

*THE RELATION OF JUDGES TO GRAND JURIES.*

The institution of the grand jury is acknowledged to be of ancient origin, and constitutes for the subject a valuable heritage. In the necessity for a presentment by them against a person charged exists the barrier which the law's foresight places between him and the final umpire as to guilt and innocence, technically designated "the country". Approved as they find it by the test of centuries, it behooves possessors of the boon to show fitting appreciation of its worth.

Consideration of this topic is opportune at this juncture in view of Mr. Justice Street's charge to the grand inquest on the Kennedy murder trial at Brantford; its nature making it pertinent to enquire to what extent a judge in directing the body may discuss matters of fact. Can he undertake at best more than the duty of enlightening them as to how these may bear upon the law?

No English text book clearly defines the judge's province with regard to instructions vouchsafed to a grand jury. Chitty's Criminal Law puts it in this way, "When they (the grand jury) appear, the judge gives them such a charge as he thinks the circumstances before them will most particularly require." Mr. Harris in his book on criminal law speaks as follows:—"The object of this charge is to assist the grand jury in coming to a right conclusion, by directing their attention to points in the various cases about to be considered by them which require special attention." Neither observation, it will be noted, gives the line of demarcation.

Burn's Justice affords the estimate of Mr. Sergeant Talfourd in this regard. "That charge, for the most part, consists of remarks tending to explain and elucidate any cases which the calendar may disclose and requiring more than ordinary attention, either from the complicated nature of the facts, or from the law applicable to them happening to be of recent enactment, or of infrequent use. When parties have been committed, or held to bail on charges arising upon any recent Act of Parliament, it becomes absolutely necessary that the statute should be stated and explained." Thompson and Merriam on Juries contains, also, a judgment or two of importance, to one of which subsequent reference will be made.

A rather convincing utterance on the subject is that of Lord Chief Justice Eyre in Howell's State Trials, in the case of *Reg. v.*