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Supreme Court.

(Continued from page 12.)

name was Archdale S. Lewis, not Archdale S. Lewis, and the Court being satisfied that he was the right person, corrected his name accordingly, the correction was made in the revised list of Grand Jurors by writing the word Archdale over that of Archdale in order to prevent a like mistake occurring again. I cannot see how these facts support any objection to the Jury or to validity of the indictment found against the accused.

As to the 7th objection: It is quite true that Thos. James is now a Customs House Officer, but he was formerly a Master Mariner, and as such he is described in the revised list of Grand Jurors for the current year. A Customs House Officer is an officer belonging to a civil department of government, and as such he is exempt from serving as a Grand Juror, but he is not disqualified. The section of the statute which creates exemption from serving as grand jurors, provides: "If any of the persons in this section exempted shall be summoned and shall attend to serve on any jury the Court may, upon or without the application of such person, release him from service. If any person so exempted shall serve on any jury, such exemption shall be no ground of objection to his so serving or to the panel of jurors on which he may be." Thomas James was a qualified juror. He attended in answer to a summons and was duly sworn and served. The fact that he might claim exemption from service is therefore no objection to the validity of the indictment found against the accused.

For these reasons I am unable to accede to the applications made by the accused to quash the Grand Jury or to allow his challenge to the array, and I think the plea in abatement to the indictment is not well-founded.

JUDGMENT OF CHIEF JUSTICE.

With the exception of the cases of the Jurors Cooper and Chaney, whom the defendant claims were not summoned, the matter which the defendant has pleaded in abatement in paragraphs numbered 1 to 4, inclusive have already been dealt with by the Court in the judgment delivered on the 13th day of October.

The other matters pleaded are as follows:—

(5) That two persons, namely, Terence G. Cooper and Wilbur Chaney, whose names are not upon the present revised list of jurors have attended and taken part in the deliberations of the alleged Grand Jury and were parties to its finding of the present alleged indictment.

(6) That the cards in the box did not correspond with the revised list as furnished by the revising magistrate because since the list was revised the following changes have been made by some persons unknown:

- The name of Joseph Perry has been struck out and the name of Joseph Perry substituted.
- The name of Edward Perry has been struck out and the name of Edward Perry substituted.
- The name of Archdale S. Lewis has been struck out and the name of Archdale S. Lewis substituted.

which said alterations are apparent upon the face of the revised list.

(7) That Thomas James, one of the alleged Grand Jurors, who has attended and taken part in the deliberations of the Grand Jury and has concurred in its findings, is a person holding an office of emolument under and as the will of the Crown, namely, Customs Officer, and therefore is not a proper person to be a member of a grand jury in a prosecution by the Crown.

With respect to Messrs. Cooper and Chaney, the evidence taken by us leaves no doubt as to the identity of these jurors. The jury list gives the name of Francis Cooper, address, Freshwater Road, occupation, clerk. Mr. Terence G. Cooper, Freshwater Road, clerk, deposes that he was called to serve on the Grand Jury; the summons was made in the name of Francis Cooper but Terence was written underneath in lead pencil. He has lived in his present home on Freshwater Road for eight or ten years and nobody of the name of Francis Cooper has, during that time, lived on Freshwater Road, nor does he know of anybody of that name ever having lived there. The witness says that he brought it to the attention of the Court when he was summoned, that he had been summoned by a wrong name and his name was then called properly as Terence G. Cooper; that there was in the city a Frank Cooper but he was not a clerk and never lived on Freshwater Road.

In Chaney's case the evidence of G. Wilbur Chaney, 120 Hamilton St., accountant, is that he was summoned under the name of William Chaney; that there are two persons by the name of William Chaney in St. John's: One, a cousin of defendant, living on Alexander Street, an engineer; the other is defendant's father, a retired dry goods clerk, who lives on Pennywell Road. Mr. Wilbur Chaney has lived at his present address for two or three years and nobody of the name of William Chaney has resided there. He called the attention of the Court to the fact that his name had been wrongly written, and he

was sworn as Wilbur Chaney. The address on the jury list is William Chaney, 120 Hamilton Street, accountant.

As has been observed by Counsel for the Crown, the name of Terence might easily have been taken, in copying, for Francis, and the confusion between William and Wilbur may be similarly explained. We find that both Terence G. Cooper and Wilbur Chaney are duly qualified jurors, clearly identified by their occupation and address; that there is no possibility of their having been confused with any other juror of a like name, and that the misspelling of their Christian names cannot have the effect of disqualifying them.

