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THE GRAND JURY SYSTEM IN CANADA.

The following circular was addressed by the Minister of Justice to judges and others in Canada:—

"Department of Justice, Ottawa, 29 Oct. 1890. Sir,—The question of the expediency of abolishing the functions of grand juries in relation to the administration of criminal justice has on several occasions been brought to the attention of parliament, and intimations have from time to time been made to the government by municipal bodies, judges and others interested in criminal jurisprudence, that the abolition would be in the public interest.

It is my intention to lay before parliament in the near future a bill codifying the criminal law of Canada, both as regards substantive law and procedure. Before submitting it, however, I would be very glad to be favoured with your views upon the question above mentioned.

I have taken the liberty of addressing this circular to all the judges in Canada who are charged with judicial functions in criminal matters as well as to the attorney general of each province."

The replies from the province of Quebec, which in the main are strongly in favor of the retention of the system, are as follows:—

CHIEF JUSTICE JOHNSON.

I have no difficulty in saying at once, that where there is a system of paid, professionally trained and competent police magistrates, the abolition of grand juries appears to me desirable, as respects ordinary felonies and misdemeanors; but I doubt whether in cases of a more or less political complexion such as seditious libels—the intervention of an entirely independent body could cease without impairing the confidence of the people in the impartiality of the administration of the law.

I do not know, and am not called upon to give any opinion upon what might be proposed as a substitute for the grand jury; but if I may assume it to be the complaint and information after examination of the accused, as now practised in Montreal, I should feel satisfied if the system were restricted to the cities, and within the limit of non-political cases.

It occurs to me, however, that even in such cases, the substitution of the police magistrate for the grand jury beyond the limits of the cities would be undesirable, if not wholly impracticable, as the power of the federal parliament to regulate criminal procedure could not extend to the appointment of local magistrates, and those offices would therefore certainly be held by partizans, to the great danger and detriment of justice as well in public opinion as in its actual administration which is already beset with great difficulty and expense arising from the two languages in use in the province.

MR. JUSTICE JETTÉ.

Although the judges of the superior court, in the province of Quebec, have criminal jurisdiction, the law (Sec. 2452, 2453, R.S.Q.) enacts that in the cities of Montreal and Quebec, when a judge of the court of Queen's bench is present and able to sit, the superior court judges are not bound to attend to that duty. In consequence of this disposition, I have never been called to sit in criminal cases, and therefore I do not feel warranted in offering any opinion on the question submitted.

MR. JUSTICE PELLETIER.

In my opinion, the grand jury is, in our districts, a great protection for the repose of the individual and a guarantee for peace among neighbours. I do not hesitate to declare that without the grand jury many vexatious suits would be instituted, especially in matters which would touch more or less closely political partizanship. To my own knowledge many frivolous accusations have been stopped by the grand jury. It is true that the keeping up of this body is costly; but until another institution is substituted for it,—some mode of preliminary trial which offers the same guarantees for the security of the person as for the property of Her Majesty's subjects,—it would be dangerous, in my opinion, to abolish it.

MR. JUSTICE WURTELE.

If in all the judicial districts of Quebec, we had able judges of the sessions and district magistrates, such as Messrs. Desnoyers and Dugas in Montreal, Mr. Rioux in Sherbrooke and Mr. St. Julien in Aylmer, and that the law required all cases to be referred to them for committal for trial, then I think that grand juries might be abolished in this province, but without such a safeguard I do not believe that their abolition would be in the public interest.

MR. JUSTICE PAGNUELO.

The inconveniences resulting from the system of grand juries are manifold, and the manner it is enforced adds to its inherent defects. Jurors lack that practical knowledge which a trained judicial officer or a judge possesses for the discovery of crimes, they are liable to surprises, and their feelings will often be appealed to and abused; in political, religious and racial trials, a condemnation is often next to impossible against a partisan, a co-religionist or a countryman, and criminals escape.

The one good feature of this system consists in this, that it gives to the accused as judges not adversaries or hardened officials exercising a daily routine business, but persons interested in his fate by a community of interest and of social position.

It is for this reason that juries are as a rule, found fault with, as giving criminals too many chances to escape; but it is of very rare occurrence that they be suspected of condemning innocent persons.

