MOISE VERONNEAU.....APPELLANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

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*May 29.
*Oct. 10.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

*Criminal law—Constitution of grand jury—Bias—Presentment of true bill—Presence of accuser on grand jury—Prejudice—Criminal Code, s. 899—Evidence.*

The appellant was indicted for perjury. The complainant had been summoned to act as a grand juror for the assizes at which the trial took place. The complainant was present with the grand jury when it was charged and when the presentment of a true bill was made. While the bill was under consideration by the grand jury one of the jurymen to whom the complainant had stated that it was a deplorable case, but it had come to the pass that either he or the accused would have to leave the town, repeated this statement to other grand jurors. In the reserved case it was stated by the trial judge that the complainant had in no manner taken any part in the deliberations of the grand jury on the indictment.

*Held*, affirming the judgment appealed from (Q.R. 25 K.B. 275), Anglin and Brodeur JJ. dissenting, that, in the circumstances stated in the reserved case, neither the fact of the presence of the complainant as a member of the grand jury nor the statement made by him constituted a well-founded objection to the constitution of the grand jury which had passed upon the indictment which therefore could not be quashed under the provisions of section 899 of the Criminal Code.

*Per* Davies, Anglin and Brodeur JJ.:—An indictment preferred after consideration in which a grand juror disqualified by interest had participated should be quashed. *Rex* v. *Hayes* (9 Can. Crim. Cas. 101) disapproved.

*Per* Anglin and Brodeur JJ.:—The reasonable inference from the facts stated in the special case is that the complainant was present with the grand jury during their deliberation upon the bill against the accused. The statement made by the complainant

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Anglin and Brodeur JJ.

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to the juryman B., and by him repeated to his fellow-jurymen, was calculated to influence them. It is impossible to know whether the complainant's presence and his statement, so repeated, did or did not affect the grand jury adversely to the accused. He is entitled to have it assumed that they did. He was thereby deprived of his right to have his case passed upon by a duly qualified grand jury which was not improperly biased, and he thereby suffered prejudice within section 899 of the Criminal Code which warrants the quashing of the indictment. *Reg.* v. *Justices of Hertfordshire* (6 Q.B. 753); *The Queen* v. *Inhabitants of Upton St. Leonards* (10 Q.B. 827); *The Queen* v. *Gorbet et al.* (1 P.E.I. Rep. 262), and *Reg.* v. *McGuire* (4 Can. Crim. Cas. 12) referred to.

*Per* Anglin J.—On a motion to quash an indictment found by a grand jury it is improper to admit evidence of what took place in the grand jury-room during the inquiry in regard to the indictment. *Reg.* v. *Justices of Hertfordshire* (6 Q.B. 753); *Rex* v. *Lancashire Justices* (75 L.J.K.B. 198); *Reg.* v. *Meyer* (1 Q.B. 173) and *Reg.* v. *London County Council* ((1892) 1 Q.B. 190) referred to.

APPEAL from the judgment of the Court of King's Bench, Appeal Side(1), dismissing a motion to quash an indictment on the charge of perjury against the appellant, whereon he had been convicted at the trial before Mr. Justice Globensky and a jury, at Sherbrooke, in the district of Saint Francis, Quebec.

The circumstances of the case and the questions submitted on the reserved case stated by the trial judge for decision by the Court of King's Bench, are stated, as follows, by Mr. Justice Cross, in his reasons for judgment in the court appealed from. (See Q.R. 25 K.B. at pp. 279 *et seq.*).

The appellant (Moise Veronneau) was found guilty in the Crown side of this court, in the District of St. Francis, in October, 1915, by verdict of a jury on a charge of having committed perjury.

"He appeals against the verdict, first, on the ground that the indictment should have been quashed because of bias on the part of one of the grand jurors

(1) Q.R. 25 K.B. 275

who found the indictment, and, secondly, on the ground that the trial judge allowed an amendment to be made to the indictment of such a nature as was not permissible in law and allowed it to be made at too late a stage of the trial.

