THE TWO LOVERS.

The evergreen mountain sorrowed and sighed.
"My love, the valley, is false to me,
When my shadow last kissed good-night," it cried
"My love wore the green; what now do I see?
White, white, all white; ah me! ah me!"

The north wind answered, "Nor sorrow nor sigh,
Thy sweet valley sleeps but will wake again."
The north wind confessed, "I too love it, 'twas I
That dropped my cloak lest my breath should pain
Thy valley, the green next its heart doth remain."

Lockhart Thomson.

REVIEW OF THE GRAND JURY SYSTEM.

THREE sessions ago the attention of Parliament was drawn to a live question, viz., the abolition of the grand jury system. The Hon. Senator Gowan, who has made a profound study of the system, declared, in a most able and exhaustive address, that bringing the grand jury to the common test of utility and fitness it had survived its usefulness, and the large, expensive, cumbrous body ought to be abolished.

Senator Gowan argues that it is secret and irresponsible. Every member is sworn to secrecy before admission to act, hence the safeguard of liberty—open and public administration of justice—is wanting. Experience teaches us that a secret body can screen an offender. Its very secrecy is an invitation to covert approach. The prejudices of local jurors may prevail against evidence. There is the one-sided free access of the crown counsel. It is a changing body and unskilled in the examination of witnesses. The true facts of a case cannot be elicited, and it is very easy for a partial or unwilling witness to suppress or colour his evidence in the secret examination. There is no right of challenge, and again experience has proven that sometimes friends or foes to the person accused are placed upon the jury, and a suppression is had or a trumpery case is propounded. Unlike the petit jury a majority governs. The grand jury itself is capable of acting arbitrarily. At one time the body was very necessary in the absence of police in bringing offenders to justice, but that reason is *effete*. Social and political considerations sway jurors minds and cause partial justice. A magistrate sends up a prisoner upon a *prima facie* case, made out against the latter, and if the grand jury find no Bill, the accused must always rest under a cloud. The cost of grand juries in Ontario alone is from $40,000, to $50,000 annually.

Better men would be released to perform the functions of the petit jury. The greatest and most important duty is thrown upon the weaker vessel, the petit jury—a most striking anomaly in the administration of British law.

Public opinion recognizes that the days of the usefulness of the grand jury have been spent, and that some simpler and less expensive system should be inaugurated. Senator Gowan suggests that either a public procurator-fiscal, like that existing in Scotland, which years of trial have proved so admirably beneficial, or that the Crown-Attorney system, obtaining in Ontario, be extended throughout the Dominion. Another system is suggested by an able writer in the *Canada Law Journal* upon the subject of crown counsel. He suggests that a crown counsel be appointed for each judicial circuit, who should take the place of the grand jury. Such a step would not only facilitate the abolition of the latter, and at once afford a perfect substitute, but would be a striking reform of another weak branch of criminal procedure. Crown counsel, nowadays, only arrive on the scene of trial at the opening of court, and are often hurriedly thrust into a case without any preparation, and so miscarriage of justice constantly takes place. Nor does the present mode of appointing a different crown counsel for each and every subsequent court ensure the obtaining of good men. Here then are three substitutes for the grand jury system. Either introduce the efficient measure of the procurator-fiscal of Scotland or enlarge the usefulness of the county attorney, or constitute a permanent crown counsel for each circuit, and substitute him for the grand jury, whose whole time will be given to criminal matters, and whose work would be under the eye of an independent judge and court.

Sir John Thompson, Minister of Justice, recognizing the strength of the movement for abolition, and it being his intention to submit to Parliament a Bill codifying criminal law procedure, both as regards substantive law and procedure, issued a circular letter to the judiciary and Attorney Generals throughout Canada, inviting their opinion on the subject. Their replies have been embodied in a Blue Book, and prove an interesting feature in the discussion of this potent question.

Mr. Justice Gwynne states that the idea of the grand jury, constituting in the present day the palladium of British liberty, is altogether of too mediæval a character to justify its receiving a moment's consideration. No perils can nowaday arise from the interference of the Crown in the administration of criminal justice. Their functions were never of a higher order than to determine whether the *ex parte* one-sided evidence submitted to them by the prosecutor was sufficient to justify the accused person being put upon trial. Judges are now independent of the Crown. The petit jury, and not the grand jury, constitute, under the direction of independent judges, the true protection of the subject, against unjust and frivolous prosecutions.

