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The Propriety of Holding a Grand Jury on Contempt of Court

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It is submitted that the court was correct in denying recovery for the wrongful death of a minor child to a divorced mother who did not have custody thereof. In the opinion of the writer, an extension of the *Haddock* rule in the instant case would have constituted a judicial amendment of the act. That the result of the *Eppes* case was harshly inequitable is the fault, not of the judiciary, but of legislative recalcitrance to correct the act's grossly inadequate right of action provision. At present, several problem areas remain which can create needless hardships, absent liberal judicial construction. Namely, if the act were *strictly* construed, a mother could not maintain a wrongful death action if the father: (a) abandoned the child and there was no divorce; or (b) was declared mentally incompetent; or (c) was confined for insanity.[23]

It is suggested that a legislative solution in the form of a redrafting of the "right of action" provision of the Wrongful Death of Minors Act is long overdue. The revision should expand the mother's right to sue under the act by allowing her to maintain an action thereunder in case of the father's death or desertion of his family, or if the mother has been awarded custody of a minor child in a divorce decree from the father,[24] or if the father has been declared mentally incompetent, or if the mother was supporting the child at the time of its death.[25] The amendment should also provide that recovery by either spouse shall be a bar to an action by the other, and that the right of action under the act shall include actions *ex contractu* and *ex delicto*.[26]

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THE PROPRIETY OF HOLDING A GRAND JURY IN CONTEMPT OF COURT

A duly empaneled grand jury at the close of its deliberations filed an interim report with the court. While the grand jury was in recess, subject to recall upon order of the assigned judge, a summons was issued to each

23. Although these fact situations have not yet been adjudicated in Florida, it is submitted that in the absence of an extension of the *Haddock* rule, recovery would be denied to the mother if the father were living. Only by deciding, as in *Haddock*, that under section 4 of the Declaration of Rights of the Florida Constitution the mother should have a right of action under the act, and, therefore, it was the intention of the legislature that she have one, would her action be allowed? As evidenced by the instant case, such an extension of the *Haddock* rule is unlikely.

24. This is merely a codification of the *Haddock* rule. See notes 10–13 *supra* and accompanying text.

25. This provision would allow recovery by a divorced mother in a fact situation similar to that presented by the instant case.

26. This provision allowing actions *ex contractu* and *ex delicto* is already a part of the Wrongful Death Act, FLA. STAT. § 768.01 (1961). Its incorporation into the Wrongful Death of Minors Act would prevent inequitable decisions such as Latimer v. Sears, Roebuck & Co., 285 F.2d 152 (5th Cir. 1960). Therein the court held that a wrongful death action by the father of a minor child is not maintainable under the act where such action arose upon a breach of implied warranty, since § 768.03 does not encompass actions *ex contractu*.

member of the grand jury requiring that they appear in open court. Upon the reconvening of the grand jury, the judge read part of the report[1] to the assembled members. Thereafter, he held each member in contempt of court and purged the indicated part of the report from the court records. On appeal, *held*, reversed: while the Florida courts have the power to expunge from a grand jury report matter which offends the dignity of the court, they do not have the power to cite an entire grand jury panel for contempt by reason of its report duly compiled during its deliberations. *Clemmons v. State*, 141 So.2d 749 (Fla. App. 1962).

Although the grand jury is a common-law institution of very ancient ancestry, its precise origin is veiled in obscurity.[2] However, the modern version of the grand jury appears to be derived from a body named the Le Grande Inquest,[3] which in time became known as the grand jury. Early in its development the grand jury was wholly under the control of the justices and the jurors were subject to fine or imprisonment for failure to act as directed.[4] Slowly, the grand jury evolved into an independent body which met in secret and whose members were sworn to secrecy.[5] The most important step toward this freedom was the releasing of the grand jury from the control of the court in respect to their findings and halting the practice of punishing the members for failure to act in accordance with the wishes of the justices.[6] Now free to act according to the dictates of their consciences, the grand jurors began