"The learned judge who presided at the trial has stated a case for our opinion on these points, and it appears from the statement that the charge against the appellant was laid by one Denis S. Bachand and that it was set forth in it that the alleged perjury had been committed at a preliminary inquiry held by the district magistrate into a charge made by the appellant against Bachand of having attempted to murder him (Veronneau).

"It also appears that Bachand was one of the grand jurors to whom the bills of indictment were submitted at the October term.

"A true bill for perjury having been returned, and Bachand being one of the jurors present at the return, the appellant, before pleading, moved to quash the indictment on the ground that Bachand was one of the grand jurors who had found the indictment and had said to Brault, another juror (who had repeated them at the sitting of the jurors) the words: 'C'est de valeur ce procès-la, mais au point où on est rendu la, il va falloir que moi ou Veronneau parte de Coaticook.'

"It further appears from the stated case that Bachand did not take part in the deliberations of the grand jury on the case against the appellant; that the words above quoted were uttered to Brault and by him repeated to the other jurors, but that it was not shewn that these words influenced the jurors or affected their decision. The motion to quash was dismissed.

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It further appears that, upon the trial being proceeded with, there was a variance between the charge as laid and the evidence, in that the perjury was charged to have been committed on October 30, 1914, whereas the appellant's deposition taken before the magistrate, and tendered in evidence at the jury trial, purported to have been taken on October 13, 1914. The appellant objected to production of the deposition as not being relevant to the charge, but the objection was overruled and the deposition was read.

"After all the evidence had been taken, counsel for the appellant submitted that the evidence related to testimony given on October 13, and that there was no evidence to support a charge of perjury committed on October 30.

"Thereupon the prosecutor moved to amend by substituting the word 'thirteenth' for the word 'thirtieth' wherever the latter appeared in the indictment.

"The amendment was allowed, and, upon being asked if he desired a postponement, counsel for the appellant declined to say anything. Counsel for the appellant and for the prosecutor then addressed the jury, and, after a summing-up by the judge, a verdict of guilty was found

"The questions to be decided are as follows:—

"1. Did the fact of Denis S. Bachand being a grand juror affect the legal constitution of the grand jury, and could the grand jury lawfully find the indictment, Bachand not having taken part in the consideration of this bill? Was the judgment dismissing the motion to quash right?

"2. Was there error in the judgment permitting the amendment?"

The judges of the court now appealed from unan-

imously answered the second question in the negative but, as to the first question, two of the judges, Carroll and Pelletier JJ., dissented from the opinion of the majority who decided that, in the circumstances, the constitution of the grand jury was not so affected as to prevent the finding by them of a true bill on the indictment.

*Verrett, K.C.*, and *Cabana* for the appellant.
*Nicol K.C.* and *Shurtliff K.C.* for the respondent.

THE CHIEF JUSTICE.—This is an appeal on a stated case.

In answer to the first question I would say the grand jury was regularly constituted notwithstanding that Bachand, who was the party complainant before the magistrate in this particular case, was sworn as a member of it. A grand juror is not sworn like a petit juror to try and a true deliverance make on the evidence submitted. His duty is to diligently inquire and a true presentment make of all such matters and things as shall be given him in charge *or shall otherwise come to his knowledge*. Until quite recently grand jurors might make presentments of their own knowledge and information without the intervention of any prosecutor or the examination of any witnesses. *Vide* Report of Royal Commissioners on English Draft Code, pages 32 and 33.

As to the proceedings before the grand jury, it is part of the stated case that Bachand, whose name was on the back of the indictment, was examined, but took no other part in the proceedings. In these circumstances, Bachand was not a stranger in the jury room. His presence is explained and accounted for by the fact that he was a witness before the grand jury

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in this particular case. And, if Bachand took no part in the proceedings, I do not think his mere physical presence somewhere about could affect the result of the grand jurors' deliberations or constitute an interference with the privacy of their proceedings. There is no impropriety in some one or more proper persons being present with the grand jury during their inquiries on bills of indictment: *Reg.* v. *Hughes*(1). I have not overlooked *Goby* v. *Wetherill* (2). The stated case might have been more explicit on this point, but when the judge states the fact to be that Bachand

n'a aucunement pris part aux délibérations qui eurent lieu au sujet du dit acte d'accusation.