Mr. Justice Taschereau, the author of the best work on Canadian criminal laws, pronounces in no undisguised tone in favour of abolition. He refers to the work of the Criminal Law Commissioners of England, and states that the weight of opinion preponderated against the maintenance of the grand jury. In refuting the argument of antiquity he cites a passage from John Pitt Taylor's opinion, viz.: "There is an instinctive tendency in the minds of most men to admire and reverence the wisdom of bygone ages, and to cling with affection to those institutions which have stood the test of centuries. Such feelings are natural, nay laudable, but they may be indulged too far. There is no doubt that in the days of the Tudors and the Stuarts the grand jury was the bulwark of English liberty. In those unscrupulous times, the judges were removable at the pleasure of the crown, and petit juries were subjected to imprisonment and fine if they dared to find a verdict contrary to the direction of a dependent and sycophantic bench. A party who had become obnoxious to the reigning power could only hope for security through the medium of the grand jury; but at the present day, when the judges are actuated by no personal fear or hopes, when petit jurors are at least as independent as the members of the grand inquest, and when an enlightened press promulgates, and by promulgating controls the proceedings of courts of justice, it is idle to suppose that the intervention of a grand jury is any longer necessary to protect the defendant from oppression or injustice."

Mr. Justice Taschereau adds that an English judge held that a grand jury is not bound by any rules of evidence, the latter saying "that they were a secret tribunal and might lay by the heels in gaol the most powerful man in the country by finding a Bill against him, and for that purpose might even read a paragraph from a newspaper."

Judge Taschereau also points out that it is undoubted law that a grand jury may present an indictment upon their own knowledge, and, if it acts arbitrarily, where is the remedy? What control has the court itself over the findings?

Chancellor Boyd, the very able President of the High Court of Justice, says that he has been "long of the opinion that the time has come to abandon this expensive, anamalous and circumlocutory process."

Judge Sinclair, a legal author of wide reputation, after careful consideration and practical experience, thinks no injury can befall the country by the abrogation of the system.

Remarkable features of justice resulting from the habit, which grand juries not unfrequently possess, of usurping functions not belonging to them, of assuming those of the judge and petit jury, as well as their own, and of trying cases given to them for their consideration, in direct opposition of the express instructions of the court, weakened his faith in their utility. Other and much more reliable means may be found for the protection of the individual from malicious and unfounded prosecution, as well as for bringing actual offenders to justice. He further states that the extended jurisdiction given to county judges and police magistrates in criminal matters has been productive of much good, and has a tendency to diminish the number of offences by furnishing the means of prompt conviction and punishment of offenders. Persons charged with offences are not so liable to be improperly convicted if innocent. The chances of escape are lessened in case they are guilty.

Judge Ross shows conclusively that it is a most expensive farce by instancing a local case in Bruce, where the court was over in one day. The jurors coming from long distances lost their time, and the county its money. Some interesting features are furnished by him. A person committed for trial, upon payment of the statutory fee obtained a copy of the grand jury panel, and therefrom canvassed every member of that body at their homes, and, being a clever, artful criminal, got his Bill ignored, and was freed. Another case is given where a ruffian went to the house of a lonely woman at midnight, and the better to intimidate her and accomplish his object, took a butcher's cleaver. The foreman, being a friend of the accused, laughed the affair out of court. Judge Lazier is of opinion that grand juries can be dispensed with; particularly at the general sessions of the peace. Judge Deacon concludes that the abolition could be safely made and that it would be better to have the men usually elected for the grand jury, free to serve upon the petit jury; that some competent officer under the direction and control of a judge would inspire more confidence in the administration of criminal justice. "As it requires twelve to agree in order to find a Bill, how often has it happened that, when the panel in attendance was not full, five or six men (and sometimes fewer) have been able to control the ten or eleven who were in favour of finding the Bill, the majority, for the time being, being controlled by a mere fraction of their number."

The learned judge's experience is, that for every one innocent person saved by the intervention of the grand jury three or four guilty ones escape.

Judge Ardagh refutes the idea of the grand jury in these days as a protector of a subject against the crown as absurd, and further states that in his experience its powers of service as a safeguard against unjust and oppressive prosecution have never really been brought into play, but, on the contrary, have been interposed as a shield to the guilty.

