Do you think that more mischief is produced by a man being acquitted in court from the knowledge of its being from failure of proof, than if his case were not taken up at all in the first instance?—Then, I think it would be better in that point of view if the public prosecutor stood up in court and said, "I have no case to sustain against this man, and I assent to his acquittal." I think that would be better than putting him through the course of a trial, which looks as if those who are conducting the public justice of the country think there is a case against him, when in point of fact there is not.

2396. *Chairman.*] You have mentioned the opinion of the present Lord Chief Justice,

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Justice, which I must say has been expressed to me in equally strong terms, as to the necessity of appointing a public prosecutor; did you ever happen to hear my Lord Denman express the same opinion?—I do not think I ever did; I have always understood that he entertained it very strongly, but I never heard him say so from the judgment seat. I will add another, to my mind, very serious evil which I have observed very often myself, sitting as recorder, and that is the manner in which policemen mix themselves up with these prosecutions. I must say that I think it is a great scandal (to use no milder term) to see a case brought into court by one of the inferior ministers of the law such as a policeman. I do not think it is consistent with the proper administration of public justice, in a great country like this, that you should have a subordinate officer, who is merely the keeper of the prisoner, clothing himself with the functions of a public prosecutor. I think it has, also, this further mischievous effect. I have observed often, and have had occasion to notice it in court, how policemen become over-zealous in the conduct of prosecutions. I can quite account for it now; what we have heard throws light upon it. I was not aware of the circumstance (I refer to what has been said by the gentleman who has been examined here to-day), that the promotion of policemen is made to depend upon the prosecutions which they successfully conduct. One knows perfectly well the class of men from whom policemen are selected. I quite concur in what has been said, that generally speaking their conduct is very excellent; but one does frequently meet with instances to the contrary, as everybody knows; and a temptation of that kind to such a man is a very strong one: if he is told that his promotion is to depend upon the number of cases which he can bring to a successful termination in the conviction of accused persons, that must produce a tendency to desire convictions. One knows how subject human nature is to be biassed by interested motives. If you tell a man in that grade of life that he is to become a police serjeant, or inspector, if he can succeed in convicting a certain number of persons, the tendency is to convert him into an over-zealous and over officious person. Then the mischief is, that a policeman being supposed to be a person removed from all undue influences, who has not that bias upon his mind which the private prosecutor has, both the court and the jury, to my certain knowledge, attach the greatest importance to his testimony. When you are dealing with the prosecutor, you know him to be a man who comes smarting under a sense of injury; he has been robbed, or he has been beaten, or his premises have been set on fire, or he has sustained some other injury, and he comes there smarting with this sense of wrong, and naturally desirous of bringing down the vengeance of the law upon the man who has injured him; you know him to be labouring under those feelings, and you make allowance for them; you do not blame him because he feels in that way; it is natural that he should do so; but dealing with him as a witness, you know that you have a party more or less interested, and you therefore exercise a watchful caution as to admitting the whole of his statements. When you get a policeman, you get a minister, though a very subordinate minister, of justice, and you look upon him as a person upon whom you may therefore rely; and I own that it was not till I became a criminal judge that I saw the necessity of exercising watchfulness over them, without imputing undue motives to them. I see that they take such an interest in the prosecution, by getting credit for the intelligence, and energy, and skill which they show while getting the witnesses together and bringing them to the court, and in bringing the prosecution to a successful issue, that I have become very sensibly alive to the necessity of watching their evidence carefully. Then there is another thing; the policeman is generally the first man who comes into contact with the prisoner, and I find that, in the generality of instances, the policeman puts questions to the prisoner. Even if he does not put questions to him, the prisoner is naturally inclined, in the excitement of the moment, to make statements to the policeman. Those statements are very often of the greatest importance, and lead constantly to convictions, when the rest of the evidence would be deficient for that purpose. It is of the last importance that you should have those statements, when they are made, reproduced with the most perfect fidelity and the most scrupulous accuracy. But if you have a policeman who is already over-zealous in the cause, the slightest difference in a word or two, a little more colour, a little more complexion, given to the prisoner's statement, makes the difference between the man's being convicted or not. Therefore I think it is of the last importance that policemen

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men should be kept strictly to their functions as policemen, as persons to apprehend, and to have the custody of prisoners, and not as persons who are to mix themselves up in the conduct of a prosecution, whereby they acquire a bias infinitely stronger than that which, as was truly observed to-day, must, under any circumstances, naturally attach itself to their evidence. I quite agree that there are many cases in which the evidence brought before the magistrates is insufficient, in which it requires to be filled out, and that you want intelligent men, accustomed to these cases, to ferret out the evidence, and get the witnesses, and so complete the case; but I think that that should be done under the superintendence of some man of higher intelligence, and whose conduct is more immediately responsible to higher authority, who should see that men employed for such purposes do not exceed their duty; and I think that it ought to be done by policemen who are not mixed up with the particular case, who are not the persons who apprehended the prisoner, or who are to give evidence on the trial, but that they should be men employed merely for that particular purpose. As it stands now, I believe there is often injustice done, and a great deal of dissatisfaction produced. I see very often in courts of justice, upon the cross-examination of policemen, or the questions put by the presiding judge, that the answers given by policemen produce considerable dissatisfaction in the minds of the surrounding audience, and I think that is unsatisfactory. I think one should endeavour, as much as possible, to make the administration of justice find its immediate response of satisfaction in the minds of the persons who observe what is going on. Upon the whole, therefore, I certainly am very strongly of opinion, that prosecutions would be more satisfactorily conducted if we had some one to intervene between the apprehension of the prisoner and the bringing of the case into court.

2397. Mr. *Miles*.] The observations which you have made as to policemen are more applicable to towns corporate which have their jurisdictions throughout the country?—Certainly.

2398. *Chairman*.] Have you any doubt that your observations refer generally to the administration of justice?—I know very well from my experience at assizes in former times, that the policemen constantly bring up the witnesses; it is not convenient to the local attorney to come all the way to the assizes or the sessions; he has a single case, and says, "I cannot trouble myself with this, the policeman will take it up;" and very often the policeman brings it up without any attorney at all. The case is not one worth the while of the magistrates' clerk, who is generally the prosecutor in my experience, to take up; perhaps it is the only case from that division, and it is left to the policeman.

2399. Mr. *Miles*.] Does not it often occur on the Western Circuit that neither attorney nor counsel are employed?—That is very common, and then the policeman takes the case up.

2400. *Chairman*.] Does it occur to you as an evil, that there should not be some person to whom the poorest man might go and desire him to conduct his case, when an offence has been committed against him?—I think so.

2401. Is it one of those things which any citizen has a right to demand of society?—I think so. In very many cases, on the other hand, it may be said that a person injured knows perfectly well, practically speaking, that if he goes before a magistrate, and says he has a charge to make against a particular individual, the magistrate will grant a summons or a warrant, as the case may be; this, again, will be put into the hands of an officer, and then the party against whom the charge is intended to be preferred will be brought before the magistrate, and if the case is well-founded against him, he will be committed for trial, or required to find bail, as the case may be; and the prosecutor knows perfectly well that if he goes and presents a bill to the grand jury, that bill will be properly dealt with, and the man will be brought to trial. Where it appears to me that the shoe pinches is this, that in such a case there may be a very good case for a conviction, supposing you have all the evidence which is necessary; but this man has not the means for getting it together, nor sufficient information as to the precise nature of the evidence which will constitute legal proof of the offence; and therefore, though an offence has been really committed, and he has sustained an injury thereby, and the party offending ought to be brought to justice, he is brought to trial, but is not brought to justice; he is acquitted where he should be convicted.

2402. In the case, for instance, of a murder, and there being no relations or friends of the murdered party, there is no one to conduct the prosecution?—

 No;

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No; but, at the same time, somebody or other would be bound over. If a man goes before the magistrate, and says that his wife or relative has been murdered, and that he desires to prosecute, the magistrate would take care to bind some one over to prosecute; but suppose a difficulty in getting the evidence, the prosecutor gets no assistance, except the warrant which the magistrate issues, and perhaps a policeman is put into motion, or in some cases the parish is bound over to prosecute. The parish has no immediate interest in the matter beyond just discharging sufficiently the duty imposed upon it, so as not to forfeit the recognizances which the magistrate has caused some one to enter into. But that is not the way, I think, in which public justice should be conducted; there should be some one to watch over the case, and see that it is brought to a proper termination one way or the other. Again, I have often felt that where an attorney is employed by a private prosecutor, for the purpose of bringing a case to trial, the attorney considers it too much as a matter of professional importance to himself. I have known instances on circuit, in which, as counsel for the prosecution, I have found it my duty to moderate the over-zealous and inordinate desire of the prosecuting attorney to get a conviction. He looks upon it, that if he succeeds, it will be the means of getting him further business. Nay, I am bound to add, that I think sometimes even counsel themselves are not altogether free from this kind of desire to get a conviction, because it gives them a professional triumph, after which they are likely to be employed in other cases; it places them in a position of superiority to their competitors and rivals. Now I think if you had a prosecutor permanently established, who should hold a high position, in which it would be his duty to see public justice administered, in which he would exercise a sort of combined function of advocate and of magistrate, all that he would feel himself bound to do, and beyond which he would feel that he was bound not to go, would be to see that if in his internal conviction there was a case of crime, the prosecution of that crime should be carried to a successful issue; but if he had the slightest doubt or hesitation about it, he would be bound to place before the court and jury all that could make in favour of the prisoner, as well as all that could make against him. Nobody knows better than the Chairman that in theory that is the principle upon which a prosecuting counsel is bound to act; but I must say, as the result of my experience, I do not think that it is always adhered to as strictly as it should be, and in particular on the part of prosecuting attorneys. I have seen over-zealousness on their part which I have more than once had occasion to reprehend and control. Therefore, though it is better that there should be an attorney to conduct the prosecution than that there should be none, I think it would be very much better to have a permanent and public officer to do it.

2402*. So as to make the elucidation of truth, instead of a professional triumph, the object?—Just so. Of course, whoever the higher authority was, whether the Attorney-general or some other person, the agent would be responsible to him for the proper performance of his duties; but he would not have a personal interest in managing the prosecution.

2403. There would not be a struggle between private interest and public duty?—Just so.

2404. Lord *Stanley*.] Would there not be equally a desire to succeed in a conviction, in order to avoid damaging his professional reputation; would not that desire exist equally in an officer conducting a prosecution on the part of the public, as it does now on the part of the counsel conducting the prosecution?—Hardly so, and for this reason, he would have achieved his position and would have no competition to apprehend. I should be rather disposed to be apprehensive (and it is a drawback, I own, to what I think would otherwise be the superior system of public prosecution) of his becomeing remiss; that having no one with whom to compete, having nothing further to achieve, having got his position, and therefore having no longer an interest in that respect, he would rather, on the contrary, have a tendency to be less vigilant.

2405. Your idea of such an officer is, that he would have achieved his position, and would have nothing higher to look to?—Yes; I assume that you appoint a district agent who would have a fixed salary, and who would have nothing to gain by the number of prosecutions, or his success in conducting them; I should be apprehensive that so long as he applied such an amount of diligence, and such an amount of skill as did not lay him open to any reprehension on the part of

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of the superior authority, he might have a tendency to become remiss and negligent, rather than a tendency to show over-zeal.

2406. Do you think that you would be able to obtain the services of competent and able men to fill such offices as you describe, although those offices led to nothing higher?—I think so, if you gave them adequate salaries. That point comes rather under the second head, which is that of the remedy.

2407. *Chairman.*] With respect to costs, you mentioned that sometimes the parish takes up a prosecution; has it ever happened to you in your professional experience to know litigation, as to who should pay for the costs of the prosecution?—Not that I recollect.

2408. You have told us in great measure the evils which appear to you to arise from the present system from the want of a responsible person; have you turned your attention at all to the remedy by which those evils might be counteracted?—Yes; I may say in the beginning that my first impression was that the magistrates' clerks might be made useful agents for the purpose of prosecutions; but, in the first place, there is this difficulty, that unless you put them on salaries, I think it would never do. However incapable they may be of inducing a magistrate to commit a man for the mere purpose of getting the costs upon the prosecution, still there would always be a suspicion about it in the minds both of the accused and of the public, which I think would be very distressing to them and very undesirable, and I do not think that would do. Occasionally it might, almost unconsciously to the man himself, just make the turning point in a case of any importance, whether the clerk should say "commit," or "do not commit." At all events, they should be removed from such a suspicion, and they should be put on salaries. But then, I fear you could not put them on sufficient salaries. If you were to take the individual items of each clerk's duty with reference to prosecutions, and give him a salary only commensurate to that, you could not confine the clerk's business and duties simply to the functions of magistrate's clerk and public prosecutor. He would therefore always have other business to attend to, and we all know that, generally speaking, the professional business of a solicitor, who is a magistrate's clerk (for they are almost always attorneys in the country), forms by far the greater and more important portion of his business. I cannot, therefore, help thinking, that if you want to have efficient officers always available for the purposes of criminal justice, you should have persons whose exclusive duty it would be to attend to that alone. Unless you have men who are to devote their whole time to it, and who are responsible, in respect of it, to some higher authority, I do not think you will ever get the thing thoroughly and efficiently done. Therefore I should prefer, unless there is some very great disproportion in point of expense, which I do not believe, district agents to magistrates' clerks.

2409. You do not approve then of that part of my scheme which would make the magistrates' clerks the criminal agents for the trifling cases, in correspondence with the district agent, so that at each petty sessions in an ordinary trifling case the magistrate's clerk would get it up himself, and if there was a case of any difficulty he would communicate with the district agent?—What occurs to me is this: I think if you have only an ordinary common-place case, you do not want the intervention of the magistrate's clerk as prosecutor at all. There the aggrieved party comes before the magistrate, and having either caused the delinquent to be apprehended, states his case against him; or if the man is still to be apprehended, gets a warrant against him. He states his case; it is a very simple one; a case, we will say, of common larceny; he says that he saw the man stealing something from his wheat stack or something else, and that he knows the man. That is a case in which you do not want the intervention of a public prosecutor at all. Where you have a case of greater importance, and where you require the intervention of a public prosecutor, I think it would be much better that the district agent, if you had such a person, should be communicated with at once, and my notion of the thing is this, subject to further consideration, that, in every case, after the first examination before the magistrate, the depositions, so far as they had been taken, should be sent to the district agent. Supposing it is one of those commonplace cases where the magistrate would perhaps say, "We do not want the district agent at all; I shall commit this man;" then, after the magistrate had decided upon committing him, I think the depositions should be sent to the district agent. Supposing, on the other hand, the case presented any feature of difficulty, I think it should be then the duty of the

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the magistrate or the magi...ate's clerk to communicate with the district agent, and that the district agent should receive the depositions as far as they had been taken. He should then intervene in the case, and if necessary, should produce further evidence than that which had been already obtained either through the private prosecutor or under the immediate direction of the magistrate by a policeman. That having been done, I would have the public agent become the depository of the depositions in every case. In ordinary cases, which are simple and straight-forward, and where no further evidence is required, I would have him simply prepare those cases for trial, and take care that at the trial the necessary witnesses are forthcoming, and that the case is conducted to its final termination. Where he entertains any doubt, or finds any difficulty, it should be his duty to communicate with a higher class of public agents, namely, the counsel, whom I should propose to conduct the prosecutions for each of those districts. I think you never would be able to do the thing well unless you have for each district, or for each circuit if you like (diminish the number as much as you possibly can, to limit the expense), counsel with whom the agents could communicate; and if they feel any difficulty, if the case assumes a character of great importance, or there are any difficulties with regard to the evidence or any other matter, such as questions of law, it should be the duty of these counsel to communicate with the Attorney-general *en dernier ressort*. Then there is another thing: if the counsel should be of opinion that there is no case upon which it is desirable to put the man upon his trial, it should not be competent for any step of that kind to be taken without the concurrence and sanction of the Attorney-general; when I say the Attorney-general, I simply mean the public prosecutor.

2410. Are you of opinion that the functions of a public prosecutor might be conveniently vested in a minister of justice?—My own view with regard to a minister of justice is, that it is of the highest importance that we should have such a functionary in this country. There is such a functionary in every other well-constituted country, and I think we ought to have one here; but then my opinion is, that that is a functionary who ought to stand upon a very much higher footing than that of public prosecutor. I think the public prosecutor ought to be responsible to him, and under his control.

2410*. Lord *Stanley*.] Will you state what the functions of a minister of justice might be?—I think that he should not be public prosecutor; I think he should control the whole; that he should have under his charge all that relates to the appointment of judicial functionaries, and to the seeing that the law is in a proper state; wherever there are any defects, not only in the administration of the law but in the law itself, it should be his duty to see to its amendment; to see that all that is kept in perfect order, and if there is anything out of order in the working of the law, to see that it is remedied by legislation. Those are the functions of a minister of justice in other countries.

2411. *Chairman*.] And you would have him at the head of the *Conseil d'Etat*, of a sort of staff who should act under his direction?—I have not compared the system in other countries so as to form any decided opinion upon that, but I am very decided that he should not be public prosecutor.

2412. Would you have him so far political as to go out with the Government?—I would rather not enter into that point; it strikes me it is foreign to our present purpose.

2413. Mr. *Philipps*.] Would you propose that he should exercise a supervision over the drawing up of Acts of Parliament?—I think so; I think that would be a matter of vital importance. My only object in speaking of him at all is this; I think that he should not be lowered, if I may say so, to the character of public prosecutor; he should be very far above that.

2414. From what class of persons would you select the district agents?—I think from persons acquainted with the law, because it would be their business to see that the evidence satisfied the requirements of the law.

2415. Do you propose that they should be barristers?—No; attorneys. I do not think that the appointment of a barrister for each district is an essential part of the scheme. Many persons object to it; many persons think it would tend, in the first place, to make the Bar subservient to the Government of the day, or whoever had the distribution of that patronage; that, in the second place, it would tend, as, indeed, it must, to limit the number of practitioners in the criminal court; and consequently that it would prevent the school for young practitioners,

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practitioners, which now exists, remaining open to them. It certainly would be open, in some degree, to those objections. I do not think that those objections, in practice, amount to very much, because we have the whole of this scheme in actual existence at this moment in Ireland, where it has existed for a very long time. I think, indeed, that there it might be, much improved; but, still we have the fact that there are Crown attorneys upon all the circuits; that there are counsel nominated, I think, by the Attorney-general, who prosecute in criminal cases; and we do not find the Bar in Ireland at all wanting in efficiency as regards the conduct of criminal cases, nor do we find the Bar more subservient in Ireland to patronage, either Government patronage or any other, than it is in England. Therefore I do not think, myself, that there is anything very grievous to be apprehended upon those grounds. At the same time, I know that there are many persons, and many persons of authority in the legal profession, who think that it would be a mischievous thing to limit the choice of counsel. Some think there is no necessity for having district counsel, but that if you had a district agent, that district agent might hand the briefs to those counsel whom he might think best qualified to conduct prosecutions, and that, according to the magnitude and importance of the cases, he would distribute his briefs among the senior or junior members of the Bar. I do not think that that is the important part of the scheme, though, in my own view, I think it desirable to have permanent counsel attached to each circuit, or each district, because with them the district agent might communicate, and in any case arising upon any circuit or district, the counsel might come to the Attorney-general and say, "Here is a case of some difficulty; I should be glad of your advice how to act;" then the Attorney-general would consult with him, and say, "You must have such and such evidence," to fill up any links that are wanting. On the other hand, if the counsel said to the Attorney-general, "I think there is no case," or "no case upon which we should succeed, and that it ought not go to trial," the Attorney-general would exercise his discretion upon that. Still I do not think that this is the more important part of the plan. The great want, the great desideratum, as it strikes me, is the having an officer whose business it shall be to prepare cases for trial, to see that when brought into court, they are brought into court in a state in which the final decision can be taken upon them satisfactorily to all parties concerned, or who, upon the other hand, conscious of the infirmity of the case, and that it is one in which the party should not be put upon his trial, either from justice to him, or from expediency to the public, shall have the duty of communicating that circumstance to the Attorney-general. The mischief is, that the only party who can stop a trial is the Attorney-general, and yet there is no person to point out to the Attorney-general, "Here is a case coming on in which the man should not be put upon his trial," or "Here is a case coming on in which it is certain he will be acquitted, because the proofs are not complete." In many a case a man has been put upon his trial and acquitted, who, if he had been tried three months afterwards with more perfect evidence, would have been convicted; yet there is no one whose duty it is to intervene to stay the proceeding.

2416. Mr. *Miles*.] In your opinion, supposing an alteration of the law occurred, such as is suggested by this scheme, when should a *nolle prosequi* take place?—The Attorney-general can do it now at any time after the indictment is prepared; he cannot do it before.

2417. Would you have it done upon the determination of the district agent?—No, I think not; I should object to that; I think the district agent ought, under no circumstances, to be allowed to stop a case from taki[illegible] full course to a complete trial and verdict, except under the immediate direction of the Attorney-general.

2418. Then the attendance of the prosecutor and witnesses would be precisely the same as it is now?—No; it would be the business of the district agent to give them notice not to attend.

2419. Not previously to the indictment being preferred?—Yes; because I would give the public prosecutor the opportunity of saying, "No indictment shall be preferred;" but here, again, if it should be thought that that is not desirable, that again need not form an essential portion of the scheme of a public prosecutor. You may say that it shall be the duty of all persons bound over to give evidence to attend at the assizes; that the public prosecutor may, as the Attorney-general now can, enter a *nolle prosequi*, but that he shall not do it until

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until after the indictment is prepared, in order to prevent the possibility of any abuse, and to secure that whatever he does shall be done only in public. What I am so anxious for is this, that there shall be some one whose duty it shall be to make the case as complete as he can, and whose duty it shall be, if the case in his judgment is incomplete, to communicate with that functionary who can alone interpose and prevent the trial.

2420. We will suppose this district prosecutor to be appointed, to whom all cases of any weight and magnitude are referred from the magistrates; am I to suppose that the magistrates will not have power, upon their own responsibility, to commit prisoners for trial, unless they have at the same time the consent of the public prosecutor?—No; I do not see any reason why the magistrates should not commit; and I think that would be a very salutary and useful check upon the public prosecutor.

2421. Then it may occur that the magistrates may commit upon evidence which the public prosecutor does not think sufficient?—Just so.

2422. That being the case, if the Attorney-general, or the person acting for the Attorney-general, having communication with the public prosecutor, hears that, my wish is then, of course, to stop as much expense as I possibly can, and to prevent the witnesses and the prosecutor coming, and I want to know whether there would be any objection that, by some process of law not now in existence, the public prosecutor should have the power of saying, "We intend to enter a *nolle prosequi* upon that case"?—Quite the contrary; I think that it would be desirable; it would stop expense, and it would be the duty of the district agent to communicate that to the parties who had been bound over to attend and give evidence at the trial.

2423. Do you not think that that, by some possibility, might bring the magistrates and the public prosecutor into collision, which would be disadvantageous?—That is no more than would take place now in such a case, supposing the case were brought to the knowledge of the Attorney-general. Suppose, for instance, that the prosecuting attorney were to write to me to say, "Sir,—Here is such a case in which the magistrates have committed. I am the attorney for the prosecution, but the prosecutor agrees with me in thinking that it is not a case in which we ought to prosecute; that we shall not convict; the magistrates have been over hasty in committing. If the case is postponed till some future time we may possibly get evidence which, at the present moment, we have not got, which will lead to the conviction of the man. We cannot stop the prosecution; the magistrates have committed, and it must run its course: it can only be stopped by your entering a *nolle prosequi*." I could then stop it. Such a thing would be one of very rare occurrence. Half the people in the country do not know that the Attorney-general has the power of interposing in such a case; but supposing that representation to be made, if satisfied that the case was not fit for trial, or ripe for trial, I should interpose by a *nolle prosequi*. I might do it now, and so might be brought into collision with the magistrates. The magistrates would be perfectly conscious that the public prosecutor, the Attorney-general, has that power and can exercise it; they would of course expect that he should only exercise it in a case where he was thoroughly convinced, after great deliberation and most cautious attention to the case, that it was one which could not safely go to trial. I presume that they would give the public prosecutor credit merely for a desire to discharge his duty, and that they would no doubt say, that acting under the best judgment which he could form, he had done right. It would not be done by the district agent. I can quite understand that, if the magistrates had committed a man, feeling that it was a case for commitment, and then a mere district agent, an attorney in the country, were to say, "I will interfere; this is not a case for trial; the magistrates were wrong, and I shall not go on with it," there would probably be dissatisfaction on the part of the magistrates; but if they felt that the case had been sent to London to the Attorney-general, and that he whose business it was to prosecute, if a prosecution could be possibly maintained, had felt that it was not a case which could go safely to trial, either from feelings of justice towards the accused, or on public grounds, I think they would be satisfied.

2424. Then I thoroughly understand you that it would not depend upon the district agent, but upon the fiat of the Attorney-general?—Certainly. I should think that a most essential condition.

2425. *Chairman.*] Would you take away from the private party the right to prosecute; supposing the magistrates committed, and the district agent thought there

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there was no case, and the Attorney-general confirmed that opinion, would you deprive, in that case, the private party of the power of going before the tribunal if he chose?—Not at all. I think that is one of the merits of the Scotch system, that whereas if the prosecution is to be conducted at the public expense, it must be conducted by the Lord Advocate, who exercises entire and despotic control over it, still if the Lord Advocate says, "I will not prosecute," the private individual has a right to prosecute, and a right to employ his own agents; but then he does it at his own risk.

2426. The risk of an action of malicious prosecution, or of the expenses?—Yes; if he fails he does not get his expenses, and he is always open to an action for malicious prosecution; and it would be certainly very fairly said, that he must have been influenced by very strong vindictive feelings to go on with a prosecution which the public prosecutor thought ought not to be brought.

2427. Then you agree with Mr. Bentham, that the desirable system is one which should neither be within the power of the Attorney-general, nor entirely at the caprice of the prosecutor, but something between both?—Certainly; in which you should retain the power of the private prosecutor to go on notwithstanding the backwardness of the public prosecutor, as a means of stimulating the latter into action, where he is disposed to be remiss in his duty.

2428. Mr. *Solicitor-General for Ireland*.] But you would not take away the power of the Attorney-general in the case of a private prosecution to interpose if he thought fit?—Certainly not in any case; because there the Attorney-general is acting not only under responsibility, but in the face of Parliament and of the public.

2429. Lord *Stanley*.] In the scheme which you have sketched out, have you at all calculated the number of district agents who would be required?—I have not; but the view I take of it is this: there are a given number of prosecutions; for the conduct of that given number of prosecutions a certain number of private attorneys are at present necessary, and are employed; their emoluments must come to a certain sum. So, there are a given number of counsel concerned in prosecutions, whose fees must come to a certain amount; and I am strongly disposed to think, that if you take the whole of the present expenses which go into the pockets of professional persons, attorneys, and counsel, and combine them, you will get a fund sufficient to pay the expenses of the district agents, and of these district counsel. I think the fallacy of the reasoning of many persons whom I have heard talk of the enormous expense which such a system would entail is, that they think it is an expense to be superadded to the present expense of prosecutions, whereas you must set on the opposite side of the account all that private attorneys and private counsel, if I may use the expression, get from prosecutions at present. I think it would come to pretty much the same thing, or that the additional expense would not be very great; and I must say, that looking to the fact that in every other great country, except England, there are public prosecutors in the shape of subordinate agents, that there is the Attorney-general, the Procureur-general, or whatever he may be called, with a staff under him to conduct these prosecutions: considering that every prosecution implies that it is an offence against the community which the community is seeking to visit with punishment, I think it does seem very anomalous and very inconsistent, that we should leave the conduct of prosecutions of offences against the community, in other words, public prosecutions, to the mere control of private prosecutors, who may settle these matters, or do what they like with them.

2430. Mr. *Solicitor-General for Ireland*.] You look upon this suggested change as a matter of great public policy?—I certainly do.

2431. In which the question of expense is rather a secondary and unimportant point?—I think it is a secondary consideration. At the same time I am bound to say, that although there are many anomalies and many imperfections in our administration of criminal justice, still, to a great extent, it is efficiently worked, and practically produces, generally, beneficial results. Supposing it could be shown that there would be very great evils, in the way of expense or of corruption exercised through the Government upon persons who might be seeking its patronage; if you could show very great and glaring evils as likely to result from this change, I should say that upon the balance of good and evil there might be a question as to its expediency; but not seeing those apprehended evils in the formidable magnitude in which they present themselves to the minds

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of some persons, but, on the other hand, seeing very great anomalies and imperfections in our existing system, which I think, both in principle and in practice, unworthy of such a country as this, and such as place us in a comparatively degrading position with reference to the manner in which public justice is administered in other countries, I am clearly in favour of the change.

2432. *Chairman.*] You would have the district agents solicitors?—I think so.

2433. Would you not have barristers eligible, just as you have a barrister as solicitor to the Treasury?—I do not see any objection to that, with this exception, that whereas the attorney could not possibly act as counsel, I think it is but fair towards that branch of the profession (which, after all, we must more or less consider), inasmuch as it properly belongs to their department of the law to prepare cases for trial, and to counsel to act as advocates when the cases are brought into court, and as the one branch of the profession cannot invade the province of the other, or ought not to be allowed to invade it, as regards the advocacy, I think it is but fair to them, seeing that they are perfectly competent for the discharge of the duties, to keep the two branches of the profession distinct, and not to encroach upon their department.

2434. After all, it is a mere question of detail?—Just so.

2435. Lord *Stanley.*] The question which I put just now was not intended to refer to the subject of expense; I put it for this reason: I understood you to say that there ought to be a considerable number of district agents?—No doubt.

2436. You would require at least one in every county, and probably in some counties two or three?—Certainly.

2437. I also understood you to say, that in important cases the opinion of the Attorney-general would be taken, in addition to that of the district agent?—Just so.

2438. And that the Attorney-general would exercise a general superintendence over these persons?—Yes.

2439. Would it be in the power of one person like the Attorney-general, in addition to all the other duties which he has to discharge, to take upon himself the general supervision of, perhaps, 70 or 80 such officers?—Perhaps not, supposing there were no one to intervene between the Attorney-general and the district agent, especially if the cases in which his assistance would be required should prove to be very numerous; but if you gave him, in addition to the district agent, a district or circuit counsel (and very likely one counsel for a circuit, or for several counties, we would be quite sufficient), as such counsel could act in the great majority of cases, and would only apply to the Attorney-general, except in cases of more than ordinary difficulty, then I think the Attorney-general would be perfectly competent to the discharge of that duty. Very likely it would not happen more than once in a month that a case of difficulty would be brought to him from each circuit. The Attorney-general in Ireland discharges those duties very efficiently, though it is true he is not so much pressed with business as the Attorney-general in England. Then there is the Lord Advocate of Scotland, who has functions to discharge of a very varying and a very important character; he contrives to get through it, because he has a staff of subordinates who assist him in it. Besides which, I think that after a very short time the district agents, from constantly devoting their sole and exclusive attention to criminal matters, would become quite familiar with the course of their duty, and would have to address themselves to the Attorney-general very seldom; and then I think even with nobody else, that the Attorney-general would be able to get through the duties.

2440. Mr. *Miles.*] You mentioned previously that you thought that a district counsel would be necessary?—I think it is very desirable. I think it would simplify the thing, and I think it would not increase the expense; but if the objection which many persons sincerely and seriously entertain to the notion of having district counsel exclusively employed in those matters should be found an insuperable or a very great objection, I do not think it absolutely necessary to the working of the scheme. I think the appointment of district agents would be an immense advantage gained, even if you had no district counsel; and I think, though it would be throwing an additional amount of labour upon the Attorney-general to call upon him to communicate with the district agents without the interposition of district counsel, still that he might do it, and would be bound to undertake it, if necessary, for an object of such great public importance.

2441. *Chairman.*]

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2441. *Chairman.*] But the appointment of a public prosecutor would, in your opinion, be the great feature of the scheme?—Yes.

2442. In the event of the public prosecutor being allowed to appeal to the Attorney-general, except in cases of treason or cases affecting public order, it would hardly be necessary to appeal to the Attorney-general?—No. The cases where there would be an application to the Attorney-general would be in general either to postpone the trial or not t bring it on at all. Very often you might have a case where, a man having been committed for trial, it would appear to the district agent or to the district counsel, if there were such a person, that if the trial were then gone on with they should infallibly fail; whereas if they waited a year or two, a person who has gone to Australia or elsewhere, might return to give evidence; and the man would be punished if guilty. But I think in such a case the trial should not be postponed or stopped without the intervention of the Attorney-general.

2443. Therefore the use of the interposition of the Attorney-general would be that the ends of public justice should not be defeated?—Yes.

2444. Mr. *Miles.*] In whom would you put the appointment of the district agents?—As to that there is a difficulty. I would put it unhesitatingly in the hands of the Home Department.

2445. *Chairman.*] Lord Campbell protested against the Home Department?—I will mention why I prefer the Home Department. I think that where you have to appoint important public functionaries, their appointment ought to be in the hands of persons immediately responsible to Parliament. The Home Secretary is in one or other House of Parliament, and if he appoints an improper functionary to fill so important an office as that of conducting the public prosecutions of the country, he should be capable of being made to answer in his place in Parliament for such misconduct. If you place the appointment in the hands of the judges, which is the only alternative,—for if you put it in the hands of the Lord Chancellor it is the same as the Home Department,—excepting that the Lord Chancellor is, generally speaking, not so immediately responsible as the Home Secretary, who is generally in the House of Commons and can be much more easily called to account for his conduct,—if you place the appointment in the hands of the judges, I fear it will be a source of favouritism and nepotism, and all that sort of thing. The judges are not responsible; they are persons whom people are extremely reluctant to attack; they cannot be attacked in Parliament except through very indirect means, and they are not there to answer for themselves. I believe the right thing to do would be this: allow the head of some public department of the State to have the appointments, but stamp with parliamentary and with public reprobation the notion of making these appointments, or any other appointments connected with the administration of the law, matters of mere political patronage.