I think he must be assumed to mean that he took no part in the finding of the bill. It would have been wiser, however, for Bachand to have left the room after giving his evidence and, as a matter of ethics or propriety, he should not have been present in the box when the bill was returned.

We must assume for the purposes of this appeal that Bachand took no part, except as a witness, in the discussions or deliberations on this indictment or in the finding of the true bill, and I express no opinion as to whether if he had done so the indictment should have been quashed.

I attach little importance to the observations made to Brault who was also a grand juror.

DAVIES J.—This appeal is one from a judgment of the Court of King's Bench (Appeal Side), Province of Quebec, refusing, by a majority, to quash an indictment found against the appellant on the alleged ground that one of the grand jury which found the indictment was interested and biased, having been the prosecutor.

(1) 1 C. & K. 519. (2) 31 Times L.R. 402.

I should say that if the facts proved had shewn Bachand to have taken any part in the proceedings or in the consideration of the bill found by the grand jury of which he was a member, as to which he was interested or biased, that would have justified the appeal and the quashing of the indictment.

The question is one of fact capable of being proved by evidence. The finding of the learned trial judge before whom the motion to quash was first made, that the proof established that Bachand did not participate in the proceedings of the grand jury upon this particular bill or in the consideration of the jury's finding of a true bill upon it, approved of by the court of appeal, if sustained by the evidence, is sufficient to dismiss the motion.

I am of opinion that the evidence to shew this non-participation and non-interference was properly admissible and that it is sufficient to uphold the findings of the courts below.

I cannot accede to the proposition that the fact of one member of a grand jury being disqualified from interest or bias with respect to one of the bills brought before that body for consideration, affects the constitution of the grand jury generally.

Such a disqualified person cannot take any part in the proceedings or findings of the jury with respect to the bill in which he is interested, but such disqualification is a personal and limited one and does not affect the constitution of the jury as a whole or the right of the juror so partially disqualified from taking part in all the proceedings or findings of the jury on other bills in which he has no interest or bias.

This question of the participation or non-participation of Bachand in the proceedings of the grand jury upon this bill, including their finding upon it,

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was the main and substantial question argued on this appeal. There were other subsidiary questions mentioned with respect to them. I do not think there was anything in them to justify this court in interfering with the judgment appealed from.

IDINGTON J.—The appellant was indicted for perjury and the learned trial judge was moved to quash the indictment on the ground that the private prosecutor was a member of the grand jury which returned the bill as true.

The learned trial judge investigated the matter and dismissed the motion but reserved the point raised thereby together with another which developed during the trial.

In his stated case separate questions were asked. The court of appeal disposed, by their unanimous judgment, of the second, leaving only that bearing upon the motion to quash in regard to which in that court there were dissentient opinions which enabled the accused to appeal here.

The first question, which thus comes before us, was stated as follows:—

*Première Question.*

Le fait que Denis S. Bachand avait été assigné comme grand juré affectait-il la légalité de la constitution du grand jury, et ce dernier pouvait-il légalement rapporter comme bien fondé, l'acte d'accusation porté contre Véronneau, Bachand n'ayant aucunement pris part aux délibérations qui eurent lieu au sujet du dit acte d'accusation, et la décision de cette Cour renvoyant la motion de l'accusé, était-elle celle qui devait être rendue?

The law applicable to the question raised before the learned trial judge is stated in section 899 of the Criminal Code, as follows:—

899. No plea in abatement shall be allowed.

(2) Any objection to the constitution of the grand jury may be taken by motion to the court, and the indictment shall be quashed if

the court is of opinion both that such objection is well founded and that the accused has suffered or may suffer prejudice thereby, but not otherwise.

