

not since been cultivated or improved except by fencing, but I find as a fact that for more than ten years before the commencement of this action, plaintiff had knowledge of the actual possession and use of the land by defendant in manner aforesaid. . . .

Action dismissed with costs as against defendant Trivett.

JUNE 2ND, 1903.

C.A.

REX v. NOEL.

Criminal Law—Conviction for Shooting with Intent—Leave to Appeal Constitution of Grand and Petit Jury—Rejection of Evidence.

Motion by defendant for leave to appeal from his conviction before MEREDITH, C.J., at Ottawa, upon an indictment under sec. 241 of the Criminal Code, for shooting at one Larocque, with intent to do bodily harm. The defendant was sentenced to five years' imprisonment. The grounds of the motion were that certain evidence, tendered on behalf of defendant, was wrongly excluded, and secondly, that four of the petit jurors were taken to fill vacancies in the grand jury, and defendant was thereby deprived of his usual right to a panel from the lawful number of jurors.

E. E. A. DuVernet, for defendant.

J. R. Cartwright, K.C., for the Crown.

The judgment of the Court (OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.) was delivered by

OSLER, J.A.:—Without expressing any opinion as to the soundness of either of the objections taken to the proceedings, viz., the constitution of the grand and petit jury, and the refusal of the learned trial Judge to allow the prisoner's counsel to re-examine the witness Pepin, we think they are such that the prisoner should have, if he desires it, an opportunity of arguing them upon a case reserved. In dealing with the latter objection it will probably be necessary that the whole of the evidence at the trial should be before us, having regard to the provisions of sec. 746 (f) of the Criminal Code. As to the former, counsel may be referred to *Burley v. The State*, 1 Neb. 385; *Runnels v. The State*, 28 Ark. 121; *Finley v. The State*, 61 Ala. 201; *Scott v. The State*, 63 Ala. 59; and the provisions of the Jury Act and the Criminal Code, bearing on the subject.