out of the hundred present being of that mind, etc. Robert Grindell (or Grindle) followed, but his evidence was ambiguous; he did not swear as had been anticipated or as he had sworn in a deposition before Mr. Geoffrey Lynch. The whole case was weak, and Mr. O'Reilly moved for the discharge of the prisoners on the ground that there was no evidence of a conspiracy to levy war against the Queen, etc., as charged; but Mr. Justice Macauley ruled that there was some evidence to go to the jury and the defence proceeded.[11]

O'Reilly followed the modern practice and called his witnesses without opening to the jury. John Shaw swore that Benham did not advise to throw off allegiance or to join Mackenzie; that the whole object of the meeting was to protect the life and property of the settlers in Eramosa, mutual defence, and a meeting was arranged for a week later if Toronto was taken; they were to protect themselves from Mackenzie; there was no talk of rebellion. Joseph Parkinson testified to much the same effect, as did James Smith and George Sunley.

The counsel for the prisoners addressed the jury, and MacNab replied; then the Solicitor-General claimed the right to follow—quite against our modern practice although good in strict law—and had his claim allowed.

The charge was impartial; the jury was told that if the prisoners at the meeting declared in favour of revolt, openly approved of the rebellion and pledged themselves to support it, they would come within the indictment, as it was of common notoriety that the object of such rebellion was to overthrow the Government by force; but that if what was meant or contemplated was self-preservation, mutual protection, reform properly so-called as distinguished from rebellion or revolt, the verdict should be for the prisoners. "The jury retired and in just eight minutes returned into court with a verdict of not guilty."[12]

[11]In Mr. Peters' Statement in the *Guelph Weekly Mercury and Advertiser*, August 9, 1906, he says: "The evidence was so much in our favour that we told our Counsel we were willing to submit our case to the jury without examining any of the eight witnesses we had on our behalf." If such were the case, Mr. O'Reilly did not risk that course because he called four witnesses. Mr. Peters is apparently under a misapprehension as to the responsibility for calling these witnesses, for he says: "The crafty Queen's Counsel (Draper and MacNab) would not consent to this arrangement probably expecting to get something out of our witness they could not get out of their own, but after examining three of them they gave it up for a bad job"; this is quite incorrect.

[12]The language of Mr. Peters in the article mentioned in Note 11; he says: "After seeing the political complexion of the petit jury . . . our chance of an impartial trial was very small." In the previous article he said that "the Grand Jury . . . nineteen in number, were all pure, thoroughbred Tories. . . . There were eighty petit jurors summoned, namely fifty-seven Tories to the backbone and twenty-three Reformers."

The conviction of Lount and Matthews, in Toronto, in January, 1838, was believed by the time of the trial of the Eramosans to be about to be followed by their execution; and the country at large did not desire further convictions unless guilt were clearly proved. Moreover, Canadians, while bitter enough partisans at election times, do not usually carry political feeling so far as to desire the shameful death of political opponents.

Mr. Peters adds: "Six of the seven jailbirds are still (1866) living—Clear Grits yet. I do not think any of them has given a Tory vote since."