These considerations are true of petit as well as grand juries, but the secret and ex-parte proceedings before grand juries add considerably to the inconveniences of the jury system, especially where the standard of the jurors is low as it is in this province.

My impression is that cases are not sufficiently considered by grand jurors, and that the latter are too easily approached. Challenges being unknown and impossible, opinions are often formed before grand jurors meet together in their room.

Suspicions of that kind are by themselves a great drawback on this mode of administering justice.

One must also bear in mind that juries owe their existence in England to the desire of providing a guarantee against the undue influence which the then organization of society and of the government, and former abuses by persons high in authority justified the people to fear from permanent judges or officers appointed by the crown; they were more of the nature of a political safeguard against government officials than against the errors to which mankind is heir.

Jurors are nowadays no longer a bulwark of personal or political liberty, and they are generally dispensed with, in political trials, at times of great political agitation, but jurors are considered rather a safeguard against the indifference, negligence or partiality of officials.

The main office of grand jurors, as I view it, is now to control the decision of the magistrate, when a preliminary investigation has been held, or that of the judge or attorney general or his substitute when it is dispensed with, and to guard against prosecutions from motives of revenge, bias or interest.

Such a check is necessary in this country; I hold very strong opinions on this head, and should grand jurors be abolished, a substitute for them will have to be provided.

It is not possible to leave it to any one of our justices of the peace, now counted by hundreds in this province, to say that any citizen will be submitted to the trouble, anxiety, expense and shame of a criminal trial, perhaps on the most trivial pretexts, or to allow a man to escape trial, in the face of the most positive evidence, either through partisanship, favour or interest. Both of these contingencies must be carefully guarded against, as equally detrimental to society and personal security.

Therefore, I again ask, what substitute is suggested for grand juries? I am decidedly against officials appointed by local governments, as they would not be above the ordinary substitutes of the attorney general, and it would be most unsafe to leave it in their hands.

In France, five judges of the court of appeal constitute a court of enquiry or *mise en accusation*, to whom the clerk of the court reads all the depositions taken by the *juge instructeur*, with the help of the substitute of the *procureur de la république*, as well as the answers given by the accused in his private examinations by the *juge instructeur* and any written defense that the accused may choose to offer. These judges are competent men, and exercise these functions alternately with the other members of the court of appeals. If this system, which was adopted in 1808, as a substitute to grand juries, and strongly favoured by Napoleon, and which is now pretty universally adopted all through Europe, were possible here, I would favour its adoption with some modification as to details.

A bill is now before the Quebec legislature, and will likely pass, for the appointment of additional judges in the court of queen's bench, in order that two judges of said court may be appointed by the chief justice for holding criminal courts in all the districts of the province. Perhaps the resident judge, who by this new law is relieved of the duty of holding the criminal court in his district, could jointly with one or two of the judges of adjoining districts, constitute a court of enquiry and exercise hereafter the functions of grand juries, or some other mode equally reliable and safe could be devised out of the actual organization of our courts, such, for instance, as despatching two or three of the county judges in the Montreal division, and two or three in the Quebec division, to discharge the same duties for a year, etc. This I leave to you, sir, to say. Were all the judges of the superior court residing in three or four cities or towns, under the direction of our two chief justices, this idea might be more readily carried out than by the judges scattered all through the province as they are now.

A change of this importance deserves great consideration. Would the advantage derived from the new system be sufficient to justify its substitution to the old one? As it would have to be applied to all or nearly all the provinces, the difficulties to enforce the idea may yet be increased.

Not presuming to solve the problem, and apologizing for the length of this communication, I remain, &c.

MR. JUSTICE BROOKS.

I have always considered the duties of the grand jury as most important, and that unless and until a most thorough and radical change in our system of administering the criminal law is made, the grand jury system should be retained not only in the interest of persons accused of crime, but of the public.

While our justices of the peace, as must necessarily be the case in a new country like this, are men who are not and who cannot be supposed to be skilled in the law, who have not in the great majority of cases even the benefit of a liberal education, and who have not the means of obtaining the services of any efficient or skilled clerks to aid them in the performance of their duties, it is exceedingly unsafe to place in their hands as a rule the power of *deciding* if a person charged before them with a crime should be placed in the dock to take his trial at a higher criminal court.

