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Criminal Law -- Grand Juries -- Independent Investigations

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porate reorganization proceedings. The sum above the amount of the consideration paid for the bonds would then be held in trust for the individual bondholder.

Oscar Leak Tyree.


Two recently considered legal problems have again brought to the forefront the long unanswered question as to the power of the grand jury to make, of its own motion, without a charge from the court or the solicitor, investigations into violations of the criminal law.

The grand jury of the Guilford Superior Court, serving during the first half of 1938, undertook, of its own motion, but with the knowledge of the judge and solicitor of that district,\(^1\) to conduct an investigation of alleged fraudulent practices in the High Point Democratic primary of June 4, 1938. The probe was carried out through the subpoenaing of witnesses to appear and answer the grand jury’s interrogations.\(^2\) This investigation was not completed at the expiration of the jury’s service; therefore, it made a report to the court, not based specifically on warrants, and pointed out several particular instances where the election laws had been violated.\(^3\) The newly assigned judge denied the succeeding grand jury authority to proceed with the independent investigation of the alleged offenses before it made a presentment of the facts to the court.\(^4\) This new grand jury was thus restrained from exercising the authority countenanced in its predecessor.

Recently the request of the grand jury of the Durham Superior Court for funds with which to employ special agents to assist it in making an investigation was denied on the ground that it lacked the authority to employ such special investigators, and that the county lacked the authority to supply funds for such a purpose.\(^5\)

These instances raise questions as to: (1) whether the grand jury may, of its own motion, make an investigation of, and a presentment to the court concerning, violations of the criminal law with which it is acquainted through its own knowledge or observation; (2) whether it may so act upon information received from a third party; and if such an investigation is allowed, (3) whether it may subpoena witnesses to

\(^1\) Greensboro Daily News, July 14, 1938, p. 18, col. 6.
\(^3\) High Point Enterprise, July 12, 1938, p. 10, col. 1.
\(^4\) Ibid.
\(^5\) Durham Morning Herald, Oct. 5, 1938, p. 4, col. 2. In a letter to Hon. Leo Carr, dated Sept. 21, 1938, Assistant Attorney General Wettach expressed the opinion, in behalf of Attorney General McMullan, that there does not appear to be any express provision in the statutes which authorizes a county to employ special investigators to assist the grand jury; and that an outside detective agency could not be employed for this purpose without special legislative authority.
appear before it and give testimony in a general inquiry; (4) whether it may found a presentment upon evidence insufficient as the basis for a bill of indictment; (5) whether it may employ outside agencies to assist it in making investigations; and (6) whether, after the presentation of a bill of indictment to it by the court, it may call for examination witnesses other than those whose names appear on the bill or who are sent to it by the court.

A presentment is the means by which the grand jury calls to the attention of the court the existence of criminal practices with which it is acquainted through its own knowledge or observation. Following the grand jury's presentment the solicitor frames a bill of indictment, indorses the names of the witnesses thereon, and then sends the bill and the witnesses to the grand jury for their determination as to whether or not it is a "true bill". Under the early common law the grand jury was vested with powers to make presentments and to make investigations and inquiries to uncover evidence to be used as a basis for such presentments. The proposition that the grand jury may act on its own knowledge or observation in making a presentment of alleged criminal acts has been squarely upheld in North Carolina, in the federal courts, and in a number of the state courts. Thus, as a general proposition, the great majority of courts vest the grand jury with such powers, though some few states have held that it may act in no case until the offense has been brought before a magistrate.

"A presentment, properly speaking, is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the king. As the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer it." 4 BC. COMM. *301.

7 1 Chitty, Criminal Law *162; 1 Wharton, Criminal Law (6th ed. 1868) §457, (hi), cited in State v. Wilcox, 104 N. C. 847, 10 S. E. 453 (1889).
8 State v. Cain, 8 N. C. 352 (1821); Lewis v. Commissioners, 74 N. C. 194 (1876); State v. Ivey, 100 N. C. 539, 5 S. E. 407 (1888); State v. Wilcox, 104 N. C. 847, 10 S. E. 453 (1889); see State v. Cox, 28 N. C. 440, 444 (1846); State v. Morris, 104 N. C. 837, 839, 10 S. E. 454, 455 (1889).
10 Irwin v. Murphy, 129 Cal. App. 713, 19 P. (2d) 292 (1933); People v. Graydon, 333 Ill. 429, 164 N. E. 832 (1929); Coblenz v. State, 164 Md. 558, 166 Atl. 45 (1933); In re Jones, 101 App. Div. 55, 92 N. Y. Supp. 275 (2d Dep't 1903); In re Osborne, 68 Misc. 597, 125 N. Y. Supp. 313 (Sup. Ct. 1910); In re Healy, 161 Misc. 582, 293 N. Y. Supp. 584 (Queens Co. Ct. 1937); Petition of McNair, 324 Pa. 48, 187 Atl. 498 (1936); State v. Bramlett, 166 S. C. 323, 164 S. E. 873 (1932); State v. Lee, 87 Tenn. 114, 9 S. W. 425 (1888); see Ward v. State, 2 Mo. 120, 121, 22 Am. Dec. 449, 450 (1829) (in which the court gives the grand jury very broad powers as a basis for its investigations, reports, and indictments); 2 Wharton, loc. cit. supra note 9.
11 2 Wharton, loc. cit. supra note 9.
12 Butler v. Commonwealth, 81 Va. 159 (1885); Clark, Criminal Procedure (2d ed. 1918) 128, §§47, 48; 2 Wharton, op. cit. supra note 9, §1265. In Pennsylvania, however, a preliminary hearing before a magistrate is not necessary where the offense is one of public notoriety, is within the knowledge of the grand jury
In *State v. Wilcox* Justice Avery said: "... it is their [the grand jury's] duty to originate presentments as to all violations of law that have come under the personal observation or knowledge of each juror, and as to the commission of any offenses of which they have information, which they deem credible and which is so specific as to the nature of the offense and witnesses as to enable the prosecuting officer to frame an indictment upon it."