The objection (8) that the cards in the box did not correspond with the revised list as furnished by the magistrate, seems to be without substance. The name Joseph Perry was put on the list for Joseph Perry, and Edward Perry for Edward Perry, as is apparent from the statement of residence and occupation. Messrs. Perez, the sons of a former Spanish Consul here, gave evidence that they were duly qualified grand jurors and that the proper spelling of the name was Perez. The correction was made in the list by the Sub-Sheriff. Mr. Archdale Lewis proves that during the present year he had been summoned as a juror under the name of Archdale S. Lewis. He objected in Court to the misspelling of his name and asked that it be corrected. Mr. Lewis' address is 29 King's Bridge Road, accountant, and he knows of nobody by the name of Archdale S. Lewis; nobody of such name has lived in his house during his six years' occupancy, nor has he heard of anybody of that name ever having lived there. Neither Mr. Lewis nor Messrs. Perez have been empowered to serve upon the present Grand Jury.

The 7th objection is that of Thomas James, because he holds office of emolument under the Crown, is not a proper person to be a member of a Grand Jury for a prosecution by the Crown. The holding of office at the pleasure of the Crown does not disqualify a juror. Mr. James is a juror whose name appears upon the revised list and who, when called in Court, did not claim exemption. He was sworn and served upon the present Grand Jury, taking part in their deliberations upon the first bill of indictment submitted to them. On the second occasion when the jury was called he claimed to be exempted. The Court, in the circumstances, decided that his claim should not be entertained. The Judiciary Act, Sec. 8, provides that "officers and clerks belonging to the department of His Majesty's Government shall be exempt from serving on juries but 'if any person so exempt shall serve on any jury, such exemption shall be no ground of objection to his so serving or to the panel of jurors on which he may be'."

These are all the objections first raised by the defendant to the indictment, and in the course of the evidence taken herein, it appears that a comparison of jury cards with the revised list had recently been made by the Sheriff for the purpose of ascertaining whether they correspond in all respects, and a discrepancy was discovered. The defendant has, in consequence, added two further objections, namely:—

(8) That the said alleged Grand Jury was not drawn from the box containing cards bearing names of all the qualified grand jurors set forth in the present revised list of grand jurors, but that twenty-seven of the said names were missing from the box when the said alleged Grand Jury was drawn.

(9) That it is certain, whether the names of all the qualified grand jurors upon the revised list were in the box or not when the said alleged grand jury was drawn, because it appears upon the evidence of the Sheriff that upon various occasions when panels of special jurors were drawn from the said box since the last time the contents of the said box were compared, namely, January, 1924, the cards comprised in the said panels were afterwards returned into the box without being counted or checked or compared with the revised list of grand jurors or any other list.

The number in question is twenty-five, not twenty-seven. Of this number twenty were taken from the box, having been drawn on special juries during the year and these cards were not returned.

It is suggested that some of the others might have been removed for the same purpose and the Sheriff reports to us that of the five cards unaccounted for, one contains the name of Hugh Carter, cooper, 5 Colonial Street; and the other the name of Richard F. Joy, journalist, 15 Garrison Hill, and that the former of these jurors has died since the list was made out and that the latter has moved to the United States. The fact that on the occasion of the checking those twenty-five cards were not in the box cannot invalidate an indictment found by the required number of Grand Jurors, all of whom were competent grand jurors, summoned by the Sheriff, called and sworn in Court, and asked to consider the Bill. The statute provides that irregularities in compiling, revising or returning jury lists shall be no cause of challenge or other exception; and that irregularities in drawing, summoning and returning any jury panel shall be

subject to exception on challenge only, and not otherwise."

JUDGMENT OF MR. JUSTICE JOHN-SON PREPARED ON OCT. 15th. FILED ON NOV. 4th.

The King vs. Meaney.
In the matter of facts suggested to the Court by counsel representing the Attorney General.

In the matter of the Grand Jury called for the present Session.
The Judiciary Act Cap. 65 having in contemplation the jury lists provided in the preceding paragraphs provides, as to the revised list of names of qualified grand jurors, as follows:—

1. Each name on the list shall be set on a separate card.
2. At least seven days before the first day of each session of Court the Sheriff or Sub-Sheriff shall attend before the Registrar or Deputy Registrar and produce the cards containing the names of all the grand jurors; the Registrar or Deputy Registrar shall compare the cards with the said list of grand jurors;
3. The cards shall be put into a box in the presence of the Registrar or Deputy Registrar;
4. The twenty-three persons whose names the Sheriff or Deputy Sheriff shall first draw from the box shall be summoned at least two days before the session opens and shall serve as grand jurors during the session.

This rigid code has been the law for almost a century. Twenty of such a jury were sworn on the first day of the present session; they proceeded with an indictment for murder sent to them; found a true bill, whereon the accused was arraigned and pleaded not guilty and his trial was set for the 15th inst. On the 9th of October five other bills of indictment were sent to the same grand jury, as to one of which they have found no true bill.