I have known in my experience of thirty years in criminal matters many cases where persons have been bound over to take their trial for alleged offences, particularly in matters involving questions of civil rights, against whom under the instruction from the judge presiding over the criminal court or on advice being sought from the representative of the attorney general, the grand jury have returned "no bills," which if returned as true bills into court would have placed innocent men upon their trial to their disgrace in the eye of the public, with great expense to the country and to no purpose.

On the other hand I have very seldom known of bills thrown out by the grand jury when there was ground for returning true bills.

The expense to the country of the grand jury not being very considerable it adds to the dignity and importance of the criminal court.

They have from the presiding judge an exposition of the criminal law defining their duties and functions which ought to be instructive and of value.

The members of the grand jury, some of whom are usually justices of the peace, are instructed in their duties as such; and in cases which are to be brought before them involving questions of any difficulty they have the benefit of instruction from the court or advice from the crown counsel, which enables them in the public interest to decide either to find true bills or to reject bills laid before them, when trials would be fruitless and the persons accused should not be put to the disgrace of public trial.

In case of errors on their part in throwing out bills they can always be renewed before another court, and I have never yet seen any gross case of failure of justice by the erroneous judgment of the grand jury in rejecting bills laid before them.

I consider the grand jury system essential to the proper administration of criminal justice in the country. They have a right to present all matters which are connected with the administration of criminal law and they frequently avail themselves of that right, thus being an official medium of communication between the people and the executive in such matters, and I know of no other system which could be adopted which would enable us safely to dispense with their services, certainly not the substitution of any officer or officers, who, however skilled in legal matters, would take their place in deciding as to what persons should be put upon their trial for alleged criminal offences.

I look upon the functions of the grand jurors, who are supposed to be chosen from amongst the more intelligent men of the community, as most important and most useful, and believe that an institution which has worked satisfactorily for so many years should be retained. I know of no system which would work so satisfactorily, certainly not that of the *Procureur du Roi* and *Juge d'instruction*, existing in France where the absence of a grand jury, *jury d'accusation*, has been so strongly felt and deplored and the evils of their system so forcibly pointed out by so many able French jurists.

I know of no system so effective as ours for the prevention of useless trials or which affords at the same time such safeguards for the innocent accused, and protection for society against the guilty.

JUDGE TESSIER.

In answer to your circular respecting the abolition of the grand jury, I must say, in my opinion, that it is better not to abolish it. Without entering upon long dissertations upon this subject, I will confine myself to saying:—That from my experience, there has been to my knowledge, no just cause for complaint against the working of the grand jury, at least, in the province of Quebec. That the grand jury is a guarantee of independence and impartiality, especially in a country like our own where a difference of origins and religions exists. Because the grand jury has the advantage of educating the people, and of making men from the highest class of citizens better understand the importance of a good administration of justice, by making them take part in its administration, and by bringing together these citizens taken from various localities of the judicial district. Because in making the grand jury to disappear, it will be necessary to put in its place a new piece of machinery, and those persons who will be entrusted with these new duties will be much more exposed to suspicion and unfriendly criticism than was the grand jury.

JUDGE TASCHEREAU.

As far as the large centres, such as Montreal, Quebec, &c., are concerned, I see no difficulty to be apprehended as a result of the abolition of the grand jury, the crown being always, as a rule, well represented, and the preliminary investigations being properly conducted. In several districts, however, the same guarantees are far from existing, and the abolition of the grand jury would leave a blank which parliament would perhaps fill with a great deal of difficulty. However, this can be overcome with a proper system of preliminary examinations, under the responsibility and supervision of officials *ad hoc*.

As to the institution of grand juries in itself, it seems to me an evident failure, at least in this province.

MR. JUSTICE CASAULT.

I have the honour to state that I believe the finding by grand jury a very important protection against unfounded accusation and prosecution.

Political rancour runs, at times, so high, and the conduct of the criminal business of the crown may be confided to such inexperienced, or irresponsible, or even unscrupulous men that I would not recommend the dispensation of a procedure which may save innocent persons from the ignominy of standing at the bar on a trial for felony or of being subjected to a criminal prosecution for a misdemeanor.

I will, moreover, beg leave to add that grand juries and their reports are not, in my opinion, without benefit to themselves and utility to the public, and that the discharge of their duties generally tends to instruct and elevate characters by the honour which is found in being so importantly mixed with the administration of justice.