The fact that the private prosecutor took no part in the deliberations on the subject of the accusation seems to me conclusive against this appeal. His having been summoned and sworn as a grand juror seems to furnish no ground of objection. He was bound to obey the summons and be sworn. It was not competent for him to refuse, for the very good reason that the conduct of the matter lay in the hands of the Crown officer and might not come before that grand jury or they might be directed by the learned trial judge, under such circumstances, if he saw fit for good reasons to refrain from dealing with it.

We are asked to presume, notwithstanding the statement of fact contained in the question which is the boundary of any appellate court's jurisdiction herein, that in fact the private prosecutor so summoned as a grand juror did take part in the deliberations in question herein as such grand juror.

In other words, we are asked to presume not only against the stated fact but also against the presumption of law that he did so.

The presumption of law is that he did not and that the Crown officer in charge saw to it as part of his duty, if aware of his being a grand juror, that he was properly instructed in that regard either by the foreman or the learned trial judge or himself, and that due order of law was observed.

Possibly he was a witness and, as such, before the grand jury for such length of time as the requirements of giving his evidence or otherwise relative to the presentation of the evidence in accordance with what convenience in the case might demand. Nothing

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further can be presumed as to the fact of his presence there.

Then it is said he appeared with the grand jury when its foreman presented the "true bill" in court.

Again there is no presumption to be drawn therefrom. For aught we know he may merely have taken a seat in the places assigned in the court-room for the grand jurors which he was entitled to do, for many proper reasons. Other bills may, for example, have been returned by the foreman to the court at the same time as this, or have been expected to have been so presented.

The mere presentation by the grand jurors of a bill forms no part of their deliberations and determination. That is disposed of in the grand jurors' room and the finding there written is simply handed in to the court. Often judges presiding at a busy court direct, as they may, that the foreman alone or such number of jurors as directed may do so, without the whole panel appearing.

And, assuming the worst that can be said of a private prosecutor appearing under such circumstances, it is specially directed by the final part of the statute I quote that unless the accused has suffered prejudice thereby the indictment must not be quashed.

I cannot find anything deserving serious consideration in all that has been urged by appellant's counsel to maintain this appeal. To do so would, I submit, be a reversion to technicality which the Criminal Code and its predecessors did so much during last century to eliminate from the law, in order that justice might be done.

I have assumed in favour of the decent administration of justice, but am not to be taken as expressing any opinion, that in law a convicted man is entitled

to go free simply because his accuser formed one of those grand jurors who presented his case for trial. I express no opinion on that legal issue, nor shall I till need be.

The appeal should be dismissed.

ANGLIN J. (dissenting).—The defendant appeals to this court under sections 1013(3) and 1024 of the Criminal Code from the judgment, on a case reserved under section 1014(2), affirming the verdict and conviction recorded against him on a charge of perjury. The opinion of the majority (Archambeault C.J., Lavergne and Cross JJ.) was delivered by Mr. Justice Cross. Carroll and Pelletier JJ. dissented on only one of the reserved questions, viz., whether a motion to quash the indictment had been properly rejected, which is therefore the subject of the present appeal.

On the 3rd of November, 1914, one Bachand, who had been unsuccessfully prosecuted at the instance of the defendant on a charge of attempted murder, laid a complaint against the defendant of having committed perjury in the course of that prosecution. The defendant having been committed for trial, his case came before the Court of King's Bench, in October, 1915. At this term of the court Bachand was a member of the grand jury. He was present in the jury-box when the grand jury was charged with the consideration of the indictment preferred against the defendant, and again when a true bill was returned. Before the defendant pleaded to the indictment a motion was made on his behalf that it should be quashed because of the presence of Bachand as a member of the grand jury, and also because Bachand had said to one Brault, also a grand juryman, the following words:—

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C'est de valeur ce procés là, mais au point où on est rendu là, il va falloir que moi ou Verroneau parte de Coaticook,

which Brault had repeated to other members of the grand jury, while they were assembled for deliberation.