2446. Mr. *Miles.*] Do you not think that any Bill which proposes so great an alteration of the law as regards public prosecutors, as this Bill does, should be introduced by Her Majesty's Government?—I do; and I am bound to say, that when my honourable and learned friend first introduced his Bill, he was good enough to withdraw it upon the assurance which I gave that Her Majesty's Government would take the matter into their serious consideration, with a view to making it a Government question; and, as I have stated before, I did this mainly at the instance of my Lord Campbell, who told me, as I have already said, from the Bench, that it was a matter which Her Majesty's Government ought to take up, and it was almost immediately afterwards, that, on my honourable friend bringing in his Bill, I said to the head of the Government, and to other members of the Government upon the Treasury Bench, "Lord Campbell, the other day, expressed himself so strongly to me from the Bench, that I think it is a matter which the Government should take up;" upon which I was authorised to say to Mr. Phillimore that the Government would take it into consideration. I considered it for a year, and could frame no scheme that I did not think would be open to great opposition; and I told my honourable and learned friend the Chairman, that I was convinced that nothing but a thorough investigation of the subject before a Committee of the House of Commons would open the minds of people to the necessity of a change; that it would require a thorough investigation to let in daylight upon it, and that when that had been done, I thought that if the Committee should come to the conclusion, after receiving and weighing the evidence, that a change was desirable, it would be a thing which the Government might

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might well take up; whereas if the Government took it up before there had been such an inquiry, it would only end in failure.

2447. The Lord Chief Justice stated that there were such great objections to the scheme at the time when he was Attorney-general, that he thought them insurmountable; do you think that such objections exist at the present time?—I think not; at the same time I give all the weight which is due to so high an authority; but, I must say, I am surprised by the fact that after weighing all the difficulties, he did, from his seat, as Lord Chief Justice of England, in the Court of Queen's Bench, address me as the law officer of the Crown, and tell me that it was absolutely incumbent upon the Government to do something in the matter. Afterwards, when we had had so much difficulty in devising a scheme, and my honourable friend and I had laid our heads together, and could not agree upon a scheme which we thought likely to receive the support of Parliament, I went to the Lord Chief Justice, and said, "You recollect that you have more than once called upon me to introduce in Parliament, with the weight of the Government, some scheme for a public prosecutor; I have been considering the matter very carefully; I have asked one or two friends to assist me, and though I am, more or less, under a pledge to Mr. Phillimore to do something on behalf of the Government, he having withdrawn his measure on the assurance which I made, I am at a loss, not in devising a scheme, but in devising such a scheme as I think Parliament will adopt.' His answer was, "The fact is, Mr. Attorney, that all the while I was in office the thing was constantly present to my mind; I always felt the necessity of it, but I have not been able to hit upon a scheme." I naturally felt, Then, my Lord, it was rather unfair of you to put it publicly upon me, when you had not been able to succeed yourself. However, all I can say is this, that without intending for a single moment to assert that the scheme which I have taken the liberty, more or less loosely, of throwing before the Committee, is a good one, or is practicable, the result of very many years' experience of the working of the criminal law in England has produced upon my mind the firm conviction that we should have, in some form or other, a public prosecutor.

2448. Mr. *Philipps.*] Supposing a minister of justice were appointed, would you vest the appointment of these district agents in him?—I think so; I would take the whole of that which relates to the administration of justice out of the hands of the Home Office, and place it (as it is placed in France, and in Belgium, and, I believe, in almost every country in Europe), in the hands of a minister of justice.

2449. *Chairman.*] I quite agree with you as to thinking that the very worst hands in which you could place the distribution of such patronage would be the judges; but with regard to the Lord Chancellor, or the Home Secretary, I do not myself care the least how it is. I need not say that I have not the slightest interest as to which of the two it should be; but there is this with regard to the Lord Chancellor, which does not apply to the Home Secretary, do you not think that the Lord Chancellor would be more likely to consult the views of the profession as to the proper persons than the Home Secretary, who is, generally speaking, a stranger to the profession and the tone of feeling in the profession?—I think that is undoubtedly true as to the appointment of the district counsel. I think, with regard to the district agents, the Chancellor is not brought into contact with them in the same way as the Home Secretary, who is in constant communication with the magistrates, and with the local authorities, who would be likely to be able to give him information. If in any county, take for instance the county of Somerset, he had to appoint a district agent, being in frequent communication with the magistrates of that county, with the chairman of quarter sessions, unless he had himself local knowledge of the place, he would be exceedingly likely to say to those gentlemen when he saw them, "I wish you would tell me who is the fittest person." There I think the Home Secretary would be a better person than the Lord Chancellor; but with regard to the members of the Bar, there is no doubt that the Lord Chancellor is much better fitted than the Home Secretary to appoint them.

2450. Mr. *Miles.*] Would you recommend, that in case of the district prosecutor being appointed he should attend upon the grand jury to answer any question which might be put to him?—I see no objection to that; I do not think he ought to take any part in the discussions of the grand jury.

2451. Merely to be referred to?—Merely to be referred to. I think he should take his witnesses before the grand jury, in order to their being there examined. Occasionally,

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Occasionally, if there were any difficulty, the gentlemen of the grand jury might apply to him; or if they thought that some other witness should be called before them, they might communicate their desire to him.

2452. Would you likewise recommend that the expenses should be allowed to prisoners' witnesses in certain cases?—That I think should be done, but done under very careful superintendence. I have no objection whatever to leave that to the magistrates; and I think even if you have no public prosecutor, it would be a very great improvement in our system that the magistrate, upon hearing a full statement of the case which the prisoner intended to set up, and the names of the witnesses who might be supposed to be capable of substantiating that statement, should have the power of ordering the attendance of those witnesses; because it is a very grievous thing that a man against whom there is a *primâ facie* case, which we know very often is consistent with innocence, should feel that if he could produce certain witnesses he could make good his innocence, and yet that he should have no means of taking them to the place of trial, which is often many miles from the place of his habitation. If you suppose the case, which sometimes may occur, of a man against whom there is a *primâ facie* case, a presumptive case of guilt, yet who is conscious of innocence, it must be a most grievous thing to him to be tried, convicted, and punished, and to be all the while conscious, not only of his innocence, but that there were the means of proof, if he could only have adduced them. It is a state of things perfectly appalling and revolting to all one's better feelings; and society, although it has the deepest interest in the conviction and the punishment of guilty persons, has also the deepest interest in maintaining the innocence of those who are really guiltless; and it is as much to the interest of society that the innocent man should be acquitted, as it is that the guilty man should be convicted. There ought to be some mode of compelling the attendance of witnesses, and the means of producing them upon the trial, for the accused. On the other hand, there can be no doubt that it would be subject to the most abominable abuse, if you did not control it; and I think it might be left, under the present system, to the discretion of the magistrates, which should never be exercised except a man chooses at once to state what the case is to substantiate which he desires to call the witnesses; because then you have a double safeguard: in the first place, the magistrate is not likely to be misled if he knows beforehand the nature of the case, nor will he be induced to allow witnesses to be summoned who will be of no use to the man when they come; and, in the next place, you are secured against having a fraudulent defence afterwards set up, or if the man sets up a fraudulent defence afterwards, at all events you have an opportunity of contrasting it with the statement made before the magistrate. You know perfectly well that now, in nine cases out of ten, the man says, "I reserve my defence until the trial." Then upon the trial he may call some witness to set up a defence entirely fraudulent. By the plan which I have suggested, you would protect yourself against that. If he said, in the first instance, "My statement is so and so, and I desire such witnesses," the magistrate would know what his defence was; or if he said, "I desire witnesses to be called," the magistrate would say, "Tell me what they are to prove." If you appoint a public prosecutor, I think that then it should be in the discretion of the public prosecutor whether or not such witnesses should be called, or you might leave it in this way, you might leave it in the discretion of the committing magistrate, subject to what the public prosecutor had to say upon the matter.

2453. Then would you allow the opinion of the public prosecutor to be final in that case?—I am not quite sure about that; I hesitate as to whether I would leave it in the absolute discretion of the public prosecutor, or whether, considering that he may have a bias in the matter, I would not leave it to the magistrate, after hearing the public prosecutor. I would make it final in this respect, that wherever the public prosecutor said that the witnesses should be had, there you might, without any danger, allow at once the expenses to be paid by the public. Supposing the public prosecutor should resist the application, then I think that either the court before whom the trial was about to take place, or the magistrates, might have a discretion upon that point; but I certainly think that something ought to be done to prevent what one sometimes hears in a court of justice, even supposing it to be untrue. This happens to me frequently when I am sitting trying cases as recorder of Bristol. I say to the prisoner, after the case for the prosecution is closed, "Prisoner, you have heard this case, what have you

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you to say in your defence?" He makes some statement which savours sometimes of innocence. I tell him, "If you can prove that it will be an answer? Have you any witnesses?" He says, "I have, but they are not here." "Why are they not here?" "I had no means to bring them." This may be false; but in some instances it may be true, and it is shocking to us to think that there are instances in which it may be true. But even if it is false, it produces a painful impression in the administration of justice. You see a poor fellow in the dock in rags, or in humble attire, and probably without a shilling in his pocket, with no means of employing counsel or attorney, and he says, "in such a place there are persons who could prove my innocence, but I had no means to send for them." You have no means of sending for those persons, who are perhaps at a distance; and the whole thing produces a painful impression upon the court, the jury, and the public.

2454. Relative to the appointment of the magistrates' clerks, do you not think it would be better to do away with the power in the country of magistrates appointing their own clerks, and to allow the clerks to the magistrates only to be appointed as they usually are at the petty sessions; would you allow the individual magistrates to appoint them?—It is a matter which has come so very little within my own observation, that I do not feel qualified to form an opinion upon the subject, or to give one. It might be perhaps more expedient in one respect, namely, that very often a magistrate appoints an individual as his clerk, more from a regard for the individual than from a conviction of his perfect competency for the office. On the other hand, it is no doubt a satisfaction to a magistrate, who is very frequently called upon to act in emergencies by himself, to feel that he has some one in whom he can place the fullest confidence, and upon whom he can rely.

2455. Would you allow any person to be appointed, even individually, by a magistrate, who should not be a professional man?—There may be a reason for that, certainly; you have a greater chance of professional capacity in a professional man than you have in another man who has not had the same opportunity of education.

2456. *Chairman*.] Then the result is, that, in your opinion, some change is extremely important, with a view to the pure administration of criminal justice? —I think so. With regard to the improvement of criminal justice, I will not say that it is now impure, but it has a good many blots and imperfections in it, which I think are not consistent with the highly civilized state of this country; and I am induced to suspect the goodness of a system which differs from that of every other country. Then, with reference to the evils which are supposed to result from the suggested system, we have seen it tried not only on the Continent, but we have seen it tried in Scotland and in Ireland, and I am quite sure, from what I can gather, that there is no one, professional or layman, in either of those two countries who would desire to see their system exchanged for ours.

Martis, 3° *die Julii*, 1855.

MEMBERS PRESENT:

Mr. J. G. Phillimore.	Mr. Walpole.
Mr. Solicitor-General for Ireland.	Mr. Napier.
Mr. William Ewart.	

JOHN GEORGE PHILLIMORE, Esq., IN THE CHAIR.

The Right Honourable *Joseph Napier*, a Member of the Committee; further Examined.

Right Hon. *J. Napier*, M.P.

3 July 1855.

2457. *Chairman*.] YOU wish to add something to your evidence, I believe?—I have found, since the day I was examined before, some papers to which I wanted to refer, and which I had not with me, but which I have since laid my hands on. I have here the heads of improvement as to different matters in which I thought the

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the system might be improved; and there are instructions to the inspector of the constabulary, to the resident magistrates and magistrates in petty sessions, to the sessional solicitors, the clerks of the peace, and the clerks of the Crown. There are also suggestions with regard to the mode of taking informations at petty sessions. These were prepared, by my direction, by a very experienced Crown solicitor, Mr. Seed, who communicated fully with me and the law adviser, and these instructions were the result. There are also some matters about the sessional prosecutors, showing the quantity of important business which they may have to discharge. This document was sent to me from the county of Carlow, it being a return as to the last quarter sessions there; there were 71 trials and 51 convictions. That was one reason why I mentioned about the distribution of the cases between the sessions and the assizes. That is a very important thing; but in England, I believe, there is a statute which regulates that.

2458. There are statutes in England which expressly prohibit certain cases from being taken at the quarter sessions?—I think there is a statute of 5th Victoria which defines the class of cases. In Carlow the sessional prosecutor's salary is 75*l.* a year. This is a letter from the clerk of the peace for the county of Carlow; he says, " At the assizes there is, in addition to the clerk of the Crown, a Crown solicitor whose salary for doing the business at the two assizes for this county and Queen's County is 500*l.* per annum, and an allowance of 200*l.* for clerks and expenses." He says that the average number is five to one between the sessions and the assizes in criminal cases. The Solicitor-general for Ireland asked me about the additions to the salaries. I caused to be made out a statement of what appeared to be a reasonable addition to the salaries for the different counties. I have a table containing the amount of the actual expenditure under our present system, and some proposed changes. I think it right to say that they have not received final revision; but I think, in substance, they contain the proposals. (*The Witness delivered in several Papers.*)

Vide Appendix.

2459. Do you think that your system adds on the whole to the public expenditure in criminal prosecutions, as compared with ours; for instance, where there are so many barristers and so many separate attorneys?—I do not know if ours be more expensive.

2460. In our case there are very often eight or ten prosecutions at sessions, with eight or ten attorneys, all of whom are paid out of the public fund; besides that, there are eight or ten counsel, each of whom has his fee upon the brief. Taking that into consideration, do you think that that system would be likely to be more expensive than yours?—I should say, if that is the state of things, it is more expensive than ours. I see no reason, with regard to ours, why it should be called an expensive system, because the true plan is to have it efficiently done by competent and proper persons, and to have them fairly paid.

2461. You would not consider it a valid objection with reference to so important an object as the proper administration of criminal justice, even if more expense was incurred?—I do not think it is a question of expense; it is the duty of the Government to have that department efficiently conducted, and whatever expense is necessary, is a part of the necessary incidents of Government. There were some things in Ireland in which I thought there might be reduction, and in some I thought there ought to be an increase. There are differences, I think, between the two countries which it is right to advert to. Very possibly, for instance, in England you might have district prosecutors, more corresponding with our Crown solicitors than with our sessional prosecutors. I think I observed before, that in Ireland, from local causes, it is sometimes unadvisable, in my judgment (but there is a difference of opinion about it), that the Crown solicitor should be a local person. I think that it is enough to have the sessional prosecutor a local person; but I think it most desirable in Ireland for the class of cases growing out of anything religious or political (as I have observed before), that the Crown solicitor and the circuit staff should have as little local connexion as possible. Agrarian cases, political cases, and religious cases, any of these three, and perhaps others, are mixed up, more or less, with local matters. If you have, for instance, a very respectable man on the circuit, he will inevitably have a good deal of private business connected with proprietors, and others there; however, the reason of this difference is gradually disappearing; but I think in England you may have less difficulty in carrying out a system of district prosecutors.

2462. The objections which exist in Ireland to local residence do not exist in England?—

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England?—I do not see that any objection is likely to arise; on the contrary, I think it would be a most valuable assistance in England.

2463. Mr. *Solicitor-General for Ireland*.] I find in Appendix (C.) to the Eighth Report of the Commissioners on Criminal Law, a paper by Mr. Pitt Taylor, in which he makes some observations on the Irish system. He says, "First the circuit Crown solicitors, being appointed to conduct the criminal business of a large district, have neither the local knowledge requisite for the due investigation of offences, nor time to prepare the cases properly for trial. Arriving in each assize town only a day or two before the judges, and being seldom fully acquainted with the circumstances of the cases to be tried until their arrival, they have scarcely time to draw the briefs before the counsel are called upon to open the facts to the jury, while the omission of material evidence is not discovered till it is too late to effect a remedy; the consequence is, that prisoners too often escape, when, had the briefs been delivered at an earlier period, or had the evidence been examined and arranged by a lawyer resident on the spot, they must have been convicted;" that is the first objection which he takes to the Irish system. From your experience, is that objection well founded?—I do not think it is to the extent to which he puts it. What I was suggesting as to the improvements in our system, I think would remove his objections altogether. I think some cases might be looked into more carefully beforehand; and also, I think that the plan of giving the Attorney-General all the cases immediately before the circuit is objectionable; that, however, I think you mentioned had been recently altered; but I do not think at all that the objection, to the extent to which Mr. Pitt Taylor puts it, is well founded. For instance: I should say of the Crown solicitors, we will take Sir Matthew Barrington, Mr. Maxwell Hamilton, of the North-east Circuit, Mr. Kemmis, of the Leinster Circuit, Mr. Seed, of the Home Circuit, Sir Edward Tierney, on the North-west Circuit; they are thoroughly conversant with every local matter; they are all men of a high, respectable class; they are most efficient, and know everything which is going on, and I should say that their business, on the whole, is well got up and well attended to. At the same time, I think there are occasionally cases in which, by a little more timely looking into, they could be more efficiently got up. Some cases may and do arise, but I do not think that objection at all applies to the system.

2464. At any rate, if it applies to the system, the Attorney-general has the remedy in his own hands?—Quite easily. I am quite sure that such objections can be to a great extent removed, and be completely got rid of by, in fact, administrative remedies.

2465. Mr. *W. Ewart*.] Mr. Pitt Taylor, in his statement, seems to think that the Crown solicitors should be local officers; would you approve of their being local officers?—I should not, for Ireland.

2466. Mr. *Solicitor-General for Ireland*.] Mr. Pitt Taylor next objects to the system of paying the Crown Solicitor by a salary, in place of fees?—I think the system of paying him by salary is the right system. He speaks there about the Crown Solicitor's giving few and meagre briefs. I think, if you have a respectable man and pay him by salary, if he does not do the duty rightly, it is the business of the Attorney-general to correct it without scruple.

2467. *Chairman*.] Then you would agree to that part of my Bill which particularly provides that they should be paid by salary?—I think they should be paid by salary.

2468. It takes away all inducement to multiply the number of the prosecutions?—I think so.

2469. Mr. *Solicitor-General for Ireland*.] Mr. Pitt Taylor says, "Thirdly, we object to the permanent appointment of Crown counsel, not only because the effect of such appointments is to continue men in situations which, from age or infirmity, they are wholly incompetent to fill, but because even the young, when released from the wholesome fear of competition, have a natural tendency to become careless and inefficient; and, moreover, those members of the Bar who, whatever be their acquirements, do not bask in the sunshine of court favour, can scarcely fail to be discouraged at a system of monopoly which, while it renders their more fortunate brethren indifferent to success, holds out no prospect of emolument or distinction to them." Applying the question to Ireland, and to the system which you have known to be in force there, do you think that those observations of Mr. Pitt Taylor's are well founded?—No; I think it is quite right

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right to have permanent prosecutors. The objection as to age, no doubt, arises sometimes, as it will in every department; a man, probably, sometimes will remain on too long beyond the time when he ought to be there. But that applies to judges; to bishops; it applies to every department; some people say it applies to prime ministers.

2470. Mr. *Walpole*.] When the Attorney-general considers that a person has been too long in that office, that is to say, is getting too old for it, or from infirmity or some other reason is unable to discharge the duties of it properly, in what way is he got rid of?—There have been one or two instances of gentlemen retiring.

2471. Of their own accord?—Of their own accord.

2472. But supposing that they do not retire, and they hang on longer than the Attorney-general thinks proper; what is done?—The Attorney-general has power to remove them; I admit, however, that it is a delicate thing, but the Attorney-general, in fact, has the power of removing any counsel, though the usage is not to do so.

2473. Practically, does he exercise that power, or in what way does the matter adjust itself?—I have never known it exercised by official removal, but I have known one or two instances of those who have held the office getting old and retiring; I think there are amicable ways of doing it; you speak to their friends and suggest what is right in that quiet way.

2474. It is done by a good understanding and arrangement, in fact?—Yes, I think so, and I do not see any other way of doing it more suitably.

2475. Do you give them a retiring pension?—No; it is a part of their bar practice.

2476. Mr. *Solicitor-General for Ireland*.] Mr. Pitt Taylor lastly objects in this paper to the system of allowing private prosecutors to prosecute in cases which the Attorney-general thinks ought not to be prosecuted by the Crown; in other words, he thinks that the Attorney-general ought to conduct all the prosecutions, and that none should be conducted which he does not take up?—I do not think that that is worth interfering about, because the cases are submitted to the Attorney-general, and if he does not think right to interpose, he abandons them. I have always found, in cases of that kind, that there is a sort of discredit thrown over them. He might prevent their going on, if he thinks proper; probably, the private prosecutor may get up something additional, but the Attorney-general can enter his *nolle prosequi* at any stage.

2477. You have not known any actual evil to result from allowing private prosecutors to interfere where the Attorney-general does not?—I have not; it is very rare. If he saw that the case was conducted from some malicious motives, or anything of that sort, he might interpose; but I do not see why there should be an absolute bar to the private prosecutor.

2478. *Chairman*.] Do you not think, on the contrary, that the circumstance of the private prosecutor having the power of instituting a prosecution would be a very salutary check upon the Attorney-general, and would prevent him from being remiss?—I do not think that the Attorney-general should exercise an arbitrary power, and the check may be useful, as you say.

2479. Mr. *W. Ewart*.] You are aware that in Scotland the private prosecutor has the power of forcing the public prosecutor to act; he can set him in motion? —As the Chairman was suggesting, it is a very good check, because if the private prosecutor goes on with it and succeeds, it shows that there has been something careless in the public prosecutor.

2480. Does not that power exist in Scotland; are you aware of that?—I am not sufficiently acquainted with it to say.

2481. Whereas in France the public prosecutor has the whole power?—There are cases in Ireland, in which sometimes the Crown allows the person who would otherwise be the private prosecutor, to have his own counsel assisting the Crown. There are cases of that kind, but they are very rare, and they are completely controlled; they are merely cases where the parties wish it. Supposing there is a case of murder, the parties may wish to have their own counsel and attorney. In some instances it is a satisfaction to the friends of the deceased, and they see that everything is fairly and properly done; but the Attorney-general does not allow them to control him in any way.

2482. *Chairman*.] The plan suggested by Mr. Taylor would, in fact, give the Government officer the unlimited power of pardon?—Yes.

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2483. Would not that be unconstitutional in the highest degree?—Yes, perhaps it would.

2484. Mr. *Solicitor-General for Ireland.*] The papers which you have now handed in were connected with projected improvements when you were yourself Attorney-general?—They were; they related to some matters of detail; I think these improvements would have made our system work much better.

2485. And which it was quite within your province and power, as Attorney-general, to have carried out?—Quite so, if I had remained; it did not require any legislation; that part relating to the sessional prosecutors would have required an increase of their salaries, and I mentioned that I was about to send forward a recommendation to the Treasury to that effect; it would not have been a very large sum, and upon some other matters, I think, there might have been some reductions.

2486. Mr. *W. Ewart.*] Mr. Pitt Taylor suggests that the person who corresponds with the sessional prosecutor might be appointed, as is the case in Scotland, by the local authorities; in Scotland the procurator-fiscal, who, I apprehend, somewhat answers to the sessional prosecutor, is appointed by the sheriff or by the town council. Do you think that that suggestion of Mr. Pitt Taylor's, which is made with a view of obviating the influence of the patronage of the Crown, is worthy of consideration, or would you put the appointment wholly in the Crown, as is the case in France?—The Executive Government is responsible, I think, for the efficient conduct of the prosecutions, and whoever has the responsibility ought to have the appointments. In Ireland, as I mentioned before, the Attorney-general appoints the sessional prosecutor, but the Government appoints the Crown solicitor. The sessional prosecutor does not go in and out with the Attorney-general, but once appointed, he remains during good behaviour. I think that that works very well. I think the patronage is better in a responsible government than in the local authorities. I would not encourage what we call local patronage. The Government is responsible for the appointment of the judges, and for the appointment of the Attorney-general himself, and therefore I do not see what objection can be made to the principle.

2487. *Chairman.*] There would be much more probability of jobbing with local patronage, of course, than with a responsible minister?—I think there might. There is another part of the subject, namely, that connected with the coroners. I think we require a class of men in this country who ought to be well acquainted with medical jurisprudence. Justice constantly fails in that way, from the imperfect preliminary inquiries. I obtained a return of the number of coroners' inquests, and in 20 years about 30,000 of them had been held in Ireland. They are an expense to the counties, and they frequently interfere, I think, with the due administration of justice; I think that the coroners' inquiry, according to the old office of coroner, ought to be confined simply to the question whether death came by natural or by violent means, but that everything of the criminal department should be looked into by the responsible officers in the staff of the public prosecutors. For that purpose, you frequently need an able inquiry by a person acquainted with medical jurisprudence at the early stages, and very often justice is defeated by the want of such a person. I believe they have a set of persons trained in Germany, a class of persons who are medical jurists.

2488. Trained in the study of medical jurisprudence?—Yes; I think that class would be very valuable.

2489. Mr. *Solicitor-General for Ireland.*] Do not you think that it would be advantageous that whoever had the conduct of the public prosecutions should be acting directly under Parliamentary responsibility?—I think every public officer ought to be responsible to Parliament. Do you mean by that question that the Attorney-general should always be in the House of Commons?

2490. I do not mean to point to the Attorney-general, but whether he be called the Attorney-general, or the minister of justice, or whatever his title may be, do not you think that the party having in his hands the general control of criminal prosecutions in the country ought to be in Parliament?—He certainly ought to be responsible to Parliament. There ought to be some way by which every part of the Executive Government would be represented in Parliament, and responsible to Parliament, through the mouth of some responsible officer acquainted with the proceedings.

2491. According to the present Irish system, if the Attorney-general is in Parliament, there is Parliamentary control over every prosecution in the country?—

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country?—Certainly; and I think there is a good deal of inconvenience when he is not there, for this reason, that when any proceeding is questioned, it is always said, "You are attacking an absent man," although there may be Members of the Government there. I remember a case of that kind which occurred. I do think that where you have to canvass the proceedings of any public officer, it is certainly a great advantage that he should be there in person to explain the course which he has taken; it is fairer to him and more advantageous to the public.

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Mr. *George Wilkin*, called in; and Examined.

Mr. *G. Wilkin.*

2492. *Chairman.*] WHAT is your office?—I have assisted the clerk of assize in the North Wales and Chester Circuit.

2493. You have been employed by the Treasury, have you not?—Yes.

2494. Are you at this moment in a department of the Treasury?—No; I am only employed by them.

2495. For what purpose?—To go down to the sessions in Suffolk, to examine into the costs there.

2496. Can you tell us what the expense of criminal prosecutions is to the country throughout England?—I think Mr. Hankins will know that better than I do; I only know as to particular parts to which I have been.

2497. In your opinion, is there a good deal of unnecessary expense incurred under the present system?—Very considerable, I think.

2498. To what causes do you attribute that circumstance?—The laxity of the system, I think, in a great measure.

2499. You have had an opportunity of ascertaining that from your own personal experience?—Certainly.

2500. Correcting bills of costs, and so forth?—Yes.

2501. And you are decidedly of opinion that considerable sums of money which might be saved are spent from the laxity of the system?—Yes, there is a vast expense to the country by the cases which are committed by the magistrates at the present time.

2502. Will you explain that?—I refer to cases where there is not sufficient evidence, and although there may be sufficient evidence even to have a bill found by the grand jury, there is not sufficient evidence to lead to a conviction.

2503. Such cases you believe not to be uncommon?—They are of very frequent occurrence. I believe it will be found that there are at least one-fourth of the cases where there is either no bill or the verdict is "Not guilty;" and if there were a proper party to examine the cases before going before the jury, that would never be the case.

2504. If instead of separate attorneys being charged with separate prosecutions, one gentleman was appointed to manage all the prosecutions which go up from a particular district, in your opinion, would that save expense to the public?—Certainly; because he would then only send up cases where there would be, in all probability, a conviction.

2505. Has it happened to you to observe whether, according to the present system, unnecessary witnesses are taken for the purpose of swelling the costs?—Very frequently. The fact is, that almost throughout the country the police are the parties who conduct the prosecutions.

2506. That is your opinion?—Yes, certainly, from what I have seen; they have the witnesses entirely under their control; they are in charge of the witnesses.

2507. Mr. *Walpole.*] By "conducting the prosecution," you mean, I suppose, getting up the evidence?—Yes; in fact the witnesses are, at the assize town, under their charge

2508. *Chairman.*] And they settle what witnesses shall be called?—Yes.

2509. In your opinion are men called who are not wanted?—A great many.

2510. You have been employed in taxing bills of costs?—Yes, for seven or eight years.

2511. Have you succeeded in saving any money to the public in that time?—I think the costs of prosecutions are reduced now to fully one half of what they were.

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Mr. G. Wilkin.

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2512. Mr. *Walpole.*] In what has that reduction chiefly been?—The expenses of witnesses.

2513. Not allowing so many witnesses?—Not allowing such high costs. I will give an instance of that; when I first had the taxing of the costs, there was a chairman of a union who had some prosecution against one of their officers, and he attended as a grand juryman; his charge in the attorney's bill was 5 *l.* 5 *s.* each day for attendance, and that was charged for three days; that was one witness alone; it was perfectly absurd.

2514. Was not that able to be checked?—Yes.

2515. Why was not it done?—I do not know, except that the system had become lax.

2516. Mr. *W. Ewart.*] Whose duty was it?—The duty of the clerk of assize.

2517. *Chairman.*] Have you any doubt that there is a great deal of jobbing now in order to obtain expenses?—I do not think that anybody who has to tax them can have any doubt of it.

2518. Mr. *Walpole.*] By there having been a laxity of system, you mean two things, as I gather from what you have stated: the one was a laxity of system, which was followed by the want of a conviction, because sufficient evidence was not procured; and the other was a laxity of system, which introduced more witnesses, and a higher amount of charge, than there should have been?—Yes; the laxity of system was also in the magistrates; it was left to the magistrates' clerks; but now, by Act of Parliament, we have the magistrates' certificates, and reduce those charges; they were very heavy.

2519. By laxity of system you mean those two things chiefly?—Yes.

2520. Have you any of the bills which you have taxed, which you can give us to enable us to form a judgment?—No; they always go in to the treasurer of the county, because on the other side is the order for payment.

2521. Could you get us any copies of them?—I could not; but Mr. Hankins I dare say could.

Mr. *Richard Hankins*, called in; and Examined.

Mr. R. Hankins.

2522. *Chairman.*] WILL you tell us what office you hold?—I am called Law Clerk in the Treasury; my business is to attend to all the Courts which now make returns to the Treasury; the county courts are also under my department.

2523. As regards the expenses?—Yes; all that which relates to the financial part of it, and also all the criminal prosecutions.

2524. How long have the Treasury undertaken the payment of the expenses of criminal prosecutions?—They began about August 1835, when Sir Robert Peel was making his alterations in the corn laws. It was introduced in order to relieve the agriculturists from the county rate; we then began to pay only a moiety.

2525. And when did you begin to pay the whole?—In 1846. The reason why we only paid a moiety first was, that we should keep, as we supposed, a better check upon the costs of prosecutions, if the county had to pay something.

2526. Mr. *Walpole.*] You mean to say that the county would exercise some check and control, as well as yourselves?—Yes, if we made them pay anything; that was Lord Monteagle's idea.

2527. *Chairman.*] Did that system answer?—The costs at that time amounted to about 70,000 *l.* a year, the moiety; that would have made, if the thing had been as it is now, and we had paid the whole, 140,000 *l.*; we are now paying 250,000 *l.*

2528. What is the present expense of criminal prosecutions?—About 249,000 *l.* or 250,000 *l.*

2529. That has been since the Consolidated Fund has taken it upon its own shoulders?—Yes. We began with the half-year ending 31st December 1835; that was the first time we paid the moiety, and it was 35,184 *l.*, or about 70,000 *l.* for the year. For the following year, 1836, the payments amounted to 82,944 *l.*; that was an increase of 12,000 *l.*, as compared with the half-year of 1835. For 10 years, up to 1845 inclusive, the annual amount varied from that sum to 134,000 *l.*, when we only paid the moiety, averaging during those years, from 1835 to 1846, 108,745 *l.*

2530. Mr. *Walpole.*] From 1846, how was it?—In 1846 we paid the whole expense.

2531. What

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2531. What was it in 1846?—It would be just about double the amount.

2532. Have you the figures from 1846 downwards?—I have not got them all down in detail here; of course I had to get out every year, so that I can give them.

2533. What was the average?—£. 227,160.

2534. The highest average before for the moiety having been 108,000 *l.* —Yes.

2535. Why I should have liked to have seen the accounts from year to year would have been to ascertain whether the expense has gone on increasing?—Yes, it has gradually.

2536. Gradually every year?—Yes.

2537. Would not the inference from that be, that the Government cannot keep so good a check and control as the local authorities can?—We had no means of having a thorough check over the bills of costs.

2538. *Chairman.*] But supposing a system of Government officers had been established, do you think a more effectual check might have been introduced?—I think so, certainly; but I would have them local, and paid by salary.

2539. In your opinion then, is a great deal of money now spent, which might be saved, in consequence of a public prosecutor?—Entirely so. I believe a great many prosecutions are commenced which should never be commenced, for the purpose of making bills of costs, because there is nobody there to check it; and I believe also that a number of unnecessary witnesses are called, and they are paid beyond their rank in life. We frequently found, on the Northern circuit, till Sir John Bayley, the clerk of assize, inquired into it, that in the depositions before the magistrates a labourer was a witness; when it came to the assizes, he was called a gentleman, and a guinea was charged instead of half-a-crown.

2540. Whose fault was that?—It was the fault of the attorney for the prosecution. Then, in the mileage, we are cheated abominably. The clerk of assize is only a certain number of days at each county town; the attorneys take good care not to bring in their bills of costs for prosecutions as fast as the cases are ended, but they keep them till the last day, and the consequence is, that the clerk of assize has 50 or 60, or 100 bills to tax, and he must go on with the judge to the next town.