JUDGE TELLIER.

I have the honour to inform you that an experience of more than a quarter of a century, gained as much when acting as deputy clerk and crown attorney, as when a justice of the court of queen's bench, lead me to the holding of an opinion favourable to its preservation. The action of the grand jury may be useless in many cases, but in general it bears good fruit and renders undeniable service.

The criminal law is an instrument which is used often to secure other ends than that of the repression of crime and the protection of society; and for its application it is important that justice should be surrounded by all the elements fitted to make it equitable and efficient. The institution of the grand jury, owing to the number, the selection and the qualification of its members, offers all desirable guarantees.

The grand jurors, selected from the most prominent men of the district, and coming from various localities, are obliged to examine and declare on the faith of their oath, if there is sufficient cause for placing on his trial the prisoner, in order that he may be able to answer the charges brought against him. Each judgment being for these occasional judges a grave and solemn action, which reckons for something in their life, they bring to its preparation all their attention, naturally, and all the caution they are capable of. The manner of their selection, their independence of authority, and the temporary character of their duties, make excellent judges of them.

Their participation in judicial proceedings is adapted to inspire confidence in the public and respect for justice, and to produce a salutary effect upon society. The cause for its existence makes itself felt especially in a country like ours where the criminal law is made by the federal power and is carried into effect by the provincial power. If I add to these few remarks the fact that the grand jury costs to the public treasury but a trifle, namely: the small cost for the summons of the men who compose it, I will say to you, "Sir, let us keep this tribunal." Such is my opinion, and I respectfully submit it to you.

JUDGE MATHIEU.

When a preliminary examination has taken place, and the justice of the peace or the police magistrate has found that there is matter for trial, I do not see why the same question is submitted for the determination again of the grand jury, for the report of the grand jury is equivalent to the declaration that there is or is not matter sufficient to bring to trial.

It is true that one can bring a bill of indictment before the grand jury, before holding a preliminary examination, but in this case, one might supplement the indictment before the grand jury by declaring that, whenever there is no preliminary examination, the trial of the prisoner cannot be gone on with without the permission of the court being obtained.

I think that the preliminary examination, and, in default of such, the authorization of the court, is a sufficient protection for the accused person, and with these provisions one cannot be subject to vexatious trials in law. I ought further to remark that this preliminary examination, and one held in secret before the grand jury, is subject to many inconveniences, and the right of presenting indictments to the grand jury is often abused,—whose good faith persons have often abused by allowing them to become acquainted with only enough to give the appearance of truth to the charge. Often the grand jury itself abuses the right it possesses to make representations, and its remarks do not always bear the stamp of wisdom. I am, then, of opinion that the grand jury might be abolished, after placing in the law, as I have stated, a safeguard such as I have indicated, or something similar, to prevent vexatious trials at law.

MR. JUSTICE CROSS.

I am disposed to give my advice strongly against the abolition of grand juries, not for any new reasons or anything that I could add to what has been recognized for ages as to the institution being one highly venerated, it being a bulwark of liberty, a safeguard against oppression and a highly prized constitutional channel for the denunciation of abuses. Its composition inspires confidence, and its mistakes are for the most part easily remedied. It assures to the accused the same justice he might be called upon himself to deal out to his peers if acting as a grand juror. Like other human institutions, it has defects, among others, it is expensive and cumbrous and its conclusions are not always satisfactory; probably on that account it is too readily condemned by many who do not think deeply of its value as a whole, not reflecting that it is easier to pull down and destroy than it is to build up and restore. It is fair to enquire of these, what better substitute they would suggest to replace it. Were presentations made at the instance of a public officer only, his responsibility would be great, he would run the risk of becoming very unpopular and of incurring the hatred of the friends of every one denounced to the public tribunals. The presentations would naturally take the leaning of the temper of the accuser; if mildly disposed they might be weak, if severe the reverse, but this, if an evil at all, would be the least of evils. In the possession of a fixed or permanent power it is the tendency of the human mind to become arbitrary. In the hands of an unscrupulous official how readily might not such power become an instrument of tyranny and oppression which could be used to screen guilty favourites and with harshness to those who might have incurred his displeasure. Imagine the case of the executive power of the government desiring to harass its political opponents; no better machinery could be devised for the purpose than to invest their agents with the powers of a grand jury; in such a case the safeguard of the institution is invaluable.