1. "Inasmuch as one other matter was brought to our attention we feel that we must comment on same. Where suspicion is cast upon the impartiality of our court system, whether it be founded or unfounded, the confidence of the public is lessened in some degree. So that our courts remain above even the slightest hint of suspicion, and so that the public confidence in our courts remain unshaken in the slightest degree, we recommend that attorneys and/or firms closely associated by blood or marriage to any member of the judiciary refrain from practicing before his kin, and thereby relieve any party so related from any hint of partiality in the judicial process." Clemmons v. State, 141 So.2d 749, 751 (Fla. App. 1962). "There is filed in the record . . . a stipulation . . . that the Honorable Charles A. Wade is the resident Circuit Judge of Okaloosa County; that he is the nephew of the Honorable Purl G. Adams, a member of a law firm in Crestview, Okaloosa County, which attorney and members of his firm are counsel in cases pending in the circuit court of the county; that it is well known throughout the county that Attorney Adams is the uncle of Judge Wade." *Id.* at 752.

2. FORSYTH, TRIAL BY JURY 1, 2 (1875); Morse, *A Survey of the Grand Jury*, 10 ORE. L. REV. 101, 102 (1931).

3. The Le Grande Inquest consisted of not less than twelve nor more than twenty-three of the most important men of the community and its function was to inform itinerant justices of those who were probably guilty of a crime. 3 REEVES, HISTORY OF THE ENGLISH LAW 133 (1880); Grundwerg, *The Florida Grand Jury*, 8 MIAMI L.Q. 584, 585 (1954).

4. EDWARDS, THE GRAND JURY 163 (1904).

5. *Id.* at 28.

6. King v. Windham, 2 Keble 180, 84 Eng. Rep. 113 (K.B. 1685). In this case the grand jury refused to find a bill for murder although satisfied that the deceased came to his death at the hands of the defendant. The chief justice fined the entire panel and bound them over until the King's Bench should determine the matter. The court relieved them of the fine and the chief justice was afterward accused in Parliament and was obliged to acknowledge that the fining was unlawful. See also King v. Baker, ROWE, REPORTS OF INTERESTING CASES 603 (1789).

to serve as a barrier between the king and the rights of his subjects and to secure the subjects against oppression from unfounded prosecution.[7] At the time of the settlement of the United States, the colonists believed that the grand jury was a necessary fundamental safeguard of individual rights against governmental oppression and that belief is manifested in the Constitution of the United States[8] as well as in the constitutions of the several states.[9]

In those jurisdictions where the power of the grand jury is not delineated by statute, it has remained for the courts to determine how far a grand jury may properly proceed.[10] In those instances where a grand jury has clearly exceeded its statutory or judicial authority by filing a report which impugns the reputation of a private citizen or a public official, the clear weight of authority favors expunging this type of material from the court records.[11] Only in California[12] and perhaps in New York[13] will a castigating report be allowed to stand. In all jurisdictions it has been conclusively determined that an individual member of the grand jury may be held in contempt for misbehavior in the presence of the court or disobedience to a lawful command of the court.[14] However, in the entire jurisprudence of the United States there has been but one instance, *Coons v. State*,[15] in which an entire grand jury has been held in contempt for exceeding its lawful authority. Although there have

7. For two of the most celebrated instances of fearless action by the grand jury in defending the liberty of a subject, although subjected to the strongest possible pressure from the crown, see the note to the Trial of Stephen Colledge, 8 How. St. Tr. 549 (1681); Shaftesbury's Case, 8 How. St. Tr. 774 (1681).

8. U.S. CONST. amend. V.

9. In Florida the provision for the establishment of a grand jury is found in FLA. CONST. DECL. OF RIGHTS § 10.

10. "It has remained for the courts, tracing the history of the grand jury from the time of early England to determine for themselves when, upon a particular set of facts and circumstances, a question is presented just how far a grand jury may properly go or should be allowed to go." Application of Tex. Co., 27 F. Supp. 847, 851 (1939).