2541. Mr. *Walpole.*] He has no time?—No.

2542. Has the Treasury no power of remedying that?—We have tried all we can by writing letters, but he says, "I have no time to do it." The last few years Mr. Wilkin has been down, and gone to several towns and helped the clerk of assize; we have also sent down other gentlemen. Sir John Bayley has reduced the expenditure in Yorkshire from 58 *l.* a case to 24 *l.*

2543. That is by taxing off particular items?—Yes; and getting the attorneys into the general custom of bringing in moderate bills of costs, because they are always afraid that he will be there.

2544. *Chairman.*] Honest bills of costs?—Yes.

2545. Do you believe, from your knowledge, that attorneys constantly bring witnesses who are not wanted?—I think they frequently do, and much more so since the local police have been established in various parts. They pass the things from one to the other; perhaps a constable takes an article, and he hands it to the inspector, and he hands it to the superintendent, and so it goes on; and instead of having one or two, we have five or six of them in five or six cases, and they try to charge in all the cases, but we only pay them in one case.

2546. How long have the Treasury exercised the control which you mention, of sending down officers to assist?—Only within the last two or three years, when we found the expense very heavy.

2547. Can you give us any idea of what has been the saving to the public service since that has been done; Mr. Wilson told me yesterday that he thought it was, at least, 18,000 *l.* a year; do you believe that to be an exaggeration?—No, I think it is more.

2548. Mr. *Walpole.*] You pay, of course, the officers whom you send down?—We pay them their expenses and give them 50 guineas; when Mr. Wilkin has gone for three or four weeks we have given him 50 guineas and paid him his expenses.

2549. *Chairman.*] Do you think that, if a system was established which had this

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Mr. R. Hankins.

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this one effect, amongst others, of appointing public officers paid by salary, who would be responsible to Government for misconduct of the kind which you have described, it would save considerable sums to the public?—I have no doubt of it.

2550. Do you think that that would be a cheaper system than that which is now in operation?—A great deal; and I should go further, and say that a local person, whether called Crown solicitor or whatever he might be termed, who should have the depositions, that he should go through the case, and declare whether it should be prosecuted at the public expense; and if he said it should not, then I would not say that the private prosecutor should not prosecute, because it would be taking away a great constitutional right from him, but that he should do it at his own expense and risk.

2551. And at the risk of an action for malicious prosecution?—Yes; and you would find it very soon stopped.

2552. Have you anything to do with the particular cases which the Home Office take up through the Treasury?—No; that is all done at the Home Office; we merely pay for them. The account from the counties is sent in half-yearly. As soon as the bill is taxed at the sessions by the clerk of the peace, and at the assizes by the clerk of assize, it is handed over, and we have the magistrates' certificate sent up; we depend upon the magistrates' certificate; we go through the list, and the clerk who does that comes to me and says, "Sir, here is a very large charge for a case of perjury," or murder sometimes, 200 *l.* or 300 *l.*; I immediately write down an official letter to the treasurer or the chairman of the quarter sessions, desiring to have the bill of costs sent up; and then I go through every item of it. I very frequently find that there ought to have been a great deal more taken off; but generally speaking it is in the witnesses. In some cases which are circumstantial they are obliged to have a great many witnesses, and many of them travelling a long distance. In cases of receiving stolen goods, and those sort of things, they pass perhaps through 20 or 30 hands; so that you cannot make a comparison of a case of larceny costing only 5 *l.* and another costing 20 *l.*; it may arise from the difficulty of proving the case.

2553. Mr. *Walpole*.] Can you remedy that in cases of circumstantial evidence; you must have the witnesses?—You must have the witnesses, but the local prosecutor would be able to say what witnesses were necessary, and would not pay beyond what were necessary.

2554. *Chairman*.] At present does not it often happen, that a policeman is the judge of what witnesses shall be called?—In almost all parts where the police are established, such as Hampshire and Essex, where there is a local police and an officer of the army or of the navy is at the head.

2555. In your opinion, are the police qualified to judge so well as a professional person?—I think not.

2556. Mr. *Walpole*.] As I understand you, you would only have the local prosecutor employed after the commitment?—I would have him a fixed officer on a salary.

2557. Would you have him get up the case before the commitment?—No, I would leave that as it is now. From the time that this public officer saw the depositions, he should then decide whether the case should go on or not; and if the private prosecutor chose to go on after the decision against him, he would go on at his own cost and risk. But there is another thing which must be done: at present, the fees to the magistrates' clerks and the justices' clerks vary in almost every county, because the Act of Parliament says that every court of quarter sessions shall frame a list of fees to be paid to their officers; that it shall be certified by two judges, and then sanctioned by the Secretary of State, and shall then become law; that has been done by every county, with scarcely any communication with each other, so that in almost every county they differ. I would have all that put right; they should be uniform throughout the country, unless, as would be better still, all those parties concerned in criminal proceedings were on fixed salaries, and there were no fees taken.

2558. *Chairman*.] Adverting to the fact that there are a great many attorneys, each with a separate case, attending the assizes or sessions, as it may be, would it not be a great saving of expense if those cases were managed by one attorney?—It would, certainly; but you would then be shutting out all the profession.

2559. With regard to expense, it would be a considerable saving?—No doubt it would, because at Liverpool, at this moment, they are paying an officer 300 *l.* a year

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Mr. *R. Hankins.*

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a year for being the prosecutor of all their cases; he gets them up, and does everything; but he shuts out all the other attorneys of the town.

2560. Do you think it worth while to encourage the growth of attorneys by a large public expenditure?—No; I think you should entrust it to your public prosecutor to decide what should go on, and to take care that the indictments were all right, and so on, and let the prosecutor employ his attorney and counsel; I would not interfere with that.

2561. I am talking as to expense?—No doubt, if you had a fixed man, the expense would be much less; so it would be if you had a fixed counsel.

2562. In the answer which you gave to Mr. Walpole just now, with regard to taking up the case from the time of commitment, your opinion was founded on the fact that you thought it an evil to put a stop to the employment of different attorneys?—It is almost impossible that one person in a county can attend to all the commitments; he can only know the case after commitment.

2563. Mr. *Walpole.*] Would there not be the same necessity for having a public officer to examine the case before commitment, and to see what the evidence was?—Then you must have one almost wherever there is a magistrate; at present that is done by the justices' clerk, who is some local attorney.

2564. *Chairman.*] It would be necessary, in that case, to have some one with the functions which are performed at every petty sessions?—Yes; in order to avoid that, I would lay down a scheme by which the justices' clerks should be paid uniform fees; they are charging all sorts of things.

2565. Speaking from your experience, what do you think the country might fairly be saved by a proper administration?—I have made some calculation, and I think we should save from 80,000 *l.* to 100,000 *l.* a year.

2566. Mr. *Walpole.*] If you did what?—If you had a public officer in each county, allowing the attorneys to go on with their cases, as they do now, up to the time of commitment, and then letting the public prosecutor take the matter up.

2567. He would become from that time the attorney for the prosecution?—Yes, and he should decide whether he would take it up or not, just the same as the Attorney-general in Ireland does.

2568. *Chairman.*] Even that, which would not be the most economical system, would save about 80,000 *l.* a year, you think?—Yes, in this way. No attorney then who went before a committing justice would bring on a case which he ought not to bring on, because he would know that it would be rejected by the Crown solicitor; but there is now no intervening authority.

2569. Have you any doubt that that leads to a great many frivolous prosecutions?—No doubt of it; but he would not have the same interest on the other plan, because it would be stopped.

2570. As matters stand, have you any doubt that the direct interest which the magistrates' clerk has in multiplying prosecutions tends very much to the increase of expense?—I am sure of it.

2571. Your system would still leave the expense incurred by having a great number of attorneys performing the business, each with a separate case?—Yes, only that a part of my scheme would be to settle all their fees, and to give them so much a case.

2572. You would let private competition prevail in that respect?—Yes; I think it too much to say that you will have every case carried on by one or two counsel; you would affect the whole bar.

2573. Have you studied the Scotch system?—A little.

2574. Do you think that the independence of the Scotch bar is shaken by it?—I think the Scotch system an excellent one. In the plan which I propose I would have a practising solicitor, and not a barrister.

2575. Are you at all acquainted with the Irish system?—Very little.

2576. You do not know whether the Irish system is supposed to injure the independence of the Irish bar?—I never heard that it did.

2577. Have you considered the French system at all?—I never have.

2578. Mr. *W. Ewart.*] You would confine the office of this public officer of the country to conducting the case; you would leave the origination of it to the parties?—Yes.

2579. Do not you think that in that case a poor person might not have the means of prosecuting?—Then the Crown prosecutor would take it up for him.

2580. You would give him that power?—Yes, and to see that the indictment was

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was all right; but I would not deprive the attorney of the right of attending for the prosecutor, when the prosecutor could pay him.

2581. Supposing the private attorney failed to take up the case, would you give the public prosecutor an independent action, besides that of the attorney? —Yes.

2582. *Chairman.*] Can you give the Committee any papers, showing the expenses more in detail, or have you any papers to put in which would illustrate the subject; have you any taxed costs which would show the difference between the sum claimed and the sum allowed?—I can get copies of some of those papers. I have a statement, for the year 1853, of the number of prosecutions, with the average cost of each, distinguishing assizes from sessions in the different counties and divisions of counties in England and Wales. I will furnish to the Committee a copy of that document.

Vide Appendix.

2583. Mr. *Solicitor-General for Ireland.*] I suppose you can also furnish us with bills of costs as taxed by the magistrates, and since by your office?—Yes. I will give the Committee some that were taxed by Mr. Preston on the last Oxford Circuit.

2584. Can you also show the Committee some that were taxed when the Government paid only one-half, and some since they have paid the whole?—I am afraid I cannot do that. We do not have the bills themselves unless I find anything doubtful, and then I have the bill up.

2585. Are you in a condition to give the Committee the expenses of the Irish criminal prosecutions for the year 1854?—No, I am not.

2586. I do not mean the details at all, but the sum which the Treasury has paid for the prosecutions for the year ending 31st December 1854?—I can do that.

2587. You said something about a system pursued in Liverpool?—They have one attorney to conduct all the cases.

2588. Whom do you mean by "they"?—The corporation. Then they come to us for the expenses of all their prosecutions.

2589. What do they pay that attorney?—£. 300 a year.

2590. For conducting all their prosecutions?—Yes; and they get from the Treasury about 1,500 *l.*, because they charge all the fees in each prosecution; we have taken the opinion of the Attorney and Solicitor-general upon it, and the Crown officers say that we cannot help ourselves; that as the law now stands, they are entitled to these fees, and that their arrangement with that gentleman is nothing to us.

2591. Do you mean that the Corporation of Liverpool make a profit of public prosecutions?—Yes; of the difference between 1,500 *l.* and 300 *l.*; it goes into their corporate funds.

2592. *Chairman.*] That is what they save by the system of a public prosecutor?—Yes.

2593. Mr. *Solicitor-General for Ireland.*] By that system of a public prosecutor in Liverpool are the prosecutions conducted with efficiency?—Yes, with very great efficiency.

2594. Would you say that they are conducted with more efficiency there than if they were left to the ordinary system?—I am not prepared to say that, but they are conducted very efficiently.

2595. Mr. *W. Ewart.*] Has not this system been found so efficient in Liverpool, that they have introduced it at other places?—I understand it is so at Manchester.

2596. And Leeds?—Yes.

2597. *Chairman.*] By adopting the system of a public prosecutor at Liverpool, the corporation save 1,200 *l.* a year?—Yes.

2598. In your opinion, is not a great part of that saving owing to the fact that one attorney conducts the prosecutions, instead of having a vast number of attorneys, each with his separate prosecution?—Yes; you have 300 *l.*, instead of having a separate bill of costs in each case.

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Martis, 10° *die Julii*, 1855.

MEMBERS PRESENT.

Mr. J. G. Phillimore.
Mr. Attorney-General.
Mr. Solicitor-General for Ireland.
Mr. William Ewart.
Mr. Walpole.
Lord Stanley.
Mr. Miles.

JOHN GEORGE PHILLIMORE, Esq., in the Chair.

The Right Hon. *James Archibald Stuart Wortley*, a Member of The House; Examined.

Right Hon. *J. A. S. Wortley*, M.P.

10 July 1855.

2599. *Chairman.*] YOU are the Recorder of the City of London?—I am.

2600. You have held that office, how long?—Since the month of September 1850.

2601. Will you be good enough to tell the Committee whether you think any improvements might be made in the management of criminal prosecutions, so far as to make some person responsible for their management?—I think that a very desirable end; whether it can be effected or not I am not prepared positively to say. I can see the evil of the present system, but I do not myself, at present, know of any scheme which has been proposed to which I can give my entire assent.

2602. Will you state what the evils of the present system are, in your opinion? —I think they are various; I think that sometimes justice is defeated, and the guilty escape by reason of there being no person competent, and whose duty it is, to inquire after the evidence, to arrange it, and to see that it is brought before the court. I think also that from there being no person of that description charged with the responsibility of the prosecution, sometimes (I do not know that in happens frequently) justice is defeated by procuring the absence of witnesses, not so much upon the trial as before the grand jury. I am also cognizant of the fact, from my own experience, that from no person being required officially to interfere in the preparation of a case for prosecution, or being responsible for that prosecution, indictments and presentments by the grand jury are frequently made the means of oppression and extortion. All these I think are evils of the present system. Again, there is no doubt that from the absence of any person in court upon the trial charged with the prosecution of the cases, it frequently happens that on the part of the prosecution they are very imperfectly conducted, and necessarily so; whereas, on the other hand, sometimes you have very able counsel retained by the prisoner, who has a manifest advantage over the prosecutor himself, if he is unsupported, or even over any junior counsel to whom the depositions may be given upon the spur of the moment to conduct the case. Those Members of the Committee who are conversant with criminal courts know that the ablest counsel are those who practise for the defence, generally speaking; if they are retained for the prosecution, it is to keep them out of the hands of the defendant. In the court over which I preside, it is not the rule to employ counsel in all cases. At the West Riding Sessions, and in the county of York, upon the Northern Circuit, with which I was more conversant before I sat upon the bench at all, it was the rule to have counsel in every case; and there, as far as the conduct of the cases in court was concerned, I never saw any mischief, nor any evil in the system; the cases were generally distributed, and in some instances in rotation. At the Leeds Borough Sessions, I think they were distributed by the clerk of the peace in rotation; it was called "Soup," because each counsel in attendance had a spoonful in his turn. At the West Riding Sessions, a portion of the business was done in the same way, but in general, the briefs were delivered by the attorneys who were charged with the prosecutions to whom they pleased, and under that system, as far as the conduct of the case in court was concerned, I never saw any evil. In other places it was not so; and at the Central Criminal Court, where I have now most experience, it is not the custom to retain counsel in all cases, and the mere

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depositions are handed to the judge at the moment of the trial: because, although a certain number of depositions are sent to me on the Saturday before the session, in order to enable me to charge the grand jury upon cases of importance, it is impossible to send the whole of them to me, nor should I have time to go through them with nothing but the Sunday intervening; a great many of them are not sent in until the Saturday from the police offices. The consequence is, that the judge is called upon to examine the witnesses, and to conduct the prosecutions; a most unseemly course always, in my opinion, and sometimes a very difficult one; because this has frequently happened to me: a bundle of depositions is handed up to me, and I find that it contains a history involving several offences; and there are five or six indictments; an intelligent officer of the court has looked into the depositions, and seen that there is ground for those five or six indictments; there is accordingly an indictment for felony, an indictment for embezzlement, and an indictment for conspiracy, and varying the offence in that way. The judge has upon the instant to decide upon which indictment he will call on the prisoner to answer in the first instance, and to pick his way through these voluminous depositions as he can.

2603. Mr. *Walpole*.] That happens to a great extent at the Central Criminal Court?—Yes, not unfrequently.

2604. Does it occur to a great extent at the assizes?—I am not very conversant with the criminal business on any except the Northern Circuit, and especially in Yorkshire; I had a very considerable criminal business there. It does not happen there, because counsel are there almost uniformly employed. Of course the simple cases are more frequent, but these complicated cases occur; there is hardly a session at the Old Bailey without a case of that description. Again, it very often happens that at the moment of trial the judge inquires, "Is there any counsel for the prosecution?" the answer is, "No." He is proceeding to take his course, and he is informed that counsel appears for the defence. It is perfectly inconsistent with the position of a judge that he should be exposed to conducting a prosecution with counsel against him. The practice which we have adopted at the Central Criminal Court is, in such circumstances, to call upon the officer of the court to give the depositions to some barrister in court. He generally takes the senior sitting at the table, who has not already had one case given to him under those circumstances. He is called upon on the instant, without any previous knowledge whatever; his reputation is not much at stake. He has had no opportunity of considering the case beforehand; he does it in the best way he can, and, generally speaking, at a great disadvantage, and often with a very clever counsel against him, who has had that previous opportunity. Still, upon the whole, I do not say that justice is to a great extent defeated; but from those circumstances it is interfered with to a certain degree.

2605. *Chairman*.] With regard to expenditure, perhaps you have cast your eye over my bill; do you think that it would add very much to the present expenditure in criminal prosecutions, supposing there was no other objection to it?—I have read the bill of the Chairman, but have only taken a very superficial view of it; and taking that view, it appears to involve at once a very large outlay in salaries, because, as I understand it, there is to be a double set of public prosecutors; one set who are to be barristers, and another set of public prosecutors to prepare the cases, in the shape of attorneys. They must all be salaried, and, if they are to perform these duties, they must be good men, and have high salaries.

2606. Fixed salaries?—Yes; and therefore there must be many districts in England in which to do that satisfactorily it must involve, in the first instance, great expense. I do not see how it can lessen the number of prosecutions, or cheapen the mode of conducting the business.

2607. At present, in a sessions town there are 10 or 20 cases, with an attorney in each case. By my Bill there would be one attorney for all those?—I am not quite aware of what you mean by expense; I am speaking of the expense to the public purse only, and that I think would not be diminished.

2608. I mean the sum now paid by the Treasury in prosecutions?—I was looking at it with a view to expense upon the public purse.

2609. Are you aware of the amount paid by the Treasury in criminal prosecutions?—I am not aware of the amount; I know it is considerable.

2610. Then again, in your opinion, might not considerable sums be saved if a person was responsible for bringing the proper witnesses; are not there many unnecessary

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unnecessary witnesses now brought?—I think a good deal of expense might be saved in that respect; it frequently happens, sometimes without any apparent motive, but sometimes from a manifest motive on the part of those who get up the case, and particularly the police, that they bring half a dozen people where one would do. One man picks up the hat, and another man picks up the stick, and a third man something else, and they produce them one after the other on the trial, whereas they might all have been given to one man upon the spot, and one witness would do.

2611. Can you say whether the present want of a responsible prosecutor has not a tendency to fling the conduct of criminal prosecutions into the hands of low practitioners. I am not speaking of members of our branch of the profession, of course; does not it put great power in the hands of low attorneys?—It may do so to some extent; I have not myself seen much evil arising from that. Speaking generally, the prosecuting attorneys with whom I have more frequently come in contact in the Central Criminal Court are a respectable class.

2612. But at the sessions and assizes at York, for instance, how is it?—They certainly are as a body a very inferior class to the attorneys who practise in the civil court.

2613. And must they not have, under the present system, very considerable power?—Yes, I suppose they have.

2614. Mr. *Miles.*] In Yorkshire were attorneys employed, as well as counsel, in conducting the prosecutions at sessions?—No, not a separate attorney in each case; when I first joined the West Riding Sessions, a very considerable number of the briefs for the prosecution, in all the minor felonies, were prepared by the solicitor to the Riding, and they used to be distributed, in the way I have mentioned, like soup. At Leeds it was the town clerk. These officers were supposed to be responsible for the preparation of the prosecutions; but, in point of fact, they just did nothing but write on the back of the depositions "Mr. So-and-so, one guinea," and hand them over, and they did not hold themselves responsible in any degree for getting up the case.

2615. In fact it was merely a copy of the depositions?—Nothing but a copy of the depositions.

2616. Did they charge any fee for that?—I fancy they did. There was an allowance to them. It was considered a good appointment. There was a fee to the counsel and a fee to the clerk, as well as an allowance, the attorney preparing the brief.

2617. Having looked over this Bill, and knowing the description of persons who fill the office of magistrates' clerk in Yorkshire, and generally speaking throughout the country, namely, highly respectable attorneys, do you see any difficulty at all in forming the district agents of that set of men, and paying them by salary instead of fees?—I set out by saying that I never had yet seen any scheme to which I was prepared to give my unqualified assent; but the only scheme which ever appeared to me at all practicable would include that as one of its parts. I think, if you insisted upon the magistrates' clerks being always attorneys, and appointed by those who would be sure to appoint able men, you might have a class of men paid by salary and not by fees, who would become very useful and very efficient district agents, for the purpose of getting up the prosecutions. If they were paid by salaries they would have no temptation to multiply the cases. On the other hand, they would be well acquainted with the circumstances and characters of the parties in that neighbourhood, and they would have the motive of doing their duty to the satisfaction of those by whom they were appointed, and under whose eye they did that duty, to do it well and to get up the case carefully. Therefore I think they might be made extremely useful. I further think, that if the present clerks of the peace were also appointed in a manner to insure their being efficient instruments, which I do not think they are at present, they have not any such overwhelming duties as would make it at all impossible for them to be in the next grade; that is, that the district agent should be responsible to the clerk of the peace for getting up the case, and should do it under his supervision. That seems to me to be the groundwork of a system which might work with effect.

2618. What alterations would you make as to the appointment of the clerk of the peace?—The difficulty is this, at present the patronage is in the Lord Lieutenant; of course there is a difficulty in taking it away; again, there is another difficulty in transferring it to the Crown. I have myself no doubt that the best men

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men would be appointed under the responsibility of the Crown, but there is a difficulty about it; perhaps the patronage might be left where it is, but subject to the consent of the Crown; it is so done in other offices; it might also be limited to barristers of a certain standing, and solicitors of a certain standing; I would not exclude solicitors, for I have in my mind two clerks of the peace in different parts of the country who are as able men as any I know, one is Mr. John Clark, the clerk of the peace at the Central Criminal Court, a most intelligent, judicious, and able man; again, there is another gentleman, who I dare say may be known to some Members of the Committee, Mr. Leeman, who is the clerk of the peace for the East Riding of Yorkshire; a more able man for that sort of business you could not possibly select. I would not therefore confine it to barristers. I think if you had a very superior man for your clerk of the peace he might supervise a whole county, and judge whether the cases should be prosecuted or not, subject to an appeal to the Attorney-general, in case of difficulty. When I say the Attorney-general, I mean the "devil" of the Attorney-general, as we say in familiar terms, a branch of his office, under his control, and for which he would be responsible.

2619. Supposing this alteration was made in the appointment of the clerk of the peace which you suggest, would you on a given trial allow him, through the Attorney-general, to enter a *nolle prosequi* before the case came to the indictment office?—I am inclined to think that I would; the scheme which has now been suggested by the Honourable Member, is one which has this advantage, that I think it is perfectly consonant with the present system, and perfectly constitutional, because although the Attorney-general is not the public prosecutor in the ordinary sense in all cases, and is in point of fact only the public prosecutor in cases of importance prosecuted *ex officio*, or at the special instance of the Crown, yet to some extent he stands in that position, because he has now the power of entering a *nolle prosequi* at certain stages, and I think it might be desirable to give him the power of entering a *nolle prosequi* as is suggested. Still there is this difficulty; many persons object to taking away the rights of the subjects of this kingdom to go before the grand jury without the interference of the Attorney-general, or any other person.

2620. *Chairman.*] It would be a very wholesome check upon the public prosecutor, because if he had not prosecuted, and a bill was nevertheless found, it would be a proof that he had neglected his duty?—It might be so; but still I am of opinion that that power of going before the grand jury is open to the grossest possible abuse; only the last session the officer of my court informed me that he had received an application from a person to draw an indictment for him for a conspiracy, against a most respectable firm of solicitors in London; that that person had six months before preferred a similar indictment which he had prepared for him at his request against those same men, and that it had been thrown out, and thrown out under these circumstances; information was conveyed to the officer that the prosecutor had himself been before convicted for instituting a prosecution for the purpose of extortion, and it was suggested to the foreman of the grand jury to ask him that question, and he admitted that he had been convicted of preferring an indictment for the purposes of extortion, and thereupon the grand jury had thrown out the bill; but this same man came again six months afterwards, when he was in hopes that the matter would have been forgotten, for a similar bill against the same parties; what became of it I do not know; I suppose it was thrown out, or he did not proceed. I directed the officer of the court under those circumstances not to prepare the bill for him, but that he must come with his own bill, if at all.

2621. Mr. *Miles.*] Are those cases frequent in London?—Yes.

2622. They are much more frequent in London than in the country, are not they?—I believe so, because they are a sharper class; I have put a check myself upon it in this way: it used in the Central Criminal Court to be the practice immediately upon the finding of a bill by the grand jury, to issue a warrant for the apprehension of the party as a matter of course, and I found that the consequence was that a bill was frequently preferred and found upon the evidence of the prosecutor; a warrant was issued, and the man was taken from behind his counter, or from his home and family, without the slightest previous notice, and put under duress and brought to terms. That was done in two or three instances where there had been a cause in the county court, and the plaintiff or the defendant having been defeated came to the Central Criminal Court with a bill for

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for perjury, and when it was found on his own evidence, threatened that if the other party did not pay the money he would have him arrested.

2623. Mr. *Walpole*.] What check did you put upon that?—I have ordered that no such warrant shall issue as a matter of course, and I require an affidavit in all cases before issuing a warrant that they have reason to apprehend that the defendant will abscond.

2624. Supposing you leave to private individuals the power of prosecuting, while you confer also upon the clerk of the peace, according to your plan, the power, under the sanction of the Attorney-general of entering a *nolle prosequi*, may you not put such a check, by means of affidavit and otherwise, upon the private individuals, as to prevent those extortionate indictments?—I think you may; my object has been to a great extent defeated, because I find that there is an Act of Parliament which enables the parties immediately upon the bill being found, to apply to a judge at chambers for a warrant, who has no discretion given him, and they have found that out, and some of them act upon it.

2625. *Chairman*.] Have you considered the propriety of allowing prisoners the expenses of their witnesses, where they are honest witnesses, and speak to material facts?—That appears to me to be a very difficult question; I am quite sure it is desirable, if possible, to do something in that direction. I think something might be done; I think you might possibly give a power to the committing magistrate to return the depositions of any witnesses whom the defendant should wish to be examined before him, if he should think them to be material witnesses, and that then the expenses might be paid of their attendance at the assizes, subject, of course, to an order from the court, if they appeared perjured or behaved themselves ill, to deprive them of their expenses: I think that, under those circumstances, if the committing magistrate, after hearing and examining those witnesses, thought their evidence material, the country should pay for their attendance. I think, also, that even where witnesses had not been so tendered to the committing magistrate, but had been discovered since committal, and attended the court, then, upon application to the judge trying the case, he should have the power of ordering their expenses, if he thought their evidence material. I think to that extent you might carry it; to say that they should all be paid who are called on the part of the defence, I think would be mischievous.

2626. The proposal was, that it should be left to the discretion of the presiding judge?—If it were left altogether to the discretion of the presiding judge it would lead to a great discussion in the majority of cases; in many cases there are no witnesses, and never could be; but I think it might save a great deal of time if the committing magistrate examined them. The committing magistrate is very much in the habit now, of saying, "Whatever your witnesses may say I will not hear them; I have made up my mind, and shall commit you." I think the prisoner might be permitted to say, "Allow me to bring my witnesses." The person conducting the prosecution would then know what the defence was, and whether it was an honest defence; it would prevent a false defence at the trial, of which nobody had had notice.

2627. No doubt it has happened to you to hear a prisoner say, "I could have had witnesses, but could not afford to bring them"?—Frequently; and we have able counsel dwelling upon that point, and affecting the jury by it, and not without justice.

2628. There are some cases where it is true?—Perfectly true.

2629. Is not that a great reproach to the administration of justice?—I am obliged myself to tell the jury that they cannot expect a man in that position to bring witnesses from a great distance; that, in the absence of the evidence, they cannot act entirely upon his statement; but that if they think it probable, they may take it into account; they must not expect him to prove all he states.

2630. Have you turned your attention to the French system at all?—I am ashamed to say I do not know it.

2631. Or the Scotch system?—I have a greneal knowledge of the Scotch system.

2632. Is there any modification of that system which might be applied, in your opinion, to England?—I think the suggestion which I alluded to in answer to the question of the Honourable Member for Somerset is very much of that description. The lord advocate, the advocate-depute, and the procurator-fiscal are

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are just the attorney-general or his deputy, and the clerk of the peace, and the district prosecutor.

2633. Is is not rather more than that, because in that case the Crown always appoints the counsel, who conducts the prosecution in court?—That I think very doubtful. I do not think that is necessary. I think if the clerk of the peace for instance, and the district agents were left at liberty upon that subject, they would make a very good selection of counsel. You must either do that, or do what is done in respect of the Mint cases, and leave it to the Attorney-general to designate some young men at the Bar, to whom the prosecutions should be given. I should object to regular appointments, I think.

2634. Mr. *Walpole*.] Does any evil really arise from leaving the choice of the Bar as open as possible, or would it arise under the system which you are shadowing forth?—I think not.

2635. Would it not be very much better to leave it open?—That is my own opinion. I think salaried officers would be the objects of jealousy; they would become careless. If you want good men, you must give them a large salary; they would be very comfortable with their 1,500 *l.* a year, or whatever it might be, if they were not ambitious; they would live in the country, and would not try for anything better.

2636. Mr. *Miles*.] Is not the quarter sessions a very admirable school for the Bar?—Very.

2637. Have not the majority of our best lawyers started in that way?—No doubt the majority of our best *nisi prius* lawyers have done so.

2638. *Chairman*.] Surely you must have seen that it very often happens that the quarter sessions, so far from being a very good school, is a very bad school; that it tends to encourage very bad habits?—Perhaps I may be under prejudice, with reference to the sessions which I attended, of which it was the boast that it was "The Sessions;" and certainly when I first joined it, it was the best sessions. There was a great deal of business, and there were very able men there, and a Bar of about 30 counsel. I have heard that in the West of England, I do not say in Somersetshire, but in Cornwall, and in some of the distant counties, there were no counsel in attendance, or perhaps only one, who appears for the prosecution, and that in point of fact there is no Bar.

2639. Have you ever heard that the Stafford Sessions is attended by competent persons?—I have heard that they have a very able chairman there.

2640. They had a very able chairman there, certainly?—I should imagine from what I have heard and know of the circuit, and from what I used to know of the juniors of that circuit, that there must be a very good Bar there. I do not know.

2641. You agreed in the observation which I made, that the tendency of the present system was sometimes rather to fling the criminal business into the hands of low practitioners?—Yes. I have not a very strong opinion about that; I do not think the superior attorneys would ever find it worth their while.

2642. Supposing that to be the case, would it not have a bad effect on the independence of the Bar; that they would be dependent upon these low attorneys for opportunities of distinction?—You mean, supposing it not to be in the hands of district agents, but left as it is now?

2643. Yes.—There is no doubt that the Bar are to a certain extent at this moment too much dependent upon a very low class of practitioners; that is one of the evils of the present system, there is no doubt; at the same time, with rare exceptions, I think the spirit of the Bar is such that they make their way honourably, in spite of that difficulty.

2644. Are you acquainted with the Irish system?—I am not; and speaking in the presence of the Irish Solicitor-general I do not venture to make any observations upon it; but I have always understood that there the Attorney-general is really the person responsible for all the prosecutions, and that he conducts them, not by himself, but through the Crown agents, he only interfering upon great occasions, which are worthy of his interference. That is, in point of fact, very analogous also to the scheme suggested by the Honourable Member for Somersetshire.

2645. Then you would recommend some system nearly approaching to the Irish system, supposing that to be a correct description of it?—I have stated the only thing which I can suggest; I am not prepared to say that that system should be adopted; it requires great consideration. The scheme which I have shadowed

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shadowed forth is analogous to both the Scotch and Irish systems, and is constitutional, considered with regard to our own system.

2646. Do you not know, as a matter of history, that the splendour of the French Bar was very much owing to the very system which you object to, of prosecutors being appointed by the Crown to conduct prosecutions?—I do not know that; I have no doubt that you will have distinguished men brought up under any system.

2647. It did not have a pernicious effect upon the French Bar, but the contrary was the case?—We all of us have heard of cases of men who have been very much pushed by the Crown, and have been under high patronage, and become great men in that way; on the other hand, we have instances of men who have been left to their own resources, who have become great men.

2648. Do you think that that system would prevent men being left to their own resources; would there not still be an opportunity for young men to distinguish themselves, although not by conducting criminal prosecutions?—No doubt they would apply themselves to the conduct of defences; there would be plenty of opportunity for distinction; I am not afraid of that.

2649. Mr. *Miles*.] From your experience in Yorkshire and in the Central Criminal Court, would you recommend that in all criminal prosecutions throughout the country counsel should invariably be employed?—I have no hesitation in saying, that it is very bad economy if they are not so; and that unless somebody is appointed to conduct the prosecutions, you cannot have the business properly done. The difficulty has been with the ratepayers; it is not so now; therefore I do not know why the practice should not be altered.

2650. If benches of magistrates do not insist upon counsel being in every case employed owing to economy, you consider that a false economy?—I do. We have at the Central Criminal Court instances of certain cases taken up by the Crown, not by the Attorney-general, but by the solicitor of the Treasury. Those are extremely well conducted. We have certain prosecutions taken up by the Society of Bankers, by very eminent solicitors, who take them as a matter of course. All forgeries of bank notes and commercial forgeries of that sort, they are extremely well conducted. The Court of Aldermen, the city magistrates, have the power of ordering prosecutions to be taken up by the City solicitor. Those, again, are conducted with the greatest ability by the solicitor, and by the counsel who are in the habit of being employed by the Corporation; the difference is most marked.