In the reserved case the learned judge makes the following statement:—

> Avant adjudication sur cette motion, il fut établi devant la cour qu'en effet Denis S. Bachand avait été assigné comme grand juré pour le dit terme d'octobre, mais qu'il n'avait aucunement pris part aux délibérations du grand jury sur l'accusation portée contre Verroneau. Il fut aussi établi que les paroles susdites avaient été dites par Bachand à Brault et que ce dernier les avait rapportées dans la salle des délibérations aux autres grands jurés; mais il n'a été aucunement établi que ces paroles aient influencé ces derniers et qu'elles aient eu pour effet de déterminer leur rapport.
>
> Il est vrai que Bachand était dans la boîte des grands jurés quand ceux-ci ont rapporté l'acte d'accusation comme bien fondé contre l'accusé.

In the respondent's factum it is stated that the fact that Bachand took no part in the deliberation upon this case

> was proved by the affidavits of two witnesses before the court.

These affidavits are not in the record and, although their production has been demanded, are not forthcoming. In view of the strict provisions as to the secrecy of all that transpires in the jury-room, and the terms of the grand jurors' oath, I find it difficult to understand how the learned judge was in a position to make the statement which he does as to the abstention of Bachand from taking part in the deliberations on this case. *Rex* v. *Marsh*(1), at page 237; *Rex* v. *Willmont* (2); Greenleaf on Evidence, par. 252; Taylor on Evidence, par. 943; Archbold, Criminal Pleading (23 ed.), page 103; 4 Blackstone's Com. par. 126. I am likewise at a loss to appreciate the force of the learned judge's observation:—

(1) 6 A. & E. 236.

(2) 30 Times L.R. 499.

Il n'a été aucunement établi que ces paroles aient influencé ces derniers et qu'elles aient eu pour effet de déterminer leur rapport.

As at present advised I incline to think that we should ignore both the statement that Bachand took no part in the deliberations upon the charge against Veronneau and also the statement that it was not established that the repetition of what he had said to the juror Brault influenced the grand jury.

But if we are bound by these statements made in the special case, it should be pointed out that it does not appear (as indeed it could not without impropriety, Taylor on Evidence, para. 943) whether the bill against Veronneau was returned by the vote of more than seven members of the grand jury; nor is there an explicit statement that Bachand did not vote upon the bill as a grand juryman although he had refrained from taking part in the deliberation. Bachand having been present in the jury-box when the jury was charged with the consideration of the case against the defendant, and again when the bill was returned, his presence in the jury-room while it was under deliberation seems to be a reasonable inference which is in nowise negatived in the case submitted.

The question reserved for the consideration of the court is stated in the following terms:—

Le fait que Denis S. Bachand avait été assigné comme grand juré affectait-il la légalité de la constitution du grand jury, et ce dernier pouvait-il légalement rapporter comme bien fondé, l'acte d'accusation porté contre Verroneau, Bachand n'ayant aucunement pris part aux délibérations qui eurent lieu au sujet du dit acte d'accusation, et la décision de cette Cour renvoyant la motion de l'accusé, était-elle celle qui devait être rendue?

In answer to the appeal counsel for the Crown takes the position that there is no right of challenge to a grand juryman individually, that the remedy of an accused person in the case of a disqualified grand juryman was, prior to the Criminal Code, by plea in

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abatement, that such pleas have been abolished (Crim. Code, sec. 899), that a motion to quash in lieu thereof is permitted only in the case of an "objection to the constitution of the Grand Jury" (*ibid.*) and that an objection that a member of the grand jury was not indifferent because of alleged interest is not an objection to the constitution of the grand jury. The *King* v. *Hayes*(1). His position, therefore, is that, although it should be assumed that Bachand took part in the finding of the true bill against Veronneau, and even that his vote was necessary to its return, nevertheless Veronneau would be without redress because the law affords him no remedy. In the alternative he maintains that, in view of the statements in the reserved case, that Bachand had taken no part in the deliberation of the grand jury, and that it was not proved that his conversation with Brault, though repeated to the grand jury, had in fact affected them, the court cannot properly hold, although the objection should be deemed well founded, that "the accused has suffered or might suffer prejudice thereby."