I do not deny that the system may be susceptible of improvement, but I think those having the power would do well to reflect carefully before decreeing the abolition of the institution.

JUDGE CIMON.

It would be very extraordinary if the secular institution of grand juries did not meet with, especially in modern times when there is every tendency towards innovation, critics who would pray for its abolition.

I do not believe that the grand jurors are reproached with bringing useless or ill-founded charges; this is so much in their favour. The reproaches come rather from a contrary cause, that is to say, that the grand jurors favour the prisoners. I admit that I have seen sometimes, but rarely, grand jurors allowing themselves to be easily approached by the friends of the accused persons, and in consequence I have known them returning indictments as not true when the proof of guilt was doubtful. I saw, during the course of my practice as a lawyer, very near relatives of the prisoners form part of the grand jury; I have even seen the father of the accused on the grand jury deliberating on the fate of his son. It need not be stated that the indictment in this case was returned as not a true bill. But let us not forget that in all these cases the evil is remediable. For the fact that the grand jury have returned the indictment as not a true bill, does not discharge the offender, and one can always submit anew the charge to other grand juries, and the crown may, if the course is preferable to attain the ends of justice, even obtain a change of venue. And it is evident that it is very certain that the crown, in these rare and extreme cases, will always conclude by obtaining a true bill if the evidence demands it.

So it happens that the reproaches cast upon this institution, although they may be serious, only are deserved in cases of great rarity, and do not entail an irreparable evil. And if provisions of law were adopted for better defining the causes for challenge of the grand jurors, and an effective procedure was laid down for this purpose, there would be avoided for the future anything to give cause to these unusual reproaches.

Now, if as a counterpoise to these unusual reproaches, we place the services rendered by the grand juries, it seems to me that we cannot hesitate for a moment as to the maintenance of this institution. Whatever may be said of them they serve still, at the present time, to protect the honour and liberty of the subject against the crown. How many trivial charges having no foundation are rejected by the grand juries? It is not the crown which would have protected the citizen against these charges, seeing that they are the representatives of the crown who bring them before the grand jurors. If the latter had not been in existence, they would have been laid immediately before the petty jurors. It is a matter of fact that a criminal trial is always dangerous, even though the prisoner be innocent.

I can say that at each criminal term at which I have presided, in the various rural districts, I was always fortunate in being able to reckon upon the assistance of the grand jurors, and it was with satisfaction that I saw them, at each of these terms, return as not true the indictments which were brought before them.

Doubtless grand juries have committed errors, as every human institution has and will do; but they are probably less numerous than those of the petty juries, notwithstanding that the latter are more under the control and in the light of the court.

It would be with the most profound regret that I should see the institution of the grand jury abolished. I think that the people of the province of Quebec are of the same opinion; for, recently, by the unanimous vote of their representatives in the legislature of Quebec, there was voted to each grand juryman an indemnity, who formerly was obliged to give his services for nothing. This is far from endeavouring to reduce the expenditure caused by this institution. It is in high favour. It is an institution springing from the people, and it seems to me that they cling closely to it. Let us make the system perfect, but I do not think that it ought to be abolished.

MR. JUSTICE GILL.

I would entirely approve of a measure to that effect, provided of course some modification of the preliminary examination as actually practised before the justices of the peace be made, those justices not being as a rule in the rural districts of this province sufficiently educated and so free from prejudice as to always fulfil properly the office.

I would go further and abolish the trial by jury in a number of cases, viz., in all the offences which may now be tried before a police magistrate; that is, I would deprive in such cases the accused of his right of option which he now has of being tried by a jury or by the magistrate.

MR. JUSTICE CHARLAND.

I have the honour to submit respectfully that I see no inconvenience in abolishing the functions of grand juries in districts where preliminary investigation can be made by competent magistrates.

MR. JUSTICE BOURGEOIS.

I confess that my views upon that question are not *much* settled.

I have found occasionally that the functions of the grand juries were useless and that their secrecy led to treacherous prosecutions and gross injustice.

In the rural districts of this province preliminary inquiries are often made by *unskilled* or prejudiced justices; in such cases, or where there has been no preliminary inquiry at all, the functions of the grand juries afford a kind of protection against oppressive and unjust prosecutions.