2651. Mr. *Solicitor-General for Ireland*.] I suppose those prosecutions are also conducted with fairness?—Yes, that is another great element of advantage.

2652. Has the result of your experience been, to lead you to think that in private hands, prosecutions are not always conducted with fairness, and with a desire to get at the truth, and that only?—That is no doubt the result of my experience, that prosecutions are very often very vindictive, and not unnaturally so; there has been a grave offence committed perhaps, and great indignation excited, and the barrister who holds a brief for a private prosecutor of that description, is sometimes put under very great pressure to take a course which he would not otherwise take; for instance, in proceeding with several indictments after a defeat upon former ones, and pressing the thing beyond what is just and fair.

2653. The object being to secure a conviction?—Yes; whereas in the cases to which I have alluded, they act upon public principle, and evidently from no other motive.

2654. *Chairman*.] In your opinion, would there not be an advantage in this state of things, in giving the prosecuting counsel the dignity of a minister of justice; supposing for instance, that his reputation was no further concerned than the exact investigation of truth, without any motive to secure a conviction, his object being the simple discovery of truth, and he holding the rank more of a minister of justice to assist the judge, than of a counsel?—There is no doubt that if you had a very good man in that position, that would be the effect of his position; but I do not believe it is necessary, and I am jealous, I confess, of the inroad which it would be upon the honourable competition of the Bar.

2655. With reference to the intersts of the Bar, you do not approve of it?—No; and when I say with reference to the interests of the Bar, I think it is a national interest. I think it is of immense importance to have a school for barristers.

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2656. Did not that honourable competition exist in the time of Charles the Second?—I cannot compete with the Chairman in the history either of my own profession or of the country. I think that the object which the Chairman seems to have in view of putting the prosecuting counsel in such a position as to be regarded rather as a minister of justice merely, and having no motive in the prosecution, would be effected if you had the prosecutions prepared by respectable and able men, who would be the agents for putting the prosecutions in good hands. The counsel conducting the prosecution would then be not the representative of the private prosecutor, but the representative of the public officer, who could have no motive but the public good.

2657. Do you not think that he would be more independent if paid by salary than if left to the choice of the district agent?—I am only afraid that in some cases the holder of it would be careless.

2658. Mr. *W. Ewart.*] Do you think that the danger of appointing a public prosecutor would be the patronage which it would give to the Crown?—My political principles do not make me so jealous of the Crown as some persons would be; but in these times I think it a difficult thing to throw into the hands of the Government such an amount of patronage as that would be, and I think it very doubtful whether Parliament would consent to it.

2659. If I rightly collect the proposed remedy from you, you would remedy that disadvantage by having some of the inferior agents appointed by the local authorities, or continued to be so?—No; I rather meant to intimate, that if I were to begin at the beginning, I should say they ought to be appointed by the Crown; by the responsible Minister; but finding the appointment of the clerks of the peace in the Lords Lieutenant of the counties, of course there would be some difficulty in taking all those appointments from them. It would, no doubt, increase the jealousy of the patronage of the Crown. I thought that, possibly, it might be reconciled by leaving that appointment of clerk of the peace where it is, subject to the approval of the Crown.

2660. With regard to the Bar, you think it better to have it quite open, and not to have any ministerial officer appointed by the Crown, as in Ireland and as in Scotland?—Upon the whole, I think so; certainly it would be better with regard to large assizes and sessions, where there is ample attendance of the Bar. There are some assizes, as well as some sessions, where, I believe, the attendance is so scanty, that it might be desirable to appoint some counsel. I do not, however, give a definitive opinion upon that point.

2661. Mr. *Miles.*] If you gave a brief in every criminal prosecution, the Bar would attend, would they not?—I think they would.

2662. Mr. *Attorney-General.*] Would you give a brief in every criminal prosecution?—I do not say that in all cases it is necessary to employ counsel, nor that there would be a positive advantage in every case, because there are a great number of cases so simple that they are disposed of in a few words; but I think that, upon the whole, it is better that there should be counsel in some way in all cases, than that there should be cases left which are of more or less complexity, in which either the judge is called upon to conduct the examinations, or counsel is called upon to conduct them by the direction of the judge, without any previous knowledge of the case whatever.

2663. The course which I have commonly adopted (I do not know whether it would meet with your concurrence) is this: I read over all the depositions before I go into court, and if I see that there are any of them which present any difficulty, I hand them over to the clerk of the peace, with a request to have counsel. I have a very intelligent clerk of the peace at Bristol, and he helps me in it. He reads over the depositions himself before they come to me, and points out to me those which are of a more complicated character, and he generally sends me a note stating, "I think these are cases in which there should be counsel." I then look the depositions through, and see whether I concur with him or not?—That no doubt mitigates the evil to a great extent.

2664. Mr. *Miles.*] But there is no power in the counties to do that; in fact, the depositions are very often brought in by the magistrate's clerk at the last period, and there is no opportunity of looking over them; is not that the case in all counties?—I believe it is, and it is the case in my court; some of the depositions come in during the session, and after I have charged the grand jury. All the depositions which I have an opportunity of seeing are the depositions in the principal and heaviest cases, which are sent to me on the Saturday night before the

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the commencement of the session, to enable me to charge the grand jury on the Monday morning; but I have never read, nor do I think I could give the time to read all the depositions beforehand, and say in what cases counsel should be employed, nor have I any power to give that direction; I exercise the power, and so do all the judges (it has never been disputed, but if it were disputed I do not think there is any right) of handing down the depositions to counsel to conduct the prosecution where counsel is retained for the defence; it has never been disputed, and the expense has been allowed.

2665. The cases of London and Bristol, which are local jurisdictions, cannot be brought as analogous to county jurisdictions?—They may be analogous, but they are not identical, certainly. If there was any officer who had the power of sifting the cases beforehand, and saying which ought to have counsel, I think it might be sufficient without having counsel in every case; but that involves a new machinery. If you had a district agent in the person of a salaried magistrate's clerk at every sessions he might do that if he was a judicious person; he would have no interest in employing counsel of course.

2666. *Chairman.*] Without any invidious remark it must have often happened to you to see a sharp collision between the prosecuting and the defending counsel?—No doubt.

2667. Do not you think that the appointment of a public prosecutor would diminish that state of things, if the public prosecutor were properly appointed?—I think not; it would give rise to constant observations, "Here is a party appointed by the Crown, a strong party and I am a weak one; the Crown is oppressing; the public prosecutor is oppressing;" I do not know whether that is ever the argument in Ireland, but it might be urged.

2668. Such topics might be sometimes used in political trials, but in ordinary cases where there was no reputation to be gained, and no emolument to be gained, and where the prosecuting attorney could have no fear of losing his business, do not you think that an educated man would prefer assisting the Judge to a desire for that sort of distinction?—We find where a Queen's Counsel is employed in the case of a Railway Company, that that argument is always used, that it is power against weakness.

2669. You do not think then that it would mitigate the evil?—I doubt it very much.

2670. Captain Hatton, who is at the head of the constabulary at Stafford, and is a very intelligent officer, told us that he had been obliged to interfere to prevent the indecent scramble between attorneys for prosecutions, and that there were a great number of that class of practitioners at Stafford; and he then proceeded to give evidence showing the vast number of those cases at Stafford. You would consider such a state of things a great injury to the Bar?—No doubt; not only to the Bar but to the public.

2671. And to the Bar employed by those practitioners?—It is much pleasanter to them, and better to be employed by a higher class of practitioners, but if the Bar had a proper spirit it would not affect them. It has a tendency to encourage disreputable men to go to the Bar, from the knowledge that they will be assisted by that class of practitioners.

2672. Do you agree with Captain Hatton in thinking it a great evil that policemen should have the management of prosecutions in any way?—I do, I think that is one of the leading evils of the present state of things; of necessity, and without any blame, a policeman is very often obliged to be the getter up of the prosecution, in point of fact, and he is generally a witness to a great many material facts; he is cross-examined as to whether he has not got up the prosecution, and he says, "No, it is not my business to get up the prosecution;" he is asked, "Have you not seen this witness and that witness?" and he is obliged to confess that he has; there is nobody else to do it.

2673. Mr. *Solicitor-General for Ireland.*] It produces a tendency also for him to shape his evidence from what he has seen of the other witnesses?—Yes; no doubt in some cases there is a tendency to combine with the other witnesses, and to make the evidence consistent.

2674. *Chairman.*] Captain Hatton told us also, that the average expense of prosecuting the prisoners at Stafford, was 7 *l.* a head; does not it appear to you that that might be materially diminished by adopting a judicious system of prosecution?—I believe it might, but one of the great difficulties in diminishing the expenses, is the grand jury system, as far as the court with which I am most conversant

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conversant is concerned; I do not know how the matter is managed exactly at the Middlesex Sessions, but Mr. Serjeant Adams always makes a great boast (I do not mean it in any invidious sense, but a just boast) of the extreme cheapness with which cases are conducted in his court; by some arrangement, and frequent sittings, he is able to appoint particular cases for particular days; we are unable to do that. What you have stated seems to me a high average, but those averages are very deceitful. With regard to the Middlesex Sessions, I have observed in the newspapers frequently, under the authority of the chairman of those sessions, statements of the average expense of prosecutions as compared with those at assizes, or at the Central Criminal Court, and very much to the advantage of the sessions; but then this is forgotten, that at the assizes, or at the Central Criminal Court, the cases are the great and most important cases, and sometimes it occurs that one case raises the average by 2 *l.* or 3 *l.* each case. In the experience which I have had in my time, I have had a case where officers have been sent to Australia, and the whole prosecution has cost between 600 *l.* and 700 *l.*; that raises the average perhaps of the 100 cases tried at that session by 5 *l.* or 7 *l.* each.

Henry George Horn, Esq., called in; and Examined.

H. G. Horn, Esq.

2675. *Chairman.*] WHAT are you?—Clerk of Arraigns on the Western Circuit.

2676. How long have you held that situation?—Since the year 1820.

2677. Have you been constantly engaged in that capacity since that time?—With the exception of about six years, when I was absent from the circuit in consequence of other duties.

2678. What were you when you were so appointed?—I was signer of the writs in the Court of Queen's Bench; I may also add, that I am taxing officer at Liverpool, and at Lancaster.

2679. You are taxing officer for the criminal briefs?—Yes.

2680. You have had abundant opportunity of witnessing the proceedings in the administration of criminal justice?—Yes, for the last 35 years.

2681. Will you state whether in your opinion, there are any defects which require alteration?—I should say that a paid officer to conduct the prosecutions instead of attorneys, would be an advantage.

2682. What are the evils which strike you in the present administration of justice?—The evils are, that most certainly, at present, attorneys are very anxious to get prosecutions, particularly in the north of England, where the remuneration is high; and I think that on the Western Circuit, where the remuneration is so low that an attorney is only allowed one guinea in ordinary cases, it throws them into the hands of low and improper persons.

2683. Respectable solicitors will not take the trouble of conducting them?—Some respectable solicitors do; but I suppose that is because they are clerks to the magistrates, perhaps it is at the instance of the magistrates that they do so; and probably it may be that the prosecutor is in such a position as to be able to pay them a bill of costs in addition to the county allowance.

2684. Supposing the prosecutor not to be in such a condition, the tendency would be to fling the cases into the hands of an inferior set of practitioners?—Certainly.

2685. Does it often happen that it would be requisite, in order to secure the attendance of a respectable solicitor, that the prosecutor should pay something more than the public would allow?—A solicitor, by the arrangement in many counties, cannot be properly remunerated without it.

2686. Do you consider that a great evil; supposing, for instance, that a man without any money receives an injury, he can only depend upon what the public allows?—Certainly.

2687. Then he will be necessarily driven to an inferior class of solicitors?—Yes.

2688. With regard to the expense, do you think that such an appointment as you have mentioned would be attended with considerable expense?—I prepared, as long as 10 years ago, a scale, with a view to a question of this sort, namely, appointing district agents to conduct cases. It was given into the hands of Mr. Hankins, of the Treasury, eight years ago; and if the Committee will allow

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allow me, I will hand it in to save trouble. I think an efficient arrangement might be accomplished for about 40,000 *l.* a year in salaries. This is a detailed account of every county, and how many persons would be required in each, making, altogether, 60 appointments. Sixty is the number of the county court districts, and I think if a county court can range over a district, it would not be too large for a criminal prosecutor to attend to.

[*The following Paper was delivered in by the Witness*:]

From the Criminal Returns in 1846.	Prisoners.	Cases.	Proposed	
			Number of Appointments.	Amount of Salaries.
COUNTY:				£. s. d.
Bedford - - - - - - -	185	150	1	300 - -
Berks - - - - - - -	250	200	1	400 - -
Bucks - - - - - - -	283	230	1	460 - -
Cambridge - - - - - -	276	220	1	440 - -
Cheshire - - - - - -	767	614	2	1,228 - -
Cornwall - - - - - -	280	230	1	460 - -
Cumberland - - - - - -	147	120	1	240 - -
Derby - - - - - - -	277	220	1	440 - -
Devon - - - - - - -	72[illegible]	600	2	1,200 - -
Dorset - - - - - - -	225	180	1	360 - -
Durham - - - - - -	249	200	1	400 - -
Essex - - - - - - -	602	500	1	1,000 - -
Gloucester - - - - - -	884	710	2	1,420 - -
Hereford - - - - - -	158	125	1	250 - -
Hertford - - - - - -	243	200	1	400 - -
Huntingdon - - - - - -	81	65	1	130 - -
Kent - - - - - - -	815	650	2	1,300 - -
Lancaster - - - - - -	3,072	2,600	5	5,200 - -
Leicester - - - - - -	358	280	1	560 - -
Lincoln - - - - - - -	419	340	1	680 - -
London and Middlesex - - -	4,641	3,650	7	7,300 - -
Monmouth - - - - - -	217	180	1	360 - -
Norfolk - - - - - - -	720	480	1	960 - -
Northampton - - - - - -	270	220	1	440 - -
Northumberland - - - - -	169	135	1	270 - -
Nottingham - - - - - -	286	230	1	460 - -
Oxford - - - - - - -	228	190	1	380 - -
Rutland - - - - - - -	26	20	1	40 - -
Salop - - - - - - -	227	182	1	364 - -
Somerset - - - - - -	701	560	2	1,120 - -
Southampton - - - - - -	605	500	1	1,000 - -
Stafford - - - - - - -	851	680	2	1,360 - -
Suffolk - - - - - - -	471	380	1	760 - -
Surrey - - - - - - -	958	755	2	1,530 - -
Sussex - - - - - - -	468	375	1	750 - -
Warwick - - - - - -	799	640	2	1,280 - -
Westmoreland - - - - -	74	70	1	140 - -
Wilts - - - - - - -	436	350	1	700 - -
Worcester - - - - - -	535	430	1	860 - -
Yorkshire - - - - - -	1,560	1,250	3	2,500 - -
			60	£. 39,442 - -

2689. Mr. *Attorney-General.*] You put the amount at 40,000 *l.* a year?—Yes, in round numbers.

2690. What, in your opinion, is the cost now of those prosecutions, as regards the remuneration to the professional parties?—The cost now is more than 40,000 *l.*, and I arrive at it in this way: the total amount at present paid to solicitors for prosecutions is 2 *l.* 3 *s.* 2 *d.* in each case, and I take the number of cases prosecuted in the year, in England and Wales, to be about 20,000.

2691. You mean prosecuted by attorneys?—Yes.

2692. Not the total number of prosecutions?—Yes, the total number of prosecutions.

2693. But it is not every case of a prosecution in which an attorney is employed?—No; but on the Northern Circuit you must take into account that the attorney

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attorney gets something like 8 *l.* out of a prosecution, so that it makes an average upon the whole number of 2 *l.* 3 *s.* 2 *d.*

2694. The result then of your experience and calculations is, that there would be very little difference in the point of expense between the system of district agents and the present system, whereas there would be a great increase of efficiency?—I think so. If you will allow me, I will put it in another way: if, instead of having only 60 officers, you felt disposed to appoint each clerk to the magistrates in a magisterial district as public prosecutor for that district, it would involve the appointment of about 519 persons, that being the number of magisterial districts. Then, perhaps, a difficulty would arise how you could afford, out of the 40,000 *l.*, to pay each of them a sufficient salary, for it only gives 80 *l.* a year to each. That is the only objection which I see to the magistrates' clerks of the different districts being public prosecutors.

2695. They are paid by fees of another sort?—Yes; but this calculation is made with a view of abolishing all fees, which, I presume, is the course about to be adopted or suggested, at all events.

2696. Mr. *Miles.*] Does your calculation take in the amount of fees which they receive in cases not criminal?—No; in criminal cases only.

2697. Then of course it would be fallacious, as far as that went?—I do not quite understand you.

2698. The clerks to the magistrates receive fees in other cases than criminal prosecutions?—Yes; it would give 80 *l.* a year for the fees which they receive in respect of criminal cases, without touching any other part of their remuneration.

2699. Supposing they receive nearly double that amount now, do not you think that they would be very willing to undertake it for 160 *l.* a year?—I should think they would be very glad to undertake the duties, receiving as much as they receive under the present system, because it would be a certain fixed payment, and not resting upon the fees, which, of course, are at present uncertain.

2700. Mr. *Attorney-General.*] You of course have been present a great deal at the trial of criminal cases; does it appear to you that, under the existing system, there is any degree of inefficiency in the mode in which prosecutions are brought into court?—Not in general; I should say but occasionally; and I should certainly say that I have witnessed many cases which, I think, ought not to have been brought into court, and which, I think, this system would obviate.

2701. *Chairman.*] And so much extra expense has been caused to the public?—Yes. I have also a document showing the present allowances to attorneys on the different circuits. On the Norfolk Circuit, it is 1 *l.* 9 *s.* 7 *d.* each case; on the Midland Circuit, 3 *l.* 1 *s.* 8 *d.*; on the Northern Circuit, 8 *l.* 2 *s.* 2 *d.*; on the Oxford Circuit, 3 *l.* 8 *s.* 10 *d.*; and on the Western Circuit, 1 *l.* 1 *s.* 5 *d.* The average of the five circuits gives 2 *l.* 18 *s.* 2 *d.* to each attorney. Then 30 sessions which I have taken average 1 *l.* 8 *s.* 2 *d.* each, which gives a general average upon the whole of 2 *l.* 3 *s.* 2 *d.* for each prosecution. The way in which I have calculated the salaries is by taking the number of prosecutions which there were in the year 1846, and which I have taken from the Statistical Returns of Government. That gives 2 *l.* a case as the remuneration to the clerk who would have to do the duty, or the solicitor, or the public prosecutor, calculated at a salary according to the number of cases in his district. I have made an estimate of the saving, supposing this principle should be carried out; and the view I take of it is this, that an official control over the prosecutions would probably lessen them by the number of 3,000. I take the year 1846 as the datum upon which I proceed. In that year there were about 20,000 criminal prosecutions, and as the Parliamentary vote was about 240,000 *l.*, it gives 12 *l.* as the average cost of each prosecution in the kingdom. I think 3,000 of those prosecutions might have been saved. Then I think it may be taken that there are 5,000 unnecessary witnesses summoned under the present system.

2702. Mr. *Attorney-General.*] What makes you take the number of unnecessary prosecutions at 3,000?—I have no data to go by, but I think it would amount to as much as that.

2703. Three-twentieths of the whole?—I think it would amount to that. Then I say that there are unnecessary witnesses on the back of the bill very frequently, and I think 5,000 of them would be saved. I find that the average amount given to each witness is 30 *s.*; that is taking assizes and sessions together.

2704. *Chairman.*]

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2704. *Chairman.*] Making 7,500 *l.* for the unnecessary witnesses?—Yes. I think if you had a paid officer to conduct a great number of prosecutions, he would be able so to arrange the attendance of his witnesses that at least there would be one day saved upon one-half the number of witnesses, which I have put down at 40,000. I have put that at 5 *s.*, per day which I think is less than the real expense. I think upon the average a witness costs the country more than 5 *s.* a day. At present a certain number of attorneys tell their witnesses to come on the commission day; they are not wanted till the next day, when they come to the taxing-officer, they say that they actually came on the first day, and it would be hard to a witness not to allow it: 40,000 at 5 *s.* each gives 10,000 *l.*, so that the total saving is upon this system 53,000 *l.* a year. In 1846 there were 6,719 prisoners acquitted and discharged.

2705. Mr. *Milnes.*] How do you arrive at your number of witnesses at sessions and assizes?—By a reference to a Report, to which I can refer the Committee, dated in 1836. It is a Report of the Committee of the House of Commons upon the County Rates' Bill. There is also, about three years previously to that, the Report of the Commissioners. I think there is a great deal in those Reports which would be exceedingly useful as touching the present inquiry, and which might probably save a great deal of trouble.

2706. Will you tell us shortly how you arrive at your conclusion?—I take the average of the witnesses that attend at sessions and assizes. I put those together, and then divide the number of witnesses by the number of cases, and I find that it gives about four witnesses to each case; 20,000 cases would give 80,000 witnesses. I therefore say, that if one-half the number are saved, it would be 40,000. I would add, that I have a paper showing the average expense of prosecutions at assizes and sessions in the year 1833. On the Home Circuit it was 12 *l.* 10 *s.* 1 *d.* On the Midland Circuit, 19 *l.* 17 *s.* 4 *d.* On the Norfolk Circuit, 21 *l.* 6 *s.* 5 *d.* On the Northern Circuit, 38 *l.* 12 *s.* 9 *d.* On the Oxford Circuit, 17 *l.* 18 *s.* 8 *d.* On the Western Circuit, 18 *l.* 10 *s.* 7 *d.* Durham, 21 *l.* 15 *s.* 10 *d.* The average of five circuits was 20 *l.* 10 *s.* At the sessions the average of 30 English counties was 7 *l.* 6 *s.* 3 *d.* The average of nine Welsh counties was 12 *l.* 12 *s.* 3 *d.*

2707. Do you think that at assizes it would be possible to make some arrangement to take particular cases at a particular time, so as to prevent the witnesses and solicitors from loitering about the town. I speak more of the heavy cases?—It would; and that system is adopted now at Liverpool. At York on the Northern Circuit, but of which I have no personal experience, I know the same system occurs there. At Liverpool, I can say from my own personal experience, that a certain number of cases are selected for each day, calculated upon the number which will occupy the time that the judge sits; not a particular class of cases, but a certain number of cases, and the witnesses have notice not to come until the day fixed, so that they do not come on the commission day.

2708. Does any difficulty arise from that system?—The only difficulty that I have heard of is from the grand jury, who are necessarily kept six days in attendance, instead of two or three. The court has never been kept waiting for want of business to proceed with, and it has lessened the amount of the expenses materially. I cannot tell how much it has lessened it, but I can mention what the amount used to be on the Northern Circuit; it used to be 38 *l.* each prosecution. At Liverpool, on the last circuit, it was 22 *l.* 15 *s.*, and on the winter circuit it was 23 *l.* 10 *s.* It averages, I should say, from 23 *l.* to 24 *l.*, instead of 38 *l.*, which it used to be there; but whether that is all occasioned by this new system or not, I cannot undertake to say.

2709. Mr. *W. Ewart.*] Mr. Hankins I think stated in his evidence that such a system as you allude to would save the country from 80,000 *l.* to 100,000 *l.* a year?—I have seen Mr. Hankins since he gave evidence here, and told him that I could not quite agree in that; it would save a great deal, but I think not so large a sum as he has estimated, because there are many counties where it cannot be done with effect. If the assizes last only two or three days you cannot do it; it can only be done at such places as Liverpool where they last ten days or a fortnight.

2710. *Chairman.*] You say that one evil of the present system is that improper prosecutions are sometimes brought?—I think so.

2711. Another evil is that prosecutions fail from want of evidence which might be brought?—Yes.

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2712. Another evil is that cases often fall into the hands of low practitioners?—Yes.

2713. Another evil is that witnesses are often brought who are unnecessary?—Yes; I can give an instance of prosecutions not being properly brought, or where the parties escape because a proper officer does not preside over them; the Solicitor of the Mint I think in his prosecutions does not have above 10 per cent. of acquittals, and the general average of acquittals all over the kingdom is about 28 per cent.; I take that small per centage to arise from the efficient control of the case before it is brought into court.

2714. Mr. *Miles.*] As to the prosecutions being unfairly got up, does that have regard to the felony cases or to the misdemeanours?—Felony cases.

2715. When you say "unfairly got up," do you mean improperly brought into court?—Improperly brought.

2715.* Are those improper prosecutions in felony or in misdemeanour?—In felony.

2716. Will you state in what way they are improperly brought?—The impropriety I should say would be in cases not being properly prepared, or in the witnesses not being there to support them; I do not mean to say that they are false charges altogether, but imperfect and improper prosecutions of a low character which cannot be supported, and which, upon investigation are dismissed from the court as not being rightly brought.

2717. In all cases of felony must not the depositions be taken before magistrates?—Yes; it is so.

2718. And the magistrates' clerk is sitting with them, and to be consulted upon those cases; and upon the evidence adduced before the magistrates the committal or non-committal takes place, does it not?—Yes.

2719. Does impropriety arise before the magistrates, or does it arise after the committal has been made out, and between the committal and the trial?—Between the committal and the trial, because there is not sufficient care taken I think before the magistrates to make the case complete for trial; there is not sufficient for a conviction, but there is enough for a committal; then if the case is neglected between the time of commitment and the time of its coming into court, it is what I have called an improper prosecution; that is to say, it is an imperfect prosecution; it ought not to have come into court in that state.

2720. The word "imperfect," would have been better than "improper"?—It would.

2721. *Chairman.*] Has it happened to you to hear the judge say that the prosecution ought never to have been brought?—Yes, I have heard that.

2722. Mr. *Miles.* That is in cases of a very trifling nature?—Yes.

2723. But the offence is a felony?—Yes.

2724. *Chairman.*] I am not talking of the cases of which Mr. Miles speaks?—I have heard judges say, "It is a shameful prosecution."

2725. Mr. *W. Ewart.*] The remedy would be a due discrimination in the choice of attendance of witnesses?—Not in that case.

2726. *Chairman.*] Mr. Miles has asked you about magistrates' clerks recommending prosecutions; does not it sometimes happen that magistrates' clerks have a direct pecuniary interest in recommending prosecutions?—It does happen.

2727. Do you think that a desirable state of things?—I do not think it a desirable state of things that they should propose any prosecution which should put money into their pockets.

2728. Does not it very frequently happen?—I will not say that; no doubt it has happened; on the Western Circuit, there can be no great inducement to a magistrate's clerk to wish for a prosecution, because he only gets one guinea for it, and if he had to come a distance, it would not answer his purpose at all.

2729. Mr. *Attorney-General.*] But some of them bring up a good number of cases?—Yes; but I think a guinea is too low; I must state, that in my calculation of 2 *l.* a case, I have not taken into consideration any extra allowance for clerks, or offices, or stationery; that expense would have to be paid; I have taken it upon the following principle which makes me arrive at the number of 60; that no man should have more put upon him than the duty of getting up 500 cases in a year, and I think there is a gentleman present, an officer of a corporation, who will tell you that he gets up more than that number; that would give 1,000 *l.* a year to an officer who had 500 indictments.

2730. *Chairman.*]

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2730. *Chairman.*] You have not had an opportunity of observing the internal working of the system, so as to be able to say whether you can speak to the fact of conn'vance with policemen, as to obtaining prosecutions or carrying them on?—No; but I know that policemen have an interest somehow or other (I do not say how) in recommending this or that attorney in different districts, and I have known two attorneys appear in the same prosecution.

2731. You consider that very scandalous?—It is certainly improper, and if it could be avoided, it would be desirable.

2732. If it could be avoided that attorneys should scramble for prosecutions, it would be desirable?—Yes.

2733. Do not you consider the mere fact that they do so, a scandal to the administration of justice?—Yes; I do not know that it exists to a very great extent, but it has occurred, I know, in two or three cases.

2734. A gentleman engaged in the metropolitan courts has told the Committee, and indeed the learned Recorder told us just now, that the prosecutions are necessarily left to policemen; do you not think that an evil?—Yes. I will, with the permission of the Committee, read an extract from a letter from Mr. Bertie Markland, the so-called public prosecutor at Leeds. He wrote the following to me: "The Town Council found that certain improper negotiations took place between the police and some of the profession, in obtaining from parties robbed retainers to conduct the prosecutions, and also that other nefarious practices were carried on. They determined to put a stop to them, and appointed two solicitors to conduct all the prosecutions. They bind over the chief constable to prosecute."

2735. Mr. *Miles.*] Have you looked through the Bill of our learned Chairman?—I cannot say that I have very attentively looked it over, because I have only seen an imperfect print of it. I thought that the result of this Committee would be to add something to it. I have seen it.

2736. As I understand your evidence, all you recommend is, the appointment of the district agents to conduct the prosecutions?—Yes.

2737. You do not go further than that?—I think that the other system which the Bill suggests would be attended with a great increase of expense, having counsel at high salaries.

2738. Mr. *Attorney-General.*] On the other hand, have you considered what you would save by setting off the remuneration of counsel under the present system?—Yes, I can tell you exactly what the remuneration of counsel is; it is 1*l.* 4*s.* each case on the average.

2739. In how many cases?—Twenty thousand cases.

2740. *Chairman.*] Surely it must amount to more than 1*l.* 4*s.*?—No it does not, because so many cases are not conducted by counsel.

2741. Mr. *Attorney-General.*] You have taken the average of each case, whether conducted by counsel or not?—Yes.

2742. How do you get at it?—From the Report of the Select Committee in 1836; from the actual returns made. They called for returns from all the clerks of assize, and all the clerks of the peace, of the details of the expenses of criminal prosecutions. From that I am giving you my data, and there is no doubt it is correct.

2743. Did they ascertain, in point of fact, the number of cases throughout the country, in a given period of time, in which counsel had been employed, and then the total amount paid to them?—The amount allowed at all places in counsel's fees.

2744. Is there any return of the actual amount paid to counsel in any given period, throughout the country?—Yes, that is it for a given year; I think it is 1833. It is from the clerks of assize of five of the circuits, and the clerks of the peace for 30 English counties; and it is upon that that all my calculations are made.

2745. *Chairman.*] Since that time the expense of prosecutions has increased excessively, according to the evidence of Mr. Hankins. It diminished from 1835 to 1846, but from 1846, downwards, it has increased excessively. The highest average before that time was 108,745*l.* a year; the average since has been 227,160*l.* a year; would not that make a considerable difference in your calculation?—No; I have calculated rather beyond that, because I have calculated that 240,000*l.* would be the gross amount. I think I could suggest a reason why the amount has increased since 1846; I think it was about that time that

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that the Government took upon themselves the whole expense of the prosecutions, and I think, since that period, it has been left more to the Government than to the magistrates, to check the expenditure.

2746. The magistrates have not had the same interest in controlling it?—No.

2747. In Question 2561, the answer to me was, "No doubt, if you had a fixed man" (meaning a district agent) "the expense would be much less; so it would be if you had a fixed counsel." That is the evidence of Mr. Hankins; you do not agree to that?—I leave the Committee to judge, when I tell them that at present the expense is only 24*s.* in each case.

2748. Supposing you had 10 barristers, at 1,500 *l.* a year each, what would be the amount?—Ten barristers would not amount to much; it would be 15,000 *l.* a year; but that would not be a very large saving, the present amount being only about 25,000 *l.* But I do not think 10 barristers would be able to do all the work. There are provisions for appointing persons for a temporary purpose, all of which would amount to a considerable sum of money; I have not sat down to calculate, minutely, what the expense would be.

2749. What you would save by the appointment of district agents, you say is 40,000 *l.* a year, bythe plan which you have suggested?—About 53,000 *l.*

2750. The saving by the appointment of barristers as public prosecutors, would not amount to anything like that?—I am not speaking of a particular item, you would save 53,000 *l.* generally; but out of the particular item of attorney you would not save anything.

2751. But you would save that?—Yes, by lessening the number of prosecutions, and of the witnesses in attendance.

2752. Mr. *Miles.*] By having a counsel as a public prosecutor, must you not of necessity have an immense number, when you consider that there are 52 counties in England alone, and that the quarter sessions are held all in the same week?—Exactly so. You must have a great many at sessions, and you must have two for Liverpool, because two courts are sitting at the same time.

2753. *Chairman.*] How many county court judges are there throughout England?—Sixty, I believe. There are 60 districts. I think that you would want at least 60 of these appointments.

2754. Mr. *Attorney-General.*] As district agents?—I think you would want as many as 60 barristers altogether.

2755. *Chairman.*] Do you not think that three counsel would be enough for each circuit, or two counsel for each circuit?—I think two would not be sufficient; perhaps three would, because we have very often three courts sitting at the same time.

2756. The scale of salary to those who attended at the quarter sessions would be much lower. There are six circuits?—There are eight, if you take in the two Welsh circuits. You would want 16 barristers for those circuits.

2757. Mr. *Miles.*] However, from the calculation which you have made, you are able to state that you conceive that to do it efficiently there would be a considerable increase in the expenditure?—Yes; and I think it would be an unfair thing to the rising barristers their being deprived of this opportunity of advancement; and I think it would be unfair to the accused; there would be no Bar from whom they could choose counsel to defend them.

2758. Mr. *Attorney-General.*] Are you aware that this system is in full operation in Ireland?—I have heard so.

2759. You have not heard that any of those inconveniences arise there which you anticipate?—I have not.

2760. *Chairman.*] Or in Scotland?—I know that the system exists there, but I do not know the details of it.

2761. Or in France?—I am not acquainted with the French system; I have seen the French courts.

2762. Do you know that England is the only country in existence where there is not a public prosecutor?—Yes; but it has so many free institutions that I have a prejudice in favour of it.

2763. Mr. *Miles.*] Notwithstanding what has been stated, you from your long experience, extending from the year 1820, are of opinion that the proposed system would act detrimentally to the Bar?—Certainly it would do that; that would be one ingredient to be considered in the system.