It seems unnecessary to consider the somewhat debated question whether there is a right of challenge to the polls in the case of a grand jury. I appreciate the force of the argument *ab inconvenienti* pressed in the *Sheridan Case*(2), and incline to the view that under the old practice an objection to a grand juryman would be properly made when the accused was arraigned either by plea in abatement or by motion to quash the indictment. I agree with Mr. Justice Cross that either course would seem to have been open, the latter, however, being the only method available when, as may often happen, the defendant first became aware of the ground of objection after he had pleaded

(1) 9 Can. Crim. Cas. 101. (2) 31 How. St. Tr. 543.

"not guilty." Since the adoption of the provision of the Criminal Code abolishing all pleas in abatement the remedy is by motion to quash.

I also agree with Cross J. that the view that the phrase "any objection to the constitution of the grand jury" (Crim. Code, 899, sec. 2), covers only objections based on lack by jurors of qualifications expressly prescribed by provincial statute law, or on disqualification of the officer charged with the duty of selecting and summoning the grand jury, seems to be too narrow. Anything which destroys the competency of the grand jury as a whole or the competency of any of its members, I think, affects the constitution of that body and affords a ground of objection which may be raised by a motion to the court under section 899. A grand juror may be well qualified as to all the cases on the docket save one and wholly unfit to pass upon that one. As to that case the jury would not be properly constituted while he sat upon it.

In the *King* v. *Hayes*(1), the contrary view was taken, apparently based largely upon what, with respect, would appear to have been a misconception of section 662 of the Criminal Code then in force.

> Every person qualified and summoned as a grand or petit juror, according to the laws in force for the time being in any Province of Canada, shall be duly qualified to serve as such juror in criminal cases in that Province.

Apart from any question as to the constitutional validity of this section as a provision dealing with the constitution of the court rather than with criminal procedure, it should be noted that the qualification which it declared sufficient was not merely that prescribed by the provincial statute law, but qualification

> according to the laws in force for the time being in any Province of Canada.

(1) 9 Can. Crim. Cas. 101.

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I know of no law in force in any province which has taken away the common law right to object to a juror *propter affectum* or deprived an accused in the Province of Quebec of the right, which exists, as in Ontario and the other older provinces, before conviction for an indictable offence, to have his case passed upon first by a body of impartial grand jurors and afterwards by a petit jury likewise composed of indifferent men. 4 Blackstone's Com. para. 306.

The disqualification of interest—*propter affectum*—rests upon the common law maxim, "that no man is to be a judge in his own case," which, as Lord Campbell said in *Dimes* v. *Grand Junction Canal Co.*(1),

> it is of the last importance * * * should be held sacred. And that is not to be confined to a cause in which he is a party but applies to a cause in which he has an interest.

The presence of one interested justice on a bench of magistrates renders the court improperly constituted and vitiates the proceeding, although the majority, without reckoning his vote, favoured the decision: *Reg.* v. *Justices of Hertfordshire*(2). The same rule is applicable to a grand jury. *The Queen* v. *Inhabitants of Upton St. Leonards*(3). The case last cited is also particularly in point because of the statement made by Bachand to Brault, and repeated to the other grand jurors, which not only put Bachand's interest in the prosecution beyond doubt, but was of a character

> not unlikely to influence the grand jury in their decision.

The reasoning and grounds of decision of Peters, J., in *The Queen* v. *Gorbet et al.*(4), commend themselves to my judgment rather than those which prevailed in the *King* v. *Hayes*(5).

(1) 3 H.L. Cas. 759.
(2) 6 Q.B. 753.
(3) 10 Q.B. 827.
(4) 1 P.E.I. Rep. 262.
(5) 9 Can. Crim. Cas. 101.