Judge Macdonald, having as a judge been concerned with the administration of criminal justice for over fifteen years, is convinced that it can safely be abolished. And owing: "To the provisions of the Acts permitting prisoners to elect to be tried before county court judge, or before a police magistrate, many—perhaps a majority—of the cases which should have formerly have claimed the attention of the grand jury are now removed from action at its hands."

Judge Boys agrees that grand juries, as now constituted, have outlived their usefulness. He suggests that, for the sake of those who cling to sentiment, the name of grand jury might be retained, but would reconstitute the body by reducing it to three in each county; such three being composed of the county crown attorney, a local judge where there are two local judges in the county, and some third person. He advocates doing away with "charging" the grand jury, and the ordinary presentments of grand juries and replies thereto, as they occupy a good deal of time and cause expense with very little return. Presentments at their best are but the servile echo of the particular opinion of the presiding judge.

Judge Upper, in favouring the abrogation of the system, states that nine persons out of every ten elect to be tried by the county judge's criminal court, where there is neither grand nor petit jury.

Judge Robinson, after a long experience, condemns the system. He never knew it to do good, but, on the contrary, work harm, and instances the latter fact by cases which arose under his notice.

Judges Hamilton and Lacourse concur in abolition, the system having become a thing of the past.

Judge E. B. Fralick thinks grand juries unnecessary, and that the appointment of Provincial inspectors does away with any necessity for the supervision of gaols, etc.

Judge Ermatinger is of opinion that the grand inquest has survived its usefulness and recommends a substitute.

Judge Hughes, speaking from a long experience of thirty-seven years, and a wide field of observation, entirely affirms all that Senator Gowan has said upon the subject.

Judges Senkler and Davis find the system cumbrous, inefficient and needlessly expensive.

Judges McRae, Robb, Pringle and McKenzie favour the doing away with the antiquated system, as such course would not interfere with the liberty of the subject.

Judge McCarthy is of opinion that action be taken abolishing the functions of the grand jury on the grounds of the very large number and intelligence of magistrates, the right so freely exercised by prisoners of being tried before a county judge and the expense.

These are some of the opinions against the maintenance of the grand jury. Surely a complete case has been made out, and the death knell of an old, decrepid, cumbrous, expensive body has for sometime been sounding.

The majority of the advocates in favour of its retention take the stand of antiquity and veneration, and that in days beyond memory it was the palladium of the liberty and right of the subject. Others again say we will dispense with it if a safe substitute can be found. We have but to turn to the tried procurator-fiscal system of Scotland, to our own crown attorney, to our own crown counsel, to a public criminal prosecutor, and some excellent substitute can without any great trouble be found. If such advocates are sincere in their desire for some earnest substitution, their attention is only necessary for the consummation of their wish.

It is then to be hoped than Senator Gowan will bring again to bear his acknowledged erudition as a jurist and his powers as a reformer of good and tried legal reform, and carry out the abrogation of the Grand Inquest, solve the question of a safe substitute, and place criminal prosecution upon as sound a basis as other branches of our jurisprudence in which his guiding hand has so often appeared.

Anon.

November 20, 1891.

PARIS LETTER.

EH BIEN; supposing that M. de Giers, aged 71, only came from the soft atmosphere of Italy in November to exchange a *bon jour* with M. Carnot and his Ministers, how can that effect the European situation? Supposing even he came to sign a treaty on behalf of the Czar, having the latter's brothers as witnesses, what novelty would that be in the "union of hearts" between the Russians and French? It is said that to-day diplomatists only deceive themselves; they have no other facts to guide them but the interests of realms and the opinions of peoples—elements at the disposal of all who use their eyes and ears. There is nothing sphinxical in what the Muscovite ambitions and the Gaul wants.

If Russia and France only executed a treaty to run diplomatically in couples, like Juno's swans, that were unnecessary. If the treaty includes sitting still like the ancient Egyptians, it will be as useless as disappointing for the French. If the dual powers mean to remain as a double-bolt on the peace-lock of Europe, they will create no more uneasiness than the triple alliance. Actions outside these lines imply and involve war; once the latter is unchained, none can direct its course nor arrange the belligerents like puppets, nor limit its duration, still less terminate it as planned. The dream of Peter the Great