2764. Mr.

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2764. Mr. *Attorney-General.*] Does it act injuriously in Ireland?—It would only act injuriously for a certain time after the change took place.

2765. Mr. *Miles.*] It would reduce the number of the Bar?—At sessions and assizes, certainly.

2766. *Chairman.*] Do you think it would be well to keep up a bad system of administering criminal law for the sake of the barristers attending sessions?—No, I am not prepared to say that.

William Baliol Brett, Esq., called in; and Examined.

2767. *Chairman.*] ARE you a Barrister attending the Liverpool Sessions?—Yes, and have done so for 10 years. At Liverpool, the course of practice at criminal trials, I think, is this: There are a stipendiary magistrate and a bench of borough magistrates, and the magistrates' clerks, who are paid by salary. The criminal offences which come eventually to trial, with very few exceptions, go first before those magistrates, or some of them. If the prisoner is committed, the depositions are taken. The town clerk of Liverpool is the criminal prosecuting attorney; he is the gentleman appointed not only for the criminal business of the corporation, but for all their business, and he is paid by a very large salary.

2768. A fixed salary?—A fixed salary. He employs in his office, for the purpose of the criminal prosecutions, one clerk, who therefore is the person responsible to him for the conduct of all the criminal prosecutions.

2769. What is the name of that gentleman?—Mr. Walter, who is present. When the depositions have been taken before the magistrates, they are sent to Mr. Walter. He then examines the depositions; he sees whether, in his judgment, further evidence is required. He then sends for the witnesses in each case; he speaks to them, and re-examines them as to the facts which he thinks require further sifting, and he then makes up the brief. There are seven sessions in the year held at Liverpool before the Recorder, and there are three assizes. Mr. Walter is answerable for the conduct of the prosecutions, both at sessions and at assizes, which arise within the district of the borough of Liverpool. There is a Bar attending the sessions of about 30 barristers on the average I should say, and he thinks it right, I believe, to give to each barrister some prosecution, if there be prosecutions enough; but he does not divide the business equally. Both in number, and in the importance of the cases, he selects those barristers in whom he puts most trust. Every prosecution which is conducted in court is conducted by a barrister having a brief. Those are the cases which are tried at sessions. He proceeds upon the same principle at the assizes. At the assizes there are the cases which arise within the borough of Liverpool; there are the cases which arise within the borough of Manchester, which are also tried at Liverpool; and there are the cases which arise in the rest of that division of the county. Those cases from Liverpool and Manchester are both conducted on the same system. The others are conducted upon the ordinary system of the country, I believe. There is no doubt a difference to be observed in the trials at the assizes between those cases which come from Liverpool and Manchester and the cases which come from the other parts of the southern division of the county.

2770. Mr. *Attorney-General.*] In the way in which the prosecutions are got up?—Yes.

2771. And in the results?—And I think in the results.

2772. *Chairman.*] On which side is the balance?—The balance is clearly in favour of the cases which arise within the borough of Liverpool, and within the borough of Manchester.

2773. Under a public prosecutor?—It is the town clerk, a person of great character and position, who has the cases conducted in his own office.

2774. Mr. *Attorney-General.*] He is the public prosecutor of that district?—He is; the way in which I believe he is made public prosecutor is this, that the magistrates have come to a determination to bind over to prosecute this gentleman, who acts in the town clerk's office, and they never bind over anybody else; he therefore at once gets possession of the prosecution.

2775. Have you then any doubt from your experience of 10 years of this system, and of the other system, that the conduct of prosecutions by a regular appointed prosecutor, as compared with the conduct of prosecutions by attorneys in general from the body of the profession, is in favour of the former of those two systems?

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W. B. Brett, Esq.

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systems?—I have no doubt of it, assuming that the public prosecutor is a person selected of high character, and is a person paid by salary; the three requisites which I apprehend you would require in a public prosecutor are fairness, care, and skill. The chance of fairness towards the prisoner would clearly be increased by a person selected by a high authority; then with respect to care and skill, if you once assume that the person to be selected is a superior solicitor, you obtain those requisites in the same way.

2776. *Chairman.*] You have had the opportunity of watching closely both systems?—I have watched them very carefully.

2777. And your opinion is what you have been good enough to tell us?—Yes.

2778. Mr. *W. Ewart.*] Is the system carried on at any other town?—Yes, I think it is at Newcastle; and it is carried on practically at Whitehaven in the same way, by the magistrates of the borough or town coming to a resolution to bind over a person in a particular solicitor's firm to be the prosecutor.

2779. Mr. *Attorney-General.*] In fact, practically, they have constituted him the public prosecutor?—They have. He then makes a selection of the counsel who attend, not by distributing the briefs equally, but by taking those in whom he has confidence.

Mr. *Henry Walter*, called in; and Examined.

Mr. *H. Walter.*

2780. *Chairman.*] YOU are appointed by the town clerk of Liverpool, I believe, to manage that part of his duty which relates to criminal prosecutions?—Yes.

2781. How long have you held that office?—About seven or eight years.

2782. You have had an opportunity of witnessing the administration of criminal justice?—I have.

2783. In your opinion, does that state of things, namely, the appointing one single person to superintend and be responsible for the management of criminal prosecutions, tend to the better administration of justice?—I think it does.

2784. Are you aware what the system was before such an officer was appointed?—It was always carried out by the public authorities, I believe.

2785. There always has been, so long as you know, some one person responsible for getting up the prosecutions?—Yes. I have known the prosecutions in the borough of Liverpool for perhaps 20 years, and they have always been so conducted.

2786. You have never known it different?—No; I have had that information from the town clerk also.

2787. What is the average amount of acquittals?—I have only gone back for the last three years; at the sessions it is from 10 to 12 per cent.

2788. And at the assizes?—About the same.

2789. What do you reckon is the average cost of prosecuting each offender?—About 10 guineas each case. Sometimes there are three or four prisoners in a case. I have gone by cases. In the borough of Liverpool the expenses of prosecutions would be considerably more than in any other borough, inasmuch as property is stolen from off dock quays, and there is the necessity of proving the identity of property which comes from up the country; there is the passing and the transit. Then again there is property stolen from warehouses and sold to parties, and conveyed up the country to be manufactured.

2790. In short, there are circumstances connected with Liverpool which make the prosecution of felons more expensive than would generally be the case?—Yes.

2791. Mr. *W. Ewart.*] Are there not circumstances also which make the acquittals at Liverpool more?—Yes.

2792. What are those circumstances?—The robbery of sailors, for instance, and the low class of witnesses which we have, who will tell a story before the magistrate and before me, and tell a different story afterwards before the recorder; who have been tampered with by the friends of the accused, which we cannot avoid. Also, there are a great number of receivers committed for trial, in which cases I find great difficulty in obtaining convictions.

2793. *Chairman.*] Have your police anything to do with the prosecutions?—We have a detective department, and information is given to them of the offence.

2794. But

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Mr. *H. Walters.*

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2794. But you do not trust to their judgment as to whether a case should be brought to trial or not?—No; the case is submitted to me, but not until after committal, unless it is an important case.

2795. And you are the judge of the evidence which is requisite?—I am, and I draw all indictments also.

2796. You are responsible to the public?—Yes; the court before whom I conduct all cases looks to me that they shall be properly conducted.

2797. I suppose you find that that duty takes up a considerable portion of your time?—The whole of my time is entirely devoted to that duty, because, independently of getting up the cases, there is the record of the court to be prepared, which is the indictment.

2798. What is the average number of cases which you have to manage in the course of the year?—About 600 to 800, including the assizes; they have been much larger; however, within the last few years they have not been so numerous, but I think that the number of commitments to the assizes and sessions must not be taken as an index to the amount of crime in Liverpool.

2799. Do the 600 or 800 cases include the cases which are dismissed as not being supported by sufficient evidence, or do you mean the cases which are actually brought to trial. There are certain cases I suppose which you do not prosecute, because the evidence is insufficient?—Very few; prisoners are very frequently committed on more than one case, and I select the best case.

2800. Supposing a man is brought before you with only one charge, and you think the evidence insufficient, you dismiss the case, I suppose?—No, I suggest on the brief that there is not sufficient evidence, but it still goes before the grand jury.

2801. You include that class of cases?—Yes, all the labour is given.

2802. In your opinion does that system altogether tend to the proper administration of criminal justice?—Certainly, because I have no feeling but to elicit truth in favour either of the prosecution or of the prisoner; and if I can assist the prisoner in any way I always do so by furnishing him with a copy of the depositions. If there is an additional case taken against him after he is committed, which sometimes happens, I invariably furnish him with notice of it by sending an officer up to the gaol with a copy of the depositions, endorsing thereupon that he will be indicted for this case as well as the previous one.

2803. With regard to the witnesses for the prisoner, have you ever interfered to procure them?—If any intimation is given to me before the trial that certain witnesses are wanted for the prisoner, I ascertain the names of the witnesses and the whereabouts, and I forward an officer to that person.

2804. Mr. *Solicitor-General for Ireland.*] Of course, if one of those witnesses whom you have summoned for the prosecution can state circumstances favourable to the accused, you instruct your counsel to elicit those circumstances?—Certainly.

2805. You are actuated simply by a desire to ascertain the truth, and not to procure a conviction?—Certainly.

2806. *Chairman.*] You have no sort of motive in procuring a conviction?—None whatever; my motive is, to get the best evidence I can.

2807. And you are not dissatisfied with your counsel if he fails in procuring a conviction?—No, because the court, knowing the mode in which the business is conducted there, would take care that the ends of justice were not frustrated.

2808. Your object is to see that the ends of justice are attained?—That is all.

2809. Mr. *Solicitor-General for Ireland.*] Do you attend during the preliminary investigation before the magistrates?—No, but I sometimes advise, in important cases.

2810. Does any one attend on your behalf?—No; there is the superintendent of the detective department who attends.

2811. When the magistrates have investigated the case, and have sent the case for trial, as I understand, you have no power to exercise any discretion in not proceeding, but you go on with that case?—Yes.

2812. You send it before the grand jury, even although you may not think there is a sufficient case to warrant the finding of a jury?—Yes; but I generally find that the grand jury ignore the bill in those cases.

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2813. *Chairman.*] Do you communicate to them your opinion?—No; but my opinion is probably known by two or three of the witnesses.

2814. Mr. *W. Ewart.*] Have you ever known a case stopped?—The grand jury sometimes find a bill, and then the counsel for the prosecution, in opening the case, sometimes says that he thinks it is only a strong case of suspicion, and calls the attention of the court to the depositions; the court then intimates its opinion; on that the case proceeds, or an acquittal is taken.

2815. You cannot state the proportion of acquittals before this system was introduced and since?—I do not think there was any other system; I have had it from the town clerk that there was none.

2816. Can you give us any comparison between the number of acquittals elsewhere and at Liverpool?—I cannot.

2817. Do you consider the number of acquittals fewer at Liverpool?—Yes; from my experience at the Liverpool assizes, I think it is a less number.

2818. *Chairman.*] Ten out of 100 is a very small average of acquittals indeed, I should say?—I will not offer any opinion upon that.

2819. Mr. *W. Ewart.*] And at Liverpool there are circumstances which render acquittals more probable than at other places?—Yes.

2820. Mr. *Solicitor-General for Ireland.*] When a case comes into your hands as public prosecutor, have you any power to postpone the case until a future sessions or assizes, supposing you think it imperfect?—I have done such a thing by affidavit without preferring a bill to the grand jury. I have done it under these circumstances: a witness has been robbed of a large sum of money; very frequently he is a foreigner, or is obliged to go away immediately after being robbed, but is certain to be back in a given time; perhaps a session intervenes in his absence; then I apply to the court, attaching to the affidavit his letter; the court has thought proper to postpone the trial until the time when I have suggested that he will be present.

2821. You do use a discretion in making an application to the judge?—Yes; but those cases occur very seldom.

2822. Have you contrasted the cases in the borough of Liverpool, in which you conduct the prosecution, with those in the other districts at the assizes?—No, I have no opportunity of so doing.

2823. Are you yourself paid by salary?—I am.

2824. Then I suppose it was your case to which Mr. Hankins alluded the other day, when he said that the borough of Liverpool by employing a public prosecutor saved 1,200 *l.* a year?—I do not know what Mr. Hankins might say, but I should say, that whatever was gained by the fees out of the prosecutions, it would not be anything like that, if there was any gain at all, because I apprehend there is a great deal of expense.

2825. Does it rest with you altogether to select the counsel to whom you entrust the conduct of these prosecutions?—Yes, I distribute them; I go through the list; a list is furnished to me of all the barristers attending by the librarian and the man who has the management of the robing room. I should tell the Committee, that on the first day of the sessions I select a certain number of cases for that day, and I warn the witnesses in those particular cases to attend on that day; those are generally the minor cases; and I go right through the list, and give every counsel one. Then in cases of importance I of course select those men in whom I have confidence.

2826. The ordinary cases you give one after the other, without any selection?—Yes.

2827. But in the important cases you select?—I take those who I think are the best men.

2828. Mr. *Miles.*] What is the salary paid to the town clerk, as public prosecutor for the borough of Liverpool; he gets a salary?—He gets 2,500 *l.*

2829. Am I to understand that that 2,500 *l.* is paid for the prosecutions?—Certainly not; he is town clerk of the borough of Liverpool, as well as legal adviser of the corporation of Liverpool.

2830. £. 2,500 then is the whole amount of his salary?—That is his salary.

2831. Can you distinguish what part of it goes to his office as public prosecutor?—I do not know if there would be any difference made with regard to the amount of the salary paid to the town clerk whether he was prosecuting solicitor or not; there are certain officers called principal clerks to manage certain departments

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ments in his office, and I am one; I am paid by salary, but my salary does not come out of the 2,500 *l.*; I am also paid by the corporation.

2832. Then possibly you may be appointed, as a clerk in the office, as the public prosecutor yourself?—Yes; I am appointed for that particular department.

2833. Then the sum of money which comes to you does not go first of all through the town clerk?—Certainly not.

2834. What is your salary?—£. 300.

2835. Do you give that as the sole salary?—No, I have a clerk at, I think, 150 *l.* or 156 *l.*, I am not quite certain which, who is also paid by the corporation. Then I have a messenger, who makes the necessary inquiries, entirely under my control, who has 2 *l.* a week, I think, and his clothes.

2836. Equivalent to 110 *l.* or 120 *l.*?—Something more than that; he has two suits of clothes, and a great coat to designate some sort of official authority.

2837. What do you put it down as equivalent to, for the whole of your establishment?—Say 600 *l.* Then independently of that, there are the stationery and the office.

2838. Are you paid for that?—We are not paid for that; that comes out of the funds of the corporation.

2839. Then about 600 *l.* a year is all that is paid for the public prosecutions, is it?—Yes. There are other expenses, of course, attending the preliminary inquiries before a person is apprehended, which are also borne by the corporation, which amount to 400 *l.* or 500 *l.* a year.

2840. We understand that your office does not come in until after a person is committed; then commences your office?—It does.

2841. I suppose all the other expenses are such expenses as always take place previously to committal; there are no others?—No.

2842. You are not able to institute, I think you told Mr. Ewart, any comparison between the number of acquittals in that part of the county of Lancaster which come into the assizes at Liverpool, and the number in your own particular borough?—I am not.

2843. *Chairman.*] We have been told by a gentleman who was sent down to superintend the expenses at Stafford, that one half of the prisoners committed at the Spring assizes were either acquitted or the bills against them were ignored; that you would consider a much greater proportion than in your business at Liverpool?—Yes.

2844. For the 600 *l.* a year, which includes everything, including yourself, the messenger, and the clerk, you conduct among you between 700 and 800 prosecutions in a year?—Yes.

2845. Supposing those 700 or 800 prosecutions were given to different attorneys, and not to any one attorney, what do you suppose would be a fair estimate of the expense; three times as much?—I could hardly say.

2846. Suppose the 700 cases were just sent to any attorneys to manage, and one attorney got up one, and another attorney got up another, without any public prosecutor at all?—I have no doubt that the amount would be very much increased.

2847. Mr. *Miles.*] But attorneys would not in all cases be employed at assizes and sessions, would they?—Yes; the court grants the costs.

2848. Mr. *W. Ewart.*] Have you or the town clerk of Liverpool ever been applied to by the authorities of any other place, with a view to adopt such a system?—It has been very much approved of.

2849. Is it adopted at any other places?—I know that it is adopted at Manchester, with the exception of drawing the indictments.

2850. You know that it is approved of?—Yes, it is highly approved of.

2851. The beginning of the case is got up, you say, by what you call the detective?—Yes.

2852. A police officer?—Yes; we have, I think, 20 servants employed in the detective department, and a superintendent.

2853. Are they persons specially selected for that duty?—Yes; as detectives.

2854. Have they any legal knowledge?—None, but they have been a long time previously in the police force.

2855. Have you any complaint of the conduct of cases by the police?—Certainly not.

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2856. Your police are particularly well educated?—Yes, the detective, in a criminal point of view.

2857. Mr. *Solicitor-General for Ireland.*] They are very much under your control, so far as that part of the business is concerned?—Yes. If I found the police put a name on the back of the indictment I should strike it off.

2858. Mr. *Miles.*] Are the magistrates' clerks at Liverpool professional men?—Yes; there are two, both of them are professional.

2859. Mr. *Solicitor-General for Ireland.*] In conducting a prosecution, if you find that a number of witnesses have been examined before the magistrates whom you think unnecessary you do not have them summoned?—Certainly not; in most cases I have to make some alteration; I have to get additional witnesses or to strike out some.

2860. Mr. *W. Ewart.*] Of course, without some such superintendence on your part there would be a greatly increased expense of witnesses?—I think there would.

2861. Mr. *Miles.*] How do you manage, supposing they are subpœnaed to attend before the magistrate; do you take upon yourself to order them not to attend?—I do not before the magistrate, but before the recorder.

2862. You were asked whether you undertook to order some of the witnesses not to attend?—On the trial, I understood it.

2863. I understood you to state that you did so?—I do.

2864. Supposing those witnesses were subpœnaed to attend as witnesses before the committing magistrate, should you undertake that still?—I do not know that witnesses are ever subpœnaed to attend before the committing magistrate. I never interfere with the witnesses brought before the committing magistrate.

2865. *Chairman.*] If you think a witness is unnecessary you do not call him?—No.

2866. And you take care that he shall not be called?—I take care that no expense is incurred in bringing him.

2867. And in the exercise of that duty you save considerable sums of money?—I do.

2868. Mr. *Miles.*] Supposing he should attend in court according to his subpœna before the magistrates, I want to know whether he would not be paid his expenses?—Before the recorder you mean?

2869. Before the recorder?—No, he would not be paid his expenses; inasmuch as I am bound over to prosecute. I send him notice early that his attendance will not be required at the coming sessions; if a man will be so obstinate as to attend after that notice, he must take the consequences.

2870. Then you have a veto over the magistrates?—In so far as judging who are the proper and necessary witnesses to attend on the trial.

2871. Mr. *Solicitor-General for Ireland.*] When a case comes into your hands you may get a single satisfactory witness who is able to prove what a dozen have proved before the magistrates?—Yes; but where there is anything like complication, I always wish the case to be supported by two witnesses. If three or four witnesses speak to one fact, I am content with two.

2872. Mr. *W. Ewart.*] That is, in the stage of the case between going before the magistrate and the recorder?—Yes.

2873. Mr. *Solicitor-General for Ireland.*] In police cases we often see unnecessary detail?—Yes, very often; the police are not the proper judges as to the necessary witnesses, and they sometimes get more than are necessary.

2874. That both protracts the trial and increases the expense?—Yes.

2875. If you have a case either of great complication in point of fact, or involving nice considerations in point of law, do you take upon yourself to be advised by counsel before the trial?—Yes, on evidence.

2876. As to the course to be pursued?—Yes; but that very seldom occurs, only in cases of conspiracy and cases of that description.

Mr. *Augustus Compton*, called in; and Examined.

Mr. *A. Compton.*

2877. *Chairman.*] WILL you state what you are?—Taxing Officer of the Northern Circuit, excepting the county palatine of Lancaster, and associated with the Judges.

2878. How long have you held that office?—Six years.

2879. During that time have you had a good deal of experience in witnessing the administration of the criminal law?—I have.

2880. In

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2880. In your opinion are there any evils in the present system which result from the want of some responsible person to manage prosecutions?—Yes, there are many.

2881. Will you be good enough to tell us what they are?—I think that the scrambling for prosecutions to get them out of the hands of constables, who are bound over to prosecute; the multiplication of indictments against the same prisoner or prisoners where there is no chance of any evidence being offered in those additional indictments, for the sake of the costs; the presenting of indictments to the grand jury, without a previous inquiry before a magistrate, and even in cases that have been examined and dismissed by a magistrate, for the sake of getting costs, from motives of revenge, or for the purpose of prejudicing a witness in a case at *nisi prius*, are all evils resulting from the want of a responsible person to manage criminal prosecutions. These evils are now partially checked by the clerk of assize on the Northern Circuit, and might be entirely done away with had he more power than he now has.

2882. Have you had an opportunity of seeing that often?—I have not seen it often; but I have seen that the constables who have been bound over to prosecute have given the prosecutions to attorneys of indifferent character, and I have seen by the bills of costs that they have been improperly conducted as far as expenses go, and frequently as to justice.

2883. There has been an attempt to swell their charges improperly?—Yes, to large amounts.

2884. In consequence of the cases falling into the hands of low practitioners?—Yes, and who try to make the most of them.

2885. They having obtained the management of these prosecutions by improper influence over the policemen?—As far as I could tell.

2886. Have you any doubt that that happens?—Not at all. I could not mention any particular case.

2887. You have no doubt, from what you have seen, that that constantly happens?—No; it is well known.

2888. In your opinion, is that a very great evil, and a scandal to the administration of justice?—Very great.

2889. Does it lead, in some cases, to a failure of justice?—I could not say that it does; but it frequently leads to improper prosecutions being brought before the grand jury; in cases, for instance, that have not been taken before the magistrates, (because there would be no committal,) an indictment is frequently taken by the attorney before the grand jury, even without being signed by the clerk of assize (they have the power of doing so); the bill is thrown out or the accused is acquitted, and all the attorney cares about is the costs.

2890. You attribute that to a wish on the part of the attorneys to put costs into their pockets?—Yes.

2891. They bring criminal charges against innocent persons?—Yes. I have frequently heard the judge say, "It is a shameful case, and ought never to have been brought to the court," and disallow the costs in consequence. Sometimes the judges allow the expenses.

2892. In your opinion, does that state of things tend to the independence of the Bar, such a class of practitioners having the management of criminal cases?—I do not think that the Bar, generally, have anything to do with men of that kind; they take the brief, and they know nothing at all about it.

2893. In your opinion, is the circumstance of such men having it in their power to give briefs to the members of the Bar a favourable circumstance to the members of the Bar?—Certainly not.

2894. There are, of course, as I suppose you know, many very respectable attorneys who conduct criminal prosecutions; but there are also many of the character which you have just described?—A great many of both descriptions.

2895. With regard to the cases failing for the want of proper evidence being brought, has it ever occurred to you to remark that?—Sometimes it has occurred, but I have not been able to trace it to negligence on the part of the attorney; I do not recollect any case of that kind.

2896. Have you frequently had occasion to diminish the attorney's charges?—Frequently, almost in every case, more or less. The amount I have taxed off the costs of prosecutions in Yorkshire alone since 1850, reaches the sum of 10,742 *l.* 11 *s.* 11 *d.*, and the amount saved by arrangement and taxing in the same county during the same period reaches 32,202 *l.* 1 *s.* 4 *d.* The sum taxed off decreases

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decreases every assize; showing that the attorneys in prosecutions now are aware that I know each case as intimately as they do, and that it is useless charging for that which they know I will not allow.

2897. Have you reasons to believe that cases happen where the attorney, receiving a sum of money to pay to a witness, puts the money into his own pocket, and gives the witness a smaller sum?—I know it has occurred frequently.

2898. Have you any doubt that that frequently occurs?—I have not the least doubt of it; I have tried to stop it as much as I could by publishing what is allowed to each witness, but it does not go the whole length of stopping the practice.

2899. Has it ever occurred to you to observe whether policemen are entrusted with getting up cases?—Frequently.

2900. Do you consider that an evil?—A very great evil.

2901. Do you consider policemen a class to whom such authority can safely be entrusted?—Certainly not.

2902. All these evils which you have mentioned exist in the system as it actually prevails?—At the assizes on the Northern Circuit it does not exist now to the extent it did, because it is very much checked.

2903. How has it been checked?—By the clerk of assize and myself reading all the depositions, and knowing each case intimately; and whenever there has been anything wrong, disallowing the costs accordingly, representing the case to the judge, and giving him information upon the subject, when he acts accordingly if he thinks fit.

2904. Then you have succeeded in checking the system, to a certain extent?—Yes.

2905. But not altogether in stopping it?—Not altogether.

2906. Sir John Bayley has taken a very active part?—Yes; the present system on the Northern Circuit was established by him in 1849.

2907. In conjunction with you?—Yes. He is the clerk of assize on that circuit; he is now at York.

2908. Mr. *Miles.*] Are the bills of costs, when they come before you, merely drawn up as a sum total, or are they specified in items?—They are specified in items, most particularly.

2909. Have you ever adopted the system of paying the witnesses yourself, desiring the attorney to bring up the different witnesses?—It would be impossible without assistance, sitting in court as I do to tax and watch every case.

2910. Do not you think that some such system might be adopted, so as to ensure the sum of money paid for the expense of each witness getting into that witness's hand?—It would be very desirable. I have often thought of it, but have had difficulty in framing a plan. The way would be, to have an assistant, who would pay the amount to each witness and take his or her receipt.

2911. That would at once get rid of the evil complained of?—I think so. I have had applications from witnesses to know what they have been allowed, and I have told them; and have found that only half has been given them. In one instance a prosecution was commenced against an attorney, but was not followed up. A public prosecutor would correct that.

Mr. *William Foote,* called in; and Examined.

Mr. *W. Foote.*

2912. *Chairman.*] WILL you be good enough to tell the Committee what is your business?—An Attorney.

2913. You have paid, I believe, very considerable attention to the subject of our inquiries?—I have been engaged some years upon the subject.

2914. You have made a digest upon the text relating to the subject, have you not?—Not altogether. I am collecting material for a work; I have not yet published it. I am assistant clerk to conduct the business of two extensive petty sessions.

2915. How long have you held that office?—I have been down there 10 years, but I have been conversant with prosecutions for 20 years.

2916. Are there any evils which you think exist in the present system?—That is rather a large question to enter upon; perhaps you will take some particular head. As Mr. Miles has spoken of the costs of the prosecutions, which is a very great consideration, would you allow me to suggest a return, which I lay before the Committee, and which would at once bring before the Members a statement of the

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the various items of prosecution. Up to this time I have never been able to find any such return; there are different heads spread through a large number of reports, but it is almost impossible to bring them together to arrive at any accurate conclusion.

2917. You suggest that a return should be moved for from each clerk of assize?—Yes, and clerks of the peace. Very often different returns are moved for, which give more trouble to make out than a comprehensive return, because you have to go over different documents in succession. If you move for one return, comprising the whole of the expenditure, you get under one head a correct statement. This is the form of certificate of costs allowed, usually adopted (*producing the same*); there is nothing under the heads of the proposed return, but which can be obtained from the book of allowance by the clerk of indictments or the clerk of the peace.

2918. Will you state whether, in your experience, the want of a responsible public prosecutor causes cases sometimes to be imperfectly got up, and causes a failure of justice?—I think so.

2919. The want of some responsible person to take care that proper evidence is brought forward?—Yes; I have had frequent communications from parties in different parts of the kingdom, and from my own knowledge and experience, I can certainly state that it is the case. In the county of Wilts, and, I think, in Somersetshire, and on the Western Circuit, I know a great number of the clerks to the justices, who are very respectable men, and I do not think they seek for prosecutions; in fact, up to 1848, the clerks to the justices in Wilts conducted all felony cases without a farthing remuneration. Up to that year they were not allowed one single halfpenny for making out depositions, recognizances, and so on. In that year the clerks memorialised the magistrates, and they made an allowance to them.

2920. You have told us that you think that it sometimes happens that, from the want of a public prosecutor, cases are not properly brought forward in court; do you believe also, as a consequence of that, that frivolous prosecutions are brought forward; prosecutions without sufficient grounds?—It would be a very difficult matter to say that, because we must assume that justices would not commit unless they had some reasonable grounds for committal. There are no doubt very trifling and trumpery offences which are brought before the justices, and the case being substantially proved before them, they find themselves, under the present state of the law, compelled to commit.

2921. But without the intervention of the justices are bills preferred?—Not in our county; I think it is very rare; it is the exception, and not the rule.

2922. Then the chief evil of which you would complain is, the want of sufficient care in getting up the prosecution?—Speaking generally throughout the country, there is one difficulty to which I have not heard the witnesses allude, and I think it is a very important feature. Supposing a case is brought before the justices, and it is felt to be weak, they have no means of allowing the expenses of witnesses, unless a committal takes place. Now I think that is a very great evil; because very often, from the uncertainty of what a witness can prove, and whether he can prove sufficient, we are deterred from sending for that witness from a distance. A case very recently occurred of robbery on the railway. There was a witness residing at a considerable distance; there was no means of paying the expenses of the witness if he came up, and it was very doubtful whether the person charged could be committed. Just at the last moment the company passed the witness up.

2923. Mr. *Miles.*] Did he prove to be a necessary witness?—He was a necessary witness; his evidence connected the chain; it strengthened it.

2924. And a conviction took place?—A conviction took place. My attention having been called to the loose way of conducting prosecutions, I was employed in settling various forms for one of the large publishing offices, and then I suggested a series of forms by which a prosecution could be conducted in a more orderly manner. In my own division I have adopted this plan, and it has also been adopted in many other divisions and counties. I have done it for special reasons; in every case which comes before the justices I prosecute, or prefer an indictment, and I have never felt any difficulty at all in it. I have had a great number of cases at a time; the thing has worked well, and I am perfectly convinced that it can be carried out on a much larger scale.

2925. *Chairman.*] It saves expense?—There are other considerations to be regarded,

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regarded, because many things now exist in the law which put in obstacles, by which expenses cannot very well be avoided or lessened, which might be removed. When the depositions are fully taken, with those depositions I send instructions for an indictment.

2926. Do you employ counsel, or draw the indictment yourself?—I consider the preparation of the indictment to be the business of the officer of the court. Then, at the trial, in each case I give one of these minutes of allowance; the order of the court is made out by the clerk of the peace, and it passes into my hands. I make out the items of each witness separately, and each witness signs the receipt for the money; it is a mere memorandum.

2927. Mr. *Miles.*] Where is that done; in the treasurer's office?—No; I myself make it out. I think at Gloucester the treasurer, or some person for him, attends for that purpose. I think it a very great evil, the treasurer not attending at the court of quarter sessions, or having some clerk there, to reimburse the witnesses. I think it might be done.

2928. *Chairman.*] Does any other evil occur to you which results from the want of a public prosecutor besides what you have stated?—I think there are a number of prosecutions which escape being fully entered up from not having some public officer to resort to, to undertake the trouble and risk.

2929. For instance, do you consider it a hardship upon a poor man, that there should be nobody to whom he can apply and call upon to undertake a prosecution for him?—Yes. I consider it a hardship and a very great inconvenience; but that must be qualified in some degree, because in counties where there is a police force, the party aggrieved frequently applies at once to the police; the policeman seeks for the prisoner, and, if apprehended, then he proceeds to see what evidence there is against him.

2930. All that falls upon the policeman?—All that falls upon the policeman.

2931. Do you consider a policeman a proper person to undertake all those duties?—I think it is a part of the policeman's duty; it is certainly part of his duty to trace out and detect crime, and if it is his duty to trace out and detect crime, it is his duty to trace out the evidence to support the charge.

2932. But you have mentioned something more than tracing out the evidence, have you not, because you have said that it devolves upon him to decide whether there is sufficient evidence or not?—The justices will do that upon the examination of the prisoner, because it frequently happens that, as men of experience, when a case is brought before the justices, the justices say, "This evidence is very weak; have you any other evidence to strengthen the case?" The policeman or the constable, or whoever is in charge of the case, says, "Yes, if you will give me a remand for a subsequent day, I can produce it."

2933. I understood you that you thought many cases were not prosecuted at all for want of a public prosecutor?—No, not for the want of a public prosecutor; I did not mean to go to that length.

2934. In the present state of things, I understood you to say that many cases were not prosecuted at all which ought to be prosecuted; is that your opinion?—I must say that I must qualify that in a great degree, because it is not only the absence of a public prosecutor, but it is the burden which the law imposes upon private prosecutors which makes them indisposed to carry on the case, and to have all the trouble and expense of a petty prosecution.

2935. What is that burden?—I might say annoyance, perhaps it would be a better word than "burden"; you very often find respectable persons greatly indisposed to carry on small prosecutions where they have to attend at assizes and sessions.

2936. Mr. *Miles.*] There is considerable loss of time, is there not?—Yes; and not only that, but the annoyance of hanging about the court so many days, and various other little inconveniences which they experience.

2937. *Chairman.*] Have you any remedy which you would suggest?—It is very well known that I am a very strenuous advocate for abolishing the grand jury at the quarter sessions; not at the assizes; and upon that point I have been greatly engaged; I do not think you can carry out any system of public prosecutions unless the grand jury is done away with; it adds to the expense of prosecutions undoubtedly, and I think you would have no difficulty in doing away with it.

2938. Would it not follow that, if you put a stop to the grand jury at sessions, you must put a stop to the grand jury at assizes also?—Certainly not, because the two things are totally distinct; in the one case you have a body of magistrates assembled

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assembled to meet the judges, who are chief magistrates, and who are also representatives of their Sovereign. I do not see that the functions of the grand jury at the quarter sessions, who are merely a body of farmers or tradesmen, are necessary.