If the institution of the grand jury were abolished, I think the statute ought to provide that nobody is to be arraigned or put on his trial before petty *juries, unless* a preliminary investigation has been made in his presence, by a competent officer.

The codification of our criminal laws as suggested by the circular is very desirable.

MR. JUSTICE ANDREWS.

In my opinion it is inexpedient to abolish the functions of grand juries in relation to the administration of criminal justice. So far as I am aware, the chief if not only reasons usually given for such abolition are: the extra expense to the public and inconvenience to individuals, which would be thereby saved.

I think that both are at least counterbalanced by the benefit accruing to the individual jurors and to the community at large, through the education in matters connected with the administration of justice imparted to the jurors by the charge of the judge, and acquired by them during their consideration of the cases brought before them. This makes them, and other members of the community coming in contact with them, better fitted to worthily enjoy the benefits of free institutions. I think that the more directly the people are made to take their part, and to feel that they have their part, in the administration of justice, the more likely they will be to respect and obey the law.

I think this the more important in the province of Quebec, where so very few civil suits are tried by juries.

I think, also, the knowledge that the grand jury can make public presentment to the courts denouncing neglects of duty, abuses and wrongs, exercises a salutary restraining influence of importance.

A further reason of great weight with me against the abolition is that as grand juries have in the past stood in England between the oppressor and his intended victim, so it is far from impossible, or even improbable, that in this province they may not in the future be similarly useful.

I think it quite conceivable that in times of political excitement, with the power that the crown has by means of challenges without assigning cause to secure a petit jury of a particular political complexion, the grand jury might be the main safeguard against oppression and injustice.

If not out of place I may add that eminent writers in France deplore the present non-existence of the grand jury in that country—among them Bérenger and Oudot, cited by Forsyth in his "History of Trial by Jury." pp. 351 and 352.

The demand for abolition alluded to by you in your circular may perhaps in part be accounted for by the fact that persons fond of change are prone to look only at the advantages they expect therefrom, and wait till they obtain it to discover the evils it occasions.

MR. JUSTICE LARUE.

I have the honour to state that in my experience, particularly in the district of Rimousik, the grand jurors are too much exposed to outside influences. Besides, the summoning of the grand jurors is very expensive and out of proportion with the services rendered by them.

I am, therefore, of opinion that the abolition of grand juries would be desirable and in the public interest.

MR. JUSTICE LORANGER.

In my opinion, the abolition of the functions of the grand juries in relation to the administration of criminal justice, would be in the public interest. My experience when attorney general as well as that which I have acquired at the bar and in the exercise of my judicial functions, has convinced me that this institution could be replaced with advantage by a proper system of preliminary investigations coupled with the appointment of permanent crown prosecutors.

MR. JUSTICE LYNCH.

My experience as a judge is of too short duration to permit of my expressing any opinion in that capacity; that while at the bar I never saw anything in this district which would warrant the conclusion that the utility of the grand jury system had ceased. I know of nothing which would satisfactorily replace it; and I believe its abolishment would be a fatal mistake. Time and intelligence have somewhat improved the institution; and the public have come to respect it and to regard it as a necessary part of the criminal justice machinery. Possibly the manner of composing it might be improved, so that its membership would be made up of the more intelligent part of the community.

GENERAL NOTES.

SHORTHAND STATISTICS.—Mr. Isaac Pitman has compiled statistics on the extent to which his system of shorthand is taught in England, and the returns this year show a striking increase over those of last year. During 1889 there were 44,730 students under class instruction in Pitman's shorthand; in 1890 this number increased to 55,558, who were divided among 1,520 colleges, schools, public institutions, classes, &c. 'These figures by no means represent all who are learning phonography throughout the country. They do not include private students, who form the greatest proportion of those who take up the study. The statistics show an increase in every respect, but no single item shows a more striking or a more rapid growth than that which consists of statistics with reference to the teaching of phonography in the Board schools. The returns received last year showed that in the Board schools in London and the provinces the study had been taken up by 3,397 boys and 146 girls. The returns this year show 8,143 boys and 1,793 girls under instruction. These figures indicate what an impetus the study of phonography has received since the addition of shorthand to the Education Code as a 'specific subject.'