As already stated I am unable to agree with the view taken by Mr. Justice Cross that evidence was legally received that the juror Bachand, though apparently present in the grand jury room, did not participate in the discussion of Veronneau's case. It would, in my opinion, be a practice fraught with very grave dangers to enter upon any such inquiry. The illegality of the presence of a mere stranger in a jury-room is illustrated by the recent case of *Goby* v. *Wetherill*(1). The presence of a person disqualified by interest, himself a member of the body, must be still more objectionable. Moreover, as already pointed out, the statement that Bachand did not take part in the deliberations of the grand jury on the Veronneau case not only does not negative his presence in the jury-room, but is not inconsistent with his having voted on the finding. The true principle, however, is that upon which the decisions in *Reg.* v. *Justices of Hertfordshire*(2), and *Rex* v. *Lancashire Justices*(3), and *Reg.* v. *Meyer*(4) proceed. As Blackburn J. said, in the case last cited,

> we cannot go into the question whether the interested justice (juror) took no part in the matter (*i.e.*, in the discussion of the case).

See also for a different application of the same principle, *Reg.* v. *London County Council*(5), at page 196.

As to the statement of Bachand to grand juror Brault, repeated by the latter (probably in Bachand's presence) in the jury-room, it was of a character calculated to influence other jurymen and it is impossible to know whether it did or did not in fact influence them. Mr. Justice Cross was under the erroneous impression that

(1) [1915] 2 K.B. 674.
(2) 6 Q.B. 753.
(3) 75 L.J., K.B. 198.
(4) 1 Q.B.D. 173.
(5) [1892] 1 Q.B. 190.

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the learned trial judge had found that the communication did not affect the decision of the grand jury.

All that the special case states is that:—

Il n'a été aucunement établi que ces paroles aient influencé ces derniers et qu'elles aient eu pour effet de déterminer leur rapport.

The effect of Bachand's statement upon the grand jury is a field of inquiry not open to us. The statement was improperly before them. It had all the weight of a communication from one of the body itself. The defendant is entitled to have it assumed that it produced some effect.

The accused has been deprived of the substantial right of having his case passed upon by a duly qualified and unbiased grand jury, and it was, in my opinion, quite impossible when the motion to quash was disposed of in the trial court to affirm that he had not suffered or might not suffer prejudice thereby. *Rex* v. *Willmont*(1); *Allen* v. *The King*(2). To hold, as was apparently held by one learned judge in the *Hayes Case*(3), at page 118, that, because the appellant was subsequently convicted by a petit jury at the trial, to which he was compelled to proceed upon the rejection of his motion to quash, it cannot be said that he was really prejudiced by anything which concerned the action of the grand jury, would entail a denial of redress in any case after conviction, however gross the improprieties accompanying the finding of the indictment, however prompt the action of the defendant in taking exception thereto, and however erroneous the rejection of his objections.

In my opinion, the motion to quash the indictment should have been granted and the question submitted should be answered accordingly.

(1) 30 Times L.R. 499. (2) 44 Can. S.C.R. 331.
(3) 9 Can. Crim. Cas. 101.

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BRODEUR J. (dissident).—Il s'agit dans cette cause d'un appel de la décision de la Cour du Banc du Roi maintenant l'acte d'accusation porté contre l'appelant.

L'appelant, Véronneau, et M. Denis S. Bachand sont évidemment deux citoyens importants de la ville de Coaticook. L'un deux, en effet, est un médecin et l'autre est un citoyen dont la fortune est assez considérable pour être qualifié comme grand juré.

Ce sont deux ennemis invétérés et ils ont jugé à propos de vider leur querelle devant les cours criminelles du pays.

Veronneau avait d'abord porté une accusation de tentative de meurtre contre Bachand, mais après procès ce dernier fut acquitté. A son tour, Bachand a porté une accusation contre Veronneau l'accusant de s'être parjuré dans ce procès de tentative de meurtre.

Le magistrat chargé de l'enquête préliminaire a trouvé matière à procès contre Véronneau sur l'accusation de parjure et un acte d'accusation a été soumis au grand juré.

Coincidence assez extraordinaire, nous trouvons que parmi les membres du grand jury se trouvait être Bachand lui-même. Aussi quand l'acte d'accusation a été rapporté comme bien fondé, Véronneau a fait motion pour le casser sur le principe que le jury n'était pas legalement constitué, vu que parmi les jurés se trouvait être son propre accusateur.