2939. Do you conceive that the province of the grand jury is only to receive the Judges?—I do not say that, but I say that the grand jury at the assizes form a very distinct class of persons from those who constitute the grand jury at quarter sessions.

2940. Is it not the principle that the grand jury shall say there is a *primâ facie* case both at the assizes and sessions?—Why I would uphold the grand jury at assizes is this: that if you do away with the quarter sessions grand jury, the retaining them at assizes would meet a very great objection, which many persons I know have entertained against doing away with all grand juries.

2941. Taking it as the principle of criminal justice, if it contributes to the administration of criminal justice to have the grand jury at the assizes, how can you say that you can do otherwise than have the grand jury at the sessions?—Taking it as an abstract principle, I should say, the functions being similar, the necessity also would be similar as to doing away with them, as regards mere functions.

2942. In short, if a prisoner happened to be tried at the assizes, you would have a bill preferred to the grand jury, but if he happened to be tried at the sessions you do not think it necessary?—I hardly think that a fair way of putting it; there is a great ground of objection to doing away with the grand jury at assizes, and there are many reasons, among country gentlemen, which have greater weight among themselves; but, as an abstract principle, the preferring a bill of indictment before either body, I say, is not necessary, if the case has been fully inquired into before the committing magistrate.

2943. Without taking the abstract principle, but looking at it as affecting the administration of criminal justice, in your opinion, does the grand jury contribute or not to the administration of criminal justice?—In my opinion it does not, because when a person is charged, the evidence against him is most fully taken; it is taken down in writing: it is compelled to be taken in writing by the statute, and that writing is transmitted to the court before which the prisoner is to be tried. The grand jury meet for two or three days, and have a vast number of cases to get through, and they have no written evidence before them; the parties go before them and state what they please; it is a mere chance whether a bill is found or not. I think it is a great obstruction of justice.

2944. And yet you would keep it in the case of assizes?—For the reasons which I have stated, not as a matter of necessity, certainly.

2945. Lord *Stanley*.] Can you explain the reason of the difference which you draw between the two?—I have had the means of knowing that country gentlemen do not wish to do away with the grand jury at the assizes; they wish to keep up that body; it also would be a means of meeting many objections which have been made against it, that supposing a public prosecutor were appointed, and there were no other means of preferring a charge against the accused, except through him, there should be an independent court to resort to if necessary; but as to the mere necessity of it, where a charge has been previously made before a magistrate, I must say that I do not see the necessity of it; I think also that every object would be answered by filing an information. If a person wants to proceed criminally where no investigation has been made before the magistrates, or if he wishes to put the power of the court in force, he might file an information which might be acted upon.

2946. Mr. *W. Ewart*.] In point of principle, you object to the grand jury either at sessions or at assizes?—Yes; but there is no doubt that if you took away the quarter sessions grand jury, an agent with their functions would be more useful in the court below.

2947. Mr. *Miles*.] I find in the bill of expenses which you have produced, a charge for the brief of 1 *l.* 1 *s.*?—Yes.

2948. That is a payment to yourself?—That is the ordinary county allowance.

2949. Do you invariably prosecute through counsel?—Except in cases where a man confesses the crime with which he is charged, where there would be no necessity for it.

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2950. In very trifling cases, requiring only the evidence of one witness, you would not employ counsel?—No.

2951. Have you read the Bill which is before the Committee?—I have.

2952. Do you think it would be advisable to carry out the whole system as proposed by that Bill?—I must say I do not.

2953. Will you state to the Committee what you think would be necessary as to the better administration of justice, and what you think would be unnecessary in that Bill?—I think, that confining our views to England, the nucleus exists of a system of prosecution which might be greatly improved and carried out. We have heard the plan proposed of making the clerks to the justices the assistants to a Crown officer, in conducting or getting up prosecutions, which I think might be done. I confess I find no difficulty in it, because I do not see a difficulty in conducting 50 prosecutions, or in conducting 10. If you will allow me, I have a plan prepared, which I should very much like to submit to this Committee, because the question would arise upon that. The proposal which I have to place before the Committee is this: "Proposal for the appointment of Crown Attorneys or Public Prosecutors.—1. In every county, or in such county or place as may be deemed expedient, appoint a competent person to be Crown attorney and public prosecutor for the whole county, or division of a county. 2. In cities and boroughs of considerable population a similar officer to be appointed. 3. Upon circuits a Crown attorney may be appointed for the entire circuit, and have in each county the aid of the local Crown prosecutors. 4. The metropolitan district should have a criminal lawyer of eminence as public prosecutor, and to him the local Crown prosecutors should be empowered to apply upon matters of criminal law, and for his advice and guidance generally in criminal business. 5. Such metropolitan officer, holding a highly responsible position, would greatly relieve the Home Secretary of a considerable portion of criminal business, which would thenceforth devolve upon the metropolitan public prosecutor, to the advantage of the public and to the due administration of justice. 6. The duties of the Crown attorney might, at the commencement, be rather difficult to define, as such officer would have to combine and exercise great caution, skill, vigilance, forbearance, promptitude, and determination, great knowledge of human nature, and an aptitude for business. 7. It would be his duty to investigate all criminal cases for trial, to see that prosecutions at assizes and sessions did not fail from not being properly conducted, to undertake and watch over the conduct of a case, but not unnecessarily to interfere with private individuals who wish to prosecute, but nevertheless to possess the necessary power so to do, and generally to attend to all criminal business; also to take up and conduct any prosecution, either in criminal courts or in petty sessions, when required to do so, or of his own authority upon special occasion, and when the case is of such a nature as to require the interference of the Crown officer; and it is in this respect that all the caution and judgment of such an officer would have to be exercised; for it is not every case in which, for the reason that there is no apparent prosecutor, he is to be called upon; for if such was the case, he might be continually running about to every part of his county on some unimportant matters, which might otherwise have been dealt with. He must necessarily have great latitude allowed to him for the exercise of his discretion in such cases. 8. The Crown attorney must understand thoroughly his position, that he is not to act as mere prosecutor for the Crown, but he must also see that justice is done towards the accused; and whilst protecting the public, must stand, as it were, a mediator between the accuser and the accused, and see that strict justice is done to either party. 9. Upon criminal trials it should be his duty to ascertain that proper allowances for expenses are made to prosecutors and witnesses, and to regulate the payment; for instance, in the county of Wilts, farmers, shopkeepers, mechanics and labourers are allowed precisely at the same rate; considerable alteration and saving might be effected by careful attention being paid to this particular subject. 10. There exists in England great facility for most easily, economically, and effectively working a system of Crown prosecutors and prosecutions. 11. In each county there is a petty session division, in which justices hold meetings, called petty sessions, for the transaction of criminal business, which is managed by their clerk, who is usually, at the present time, an experienced attorney. The officers of such petty session present ready means of communication for all purposes, under a well-arranged general system, and wherever a constabulary force is established, additional means are afforded of facilitating

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'facilitating communications. Ready and convenient channels for the due transaction of business are thus now established throughout a county, between different counties, and throughout the country. There are at the present time many cases of no serious character, and which need not require the personal attendance of a Crown prosecutor. 12. Clerks to magistrates might be made valuable assistants to such Crown attorney, by forwarding with each case the names and residences of the prosecutor and witnesses, with any remarks respecting them or their evidence, and any suggestions as to additional evidence, or other matters which ought to be considered, or which might be necessary to bring under the notice of the Crown officer; and, through the magistrates' clerks, the Crown officer would have the power of having any facts further investigated and evidence collected. 13. In the place of the magistrates' clerks returning the depositions to the clerks of assize and of the peace immediately previous to the assizes and sessions, they must return them to the Crown attorney immediately after the case is taken; he will then have time to peruse and arrange the cases. At the present time there are many cases of no serious character, and which need not require the personal attendance of a Crown prosecutor; but it is a source of complaint, that where individuals are not, from various reasons, willing to come forward to prosecute, there is no authorised public officer to undertake the case. Now in such instance the Crown attorney might authorise some local authority, such as the clerk to the justices, to see that such cases are properly investigated and presented to the justices, so as to insure proper attention being paid thereto. 14. Provision must be made to defray the costs of such proceedings, for the true reason of considerable cause of complaint which at present exists is, that no person is willing to prosecute certain offences, as a private person may incur great trouble and expense without the possibility of being remunerated. 15. The public prosecutor, or Crown attorney, must not be a public informer. He will, for his own sake and for the safety of individuals, require certain conditions to be complied with previous to his services being called into action; in some cases a complaint in writing by a party; in others a request in writing from a justice. Again, a similar request from a public Board or authority, but in all cases the Crown attorney must have ample power to act upon his own responsibility, with such formal requisition in cases wherein he considers that his office ought to be exercised. 16. The Crown attorney to be appointed by the Crown, to be subject to the control of the Home Secretary, who is to have power to make regulations touching the office. 17. To be paid by a fixed salary, with an allowance for travelling expenses, clerks, and office expenses." I call the parties Crown attorneys; that is, taking the old name, it would include either barristers or attorneys. I should not limit it to any particular branch of the profession.

2954. Having read the learned Chairman's Bill, does not it strike you, that the functions which you place in the Crown attorney are very much indeed what our Chairman would place in the district agent?—Yes; but in the one instance you could work a county at a very small expense; in the other instance, where you appoint, as I understand the Bill, public prosecutors, and deputy public prosecutors, and assistant public prosecutors, and deputy assistant public prosecutors, and district agents, there would be a very great difference in the expenditure.

2955. My question went particularly to this: having listened to what you have been reading, it appears to me that the functions which your Crown attorney would perform are very like the functions which the district agent of our Chairman would perform?—Yes.

2956. Then if that is the case, that part of the Bill of our learned Chairman you would adopt relative to district agents?—Yes; but you will observe that my district agents are the clerks to the justices, and another part of the consideration would be to assume that those parties would be paid by a fixed salary for all business.

2957. Then you would have an alteration made as to the payment of the clerks to the magistrates?—Certainly; and I think a great deal of the odium which the system has gone through, as has been stated, is from the justices' clerks not being paid by salary.

2958. Did you hear the Recorder examined this morning?—I was present during the latter part of his evidence.

2959. He suggested that it would be very possible to carry out some such system as this; to make the clerks to the magistrates the prosecutors, to pay them by

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by salary, and to make the clerk of the peace the district agent?—Yes, I heard that.

2960. Does that appear to you a less cumbrous and a less expensive mode of doing it?—It is substituting one party for another. If the clerk of the peace could undertake the duties of the office, as merely prosecutor of cases at quarter sessions, I do not see any objection to his undertaking them; all you want is a head to receive and arrange the depositions, and communicate with the district agents, in case it should appear that there was not sufficient evidence on the face of the depositions, or any other matter. I think that could be very easily arranged. I do not see any difficulty in conducting those prosecutions, if you have people of experience; because I have had many and serious cases, with almost every description of crime, and have had no difficulty in conducting the cases. Why I propose having a chief in London is, that it will take off a great deal of the criminal business from the Home Office, and the Crown agent, whether the clerk of the peace, or any independent person could communicate direct with that person.

2961. Does not it appear to you that the Attorney-general would be the proper person for such a purpose?—His duties are very onerous. I do not know what they are. If he could undertake it, I think he would be the very best person to do it.

2962. If you gave him a proper staff, so as to enable him to do it, do not you think he is the proper person?—Yes; only it should be under the sanction of the Home Office,—another branch of the Home Office. There is no difficulty in carrying out the system effectually and cheaply. What I would suggest is, to pick out a certain number of counties, and try it.

2963. Lord *Stanley.*] Would you make it optional with the counties to adopt that system in the first instance?—No; because I think in a matter of this sort it ought to rest with the Crown.

2964. But you propose to try it as an experiment?—Yes.

2965. Would you do it compulsorily, as an experiment, in one county?—Of course it should be compulsory.

2966. *Chairman.*] Which county would you select?—That I should leave to the authorities. I should not try one only, because I think it would be rather invidious and unfair; I should take three or four. Take an agricultural county, take a commercial county, and take a manufacturing county.

2967. Mr. *Miles.*] But if the mischiefs which exist now in criminal prosecutions exist pretty well throughout the country, do you not think it would be very much better to pass a general law upon the subject than to be dabbling by applying it to one county or the other?—I am decidedly of opinion that it would be beneficial to pass a general law, but we know the difficulties by which these things are met. Example is a great thing, and when it is effectively carried out in one place, another will adopt it.

2968. Lord *Stanley.*] Taking the average size of our agricultural counties, have you calculated what amount of staff and what expense the system would require?—I should agree pretty nearly with Mr. Horn's statement; it is I think pretty nearly accurate, but there is an estimate which none of the gentlemen have touched upon whom I have heard, namely, that supposing the Criminal Justice Bill comes into operation it would alter all calculations and everything; and it will effect a great saving. There is another little matter which I think should be laid before the Committee; the number of persons committed for the year 1853 in England and Wales was 27,057; six counties furnished 12,250 of them; 12 counties together furnished 17,230; so that it is not altogether absolutely necessary to introduce a system throughout the country; 14,334 were imprisoned under six months.

Mr. *Frederick Stephen Austin,* called in; and Examined.

Mr. *F. S. Austin.*

2969. *Chairman.*] WILL you state what you are?—Assistant to the town clerk of Manchester.

2970. Is the same system adopted at Manchester as at Liverpool?—Exactly.

2971. How long has that system been in operation at Manchester?—Ever since the establishment of the borough; it was a new borough under the Municipal Corporations Act.

2972. Do

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Mr. *F. S. Austin.*

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2972. Do you recollect the time before the system was adopted in Manchester?—No; I have only been there three years and a half.

2973. Does the management of the criminal business fall under your notice?—It does; I have the entire control of it.

2974. How do you think the system operates?—I think it operates perfectly well.

2975. Do you think it saves expense?—I think it does.

2976. Do you think it prevents frivolous prosecutions?—I think so, decidedly.

2977. And do you think that it secures the proper bringing into court of those cases which are prosecuted, so that they do not fail from insufficient evidence?—Yes.

2978. You think those three advantages arise from the system of a public prosecutor?—I think so.

2979. Mr. *Solicitor-General for Ireland.*] Were you present during Mr. Walter's evidence?—I was.

2980. And do you concur generally in his views?—I do. The acquittals are about 10 per cent. in Manchester; I heard it stated this morning that the general average was about 28 per cent. Our acquittals are not quite 10 per cent., or perhaps 10 per cent. in round figures.

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APPENDIX.

Appendix, No. 1.

DOCUMENTS delivered in by the Right Hon. *Joseph Napier*, M.P., 3 July 1855.

[These Letters were prepared, under my direction, by Mr. Seed, with a view to carry into effect the proposed Improvement of our System, which had been considered by myself and Mr. Hayes, and after full conference with Mr. Seed and others, had been approved.]

SUGGESTED Letter to the Inspector-General of Constabulary.

Sir, Dublin Castle, October 1852.

HIS Excellency the Lord Lieutenant having, in conjunction with the Attorney-general, had under his consideration the present procedure in the various departments connected with criminal prosecutions in Ireland, I am directed to inform you that his Excellency's attention has been called to the delay which frequently occurs in the proper investigation of serious cases, in consequence of the Crown solicitor of the circuit not being promptly apprised of the commission of crime.

To obviate this inconvenience to the public service, the Attorney-general has recommended that immediately on the occurrence of any outrage of moment, the sub-inspector of the district should furnish a Report of it to the Crown solicitor, in order that prompt measures may be adopted for its investigation; and his Excellency having concurred in the importance of that recommendation, I am directed to request your co-operation in having it carried into effect.

I have, &c.,
[Chief or Under Secretary.]

The Inspector-general of Constabulary,
&c. &c. &c.

SUGGESTED Circular to the Resident Magistrates, and Magistrates at Petty Sessions.

Gentlemen, Dublin Castle, October 1852.

HIS Excellency the Lord Lieutenant, in conjunction with Her Majesty's Attorney-general, having had under consideration the present procedure in the several departments connected with the administration of criminal justice in this country, I am directed to inform you that their particular attention has been called to the irregularity which prevails in the return of informations in cases which become the subject of prosecution, and to the laxity which generally exists in taking the examinations of prosecutors.

It is unnecessary to remark to you that in all cases the informations are the foundation upon which the prosecution is built, and that the ends of justice have often been defeated through want of proper attention in their preparation, or to inform you that it is by no means unusual to entrust this duty to the clerks of petty sessions, the magistrates themselves performing merely the judicial part of reading over the informations and administering the oath.

With the view of remedying these evils, his Excellency has to request that in future the resident magistrate and magistrates at petty sessions, will take care that all informations taken by them shall be forthwith returned, either by themselves or their clerk, to the office of the clerk of the Crown or peace, in order that such of them as may be deemed advisable shall be transmitted to the Crown solicitor of the circuit, who will submit them to the proper authorities, and will take care that all proper means are adopted for their effectual prosecution.

His Excellency has also to direct the attention of the magistracy to the importance of a careful preparation in taking the examinations of prosecutors, and having them in their own handwriting, in all serious cases (if practicable); and, with the view of assisting them in the investigation of cases requiring more than ordinary attention, it has been arranged that the sessional solicitors shall attend on such occasions (or the Crown solicitor of the circuit himself, if necessary), on the requisition of the magistrates, to render them all the assistance in their power: and in taking the recognizances of the accused, it will be advisable and requisite

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requisite that careful inquiry should be made into the solvency of the bail, in case it should eventually be found necessary to proceed upon them.

His Excellency feels that a careful and judicious observance of these important duties will tend materially to the improvement of the administration of justice, and to facilitate the effectual suppression and prosecution of crime.

I am, &c.

To Esq. [Chief or Under Secretary.]
Justice of the Peace. &c.

SUGGESTED Circular to the Sessional Solicitors.

Sir, Mountjoy-square, October 1852.

HAVING for some time passed had under my consideration the procedure in the several departments connected with the administration of justice in Ireland, with a view to its revision and amendment, I have to inform you that I have now completed an arrangement, which, if properly carried out, and zealously acted upon by the several officers engaged in these departments, will I have no doubt effect a vast improvement.

The duties of the sessional solicitors having been hitherto confined to the prosecution of cases at quarter sessions merely, it is intended under the contemplated arrangement to extend their duties, by requiring them to assist the magistrates in the investigation of important cases, and the Crown solicitor of the circuit, in such matters and on such occasions as may be considered necessary.

They will be required to be in constant communication with the circuit Crown solicitor, and to transmit to him, once in each fortnight, copies of all informations in the class of cases usually prosecuted by them at sessions (with which the clerks of the peace will be directed to furnish them), in order that such cases may receive due consideration, and that such directions may be given respecting them as will tend to their effectual prosecution.

They will immediately after each sessions have to report to the Crown solicitor the result of the several prosecutions, and especially whether the informations have been returned by the magistrates and clerks of petty sessions to the clerk of the peace within the time specified by Act of Parliament.

I have also to call the attention of the sessional solicitors to the importance of the enforcement of estreats on forfeited recognizances in all serious cases, where there is reason to believe that either the prosecutors or the traversers have been kept out of the way, or have absented themselves either through undue influence, intimidation, or wilful neglect. Many instances have occurred where the ends of justice have been defeated in this respect through want of proper attention on the part of the public officers, and I am quite persuaded that the enforcement of estreats, in certain cases, would often be more effective than the prosecution of the party.

Further, in important cases in which it may be necessary or advisable for the sessional solicitor, he may directly apply to the Government, or to the Attorney-general or law adviser, in any matters connected with their department; but in the ordinary course of business, application may be made to the circuit Crown solicitor, who will then take care that it shall have proper and prompt attention; and finally, it will be specially required, that no sessional solicitor shall interfere in any way either in the registry of electors, or in any election matters whatsoever within their own district, such interference being considered quite incompatible with the impartial and satisfactory discharge of his public duties. It is also intended that the sessional solicitors shall not act in criminal cases for private parties, either to prosecute or defend, without a special licence from the Executive Government.

In conclusion I have to acquaint you, that, in consideration of the intended extension of the duties, and restriction of the practice of the sessional solicitors, I have recommended that their present salaries shall be increased in a moderate ratio.

I am, &c.

The Sessional Solicitor [Attorney-General.]
for the County of .

SUGGESTED Circular to the Clerks of the Peace.

Sir, Dublin Castle, October 1852.

THE Attorney-general, having had under his consideration the present mode of procedure in regard to cases prosecuted by the sessional solicitor at quarter sessions, I am directed by his Excellency to request that in future you will, once in each fortnight, furnish to the sessional solicitor of your county, copies of all informations in the class of cases usually prosecuted by him at sessions, in order that they may be transmitted without delay to the Crown solicitor of the circuit, who will take care that proper steps are taken for their effectual prosecution.

The Attorney-general has deemed it necessary to recommend this step, in consequence of the objections which have hitherto existed, and which have very reasonably been made by the sessional solicitors themselves, to the present practice of not furnishing them with the informations in proper time to enable them to prosecute with effect, it being the practice in most instances not to give the informations to the solicitor until the sitting of the court, thereby rendering any previous preparation or investigation of the case impracticable.

The

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The Attorney-general has also thought it right to bring under his Excellency's consideration the laxity which has prevailed in the estreating of the forfeited recognizances of prosecutors and traversers in cases of importance, many failures of justice having occurred through want of proper attention in this respect; and I am therefore desired by his Excellency to inform you, that the sessional solicitors have been instructed in this important matter, and to request your zealous co-operation with him in the enforcement of estreats on forfeited recognizances, in such cases as the court may think proper to comply with the sessional solicitor's application in that behalf.

I am, &c.
[Chief or Under-Secretary.]

The Clerk of the Peace
for the County of

SUGGESTED Circular to the Clerks of the Crown.

Sir, Dublin Castle, October 1852.

THE Attorney-general having had under his consideration the mode of procedure in the various departments connected with the administration of criminal justice in Ireland, his attention has been directed to the delay which often occurs in the transmission of informations from the offices of the clerks of the Crown to the Crown solicitors, which has in many instances led to considerable inconvenience to the public service. He is aware, however, that very frequently this delay has arisen either from the want of punctuality or the negligence of the clerks of petty sessions in not returning informations in proper time to the Crown office; and therefore, with a view of remedying this evil, he has taken measures to ensure the punctual return of all informations to the offices of the clerks of the Crown and peace, without delay, after they leave the hands of the magistrates.

Under these circumstances, I am directed by the Lord Lieutenant to request that in future you will, once in each fortnight, transmit to the Crown solicitor of the circuit copies of any informations which you may have received in the class of cases usually prosecuted by the Attorney-general, in order that he may adopt, without delay, such measures as may be deemed necessary to their effectual prosecution.

I am, &c.
[Chief or Under-Secretary].

The Clerk of the Crown
for the County of

Martello Lodge, Ballybrack,
20 September 1852.

My dear Sir,

ON reading over the statement which I sent you last week, I find there is one matter which I omitted to advert to, and, as I think it of importance, I know you will excuse my calling your attention to it. I allude to the mode of prosecuting cases at quarter sessions.

Until within the last few years, the clerks of the peace, by direction of the Attorney-general, were obliged to send copies to the circuit Crown solicitor in Dublin of the informations in such cases as were generally prosecuted at sessions, for the purpose of his reading them over, and directing such proofs as were necessary, and such inquiries as appeared to him to be advisable. The good effect of this was obvious; instead of the informations being put into the hands of the sessional solicitor, as the practice is now, for the first time on his going into Court (thus rendering any previous preparation or inquiry impracticable), it enabled him to prosecute with much better chance of success than at present. As I know that this has been made the subject of complaint by many of the assistant barristers, and as there is no doubt that it has led to a failure of justice, I just mention the matter for your consideration. It can be easily remedied, and I think would be of great service, as so many cases of importance are now prosecuted at quarter sessions.

Believe me, &c.
(signed) *S. Seed.*

The Attorney-General.

[This was prepared by Mr. *E. Hayes*, Q. C., and approved by me.—*J. Napier.*]

SUGGESTIONS for the Improvement of the Administration of Criminal Justice in *Ireland.*

PETTY SESSIONS.

IN all cases of indictable offence, a copy of the depositions to be made by the petty sessions' clerk, and forwarded at once to the Crown solicitor for his direction.

The petty sessions' clerk to be paid for this copy at the rate of 1½*d.* per folio of 92 words (*see* 14 & 15 Vict. c. 93, s. 14, *ad finem*), or such lesser sum as the Crown solicitor shall determine to be a proper compensation, if he shall be of opinion that unnecessary prolixity has been used in the preparation of the informations.

In case the magistrate shall not, at the time of committing or holding the prisoner to bail, have had any special instructions from the law officers of the Crown as to the trial, whether it

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it shall be at assizes or sessions, the following course is suggested for his adoption:—All cases of simple larceny, and of common assault arising out of ordinary differences, he shall at once remit to the quarter sessions, unless in custody cases, where an assizes shall intervene. All capital cases, and all cases arising out of or connected with political or religious differences, shall be sent to the assizes; so also all cases against the Coin Act, the Post-office Act, the Customs, Excise, or Stamp Acts, and, generally, all custody cases where the assizes shall occur before the quarter sessions. In cases to which the foregoing directions do not apply, the magistrate, in framing the recognizance to surrender, prosecute, or give evidence, shall make the condition to be "to attend either the court of assizes at D. or the quarter sessions for the E. division of the county of F., which shall be held next after the expiration of a ten days' notice to that effect to be served at your dwelling in , in the county of , and at such assizes or sessions as the said notice shall require, to appear," &c. &c.

[The subject of sessional prosecutor's salary having been considered, the following scale was approved by me, and intended to be recommended for adoption by the Treasury.—*J. Napier.*]

Prepared under Mr. *Napier's* direction in 1852.

SUGGESTED Increase of Salaries to the Sessional Solicitors.

Circuit	County		£.	£.
Leinster Circuit	Tipperary	Increase of	100	
	Waterford	"	75	
	Wexford	"	75	
	Kilkenny	"	75	
	Wicklow	"	50	
				375
Munster Circuit	Clare	"	75	
	Limerick	"	100	
	Kerry	"	75	
	Cork	"	100	
				350
Connaught Circuit	Roscommon	"	75	
	Leitrim	"	50	
	Sligo	"	50	
	Mayo	"	75	
	Galway	"	100	
				350
North-East Circuit	Antrim	"	75	
	Down	"	75	
	Armagh	"	75	
	Monaghan	"	75	
	Louth	"	50	
	Drogheda	"	25	
				375
North-West Circuit	Cavan	"	75	
	Longford	"	75	
	Fermanagh	"	75	
	Tyrone	"	75	
	Donegal	"	75	
	Derry	"	75	
				450
Home Circuit	Meath	"	75	
	Westmeath	"	75	
	King's County	"	75	
	Queen's County	"	75	
	Carlow	"	50	
	Kildare	"	50	
				400
TOTAL Amount of increased salaries to the sessional solicitors provided for as per other side			£.	2,300

LETTERS

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LETTERS showing the Business done by Sessional Prosecutor at Carlow.

COUNTY CARLOW.

Carlow, 3 July 1852.

I HAVE the honour to state, that at our June Quarter Sessions the following cases were disposed of:

Tried.	At Carlow:	Convicted.
7	Burglary	5
34	Larceny	28
5	Ditto from the person	3
1	Sheep-stealing	1
2	Obtaining money under false pretences	–
4	Affray	4
3	Assault	1
	At Tullow:	
4	Burglary	2
8	Larceny	4
1	Forcible entry	1
1	Cow-stealing	1
1	Assault	1
71		51

I beg respectfully to suggest, that our efficient sessional Crown solicitor be specially directed to take charge of, and carry on important prosecutions, and that he be furnished with funds to procure Crown summonses in burglaries, cattle-stealing, &c., for necessary witnesses. Unless some arrangement of the sort be adopted, it would be better to have such cases excluded from the quarter sessions, and held over for the assizes.

J. Wynne, Esq.,
&c. &c. &c.

C. H. Tuckey, R.M.

Clerk of the Peace's Office, Carlow,
16 July 1852.

Sir,

I TAKE the liberty of calling your attention, as first law officer of the Crown, to the inefficient provision that is made for transacting the criminal business at quarter sessions, and contrasting the efficient staff that is provided for the assizes, where, comparatively speaking, there is nothing to be done. The number of persons indicted and tried at the several quarter sessions for this county (Carlow) for the last four years, is as follows, as will appear from the annual Returns made by me, viz.:

1848	478
1849	527
1850	410
1851	312
	4) 1,727
	431

being an average of 431 for the last four years, or upwards of 100 persons for trial at each quarter sessions. At the last summer assizes there were not more than 10 cases for trial, in two of which the indictments were prepared by me at quarter sessions, and were ready to be tried at sessions, and the business was disposed of in the Crown Court in about two hours.

At quarter sessions there is a local sessional prosecutor, whose duty is to prosecute in cases of assaults and riots, and, as a favour to the court and to the clerk of the peace, he examines the witnesses in felony cases, which are very numerous, for which he receives a salary, I believe, of 75 *l.*, but does not interfere further.

At

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At the assizes there is, in addition to the clerk of the Crown, a Crown solicitor, whose salary for doing the business at the two assizes for this county and Queen's County is 500 *l.* per annum, and an allowance of 200 *l.* for clerks and expenses, and who also has the assistance of the Crown counsel, and can apply for all extra expenses to Government. Now, in the county of Carlow there is but seldom a serious case for trial at the assizes, and the principal part of the felonies, riots, assaults and misdemeanors are disposed of at quarter sessions, and the average number is, at the least, 5 to 1 between the quarter sessions and assizes in criminal cases, and about 150 to 1 in the civil cases, besides the registry, which is not the least.

The disproportion is very manifest, and no sufficient remuneration is provided for the officers of the court at quarter sessions for this increase of business. On the contrary, their legal fees have been almost altogether withdrawn, and business of all kinds, criminal and civil, have been sent to the quarter sessions, and no sufficient fees or salary provided; and no assistance is given whatever in the preparation of indictments, which now require considerable skill and legal knowledge, in order that they may be correctly done.

Trusting that, when leisure permits, you will look into this matter, and communicate with our assistant barrister, Mr. R. Andrews, and that you will pardon the liberty I take, as a county officer, in bringing before your notice this subject,

I remain, &c.
(signed) *A. K. Humfrey,*
Clerk of the Peace for the County of Carlow.

The Right Hon.
The Attorney-General for Ireland.

Appendix, No. 2.

Appendix, No. 2.

Papers furnished by Captain *John H. Hatton,* referred to in Answers to Questions 1340 to 1347.

SENTENCES on Prisoners committed for Trial during Year ending March Assizes inclusive, 1851.

DATE.	AT ASSIZES OR SESSIONS.	GUILTY.	NOT GUILTY.	NOT A TRUE BILL.	TOTAL.
9 April 1850	Quarter sessions	42	10	2	54
1 July -	Quarter sessions	123	24	8	155
18 - -	Adjourned sessions	33	4	2	39
20 - -	Assizes	46	34	6	86
14 Oct. -	Quarter sessions	133	11	6	150
30 Dec. -	Quarter sessions	134	15	8	157
6 March 1851	Adjourned sessions	120	10	7	137
11 - -	Assizes	92	37	5	134
	Total	723	145	44	912

SENTENCES on Prisoners committed for Trial during the Year ending with March Assizes inclusive, 1852.

DATE.	AT ASSIZES OR SESSIONS.	GUILTY.	NOT GUILTY.	NOT A TRUE BILL.	TOTAL.
8 April 1851	Quarter sessions	34	7	8	49
30 June -	Quarter sessions	123	28	14	165
22 July -	Adjourned quarter sessions	40	3	6	49
24 - -	Summer assizes	56	27	7	90
13 Oct. -	Michaelmas sessions	130	30	12	172
5 Jan. 1852	Epiphany sessions	151	25	11	197
3 March -	Adjourned sessions	113	21	8	142
9 - -	Spring assizes	102	40	4	146
	Total	749	181	70	1,012

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SENTENCES on Prisoners committed for Trial during the Year ending with March Assizes inclusive, 1853.

DATE.	AT ASSIZES OR SESSIONS.	GUILTY.	NOT GUILTY.	NOT A TRUE BILL.	TOTAL.
5 April 1852	Easter sessions - - - -	59	20	5	84
28 June -	Midsummer sessions - - -	144	15	10	169
19 July -	Midsummer adjourned sessions -	20	2	1	23
21 - -	Summer assizes - - - -	53	17	2	72
18 Oct. -	Michaelmas sessions - - -	109	29	13	151
3 Jan. 1853	Epiphany sessions - - -	123	18	16	157
8 March -	Adjourned sessions - - -	108	24	7	139
12 - -	Spring assizes - - - -	76	36	2	114
	TOTAL - - -	692	161	56	909

SENTENCES on Prisoners committed for Trial during the Year ending with March Assizes inclusive, 1854.

DATE.	AT ASSIZES OR SESSIONS.	GUILTY.	NOT GUILTY.	NOT A TRUE BILL.	TOTAL.
5 April 1853	Easter quarter sessions - -	44	16	3	63
27 June -	Midsummer quarter sessions -	125	25	7	157
14 July -	Midsummer adjourned sessions -	21	13	- -	34
16 - -	Summer assizes - - - -	34	29	2	65
17 Oct. -	Michaelmas sessions - - -	172	29	9	210
29 Nov. -	Michaelmas adjourned sessions -	72	13	5	90
2 Jan. 1854	Epiphany sessions - - -	51	14	2	67
7 March -	Epiphany adjourned sessions -	141	26	14	181
11 - -	Lent assizes - - - -	73	40	5	118
	TOTAL - - -	733	205	47	985

SENTENCES on Prisoners committed for Trial during the Year ending with March Assizes inclusive, 1855.

