

LETTER

FROM

HIS HONOR MR. JUSTICE JOHNSTON

RELATIVE TO THE

PROPOSED ABOLITION OF GRAND JURIES.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON.

—
1872.

LETTER RELATIVE TO ABOLITION OF GRAND JURIES.

No. 1.

Mr. Justice JOHNSTON to the Hon. the COLONIAL SECRETARY.

SIR,—

Judge's Chambers, Wellington, 26th August, 1872.

Since my return from Napier my attention has been called to the report of a speech by Mr. Steward in the House of Representatives, contained in the *New Zealand Hansard*, p. 417, in which it is made to appear that I am in favour of, or not opposed to, the abolition of Grand Juries in the Colony.

The honorable member, who quoted from some (probably newspaper) report of language used by me at a recent sitting of a Circuit Court at Wanganui, seems to have misunderstood the purport of my remarks. I intended to express very strongly my opinion that the abolition of grand juries in the Colony would be most *undesirable*, while I pointed out that a modification of the practice regarding them in England, by limiting the classes of cases which the grand jury should be obliged to investigate seemed so reasonable, that I was almost surprised it had not yet been effected. On my recent visit to Napier, I took occasion, on discharging the grand jury, to express the regret which I should feel if the institution should be abolished.

Many years ago I advocated the introduction in England of a system of public prosecution analogous to that of Scotland, without necessarily abolishing grand juries. My experience during the interval has to some extent modified my views, and has made me doubt whether the Scotch system would be desirable in England. At all events, it seems to me improbable that this Colony will for some time to come be able to establish an efficient system of that kind; and I am of opinion that such a system ought to be introduced and tried before, not after, the abolition of the grand jury.

It seems to me that the advocates of a Scotch system are too apt to forget that the law which is to be administered under the system is the law of England, not that of Scotland.

I find that I wrote a semi-official letter on this subject to the Attorney-General of the Colony ten years ago; and as I still entertain the opinions I expressed in it, I have the honor to forward you a copy.

I have, &c.,

ALEXANDER J. JOHNSTON.

The Hon. the Colonial Secretary, Judicial Branch.

Enclosure in No. 1.

COPY of a Letter written to Mr. SEWELL, Attorney-General,—in the matter of Criminal Jurisdiction and Grand Juries.

(Semi-official.)

Wellington, New Zealand, 22nd February, 1862.

In the Matter of Criminal Jurisdiction.

MY DEAR ATTORNEY-GENERAL,—

I am glad you have turned your attention to the subject of criminal prosecutions. Nothing can be more unsatisfactory than the existing state of things in that respect.

As I have not received the Circular letter of which you speak in your letter of the 31st, I can give no opinion in detail with respect to your proposed measures.

But, as at present advised, I quite disagree from you about the grand jury, and should be disposed, till I hear some good reason for its abolition, to adopt every constitutional means in my power to protest against and try to prevent it.

The principle of a grand jury is a most excellent and useful one; and although in England, with its complicated but efficient system of practical checks, a thoroughly efficient police and magistracy, and a vigilant and enlightened public opinion, its practical utility has in many respects been so far diminished as to make it doubtful whether it is any longer necessary,—the manifest aversion to abolish the system entirely, is, I believe, founded on one of those intuitive feelings of respect for wholesome regulative checks upon the abuse of authority which are part (among the most respectable) of the English national character.

I believe the grand jury system for the Supreme Court is peculiarly advantageous and desirable in a young Colony like this, while public opinion is scarcely formed, where (as you yourself admit) competent professional officials are not easily to be got, where political rivalries and jealousies run high, and where the action of Government-appointed officials would naturally be looked upon by some portion of the community with a certain amount of distrust.

I think the existence of the grand jury affords a comforting assurance to the community that no man will, through the personal pique or prejudice of a magistrate or other official, be subjected to the disgrace of a public trial without abundant reason; but, what is much more important, it helps to assure society that crime will not be allowed to go unpunished through the indifference, partiality, mistake, or jobbery of officials. I believe that the attendance of grand juries at the Circuit Courts of the Colony is accompanied by several very decided advantages. It keeps up among the educated classes a wholesome familiarity with the administration of justice; it affords opportunities to Judges, which they do not otherwise possess, of calling the attention of Justices and others to their duties, and to changes in the law; it sets a healthy and not unnecessary example to the most of the com-

munity of respect for the administration of the law, and, to my mind, helps materially, in so young a society, in keeping up those feelings of harmony, and that practice of harmonious action, among different classes of society, which it is not easy to generate or maintain in a small community with very liberal institutions.

I believe that it is a great social advantage, and a political one, too, to bring together men of different views, political and social, for the discharge of common duties, on neutral ground, where they act in harmony for the common good, ignoring partisan and personal prejudices.

No grand jury in the Colony ever yet complained to me, or to the Government, to my knowledge, of the burden cast upon them. I have never heard of any mischief arising from the system in the Colony. I feel sure it is both practically and theoretically useful; and unless I have some reason never yet suggested to me for its abolition, I shall strive my best to preserve it.

If you are going to have public prosecutors, I should venture to give you one suggestion: make it their interest to conduct cases properly. That you might do by giving them a small salary as general retainer, and liberal fees in every case where the Court was satisfied with the mode in which the prosecution has been conducted, giving the Court full power to disallow all or any costs. At present the power of the Court in this respect, in the Colony, is nominal; as the prosecuting lawyers are paid by salary, and the Provincial Treasurers pay or disallow costs without the interference of the Court. This is one radical vice of the present system. Should there even be a revival of the District Court criminal action, a grand jury in the Supreme Court would be able to make up for the negligence of a prosecuting officer in the inferior tribunal—if such should occur—by finding a true bill in the Supreme Court. The Provincial Solicitors ought to be competent to conduct prosecutions in all their stages; but there is much more chance of their being so when it becomes their direct interest to succeed—that is, of course, not necessarily to get convictions, but to get judicial approval for the prosecution.

I have, &c.

ALEXANDER J. JOHNSTON.

P.S.—After a material increase of population and crime, it might be thought desirable not to trouble the grand jury with certain classes of cases, unless the Judge, on perusing the depositions, should think it desirable that they should inquire into particular cases.

That course seems unnecessary at present, as the labours of the grand jury, once assembled, are seldom very onerous.