Une preuve par affidavit a été faite à ce sujet et il paraît avoir été établi à la satisfaction du juge qui présidait au procès que Bachand n'avait pas pris part aux délibérations. Il ne nous dit pas cependant si Bachand était dans la chambre où les jurés ont délibéré.

Il est en preuve également que Bachand aurait dit à l'un de ses collègues du grand jury qu'au point où

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on étaient rendues les choses "il va falloir que lui ou Véronneau parte de Coaticook."

Il a été prouvé également que Bachand était dans la boîte des grands jurés quand ceux-ci ont rapporté l'acte d'accusation comme bien fondé contre Veronneau.

La question qui se présente est donc de savoir si le jury était validement constitué pour rapporter l'acte d'accusation en question. Il n'y a pas de doute sur le fait que Bachand était membre du grand jury et qu'il a été assermenté comme tel.

Le juge qui présidait au procès a réservé pour la décision de la cour d'appel la question suivante:—

> Le fait que Denis S. Bachand avait été assigné comme grand juré affectait-il la légalité de la constitution du grand jury et ce dernier pouvait-il légalement rapporter comme bien fondé l'acte d'accusation porté contre Verroneau; Bachand n'ayant aucunement pris part aux délibérations qui eurent lieu au sujet du dit acte d'accusation et la décision de cette cour renvoyant la motion de l'accuse était-elle celle qui devait être rendue?

Les rôles d'accusateur et de juge sont, d'après les principes primordiaux de notre organisation judiciaire, absolument incompatibles; et la Couronne l'a si bien compris que dans la cause actuelle elle a prouvé que l'accusateur, Bachand, n'avait pas pris part aux délibérations qui ont eu lieu sur l'acte d'accusation porte contre Veronneau.

Les faits qui nous sont rapportés par le juge et qui font la base de la question réservée ne sont peut-être pas aussi détaillés qu'ils devraient l'être. Ainsi, par exemple, je crois qu'il aurait été bien important de savoir si Bachand était resté ou non, pendant les délibérations du jury. Le juge déclare simplement qu'il n'a pas pris part aux délibérations. Cela veut-il dire qu'il n'était pas présent dans la chambre où le jury a délibéré? J'étais enclin d'abord à croire que le fait de mentionner qu'il n'avait pas pris part aux

délibérations aurait pu être interprété comme encluant sa présence mais qu'il n'avait pas assisté. Mais, réflexion faite, je considère que la meilleure interprétation qui puisse être donnée à cette expression du juge est que Bachand était présent mais qu'il n'a nullement pris part aux délibérations.

Je considère que dans les circonstances le jury n'était pas légalement constitué pour porter un acte d'accusation.

Chitty dit:—

> This necessity for the grand inquest to consist of men free from all objection existed at common law and was affirmed by the statute 11 Henry IV., ch. 9, which enacts that any indictment taken by a jury, one of whom is unqualified shall be altogether void and of no effect whatever. So that if a man be outlawed upon such a finding, he may, on evidence that one of the jury was incompetent, procure the outlawry against him to be reversed.

Le grand jury dans le cas actuel pouvait être légalement constitué pour entendre d'autres causes qui lui seraient soumises; mais, en tant que la cause de Veronneau est concernée, je considère qu'il n'était pas légalement constitué.

Je ne saurais, par conséquent, concourir dans l'opinion exprimée dans la cause de *Reg.* v. *Hayes*(1). Je crois que le principe qui a été énoncé dans la cause de *Reg.* v. *McGuire*(2), est plus acceptable et plus conforme à notre organisation judiciaire.

Pour ces raisons, je serais d'opinion que l'acte d'accusation proféré contre Veronneau devrait être annulé et que l'appel devrait être maintenu avec dépens.

*Appeal dismissed.*

Solicitor for the appellant: *Chas. C. Cabana.*
Solicitor for the respondent: *Jacob Nicol.*

(1) 9 Can. Crim. Cas. 101. (2) 4 Can. Crim. Cas. 12.