DATE.	AT ASSIZES OR SESSIONS.	GUILTY.	NOT GUILTY.	NOT A TRUE BILL.	TOTAL.
4 April 1854	General quarter sessions - -	33	6	1	40
16 May -	Adjourned quarter sessions -	82	22	6	110
26 June -	General quarter sessions - -	65	21	1	87
26 July -	Adjourned quarter sessions -	47	11	11	69
2 August -	Summer assizes - - - -	47	25	7	79
16 Oct. -	General quarter sessions - -	129	36	11	176
29 Nov. -	Adjourned quarter sessions -	71	15	4	90
1 Jan. 1855	General quarter sessions - -	69	23	3	95
6 March -	Adjourned quarter sessions -	112	23	6	141
12 - -	Lent assizes - - - -	56	32	3	91 *
	TOTAL - - -	711	214	53	978

* One traversed to next assizes. One ordered to be kept in strict custody until Her Majesty's pleasure respecting her shall be known (insane).

J. H. Hatton.

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Appendix, No 3.

Appendix, No. 3.

PAPERS furnished by Mr. *Richard Hankins.*

MEMORANDUM upon Criminal Prosecution Expenses in *England* and *Wales.*

THE first charge upon the public funds for this service was made by the late Sir Robert Peel, in 1835, in consequence of a prevailing feeling that the landed and agricultural interests were unfairly taxed, and a vote of Parliament was taken for a sum calculated to meet one-half, or 50 per cent., of these expenses.

The payments for the latter half of that year to the 31st December amounted to the sum of 35,184 *l.*, or about 70,000 *l.* per annum.

The payments for the following year (1836) amounted to 82,944 *l.*, and for 10 years to 1845 inclusive their annual amount varied from that sum to 134,566 *l.*, averaging 108,745 *l.*, or an annual average increase of 38,000 *l.* during the 50 per cent. period.

In 1846 Parliament decided that the whole expense should be borne upon the public income, and the amount of the annual charge for the years 1847 to 1853, both inclusive, varied from 182,215 *l.* to 249,753 *l.*, giving the annual average of 227,165 *l.*; but the present charge being not less than 249,000 *l.* per annum, shows that, however these expenses may have lessened in particular years, a steady increase in them has continued, until they have exceeded in amount those of 1835 by 100,000 *l.*

Accompanying this are the following Tabular Statements for the year 1853; namely—

1. Of the Number of Prosecutions, with the average Cost of each, distinguishing Assizes from Sessions, in the different Counties and Divisions of Counties in England and Wales.
2. A similiar Statement with respect to Boroughs and Liberties.
3. The Counties classed according to Circuits.
4. The Counties, with the principal Boroughs in each.
5. The large and principal Cities and Boroughs only compared with each other.

The great discrepancy which runs through the whole of these comparative averages, both as to the counties and boroughs, as well as in districts embracing the same locality, shows the urgent necessity of some fixed rule being established with regard to what items of expense should be hereafter allowed, and thereby secure, as far as possibly can be, under a system of fees, an uniform and economical charge throughout the country.

Single prosecutions may frequently vary greatly in amount, and yet be satisfactorily explained by the altered circumstances of each case; but there can be no good reason assigned, when the average is taken of a large number of prosecutions, why the costs in one case should so far exceed those of another.

Richard Hankins.

July 1855.

No. 1.—COUNTIES.

A STATEMENT, for the Year 1853, of the Number of PROSECUTIONS, with the Average Cost of each, distinguishing Assizes from Sessions, in the different COUNTIES and DIVISIONS of COUNTIES in *England* and *Wales.*

	NUMBER OF PROSECUTIONS.		AVERAGE COST OF EACH PROSECUTION.	
	SESSIONS.	ASSIZES.	SESSIONS.	ASSIZES.
ENGLAND:	*No.*	*No.*	£. *s.* *d.*	£. *s.* *d.*
Bedford	104	38	8 7 -	12 17 4
Berks	142	60	11 19 -	17 17 4
Bucks	158	59	12 - -	17 18 -
Cambridge	86	26	9 1 -	22 - -
Chester	770	145	11 18 -	32 16 3
Cornwall	122	79	7 11 -	13 4 4
Cumberland	108	34	14 16 8	20 10 7
Derby	112	75	14 6 6	19 8 9
Devon	303	88	10 12 2	21 13 9

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	NUMBER OF PROSECUTIONS.		AVERAGE COST OF EACH PROSECUTION.	
	SESSIONS.	ASSIZES.	SESSIONS.	ASSIZES.
ENGLAND—*continued.*	*No.*	*No.*	£. s. d.	£. s. d.
Dorset	227	36	7 3 –	12 10 6
Durham	239	63	11 9 1	18 19 4
Essex (half year)	182	27	9 7 –	15 13 8
Gloucester	353	127	8 18 –	14 11 9
Hants	297	119	10 14 –	19 4 4
Huntingdon	60	23	12 13 –	15 14 –
Hereford	131	35	12 – –	21 10 –
Hertford	165	18	8 19 –	24 4 5
Kent	394	155	7 3 8	13 3 8
Lancaster	1,341	187	7 11 4	25 14 –
Leicester	128	25	12 18 –	16 2 4
Lincoln, Lindsey	195	20	11 5 7	18 4 –
Lincoln, Kesteven	54	9	7 10 8	29 – –
Lincoln, Holland	78	9	10 2 –	28 13 4
Middlesex	3,190	- -	2 4 6	—
Monmouth	239	51	11 13 1	18 4 –
Norfolk	401	69	5 13 6	19 – –
Northampton	130	33	10 13 –	21 12 8
Northumberland	84	26	11 11 –	23 – –
Notts, South	96	24	10 6 –	15 17 6
Notts, North	55	6	11 8 –	20 6 8
Oxford	133	80	16 3 3	18 17 –
Rutland	17	5	7 – –	15 4 –
Somerset	330	106	8 16 4	16 10 9
Salop	147	39	9 9 –	16 1 6
Stafford	671	143	9 12 4	22 7 10
Suffolk, Ipswich	79	15	9 1 6	21 5 4
Suffolk, Beccles	67	10	9 3 3	18 2 –
Suffolk, Bury	125	21	10 1 3	15 1 –
Suffolk, Woodbridge	36	6	5 14 –	18 13 4
Surrey	834	47	4 2 10	15 8 1
Sussex, West	88	18	9 2 3	16 9 –
Sussex, East	267	43	8 10 9	12 6 6
Warwick	200	182	9 9 4	15 14 11
Westmoreland	23	11	14 16 6	22 7 3
Wilts	170	116	9 16 9	15 10 4
Worcester	352	81	9 9 6	21 7 7
York, North	149	17	10 6 6	27 1 2
York, East	112	19	10 10 10	35 13 8
York, West	869	110	9 1 –	34 10 6
WALES:				
Anglesea	38	12	12 10 –	21 6 8
Brecon	32	18	9 2 –	27 3 4
Cardigan	10	11	15 14 –	26 16 4
Carnarvon	41	25	15 11 2	25 16 –
Carmarthen	36	9	12 10 –	21 13 4
Denbigh	61	21	18 – –	23 3 –
Flint	22	14	18 3 –	23 11 5
Glamorgan	308	58	8 11 3	20 3 6
Merioneth	22	1	20 4 6	36 – –
Montgomery	57	8	11 7 4	18 10 –
Pembroke	32	33	12 17 6	22 13 4
Radnor	12	8	10 13 –	21 7 6

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Appendix, No. 3.

No. 2.—BOROUGHS.

A STATEMENT, for the Year 1853, of the Number of PROSECUTIONS, with the Average Cost of each, distinguishing Assizes from Sessions, in the several BOROUGHS, &c., throughout *England* and *Wales*, with the exception of those of minor Importance.

	NUMBER OF PROSECUTIONS, WITH THE AVERAGE COST OF EACH.							
	SESSIONS.				ASSIZES.			
	No.	£.	*s.*	*d.*	*No.*	£.	*s.*	*d.*
Abingdon	15	6	10	8	—	—		
Banbury	11	7	1	10	—	—		
Barnstaple	8	6	10	-	3	44	-	-
Bath	96	6	13	6	6	36	13	4
Bedford	25	9	16	-	—	—		
Berwick	16	13	6	3	1	40	19	-
Birmingham	326	5	2	7	—	—		
Bolton	89	7	2	-	5	31	4	-
Bradninch	7	6	6	-	—	—		
Bridgnorth	16	9	13	9	3	20	13	4
Bridgwater	17	5	-	-	3	5	7	-
Bristol	206	4	19	9	—	—		
Bury St. Edmund's	24	9	-	-	2	11	10	-
Cambridge	58	9	13	9	6	15	16	8
Chester	68	9	5	3	—	—		
Chichester	11	3	4	-	—	—		
Canterbury	36	5	17	9	—	—		
Carmarthen	5	14	4	-	9	30	6	8
Colchester	32	8	2	-	4	16	10	-
Deal	7	4	5	8	—	—		
Derby	23	16	1	-	3	15	6	8
Devizes	3	5	13	4	5	8	16	-
Devonport	32	6	18	1	—	—		
Dover	46	7	10	10	3	15	-	-
Ely, Isle of, Liberty	69	12	5	2	—	—		
Exeter	44	7	-	-	18	12	4	5
Faversham	6	3	13	4	—	—		
Falmouth	8	4	10	-	—	—		
Folkestone	12	8	15	-	1	20	-	-
Gloucester	81	8	2	5	7	16	14	3
Grantham	4	6	-	-	—	—		
Gravesend	27	7	15	6	9	12	9	-
Hastings	29	4	13	1	1	23	-	-
Hereford	29	11	14	6	4	14	15	-
Harwich	11	7	18	-	3	18	-	-
Haverfordwest	14	13	1	5	3	37	13	4
Hull	161	10	4	3	8	46	5	-
Havering-atte-Bower	17	4	7	-	2	9	-	-
Ipswich	59	8	15	7	4	21	5	-
Lynn, King's	33	16	3	-	—	—		
Leeds	305	9	4	2	40	29	15	-
Leicester	55	10	10	10	9	14	11	1
Liverpool	442	9	9	-	56	18	-	-
London	301	3	4	9	—	—		
Lichfield	29	9	7	7	—	—		
Ludlow	18	6	18	4	—	—		
Maidstone	41	6	17	1	1	11	-	-
Manchester	551	7	11	3	60	21	2	-
Maldon	7	10	5	8	—	—		
Newcastle-under-Lyne	23	5	17	4	—	—		
Newcastle-upon-Tyne	43	7	-	5	35	10	16	6
Newbury	6	12	16	8	—	—		
Newark	8	8	17	6	—	—		
Northampton	47	7	9	9	1	18	-	-
Norwich	92	7	12	4	21	9	3	9
Nottingham	53	8	-	-	24	15	3	4

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	NUMBER OF PROSECUTIONS, WITH THE AVERAGE COST OF EACH.			
	SESSIONS.		ASSIZES.	
	No.	£. s. d.	No.	£. s. d.
Oxford	38	7 8 5	6	13 3 4
Peterborough Liberty	27	13 18 6	—	—
Plymouth	79	8 4 6	1	38 - -
Portsmouth	113	6 16 9	—	—
Ripon Liberty	4	8 10 -	2	28 - -
Reading	19	7 19 -	9	13 9 -
Rochester	47	8 11 11	3	10 - -
Rye	6	3 13 4	—	—
St. Alban's Liberty	64	5 16 10	5	18 4 -
Salisbury, New Sarum	33	7 3 7	8	6 17 6
Saffron Walden	4	7 5 -	—	—
Sandwich	22	6 - -	—	—
Scarborough	11	9 - -	—	—
Southampton (half year)	42	6 4 3	—	—
Stamford	7	9 17 2	—	—
Shrewsbury	25	7 13 7	4	11 15 -
Sudbury	7	6 17 1	1	23 - -
Tiverton	8	7 5 -	—	—
Thetford	5	5 12 -	—	—
Warwick	19	9 16 10	—	—
Walsall	36	7 - -	—	—
Wigan	45	7 4 5	12	26 10 -
Windsor	15	3 12 -	—	—
Winchester	24	6 5 10	—	—
Worcester	35	8 5 8	13	20 17 -
Wenlock	7	8 5 8	1	12 - -
Yarmouth	29	7 6 10	2	78 - -
York	61	6 18 4	4	22 10 -

No. 3.—CIRCUITS.

AVERAGE COST of Prosecutions in the different Counties, arranged according to Circuits.

CIRCUITS.		AVERAGE COST OF EACH PROSECUTION.	
		SESSIONS.	ASSIZES.
		£. s. d.	£. s. d.
Home	Hertford	8 19 -	21 4 5
	Essex	9 7 -	15 13 8
	Kent	7 3 8	13 3 8
	Sussex	8 16 6	14 7 9
	Surrey	4 2 10	15 8 1
	Average per Circuit - - £.	7 14 -	16 11 6
Midland	Northampton	10 13 -	21 12 8
	Rutland	7 - -	15 4 -
	Lincoln	9 12 9	25 5 9
	Nottingham	10 17 -	18 2 1
	Derby	14 6 6	19 8 9
	Leicester	12 18 -	16 2 4
	Warwick	9 9 4	15 14 11
	Average per Circuit - - £.	10 13 9	18 15 9

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Appendix, No. 3.

CIRCUITS.	—	AVERAGE COST OF EACH PROSECUTION. Sessions.	Assizes.
		£. s. d.	£. s. d.
Oxford	Berks	11 19 –	17 17 4
	Oxford	10 3 3	18 17 –
	Worcester	9 9 6	21 7 7
	Stafford	9 12 4	22 7 10
	Salop	9 9 –	16 1 6
	Hereford	12 – –	21 10 –
	Monmouth	11 13 1	18 4 –
	Gloucester	8 18 –	14 11 9
	Average per Circuit - - £.	10 8 –	18 17 1
Norfolk	Bucks	12 – –	17 18 –
	Bedford	8 7 –	12 17 4
	Huntingdon	12 13 –	15 14 –
	Cambridge	9 1 –	22 – –
	Suffolk	8 10 –	18 5 5
	Norfolk	5 13 6	19 – –
	Average per Circuit - - £.	9 7 5	17 12 5
Northern	Lancaster	7 11 4	25 14 –
	Westmoreland	14 6 6	22 7 3
	Cumberland	14 16 8	20 10 7
	Northumberland	11 11 –	23 – –
	Durham	11 9 1	18 19 4
	York	9 19 5	32 8 6
	Average per Circuit - - £.	11 14 –	23 16 7
Western	Hants	10 14 –	19 4 4
	Wilts	9 16 9	15 10 4
	Dorset	7 3 –	12 10 6
	Devon	10 12 2	21 13 9
	Cornwall	7 11 –	13 4 4
	Somerset	8 16 4	16 10 9
	Average per Circuit - - £.	9 2 2	16 9 –
North Wales	Montgomery	11 7 4	18 10 –
	Merioneth	20 4 6	36 – –
	Carnarvon	15 11 2	25 16 –
	Anglesea	12 10 –	21 6 8
	Denbigh	18 – –	23 3 –
	Flint	18 3 –	23 11 5
	Chester	11 18 –	32 16 3
	Average per Circuit - - £.	15 7 8	25 17 7
South Wales	Glamorgan	8 11 3	20 3 6
	Pembroke	12 17 6	22 13 4
	Cardigan	15 14 –	26 16 4
	Carmarthen	12 10 –	21 13 4
	Brecon	9 2 –	27 3 4
	Radnor	10 13 –	21 7 6
	Average per Circuit - - £.	11 11 3	23 6 3

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No. 4.—COUNTIES, WITH BOROUGHS INCLUDED.

COMPARE of the Average Cost of Prosecutions in the Boroughs, with the Counties within which they are situated.

COUNTIES.	AVERAGE COST. SESSIONS.	AVERAGE COST. ASSIZES.	BOROUGHS.	AVERAGE COST. SESSIONS.	AVERAGE COST. ASSIZES.
	£. s. d.	£. s. d.		£. s. d.	£. s. d.
Bedford - - -	8 7 –	12 17 4	Bedford - - - - - -	9 16 –	—
Berks - - -	11 19 –	17 17 4	Abingdon - - - - - -	6 10 8	—
			Reading - - - - - -	7 19 –	13 9 –
			Windsor - - - - - -	3 12 –	—
			Newbury - - - - - -	12 16 8	—
Cambridge - -	9 1 –	22 – –	Cambridge - - - - - -	9 13 9	15 16 8
			Ely, Isle of, Liberty - - -	12 5 2	—
Chester - - -	11 18 –	32 16 3	Chester - - - - - -	9 5 3	—
Cornwall - - -	7 11 –	13 4 4	Falmouth - - - - - -	4 10 –	—
Derby - - -	14 6 6	19 8 9	Derby - - - - - -	16 1 –	15 6 8
Devon - - -	10 12 2	21 13 9	Barnstaple - - - - - -	6 10 –	44 – –
			Bradninch - - - - - -	6 6 –	—
			Devonport - - - - - -	6 18 1	—
			Exeter - - - - - -	7 – –	12 4 5
			Plymouth - - - - - -	8 4 6	38 – –
			Tiverton - - - - - -	7 5 –	—
Essex - - -	- - -	- -	Colchester - - - - - -	8 2 –	16 10 –
			Harwich - - - - - -	7 18 –	18 – –
			Havering-atte-Bower - - -	4 7 –	9 – –
			Maldon - - - - - -	10 5 8	—
			Saffron Waldon - - - -	7 5 –	—
Gloucester - -	8 18 –	14 11 9	Bristol - - - - - -	4 19 9	—
			Gloucester - - - - - -	8 2 5	16 14 3
Hants - - -	10 14 –	19 4 4	Portsmouth - - - - - -	6 16 9	—
			Southampton - - - - -	6 4 3	—
			Winchester - - - - - -	6 5 10	—
Hereford - - -	12 – –	21 10 –	Hereford - - - - - -	11 14 6	14 15 –
Hertford - - -	8 19 –	24 4 5	St. Alban's, Liberty - - -	5 16 10	18 4 –
Kent - - -	7 3 8	13 3 8	Canterbury - - - - - -	5 17 9	—
			Deal - - - - - - -	4 5 8	—
			Dover - - - - - -	7 10 10	15 – –
			Faversham - - - - - -	3 13 4	—
			Folkestone - - - - - -	8 15 –	20 – –
			Gravesend - - - - - -	7 15 6	12 9 –
			Maidstone - - - - - -	6 17 1	11 – –
			Rochester - - - - - -	8 11 11	10 – –
			Sandwich - - - - - -	6 – –	—
Lancaster - -	7 11 4	25 14 –	Bolton - - - - - -	7 2 –	31 4 –
			Liverpool - - - - - -	9 9 –	18 – –
			Manchester - - - - - -	7 11 3	21 2 –
			Wigan - - - - - -	7 4 5	26 10 –
Leicester - - -	12 18 –	16 2 4	Leicester - - - - - -	10 10 10	14 11 1
Lincoln - - -	9 12 9	25 5 9	Grantham - - - - - -	6 – –	—
			Stamford - - - - - -	9 17 2	—
Middlesex - -	2 4 6	- - -	London - - - - - -	3 4 9	—
Norfolk - - -	5 13 6	19 – –	Lynn, King's - - - - -	16 3 –	—
			Norwich - - - - - -	7 12 4	9 3 9
			Thetford - - - - - -	5 12 –	—
			Yarmouth - - - - - -	7 6 10	78 – –
Northampton - -	10 13 –	21 12 8	Northampton - - - - -	7 9 9	18 – –
			Peterborough, Liberty - - -	13 18 6	—
Northumberland -	11 11 –	23 – –	Berwick - - - - - -	13 6 3	40 19 –
			Newcastle-upon-Tyne - - -	7 – 5	10 16 6

(*continued*)

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COUNTIES.	AVERAGE COST. Sessions.	AVERAGE COST. Assizes.	BOROUGHS.	AVERAGE COST. Sessions.	AVERAGE COST. Assizes.
	£. s. d.	£. s. d.		£. s. d.	£. s. d.
Nottingham - -	10 17 –	18 2 1	Newark - - - - - -	8 17 6	—
			Nottingham - - - - -	8 – –	15 3 4
Oxford - - -	10 3 3	18 17 –	Banbury - - - - - -	7 1 10	—
			Oxford - - - - - -	7 8 5	13 3 4
Somerset - - -	8 16 4	16 10 9	Bath - - - - - - -	6 13 6	36 13 4
			Bridgwater - - - - -	5 – –	5 7 –
Salop - - -	9 9 –	16 1 6	Bridgnorth - - - - - -	9 13 9	20 13 4
			Ludlow - - - - - -	6 18 4	—
			Shrewsbury - - - - -	7 13 7	11 15 –
			Wenlock - - - - - -	8 5 8	12 – –
Stafford - - -	9 12 4	22 7 10	Lichfield - - - - - -	9 7 7	—
			Newcastle-under-Lyme - -	5 17 4	—
			Walsall - - - - - -	7 – –	—
Suffolk - - -	8 10 –	18 5 5	Bury St. Edmund's - - -	9 – –	11 10 –
			Ipswich - - - - - -	8 15 7	21 5 –
			Sudbury - - - - - -	6 17 1	23 – –
Sussex - - -	8 16 6	14 7 9	Chichester - - - - - -	3 4 –	—
			Hastings - - - - - -	4 13 1	23 – –
			Rye - - - - - - -	3 13 4	—
Warwick - - -	9 9 4	15 14 11	Birmingham - - - - -	5 2 7	—
			Warwick - - - - - -	9 16 10	—
Wilts - - -	9 16 9	15 10 4	Devizes - - - - - -	5 13 4	8 16 –
			Salisbury on New Sarum - -	7 3 7	6 17 6
Worcester - -	9 9 6	21 7 7	Worcester - - - - - -	8 5 8	20 17 –
York - - -	9 19 5	32 8 6	Hull - - - - - - -	10 4 3	46 5 –
			Leeds - - - - - - -	9 4 2	29 15 –
			Ripon, Liberty - - - -	8 10 –	28 – –
			Scarborough - - - - -	9 – –	—
			York - - - - - - -	6 18 4	22 10 –
Carmarthen - -	12 10 –	21 13 4	Carmarthen - - - - - -	14 4 –	30 6 8
Pembroke - -	12 17 6	22 13 4	Haverfordwest - - - - -	13 1 5	37 13 4

No. 5.—PRINCIPAL CITIES AND BOROUGHS.

COMPARISON of the Average Cost of Prosecutions in each of the following Eight Cities and Boroughs.

	NUMBER OF PROSECUTIONS, WITH THE AVERAGE COST OF EACH.			
	SESSIONS.		ASSIZES.	
	No.	£. s. d.	No.	£. s. d.
Birmingham - - - - - -	326	5 2 7	—	—
Bristol - - - - - - -	206	4 19 9	—	—
Hull - - - - - - -	161	10 4 3	8	46 5 –
Leeds - - - - - - -	305	9 4 2	40	29 15 –
Liverpool - - - - - -	442	9 9 –	56	18 – –
London - - - - - - -	301	3 4 9	—	—
Manchester - - - - - -	551	7 11 3	60	21 2 –
Portsmouth - - - - - -	113	6 16 9	—	—

ANALYSIS

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Adjournment of Trials. The power of adjournment of trials should be extended to criminal courts, *Waddington* 2110, 2111.

Administration of Justice. Evils which strike witness in the present system, *Horn* 2680 *et seq.*

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1. *Defects of the present System:*

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1. *Approval of the Appointment of District Agents or Prosecutors;*

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See also *Advance of Expenses. Attorneys. Boroughs. Central Criminal Court. Cheshire. Circuits. Collusion. Constabulary (Ireland). Counsel. District Agents,* 1. 3. *Gaund Juries. Indictments. Ireland. Liverpool,* 2. 3. *Magistrates' Clerks. Manchester. Northern Circuit. Petty Offences. Police, The,* 3. *Poorer Classes. Prisoner's Witnesses. Ratepayers. Staffordshire. Taxation of Costs. Treasury, The. Unnecessary Witnesses. Witnesses.*

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Factory Cases. In factory cases of prosecution the Treasury have enforced the Act of Parliament by civil action, but not in the case of mines, *Reynolds* 1668.

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See also *Home Circuit*. *Magistrates' Clerks*, 2. 3. *Salaried Officers*. *Taxation of Costs*.

Foote, William. (Analysis of his Evidence.)—Attorney; has paid very considerable attention to the subject of criminal prosecutions; is collecting materials for a work on the subject, 2912-2915——Return witness would suggest should be moved for relative to the expenses of prosecutions, 2916, 2917——Failure of justice frequently arising from the want of a responsible pnblic prosecutor to get up cases properly, 2918-2922——It is a very great evil that magistrates have not the power of allowing the expenses of witnesses unless a committal takes place, 2922-2924.

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G.

Gaming-houses and Brothels. In cases of indictments for gaming-houses and brothels the law is at present shamefully perverted, *Lord Campbell* 639. 672. 678.

Gaolers. At Leeds it is not the duty of the gaoler to communicate with the clerk of the peace in regard to evidence of previous conviction, *Markland* 779——The gaoler at Leeds always communicates with witness as deputy clerk of the peace, in regard to previous convictions, *Richardson* 862.

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Grand Juries. Propriety of partly dispending with the institution of the grand jury; how far this body should be entirely abolished, considered, *Lord Brougham* 19–25. 32–35——Circumstances under which the action of the grand jury would be a salutary check upon the public prosecutor, *ib.* 25–27——Points in which the grand jury is mainly to be objected to, *ib.* 32–35——Absence of a power of challenge in regard to grand juries adverted to, *ib.* 35. 53, 54——Importance of the witness or prosecutor appearing before the grand jury, *ib.* 37——Instances of errors committed by grand juries in finding bills, *ib.* 37–40——For the present the institution of a public prosecutor should be engrafted upon that of the grand jury, *ib.* 43.

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Hankins, Mr. Memorandum upon criminal prosecution expenses in England and Wales, furnished by Mr. Hankins, *App. p.* 248–254.

Hatton, Captain J. H. (Analysis of his Evidence.)—Chief of the constabulary at Stafford; has had opportunities of watching the working of the criminal system there; 1309–1312——The system of binding over policemen as prosecutors is very objectionable, 1313–1318——

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1318——Reference to the former disgraceful conduct of many attorneys in Stafford for the purpose of obtaining the management of prosecutions, 1319-1324. 1336——Opinion that many prosecutions are improperly got up, merely for the purpose of receiving the money, particularly in towns, 1325-1330.

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Hemp, James. (Analysis of his Evidence.)—Assistant clerk of arraigns at the Central Criminal Court and deputy clerk of assize on the Oxford Circuit, 874, 875——Evil at present in the want of responsibility on the part of those who conduct the prosecutions, 878-880——Want of uniformity in the general practice in regard to indictable offences, 878——Absence of advantage in the appointment of a public prosecutor to conduct the case in court, 878——Advantages anticipated from the appointment of a district agent, 878 *et seq.*

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Strong opinion in favour of the grand jury system; objections to having an officer vested with the power of examining witnesses upon oath in the preparation of a prose-

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cution, in lieu of the examination before the grand jury, 1700–1708——The coroner's inquest is one of the most important tribunals which we have in this country, 1709, 1710——Although upon the whole the police as a body act very fairly, it would be derogatory to the justice of this country that the conduct of prosecutions should be thrown into their hands, 1711–1715. 1774–1776——Witness has not seen much difference in the mode of conducting prosecutions down to the time of trial between the cases in the country and those in London, 1718–1720.

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Home Circuit (*England and Wales*). Amount of fees paid to counsel in regard to prosecutions on the Home Circuit at Lent Assizes in 1853; *Straight* 960.

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Indictments. Inconvenience of the large number of separate indictments against the same prisoner; great increase of expense occasioned thereby, *Preston* 1167, 1168——Opinion that the power of going before the grand jury to prefer an indictment is open to the greatest possible abuse, *Right Hon. J. A. S. Wortley* 2620–2624——Evils arising from the multiplication of indictments merely to get costs, *Compton* 2881——Objection to the plan of presenting indictments to the grand jury without previous enquiry before a magistrate, and even after the case has been dismissed by the magistrate, *ib.* 2881–2884.

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Report made to the Attorney-general by the Crown solicitor, after each circuit, of the result of each case, in order that the Attorney-general may see whether it has been properly conducted, *Right Hon. J. Napier* 1978–1983——There is no reason why the Irish system should be called an expensive system, *ib.* 2460——Evidence showing that the objections, as regards Ireland having local prosecutors or Crown solicitors, do not apply to England, *ib.* 2461, 2462——Reference to the analogy between the Irish and English systems of criminal justice, *Right Hon. J. A. S. Wortley* 2644–2648.

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Jersey. Reference to the state of the Jersey law as founded on the Grand Costumier of Normandy, *Ellis* 202–207.

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L.

Leeds:

1. *Defects of the former System of Prosecutions.*
2. *Alterations made therein, and Way in which carried out.*
3. *Satisfactory Result of these Alterations.*

1. *Defects of the former System of Prosecutions:*

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2. *Alterations made therein, and Way in which carried out:*

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See also *Counties. Preliminary Investigation,* III., 1. *Yorkshire.*

Leeman,

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Leeman, George. (Analysis of his Evidence.)—Clerk of the peace for about twelve years for the East Riding of Yorkshire; also practises as solicitor at York, 949-952——Is decidedly opposed to the main points of the Bill under consideration, 954-956——Impracticability of applying the provision for a public prosecutor to the county of York, 955, 956——Injury to the bar if the Bill be passed, 955——Suggested agency of magistrates' clerks as quite sufficient, without the intervention of district agents, for the prosecution of all cases coming before justices, 955, 956——Magistrates' clerks should be paid by salary, fees being abolished, 955.

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1. *Mode of conducting Criminal Prosecutions.*
2. *Beneficial Operation thereof.*
3. *Saving of Expense as compared with other Places.*

1. *Mode of conducting Criminal Prosecutions:*

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3. *Saving of Expense as compared with other Places:*

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Livingstone, Mr. See *Examination of Prisoners.*

Local Agents. See *District Agents.* *Ireland.* *New York.*

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MAGISTRATES' CLERKS:

1. *How far they might get up the Evidence under the District Agents.*
2. *Approval of the Plan suggested of making them the District Agents or Prosecutors.*
3. *Objections to this Plan; Difficulties in the Way of carrying it out.*

1. *How far they might get up the Evidence under the District Agents:*

Witness does not object to the proposal that magistrates' clerks be employed to get up the evidence, and that in cases of difficulty they apply to the district agent, *Hemp* 930–936——Suggested agency of magistrates' clerks as quite sufficient, without the intervention of district agents, for the prosecution of all cases coming before justices, *Leeman* 955, 956——Objection to the system adopted, in some counties, of individual magistrates appointing their own clerks, in addition to petty sessional clerks, to take evidence in criminal prosecutions, *Preston* 1181–1186. 1303–1308——Although the clerks to the London police magistrates are not professional men, they are generally well acquainted with their business; no great advantage would arise from their being professional men; *Hobler* 1761–1764——Witness is rather in favour of magistrates' clerks getting up prosecutions, *Waddington* 2083–2088.

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Maltreatment of Children. Cases of maltreatment of children or servants, &c. might very properly be taken up by the district agent, *Greaves* 294——Frequency of disputes as to who should defray the expenses of prosecutions in cases where children have been ill-used; failure of justice in consequence, *Hobler* 1738–1740——Reference to the case of the Birds, where a poor child was savagely treated; this was a case in the country; reason why it was taken up by the Government, *Waddington* 2074–2080.

Manchester. Very improper manner in which some prosecutions were formerly conducted at Manchester; amendment thereof by witness, *Trafford* 971–976. 993–997——Regulation at Manchester as to the cases to go to sessions and to assizes, *ib.* 1034. 1048——Operation of the different systems of prosecutions in the two courts under witness at Manchester and Salford, *ib.* 1042–1047——The same system of criminal justice is pursued at Manchester as at Liverpool, *Austen* 2969–2972——The system operates perfectly well; it saves expense, and prevents frivolous prosecutions, *ib.* 2973–2980.

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District agents would not be so necessary in the country as in London; the clerks to the magistrates in the country being nearly always attorneys, *Hobler* 1772, 1773——Supposing the provisions of the Bill to be adopted, the Metropolis should be divided into six districts, a solicitor being attached to each, *ib.* 1777–1782——They should receive an adequate remuneration, and put aside their private business, *ib.* 1783——It would not be an unfair salary to give them 1,000 *l.* a year at the lowest, *ib.* 1784–1786.

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Opinion that it would be advisable to have a public prosecutor in the courts of quarter sessions in England, although some of the chairmen are competent men, 1933-1941. 1948-1950——Evidence as to the appointment and pay of petty sessions clerks in Ireland, 1942-1947——The criminal business ought to be conducted by a person responsible to the public; the best possible men should be got, 1953, 1954——There would be no objection to the district agent assisting the grand jury in criminal business; importance of the functions of the grand jury; witness would be sorry to see the system done away with, 1955-1962——The Attorney-general in Ireland, in exercising his discretion as to what cases he would prosecute in, would of course see that the prosecution was one of public justice, and not with a view to work out any private object, 1963-1968.

The sessional prosecutors are an excellent class of officers, but badly paid, 1969, 1970——Nature of a plan, suggested by witness and drawn out by Mr. Seed, for altering their salaries, and also, in some respects, their duties, 1970-1977——Report made to the Attorney-general by the Crown solicitor after each circuit of the result of each case, in order that the Attorney-general may see whether it has been properly conducted, 1978-1983.

[Second Examination.]—Delivers in certain papers, 2457, 2458——Witness would say that the English system is more expensive than the system in Ireland, 2459, 2460——There is no reason why the Irish system should be called an expensive system, 2460——The right plan is to have the work done by competent and proper persons fairly paid; it is not a mere question of expense, 2461——Evidence showing that the objections as regards Ireland to having local prosecutors or Crown solicitors do not apply to England, 2461, 2462——Observations on, and answers to, various of Mr. Pitt Taylor's objections to the Irish system (as found in a paper delivered in by him, and appended to the eighth report of the Commissioners on Criminal Law), 2463-2491.

