THE GRAND JURY AND ITS DUTIES

Functions of Old English Institution Defended—Its Abolition Would Put Dangerous Power in the Hands of Officials and Government.

The grand jury, as part of the machinery for administering justice in Great Britain, was suspended during the war. The suspending act has expired, and the fact has called for a discussion of the usefulness of such an institution. One of the most interesting and instructive articles given to the public appears in the London Times. It was prepared by "One of His Majesty's Judges." He introduces his argument with the statement that the question to be decided is not one of "finding machinery that will serve tolerably the purpose of a humdrum assize in quiet times; it has much wider bearings." Then the article proceeds:—

The institution of the grand jury rests upon the principle of the common law that a subject is not to be brought to trial by the act of the executive or any officer representing it, but only through the presentment of a jury drawn from the community. This principle may or may not command approval, but there can be no doubt that it is as fundamental as anything in our law. There is a limited exception in the case of criminal informations, which need not detain us.

A grand jury, though summoned to investigate supposed crimes in the interests of the crown, as head of the state, might nevertheless, as the form of their oath is sufficient to show, be informed of such offences by any private person, or might even (though this may be obsolete) act upon their own knowledge. The short effect of the system is that no one can be put upon his trial except by a grand jury, and conversely that anyone can be put upon his trial by a grand jury on any information with which they are satisfied. In a word, they are the only and the uncontrolled accusing authority.

The Magistrates' Duty.

The functions of the magistracy in the preliminary stages of criminal proceedings were and are different both in origin and nature. It is the duty of magistrates, on information that a crime has been committed, to inquire into it, and if satisfied that there is a prima facie case to commit the supposed offender for trial (more accurately, to commit him in order that he might be forthcoming to answer any indictment that might be found against him by a gand jury), or to release him on bail to be so forthcoming; also, to bind over the witnesses to appear upon the preferring of such indictment. If they do not bind him over the indictment may still be preferred, subject to the inconvenience that the accused may not be found. The magistrates are, therefore, in no sense an accusing authority. If they commit, it does not follow that an indictment will be found. If they refuse to commit, it does not follow that it will not. In cases within the Vexatious Indictments Acts it is an essential preliminary that magisterial proceedings, successful or unsuccessful, shall have been taken. But in other cases, including most of the serious offences, a prosecutor can go direct to the grand jury.

From the above short outline of the position it will be seen that the popular notion that the only function of a grand jury is to revise a committal by magistrates is wholly inaccurate. A very little thought will show that this system has great significance, both from the point of view of the accused and from that of the prosecution. To take the position of the accused first; it is by no means uncommon that the evidence taken before the magistrates is found to be insufficient to support the charge on which a prisoner has been committed. In such a case, upon the advice of the judge, the bill of indictment is either ignored by the grand jury or is found in respect of a different charge, such as the evidence does support. In many cases trials are thus prevented which, if there is no prospect of a conviction, should certainly not take place. It is not necessary to indicate the class of case referred to. If the bill is ignored this, of course, does not amount to an acquittal, and if further evidence is forthcoming, on a later occasion the indictment can then be found and a miscarriage of justice due to premature commital is prevented. It is believed that this occurred fairly recently.

A Constitutional Right.

On the other hand, the public interests, represented by the prosecution, are also involved. It must not be forgotten that many grave matters are triable upon indictment besides the common crimes which popular imagination principally regards. Abuses and defaults not resulting in direct pecuniary or physical damage to an individual willing to bring an action, but only to the public, cannot be corrected by any other judicial process. To take an example which may make it possible to realize this principle, it was recently suggested that the officers of Inland Revenue in assessing a certain class of persons to income-tax were making allowances not warranted by law. The only means afforded by law to get such a question determined is by indictment of the officers to whom such delinquency is imputed. Every one has a constitutional right to prefer a bill before the grand jury and have them judicially directed upon it according to law. This right, though the occasions for its exercise may not often arise, must surely, when the scope of the remedy by indictment is appreciated, be allowed some importance in our legal system.

In view of the considerations stated above, sweeping pronouncements upon the futility of grand juries are somewhat hasty and superficial. On the other hand, the system is undoubtedly cumbrous and does involve some waste of time and money. The question is whether for general purposes any other satisfactory accusing authority can be found. It is popularly thought, in a loose way, that the committing magistrates act in that capacity. This, as has been shown, is wrong. But at least it is implied that they ought to, and it is taken for granted that under the Grand Jury Suspension Act they have. As a matter of fact, under that act an indictment was found (by the clerk of the court simply writing it out) "in any case where a person had been committed for trial or where the consent or direction in writing of a judge of the High Court or of the attorney-general or solicitor-general had been obtained." This made the committing magistrates or a judge or a law officer alternative accusing authorities.