11. State v. Interim Report of Grand Jury, 93 So.2d 99 (Fla. 1957); *In re* Presentment of Grand Jury, Charlt. R.M. 149 (Ga. 1822); State v. Platt, 193 La. 928, 192 So. 659 (1939); Bennett v. Kalamazoo Circuit Judge, 183 Mich. 200, 150 N.W. 141 (1914); State *ex rel.* Strong v. Dist. Court, 216 Minn. 345, 12 N.W.2d 776 (1944); *In re* Report of Grand Jury, 123 Utah 458, 260 P.2d 521 (1953).

12. If a grand jury is authorized and bound to inquire of public offenses, a necessary element of the power must be the power and duty to disclose the results of the inquiry. Irwin v. Murphy, 129 Cal. App. 713, 19 P.2d 292 (1933).

13. The feeling of the New York jurisdiction appears to be that a grand jury report which castigates a public official should issue in benefit of the public interest. *In re* Healy, 161 Misc. 582, 293 N.Y. Supp. 584 (Queens County Ct. 1937). *Contra, In re* Funston, 133 Misc. 620, 233 N.Y. Supp. 81 (Sup. Ct. 1929).

14. *In re* Summerhayes, 70 Fed. 769 (1895); Skipper v. Schumacker, 124 Fla. 384, 169 So. 58 (1936); State v. Youngblood, 205 Ind. 129, 73 N.E.2d 174 (1947); State v. Platt, 193 La. 928, 192 So. 659 (1939); Pennsylvania v. Keffer, 1 Add. 290 (Pa. 1795).

15. 191 Ind. 580, 134 N.E. 194 (1922). The Supreme Court of Indiana based its affirmation of a lower court's contempt order upon the Indiana statute which created the grand jury and which offered no instance in which the grand jury could charge any public official with the commission of a felony by a so-called report.

been occasions[16] when the *Coons* case could have been relied upon, it is noteworthy that it never has been followed.

In the instant case[17] the First District Court of Appeal, faced with the critical query of the power to hold an entire grand jury panel for contempt by reason of the contents of its report, was not hesitant in declaring that the Florida courts do not have this power. While it was readily determined that the grand jury is under the control of the court,[18] the court found but one instance[19] where the courts of the several states, although provided with ample opportunity, have attempted to exercise the power of contempt over an entire grand jury. Furthermore, a long and tedious search into the common-law development of the grand jury, and the fact that the grand jury system of Florida is derived from the common law,[20] provided the court with ample evidence that the institution was and should be free from control of the court in its findings. The court decided in favor of the continued freedom of the grand jury to inquire of all matters as shall be given it in its charge from the court,[21] subject only to the power of the court to expunge objectionable matter.[22]

In order to preserve the grand jury as a distinct and independent body in regard to its findings and to foster its historical purpose as a defender of liberty, it is imperative that it must act free from fear of reprisal. In this respect, the writer unequivocally agrees with the decision of the court which adhered to the dictates of history and common sense. When it is proposed to turn aside from a course which has been followed for centuries, the warning of Judge King applies with great force:

> Any and every innovation in the ancient and settled usages of the common law, calculated in any respect to weaken the barriers thrown around the liberty and security of the citizen, should be viewed with jealousy, and trusted with caution.[23]

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16. For flagrant violations of the grand jury's lawful authority see State v. Interim Report of Grand Jury, 93 So.2d 99 (Fla. 1957); State v. Platt, 193 La. 928, 192 So. 659 (1939).

17. Clemmons v. State, 141 So.2d 749 (Fla. App. 1962).

18. Skipper v. Schumacker, 124 Fla. 384, 169 So. 58 (1936); Cherry v. State, 6 Fla. 679 (1856).

19. See note 15 *supra.*

20. Cotton v. State, 85 Fla. 197, 95 So. 668 (1923).

21. Owens v. State, 59 So.2d 254 (Fla. 1952).

22. State v. Interim Report of Grand Jury, 93 So.2d 99 (Fla. 1957).

23. *In re* Lloyd, 3 Clark 188 (Pa. 1845), as cited in EDWARDS, THE GRAND JURY 44 (1904).