New York, State of. Practice in the State of New York in regard to the summoning and attendance of witnesses, *Greaves* 401——In each of the 56 counties of the State of New York there is a local officer, called a district attorney, whose duty it is to attend to all criminal prosecutions in the county; how such duty is carried out, *Davies* 534-553. 561. 605-613——The district attorney generally consults with the committing magistrate, and always attends the grand jury as legal adviser, *ib.* 543, 544. 546-548. 551-553. 588-590. 602-604——Salary of the district attorney of New York; he has of necessity a large staff and an assistant attorney under him, *ib.* 555-561——Course pursued after the grand jury have concurred in finding a bill, *ib.* 561. 592-594. 606-613.

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Nolle Prosequi. The Lord Advocate frequently exercises his power of entering a *nolle prosequi*: *Lord Advocate* 169, 170——Mischief arising from the fact that the Attorney-general is now the only person that can direct a *nolle prosequi*; how far this evil might be remedied, *Sir A. Cockburn* 2415-2424.——*See* also *Clerks of the Peace.*

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North of England. Success of the plan in Durham, Northumberland, and the West Riding of Yorkshire, of selecting a counsel and giving him the general superintendence of prosecutions, *Lord Brougham* 16——Anxiety of attorneys in the North of England, where the remuneration is high, to get prosecutions, *Horn* 2682.

North-west Circuit (Ireland). Suggested increase of salaries to the sessional solicitors, *App. p.* 244.

Northern Circuit. Satisfactory result in the Northern Circuit of having a gentleman to attend to tax the costs of criminal prosecutions; large reduction of expenses consequent thereon, *Preston* 1257–1281.

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Offences. See *Capital Offences. Crime. Murder, Cases of. Petty Offences.*

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Patronage. Consideration of the subject of the mode of appointment and removal of the contemplated district prosecutors, *Lord Brougham* 88-99——Expediency of politics not interfering in the appointment of the proposed public prosecutors, *ib.* 90, 91——The appointment of the district officer should rest with Government, *Greaves* 327, 328. 339 ——Obstacles to a system of public prosecutors on the score of patronage, *Lord Campbell* 639. 646-650——The appointment of public prosecutors should be vested in the Crown, *ib.* 667-669. 706.——*See* also *Appointment of Prosecutors.*

Payment of Witnesses. Hardship in binding over to give evidence, on the score of payment of expenses, the same not being allowed till the trial is over, *Lord Brougham* 6. 55—— Steps taken in the county of Stafford to prevent fraud in the case of paying the expenses of witnesses, *Hatton* 1462–1467——Great fraud practised upon witnesses in paying them their expenses; suggestions for remedying this evil, *Goodman* 2161, 2162——There is no practical impediment to paying to each witness his own expenses; practice adopted at the Central Criminal Court, *ib.* 2228–2232——Witness has no substantial grounds for doubting whether the full allowances are paid to witnesses, *Avory* 2262——Frequency of the cases of witnesses being defrauded of their proper allowances by attorneys, *Compton* 2897, 2898——It would be very desirable, if such a system could be adopted, that the taxing officer of the circuit should pay the witnesses, *ib.* 2909–2911.

See also *Advance of Expenses. Witnesses.*

Perjury. See *Conspiracy, &c.*

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Petty Offences. Instances of large expenses at assizes for witnesses in cases of petty theft; suggested expediency of giving a magistrate summary jurisdiction in small affairs of this kind, *Goodman* 2150-2160.——*See* also *Police.*

Petty Sessions. See *Magistrates. Magistrates' Clerks. Police,* 3. *Preliminary Investigation,* II.

Petty Sessions Clerks. The clerk to the justices in petty sessions is not the party who ought to have the conduct of prosecutions, *Barr* 1434, 1435——Evidence as to the appointment and pay of petty sessions clerks in Ireland, *Right Hon. J. Napier* 1942-1947.

Police Courts. With the view to doing away with the remarks that are made of cases not being properly taken up at the police courts, some solicitor should be attached to these courts, *Hobler* 1678–1683——There is a class of persons who attend police courts for the sake of getting prosecutions who are not attorneys, *Avory* 2263, 2264.

See also *Low Practitioners.*

POLICE, THE:

1. *Utility of the Police as regards the preliminary Investigation.*
2. *Approval of the System of the Police being bound over to prosecute.*
3. *Objections to this Practice.*
4. *Opinions as to their acting in connivance with low Attorneys.*

1. *Utility of the Police as regards the preliminary Investigation:*

Great usefulness of the police in the preliminary stages of prosecution, *Straight* 514 ——Doubt as to the police in county towns and at sessions abusing their powers, *Lord Campbell*

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1. *Utility of the Police as regards the preliminary Investigation*—continued.

Campbell 673——Under the present system it is necessary that great discretion should be vested in the police, *Hatton* 1331, 1332——Grounds for forming the opinion that the police are the most competent persons to get up the evidence, but witness has never heard of their managing prosecutions, in the proper acceptation of the word, nor would he consider them the proper persons to do so, *Avory* 2268-2332——Even in collecting the evidence it would be an advantage if there were some superior person to control them, *ib.* 2284-2332. 2336-2338——Extent to which policemen must necessarily be engaged in prosecutions, *Foote* 2930-2932.

2. *Approval of the System of the Police being bound over to prosecute:*

Frequent occurrence of offences for which there would be no prosecution if the police did not take them up, *Hatton* 1370-1373——Witness does not concur in the evidence of Captain Hatton, that in all the cases where the police were the prosecutors, there would be no prosecution at all if they did not prosecute; witness's experience is quite to the contrary, *Roberts* 1538-1540. 1545——From the fact of the clerks to the metropolitan magistrates not being attorneys, and not practising, the police are necessarily bound over to prosecute, unless in cases connected with property, *Waddington* 2067.

In certain cases the police apply to the Secretary of State for legal assistance; such assistance is given them, but these cases are extremely few, *Waddington* 2067——Consequently in London nearly all cases are conducted by the police up to the moment of a bill being found by the grand jury, *ib.* 2067——In witness's official position he has not heard of any serious complaints or general failures of justice arising from this system, *ib.* 2068-2072——How far in common cases police officers are the most proper persons to be bound over to prosecute, *Goodman* 2179-2218.

3. *Objections to this Practice:*

The system of binding over policemen as prosecutors is very objectionable, *Greaves* 277, 278; *Straight* 492, 493. 506-516; *Hatton* 1313-1318; *Hobler* 1790-1796; *Wilkinson* 2009, 2010; *Horn* 2734; *Compton* 2899-2907——Pecuniary temptations to which the police are liable, *Straight* 510-512——A vast number of cases are managed by policemen in London; they are the worst possible people to have such a trust delegated to them, *Preston* 1150-1161——Objection to police officers on their own mere impulse being permitted to take long expensive journeys to collect information, *ib.* 1154-1157. 1216-1227——The magistrates allow too liberally these large expenses to police officers, *ib.* 1158. 1213, 1214. 1216 *et seq.*——Policemen ought to be removed from all motive for unfairly pressing prosecutions, *ib.* 1159-1162.

Evils arising from the police having pecuniary interest in prosecutions; suggestions for remedying these evils, *Hatton* 1364-1369——In no case should a policeman or constable be the prosecutor; this evil can only be obviated by a direct enactment, *Roberts* 1528-1537——Many prosecutions are brought to trial by the police; interference, in consequence, with the duties of the professional man, and power and authority given to the police thereby which is inconsistent with their duties, *Hobler* 1684-1686——Although upon the whole the police as a body act very fairly, it would be derogatory to the justice of this country that the conduct of prosecutions should be thrown into their hands, *ib.* 1711-1715. 1774-1776.

So far as concerns prosecutions at petty sessions, the police may be useful for conducting them when nobody else can be got, but not otherwise, *Wilkinson* 2026-2033——Serious evil arising from the manner in which policemen mix themselves up with prosecutions; reasons for the great zeal evinced by them to obtain convictions; mischievous effects thereof, *Sir A. Cockburn* 2396-2399——Great evil of policemen having the management of prosecutions in any way, *Right Hon. J. A. S. Wortley* 2672, 2673——Little interference the police have in Liverpool with regard to prosecutions, *Walter* 2793, 2794. 2851-2857.

4. *Opinions as to their acting in connivance with low Attorneys:*

Great slur upon the independence of the bar, and consequent evils arising from the fact of policemen acting with low attorneys in instigating prosecutions, *Preston* 1294-1297——So far as regards the metropolis, witness much doubts the fact of attorneys feeing policemen to give them prosecutions, *Waddington* 2140-2146——If, however, such a practice does exist, it is a great evil requiring interference, *ib.* 2140-2146——Witness has never met with any case of policemen receiving fees for bringing prosecutions to attorneys, *Avory* 2265-2267——Under the present system, the cases being so much in the management of the police fall into the hands of low practitioners; this is a very great evil, *Compton* 2882-2894.

See also *Collusion. Constables. Constabulary (Ireland). Home Office. Leeds*, 2. *Low Practitioners. Preliminary Investigation. Taxation of Costs. Unnecessary Witnesses.*

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Poorer Classes. Hardship to the poorer classes in the want of a public prosecutor, *Lord Brougham* 55——Difficulty at present to poor persons in bringing forward needful evidence, *ib.* 71-73——Many cases are not gone into on account of the poverty of the prosecutor; this is an injury to the poor man, *Wilkinson* 2003-2005——Great disadvantage which would arise to a poor man who had received an injury if advances were not made by the attorney, *Hobler* 1727, 1728——It is an evil that there is not some person to whom the poorest man might go, and desire him to conduct his case, when an offence has been committed against him, *Sir A. Cockburn* 2400-2402——If a poor man had not the means of prosecuting, witness would give the Crown prosecutor the power of taking up the case for him, *Hankins* 2579-2581.

See also *Advance of Expenses.* *Prisoners' Witnesses.*

Post-office Prosecutions (Ireland). Great pains with which the Post-office cases in Ireland are got up, *Right Hon. J. Napier* 1818.

Postponement of Trials. How far witness, as town clerk of Liverpool, has the power of postponing a case until a future session or assizes, supposing he considers it imperfect, *Walter* 2820, 2821.

PRELIMINARY INVESTIGATION:

I. *Defective State of the present System of preliminary Investigation.*
II. *Opinions as to how far the proposed Bill would remedy this.*
III. *Nature of the preliminary Investigation in various Places.*

1. Leeds.
2. Liverpool.
3. Scotland.
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I. *Defective State of the present System of preliminary Investigation:*

Great defect in the present law, in there being no means of originating inquiries in cases of felony, &c., *Greaves* 274——The main evil to be remedied is, that there is no person responsible for the management of a prosecution from the time of the committal to the time of the presentment, *Straight* 449-455. 471, 472. 493-495——Great want of some competent person to make a searching investigation, even before the case comes before the magistrate, *Wilkinson* 1990. 2022-2025——Strong opinion that prosecutions would be more satisfactorily conducted if there were some one to intervene between the apprehension of the prisoner and the bringing of the case into court, *Sir A. Cockburn* 2396——Failure of justice frequently arising from the want of a responsible public prosecutor to get up cases properly, *Foote* 2918-2222.

II. *Opinions as to how far the proposed Bill would remedy this:*

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III. *Nature of the preliminary Investigation in various Places:*

1. Leeds:

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2. Liverpool:

Way in which the preliminary investigation is carried out in Liverpool before witness takes the case, *Walter* 2809-2814.

3. Scotland:-

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PRELIMINARY INVESTIGATION—continued.

III. *Nature of the preliminary Investigation in various Places*—continued.

3. Scotland:

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4. New York, State of:

Nature of the preliminary proceedings in the State of New York on the occurrence of any offence; how the complaint originates, *Davies* 540-542. 595-597. 615-619.

See also *Appeals.* *Capital Offences.* *Police,* 1.

Presentments. See *Grand Juries.*

Preston, John Hughes. (Analysis of his Evidence.)—Solicitor; was employed by the Government to examine into the expense of criminal prosecutions on the Oxford circuit; has been acquainted with the practical working of the entire system for the last twenty-five years, 1140-1142——Has turned his attention to the subject of the appointment of a public prosecutor, 1143——It would effect a very considerable remedy for the corrupt practices going on under the present system, 1144——Collusion existing among attorneys, justice's clerks, and the police, with a view to augmenting to the greatest possible extent the costs of criminal prosecutions, *ib.*——The practices which take place amount to roguery, 1145-1147——Frivolous and groundless prosecutions are frequently brought, 1748, 1149.

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Prisoners' Witnesses. Discretion exercised by witness in regard to the allowance of costs to witnesses for prisoners, *Lord Advocate* 148. 152——Approval of discretion being vested in the judge to allow expenses to prisoners' witnesses, *Greaves* 388–392. 395. 398–403; *Markland* 852, 853; *Hemp* 920–922; *Leeman* 956; *Trafford* 1056–1061; *Wilkinson* 2006–2008——Obstacles to giving one judge the power of allowing the costs of witnesses for prisoners, *Lord Campbell* 699–705——Hardship in there not being some legal provision for allowing expenses to prisoners' witnesses; suggestion hereon, *Richardson* 862–868——In certain cases it might promote the interest of justice to allow expenses to witnesses for a prisoner; way in which these expenses might be allowed and settled, *Hobler* 1798–1809.

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In the state of New York the expenses of the prisoners' witnesses, if poor people, are defrayed by the county; doubt as to fraudulent defences being ever induced thereby, *Davies* 562–569——In some cases in Ireland the witnesses for the prisoners are allowed their expenses; but this is very rare, *Right Hon. J. Napier* 1872.

Private Practice. The district agent should not be prohibited from private practice, provided always the duties of his office were not interfered with, *Greaves* 321–323——Doubts as to whether any great advantage would arise from debarring the permanent Crown counsel in Ireland from practising in the civil courts on circuit, *Right Hon. J. Napier* 1931, 1932——At any rate there should be a perfect understanding that the Crown business should receive their primary and proper care, *ib.* 1931, 1932.

Private Prosecutions. Even if public prosecutors be established, there should still be a right of private prosecution, *Lord Brougham* 21–24; *Markland* 770; *Hemp* 903–905; *Straight* 961, 962; *Cameron* 1114–1117——Very rare occurrence of private prosecutions in Scotland, *Lord Advocate* 121–127——Right of a private party to obtain the concurrence of the Lord Advocate, *ib.* 137——Proposition that where the Crown counsel and the district officer stop the prosecution, the party feeling aggrieved should not be allowed to proceed at his own risk unless he obtain the sanction of the Court, *Greaves* 404–423——Still witness objects to the cases being altogether taken from the private prosecutors, *ib.* 435–443.

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risk, *Sir A. Cockburn* 2425–2428; *Hankins* 2550, 2551. 2557——Opinion that in private hands prosecutions are not always conducted with fairness, but rather with a vindictive feeling, *Right Hon. J. A. S. Wortley* 2652, 2653.

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Provinces. Witness has not seen much difference in the mode of conducting prosecutions down to the time of trial between the cases in the country and those in London, *Hobler* 1718–1720.——*See* also *Treasury, The.*

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Ratepayers. The difficulty in regard to public prosecutors used to be with the ratepayers, but it is not so now; there is no reason, therefore, why the system should not be altered, *Right Hon. J. A. S. Wortley* 2649.

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Scotland. Comparison of the number of commitments, of trials, and of acquittals, in England and in Scotland, showing the advantage of a public prosecutor in the latter country, *Lord Brougham* 34, 35——Description of the Scottish system of public prosecution, *Lord Advocate* 111 *et seq*——Successful and beneficial operation of the system, *Lord Advocate* 111. 127. 153, 154; *Lord Campbell* 637. 639–641.

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Seed, Mr. Letters prepared by Mr. Seed, as directed by Mr. Napier, with a view to carry into effect certain improvements in the system of prosecutions, &c., in Ireland, *App. p.* 241–245.——*See* also *Ireland. Metropolis, The. New York.*

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Sessional Prosecutors. See *Ireland. Leinster Circuit.*

Sessions. Difficulty in the Bill in regard to the conduct of the cases at sessions by one barrister and an assistant, *Richardson* 794–796. 856–859.

See also *Chairmen of Sessions. Ireland. Petty Sessions. Quarter Sessions.*

Shepherd, Mr. Reference to a statement by Mr. Shepherd to the effect, that in bringing home a charge of murder he lost about 40 *l.* in getting up the evidence, *Greaves* 312, 313.

Society of Friends. Practice of members of the Society of Friends to forfeit their recognizances rather than prosecute, *Lord Brougham* 13.

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Staffordshire. In Staffordshire prosecutions are sometimes got hold of in order to get money any how, *Greaves* 315——Great public advantage of district agents, especially in the county of Stafford, *Hemp* 890, 891. 939. 941——Evidence showing the notoriety of the county of Stafford for frivolous and improper prosecutions, and causes to which this state of things may be ascribed, *Preston* 1262–1281.

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In Stafford the solicitors are not paid at quarter sessions; to this cause may be attributed the fact that many trumpery cases are kept back from the quarter sessions and sent to the assizes, *Hatton* 1348–1362——Evidence showing, in the three years 1852, 1853 and 1854, the number of persons prosecuted from Stafford at assizes and at quarter sessions, and the cost to the county per head, *ib.* 1445–1462——At assizes the cost has been less than 16 *l.* a head, *ib.* 1462.

Attorneys are not employed at the sessions; the depositions are sent to the clerk of the peace, who distributes them to the counsel, *Wilkinson* 2011–2015.

Tables furnished by Captain Hatton, showing the sentences passed on prisoners committed for trial in each year respectively, from 1851 to 1855, in Stafford, *App. p.* 246, 247.

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Straight, Robert Marshall. (Analysis of his Evidence.)—Is deputy clerk of assize on the Home Circuit, and one of the clerks of arraigns of the Central Criminal Court, 444——Has had considerable experience on the subject of criminal procedure, 445–447——The evils arising from the want of some responsible person to undertake the duties of criminal prosecution are not so great as has been supposed, 448——The main evil to be remedied is that there is no person responsible for the management of a prosecution from the time of the committal to the time of the presentment, 449–455. 471, 472. 493–495.

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Taylor, Mr. Pitt. Observations on, and answers to, various objections by Mr. Pitt Taylor, to the Irish system (as found in a paper delivered in by him and appended to the Eighth Report of the Commissioners on Criminal Law), *Right Hon. J. Napier* 2463-2491.

Tenure of Office. When once appointed, the prosecutor should only be removed upon cause shown, and after a full inquiry, *Lord Brougham* 88, 89. 95-99——His tenure of office should be during good conduct, *Greaves* 329-331——District agents, as public prosecutors, should not go out of office with the Attorney-general, *Lord Campbell* 707.

Town Clerks. See *Liverpool.*

Trafford, Henry Leigh. (Analysis of his Evidence.)—Barrister at Law; is stipendiary magistrate for the division of Manchester and the borough of Salford, 967-970——Very improper manner in which some prosecutions were formerly conducted at Manchester; amendment thereof by witness, 971-976. 993-997——The proposed district agents are not necessary, 977, 978——Approval of the clause in the Bill, which empowers justices of petty sessions to appoint a person to attend to the prosecution, 979-981. 1013—— Objection to a public prosecutor who should appear in court on each case, 982—— Defects of the system of a public prosecutor, as formerly carried out in the county of Chester, 982-990.

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The solicitor to the Treasury being paid by salary, no portion of his profits depends on the amount of business done, *Reynolds* 1615–1620——Necessity in some cases for advancing money in order to get the requisite witnesses, *ib.* 1568–1570——Witness is not aware of any reason why the Treasury should not interfere in important cases in the country as well as in London, except the great additional work it would give the office, *ib.* 1594, 1595. 1603–1609 ——Witness does not recollect any cases where there has been a failure of justice from any unwillingness to incur expense; still no more money is spent than is necessary, *ib.* 1603–1609.

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Witness is not aware that it is the duty of any party in the country to make an application to the Secretary of State to direct the Treasury to take up a prosecution, *Reynolds* 1658–1665.

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Uniformity of Practice. Want of uniformity in the general practice in regard to indictable offences, *Hemp* 878——Great objection to the present system, or rather want of system, in the uncertainty as to the mode in which a particular prosecution may be followed out, *Waddington* 2066——One system prevailing in the metropolitan districts, another prevailing in counties where there are no police, *ib.*

United States. See *America.* *New York, State of.*

Unnecessary Witnesses. One evil of the present system is that witnesses are often brought who are unnecessary, *Markland* 728. 787–793. 851; *Horn* 2713——Unnecessary witnesses are taken for the purpose of swelling the costs, *Wilkin* 2505——This evil arises from the fact of the police having too much the management of prosecutions, *ib.* 2505–2509——Great extent of jobbing in order to obtain expenses, *ib.* 2517–2521——Frequency of attorneys bringing witnesses who are not wanted, especially since the establishment of the local police, *Hankins* 2545. 2554, 2555.

Some saving might be made if a stop could be put to the practice of bringing so many unnecessary witnesses, *Right Hon. J. A. S. Wortley* 2610——Extent to which an official control over prosecutions would lessen their number; great probable reduction in the expense, especially as regards unnecessary witnesses, *Horn* 2701–2706——If witness, at Liverpool, finds a witness is unnecessary, he does not call him; considerable sums saved thereby, *Walter* 2859–2876.

See also *District Agents*, 2.

V.

Vagrant Act. Objection to the practice obtaining in the metropolitan district, in order to avoid trouble and expense, of punishing pickpockets under the Vagrant Act, *Waddington* 2137–2139.

W.

Waddington, Horatio. (Analysis of his Evidence.)—Under Secretary of State at the Home Office; had practiced as a barrister for many years, 2062, 2063——Undoubted evils in the present system of administering criminal justice pointed out, 2064 *et seq.*——Great objection to the present system, or rather want of system, in the uncertainty in what mode a particular prosecution may be followed out, 2066——One system prevailing in the metropolitan districts, another prevailing in the counties where there are police, 2066——From the fact of the clerks to the metropolitan magistrates not being attorneys, and not practising, the police are necessarily bound over to prosecute, unless in cases connected with property, 2067.

In certain cases the police apply to the Secretary of State for legal assistance; such assistance is given them, but these cases are extremely few, 2067——Consequently, in London nearly all cases are conducted by the police up to the moment of a bill being found by the grand jury, 2067——In witness's official position he has not heard of any serious complaints or general failures of justice arising from this system, 2068–2072——System on which the Home Office proceeds in granting legal assistance when applied to by the police, 2073——It is only granted in cases of violent assaults on the police, and in cases of murder and manslaughter, 2073.

Reference to the case of the Birds, where a poor workhouse child was savagely treated; this was a case in the country; reason why it was taken up by the Government, 2074–2080——Opinion that the want of a public prosecutor occasionally leads to collusive prosecutions, 2081, 2082, 2088——There may be a sort of scrambling for prosecutions at times among low attorneys, but witness would say that such cases are rare, 2083–2086. 2129, 2130——Witness is rather in favour of the practice of magistrates' clerks getting up prosecutions, 2083–2088.

It is not desirable that attorneys should advance money out of their own pockets for the management of prosecutions, but no great evils have arisen from it, 2089–2091——Impossibility of judging whether a new system, by adopting district agents, would be more or less expensive than the present system, 2092, 2093——Allowing the expenses of witnesses for the prisoner would be a humane provision; way in which it would be likely, however, to have serious effects upon the administration of justice, 2094–2110.

The power of adjournment of trials should be extended to the criminal courts, 2110, 2111——Frequency of a sort of appeal being made to the Home Office, in consequence of proof in favour of the prisoner not having been given, 2112——Circumstances under which such cases arise; steps taken by the Home Office in these cases; pardon is sometimes granted in these cases, 2112–2119.

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Waddington, Horatio. (Analysis of his Evidence)—*continued.*

The system of public prosecutors, witness would recommend, would not be a number of irresponsible agents, but a minister of justice at the head, corresponding with the Minister of Justice in France, 2120–2127——He should be a person of high legal attainments, to whom all the agents should be responsible, 2127——The Attorney-general, with his other functions, would not be able to discharge these functions, 2120–2126.

As regards any general failure of justice, witness is only surprised, knowing the irregularity of the system, at there being so few complaints, 2128——There would be no very strong objection to the magistrates' clerks having the whole conduct of prosecutions, or the magistrates might appoint a person independent of their clerk, 2131–2133——Cases in which the solicitor to the Treasury is employed, 2134. 2139.

Doubts as to their being any need of additional assistance, with a view to investigate those prosecutions which are not taken up, 2135–2137——Objection to the practice obtaining in the metropolitan district, in order to avoid trouble and expense, of punishing pickpockets under the Vagrant Act, 2137–2139——So far as regards the metropolis, witness much doubts the fact of attorneys feeing policemen to give them prosecutions, 2140–2146——If, however, such a practice does exist, it is a great evil, requiring interference, 2140–2146.

Wales. In thinly-populated districts such as Wales, great advantage would accrue from a public prosecutor, *Roberts* 1483–1487.

Walter, Henry. (Analysis of his Evidence.)—Has been appointed about seven or eight years by the town clerk of Liverpool to manage criminal prosecutions, 2780–2782——Opinion that the appointing one single person to superintend and be responsible for the management of criminal prosecutions tends to the better administration of justice, 2783–2792——Little interference the police have in Liverpool with regard to prosecutions, 2793, 2794. 2851–2857——Witness is the judge of the evidence which is requisite, draws all the indictments, and is responsible to the public, 2795, 2796.

The whole of witness's time is devoted to this duty; average number of cases he has to manage in the course of the year, 2795–2801——Witness is simply actuated with the desire to attain to the truth, and can have no motive in procuring a conviction, 2802–2808——Way in which the preliminary investigation is carried out before witness takes the case, 2809–2814——How far witness has the power of postponing a case until a future session or assizes, supposing he considers it imperfect, 2820, 2821——It rests with witness to select the counsel to whom he entrusts the conduct of the prosecutions; way in which he selects them, 2825–2827.

Evidence relative to the costs of prosecutions at Liverpool as regards the establishment of the office of public prosecutor; how far it may be considered to be below the cost in other parts of the county of Lancaster, 2828–2847——The system adopted at Liverpool has been very much approved of by other places; it has been adopted at Manchester, except as to drawing the indictments, 2848–2850——If witness finds a witness is unnecessary, he does not call him, and takes care that no expense shall be incurred in bringing him; considerable sum saved thereby; 2859–2876.

Warrants. Practice in Scotland in regard to the warrant for the arrest of any one charged with crime, *Lord Advocate* 144, 145.

Wilkin, George. (Analysis of his Evidence.)—Has assisted the clerk of assize in the North Wales and Chester Circuit; has been employed by the Treasury to go down to the sessions in Suffolk to examine into the costs there, 2492–2496——Considerable sums of money are spent from the laxity of the present system, which might be saved, 2497–2501——Vast expense to the county by the cases which are committed by the magistrates at the present time, 2501–2504——If there were a proper person to examine the cases before they went to the jury this would not be the case, 2501–2504.

According to the present system unnecessary witnesses are taken for the purpose of swelling the costs, 2505——This evil arises from the fact of the police having too much the management of prosecutions, 2505–2509——The costs of prosecutions are reduced now to fully one-half of what they were, 2510–2516——Great extent of jobbing in order to obtain expenses, 2517–2521.

Wilkinson, Samuel. (Analysis of his Evidence.)—Solicitor; town clerk of the borough of Walsall; has had pretty good experience for nearly ten years in criminal business; 1984–1988——Respects in which the present system of the administration of criminal justice requires improvement, 1989 *et seq.*——Great want of some competent person to make a searching investigation even before the case comes before the magistrate, 1990. 2022–2025——Frequent failure of justice from the want of such a person; abuse also of justice for purposes of extortion, 1990–1994. 2022–2025——Escape of criminals from the want of a person directly interested on the part of the public in the management of the prosecution, 1998, 1999.

No particular evil can arise from an attorney having to advance money out of his pocket to procure evidence, 2000–2003——Many cases are not gone into on account of the poverty

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Wilkinson, Samuel. (Analysis of his Evidence)—*continued.*

poverty of the prosecutor; this in an injury to the poor man, 2003-2005——The power of allowing the expenses of the witnesses for prisoners should be exercised with very great care, and should be left entirely to the judge, 2006-2008——Objection to policemen being employed in the management of prosecutions, 2009, 2010——In the county of Stafford attorneys are not employed at the sessions; the depositions are sent to the clerk of the peace, who distributes them to the counsel, 2011-2015.

How far the appointment of a district prosecutor would be likely to insure a better attendance of witnesses at trials than is now obtained, 2016-2021. 2034-2051——So far as concerns prosecutions at petty sessions, the police may be useful for conducting them when nobody else can be got, but not otherwise, 2026-2033——Importance of the district prosecutor attending at the petty sessional division when the preliminary evidence is taken, 2052, 2053——A single officer might take a considerable area, if he did nothing else; he should be paid by salary, 2053-2056——Collusive compromises undoubtedly take place, 2057-2061.

Witnesses. Objection to all expenses being allowed to witnesses called on prosecutions, *Lord Brougham* 56, 57——Check to be exercised by the proposed district officer in regard to the witnesses and the evidence to be produced on trial, *Greaves* 282-285. 301-306. 354-357. 392——Reluctance at present on the part of attorneys to bring forward witnesses really necessary for fear of being blamed by the judge for incurring too much expense, *ib.* 304, 305——Great importance of avoiding the evil of not producing necessary witnesses; case in point, *ib.* 394——How far any increased authority is wanted to pay witnesses for lost time, *Preston* 1191-1193. 1290-1293——It is a very great evil that magistrates have not the power of allowing the expenses of witnesses unless a committal takes place, *Foote* 2922-2924.

See also *Advance of Expenses. Attendance of Witnesses. Central Criminal Court. Compromises. Coroners' Inquests. District Agents,* 2. *Evidence. Grand Juries. Ignored Bills. Payment of Witnesses. Petty Offences. Prisoners' Witnesses. Recognizances. Treasury, The. Unnecessary Witnesses. York.*

Wortley, Right honourable James Archibald Stuart, M. P. (Analysis of his Evidence.)—Has held the office of Recorder of the city of London since September 1850; 2599, 2600——Witness can see the evil of the present system of managing criminal prosecutions; but does not know of any scheme which has been proposed to which he can give his entire assent, 2601——Variety of the evils of the present system, 2602——Justice is defeated and the guilty escape by reason of there being no person competent to inquire after the evidence and arrange it, 2602——Justice is also defeated by procuring the absence of witnesses before the grand jury, 2602——Way in which, from the want of some official persons, indictments and presentment by the grand jury are made the means of oppression and extortion, 2602.

Evidence showing that the case for the prisoner is much more ably conducted than the prosecution; this arises from the want of a proper person charged with the conduct of the trial, 2602——Reference to the fact of counsel not always being employed at the Central Criminal Court; inconvenience arising from this, especially to the judge, 2602-2604——The Bill before the House appears to involve a very large outlay in salaries; opinion that the Bill will not lessen the number of prosecutions, or cheapen the mode of conducting the business, 2605-2610. 2614-2616——Some saving might be mad if a stop could be put to the practice of bringing so many unnecessary witnesses, 2610.

The want of a public prosecutor may have a tendency to throw the conduct of criminal prosecutions into the hands of low practitioners, but witness has not seen much evil arising from this, 2611-2613. 2641-2643——The only scheme which appears to witness to be at all practicable would be, that the magistrates' clerks, being attorneys, should be appointed district agents for the purpose of getting up the prosecutions, 2617.

Way in which the clerks of the peace might also be made useful in this scheme, in exercising a supervision over the district agents, 2617-2619. 2659——Difficulties in the way of doing this from the nature of the appointments of the clerks of the peace, 2618, 2619——Power which might be given to the clerks of the peace to enter a *nolle prosequi*, subject to the control of the Attorney-general, 2619——Opinion that the power of going before the grand jury to prefer an indictment is open to the greatest possible abuse, 2620-2624——If practicable it would be very desirable in some cases to allow prisoners the expenses of their witnesses; it is, however, a very difficult question, 2625-2629.

Evidence relative to the Scotch system of administering criminal justice, 2631, 2632——Similarity which may be drawn between the Scotch system and that suggested by witness, 2632——The Lord Advocate, the Advocate Depute, and the Procurator Fiscal are just the Attorney-general or his deputy, and the clerk of the peace, and the district prosecutor, 2632, 2633——The clerk of the peace and the district agent might be left to select the counsel, 2633-2640——Reference to the analogy between the Irish and English systems of criminal justice, 2644-2648.

Bad

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Wortley, Right hon. J. A. S., M.P. (Analysis of his Evidence)—*continued.*

Bad economy of not employing counsel in all cases of criminal prosecutions, 2649-2651. 2661-2665——Unless somebody is appointed to conduct the prosecutions, the business cannot be properly done, 2649——The difficulty used to be with the ratepayers, but is not so now; there is no reason, therefore, why the system should not be altered, 2649——Opinion that in private hands prosecutions are not always conducted with fairness, but rather with a vindictive feeling, 2652, 2653——Looking to the interests of the bar, it would not be advantageous to give the prosecuting counsel the dignity of a minister of justice, 2654-2658. 2660.

Opinion that the appointment of a public prosecutor by the Crown would not do away with the sharp collisions which occasionally take place between the prosecuting and the defending counsel, 2666-2669——Evils arising to the interests of the bar from the low class of practitioners attending some of the assizes and sessions in the country, 2670, 2671——Great evil of policemen having the management of prosecutions in any way, 2672, 2673——The grand jury system is one of the great difficulties in diminishing the expenses of prosecutions, 2674.

Y.

York. Inconvenience occasionally at York in regard to the attendance of witnesses at trials as well as before the grand jury, *Ellis* 264, 265——Arrangements which have been made with a view to obviating the inconvenience and expense of witnesses having to go from Leeds to York assizes twice, viz., to go over before the grand jury, and afterwards to the trial, *Barr* 1401-1405.

Yorkshire. Impracticability of applying the proposed provisions for a local public prosecutor to the county of York, *Leeman* 955, 956——The system of public prosecution as adopted at Leeds has not been carried out in any other town in Yorkshire, *Barr* 1399.

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