When Court opened on the 10th of October, counsel speaking for the Attorney General read, under caption in this indictment, an affidavit made that day setting out that the deponent had been informed and believed that the grand jury had been irregularly summoned in that points 2, 3 and 4 above quoted had not been complied with. On Saturday, the 11th inst., the same counsel on behalf of the Attorney General moved that the grand jury should be discharged.

In the facts before us I am of opinion that the grand jury was not duly drawn; that attendance by the Sheriff or Sub-Sheriff before any but the Registrar or Deputy Registrar is not such attendance as the statute prescribes; that comparison by any but the Registrar or Deputy Registrar is no comparison; that the cards were not in this instance put into the box in the presence of the Registrar or Deputy Registrar. It appears that at this so-called comparison there was no comparison of the cards with the jury list, but comparison only as to the twenty-three cards first drawn by the Sheriff.

In my opinion it should be held that a grand jury for the present session never came into existence, and that all done therein from the date of the supposed drawing has been nullity.

St. John's, 13th Oct., 1924.

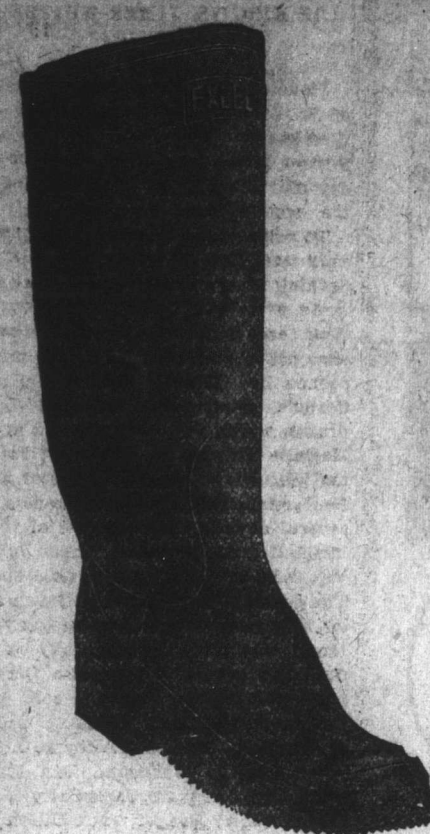
JUDGMENT OF MR. JUSTICE JOHN-SON DELIVERED NOV. 4th.

The King vs. James Whiteford Mc-Nelly.

I was unable to concur in the judgment pronounced by the majority of the Court on the 13th of October, in the application made in Rex vs. Meaney as to the sufficiency of the Grand Jury, because I considered the irregularities then disclosed in affidavit filed by counsel for the Crown, as to and preceding the drawing of twenty-three names of grand jurors, so material as to void that drawing.

In the present application wherein this defendant seeks the benefit of (a) challenge to the array of grand jurors; (b) that the indictment be quashed; (c) to plead in abatement thereto, his counsel relies upon six points of irregularity in addition to those to which that affidavit referred. The first three were:

1. That the cards containing the names of all persons qualified to serve as grand jurors were not compared with the revised list as the statute provides;
2. That the names of all the qualified grand jurors were not put into the box or drawn in the presence of the proper officer;
3. That of the twenty-three, whose names were first drawn by the Sheriff twenty only were summoned;
4. That added points are that five of the twenty-three were not summoned;
5. That two persons whose names were not on the revised list took part in the revised Grand Jury's deliberations and were parties to the finding of this McNelly indictment;
6. That the cards in the box did not correspond with the revised list because alterations in that list had been made subsequent to the revision;
7. That Thomas James, one of the alleged grand jurors, was a Customs Officer and as such, not a proper grand juror;
8. That the alleged grand jury was not drawn from the whole revised list, because twenty-seven cards were missing from the box;



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neither the Registrar nor the Deputy Registrar was present, but the Sheriff and the clerk from the Registry only.

Not even suspicion of mala fides attaches to either the Sheriff or the said clerk in respect of what was done in or about the drawing of the 23 names; but they ignored the specific requirements of section 65.

The remaining six points are very material in view of the imperative nature of the provision of section 65 that the cards containing the names of all the jurors of the grand jury panel shall be put into the box in the presence of the Registrar or Deputy Registrar on the occasion when the 23 cards are to be drawn before each of the three annual sessions of court.

The presence of officials of the status of the Registrar and Deputy Registrar, the Sheriff and Sub-Sheriff,

was the specific safeguard which the Legislature provided for the constituting of such a high body as the grand jury; it therefore made use of the mandatory phrases of section 65, observance of which is the adequate security from the difficulties and malfeasances which might otherwise ensue.

In my opinion it should be held that a grand jury for the present session was not duly constituted, and that the present indictment should be quashed and the accused not called upon to plead thereto.

The grand jury functioning during the current session being in my opinion a nullity ab initio because of non-compliance with essentials prescribed by section 65, this my conclusion will apply also to proceedings had on any other indictments purporting to be found by that jury.