Power of The Executive

The first point that strikes one in this system is the novel power it gives to the executive. The attorney or solicitor-general has only to direct that an individual shall be tried for any offence, from treason downwards, and the trial takes place. This replaces the law under which such a result could only be obtained by the finding of a grand jury after a charge upon the matter by a judge in open court. Whatever view may be taken o. the charge, it must be admitted by all that it is a fundamental change, and it is not to be described or discussed as an obsolete formality. The position is that the government of the day would be able if pressed, to promise a criminal trial across the floor of the House of Commons.

One hears it said that English justice is so pure and merciful that there is no danger of anyone being convicted upon a charge which should never have been brought, and, after all, it is said, there is always the Court of Criminal Appeal. It may, however, be permissible to question the soundness of a principle which would neglect the hazard of unjustifiable executive accusation in reliance upon no harm being done in the end. The system should be sound at every point, and, after all, it is no light matter to stand a trial. It must be remembered, too, that the executive already has the power to nominate special judges for criminal trials. The jurisdiction of judges and commissioners of Assizes rests on no other foundation. Moreover, this is not a question merely of the moment. There is an indefinite future before us. Official prerogatives do not tend to recede and times may become very different. A revolutionary government could always usurp an unconstitutional power of sending its enemies before a criminal tribunal, but there is no reason why this generation should save it the trouble.

Safeguarding Justice.

The idea that a judge should originate a criminal accusation, another of the devices of the Grand Jury Suspension Act, may be shortly dismissed. A judge ought not to be an accuser, and in practice, unless he is to be the judge who is going to hear the case (which is unthinkable), he has not the materials. There remains, therefore, the question whether the putting of a person on trial is to be left finally to the magistrates.

It is remarkable that this has never been expressly proposed. The principle that the dismissal of a case by magistrates should not be a final bar to a prosecution was recognized by the Vexatious Indictments Acts and the Grand Jury Suspension Act itself. Surely few would, upon consideration, favor the idea that the fate of criminal proceedings should rest finally with the majority of a local bench, whether the question he looked at from he point of view of the prosecution or of the accused. The committal proceedings, if they finally determine the question, would assume a very different aspect from that which they wear under the grand jury system. And when cases occur arousing strong local feeling or in difficult times the difference would soon become very marked. It is, perhaps from the point of view of the public interest in prosecutions that there is most to be said against a system which would leave the matter finally to a local bench. Suppose a well-known local man does an act of wounding or homicide. Is a majority of the bench to decide finally that he is to be tried for wounding only (without intent), or for manslaughter and not murder, or not tried at all? At present any weakness of this sort on the part of magistrates can be corrected by the grand jury upon a charge by the judge. What in the future is to be proposed should be the safeguard of public justice in such cases?

A Suggested Change.

The matter, however, does not end there. It has already been pointed out that the scope of the remedy by indictment extends far beyond everyday crime. Moreover, as every lawyer knows, the range of the criminal law is not confined to statutes. Outside of the statute law there is the wide class of misdemeanors at common law—a valuable chapter in our jurisprudence. If the remedy by indictment (for grievances for which there is no other remedy) is to be retained as an effective safeguard for public interests, it could hardly be contended that it is only to be available if a petty sessional bench can be got to understand its application in such cases. It is easily available in a proper case if a grand jury is directed upon the point by a judge of Assize.

Upon a review of the whole matter from both points of view, there seems much to be said for the suggestion that while the grand jury system should be retained at assizes, a system somewhat on the lines of the act just expired should be substituted at quarter sessions. These are held four times a year in every county (and sometimes in parts of counties). They are also held in innumerable boroughs. In the metropolis they occur every fortnight. It is at quarter sessions that the burden of the grand jury is most felt and its practical utility most remote. If grand juries can be abolished at quarter sessions nine-tenths of the inconvenience would disappear. On the other hand, by their retention at assizes only, all that is desirable in the system can be secured.

The Young Women's Guild of Trinity church at its regular meeting last night had an interesting missionary programme and listened with much appreciation to a paper on India contributed by Miss Roberta Holder.