Justice Field, in his *Charge To Grand Jury*, specifically advised that body of its power to investigate matters coming to its knowledge from its own observations or in the course of its investigation into matters placed before it; and later federal court decisions have continued to recognize these powers. The other state courts authorizing such investigations and presentments follow practically the same view as do the North Carolina or federal courts. In twenty-eight of the states the making of investigations and presentments has been imposed on the grand jurors as a duty through specific statutory enactments.

In considering whether the grand jury may utilize information gained from third parties as the basis for such an investigation and presentment to the court, it would be well to make a distinction between: (1) instances where the jurors receive information from third parties who, in the interest of society and the general welfare, merely point out the existence of criminal conditions without bringing any specific charge in their own names and without acting in the role of private prosecutors; and (2) instances where individuals, desirous of insti-

or its members, is given in charge by the court, or is sent up to them by the district attorney. *McCullough v. Commonwealth*, 67 Pa. 30 (1870); *Commonwealth v. Green*, 126 Pa. 531, 17 Atl. 878 (1889); 1 WHARTON, CRIMINAL LAW (6th ed. 1868) §458 and note.

104 N. C. 847, 850, 10 S. E. 453, 454 (1889).


See note 10, supra.

These statutes have been assembled according to the express nature of their provisions in AMERICAN LAW INSTITUTE, CODE OF CRIMINAL PROCEDURE (Tent. Draft No. I, 1928) commentaries to §§137, 141.

In *King v. Second Nat'l Bank and Trust Co.*, 173 So. 498 (Ala. 1937), the Supreme Court of Alabama affirmed a judgment of the lower court in favor of a defendant in a suit for malicious prosecution. The defendant had reported to the grand jury the commission of a criminal offense, furnished the names of witnesses, and stated that he was informed that the guilty parties were the plaintiffs here. This court said: "Public policy demands that the citizen, without hazard to himself, may freely bring before the grand jury the fact that a crime has been committed, request an investigation, and furnish such information as he has in aid of the investigation. In this the citizen is not a prosecutor. ... He is merely performing a duty in aid of the tribunal set up to ascertain whether there is probable cause to believe a crime has been committed, and if so, who is there probable cause to believe to be the guilty party."
tuting proceedings for their own personal reasons, seek to appear before
the grand jury and make accusations and bring specific charges against
alleged wrongdoers. In general the grand jury is allowed to utilize in-
formation received from this first class of informers, but the latter type
of persons are usually required to go before the solicitor instead of the
grand jury.

Certain dicta in the North Carolina cases would seem to indicate a
recognition of this distinction, support for which may also be drawn
from the common law materials. In Lewis v. Commissioners the
court pointed out that the practice to be followed by private individuals
desiring to prosecute offenders is to inform the solicitor and have him
frame a bill of indictment against the accused, indorsing upon it the
name of the prosecutor, as such, and the names of his witnesses. The
bill, with the witnesses, is then sent before the grand jury. This
clearly indicates that those parties wishing to begin proceedings and
make accusations should go before the solicitor and not before the
grand jury. Our court has, however, declared that presentments may
be founded not only upon facts of which the grand jury or some member
of that body had knowledge, but also “... upon specific information
given in good faith and deemed to be credible...” This would
seem to indicate that if they received information from a third party
in their ordinary course of conduct, they might act upon such in-
formation.

The federal courts have specifically denied private prosecutors the
right to go before the grand jury and present accusations. The basis
is that, as a general rule, such parties are actuated by private enmity
and seek merely the gratification of their personal malice; and the
grand jury cannot be made a means to the attainment of such ends.
It has been said, however, that matters which “... otherwise come
to your knowledge touching the present service...” might be made

(1906), Justice Brown indicated that “Under the ancient English system, criminal
prosecutions were instituted at the suit of private prosecutors, to which the King
lent his name in the interest of the public peace and good order of society. In
such cases the usual practice was to prepare the proposed indictment and lay it
before the grand jury for their consideration.” He further pointed out that in such
cases of accusations by private persons a formal bill of indictment was laid before
the grand jury for their consideration, while they were privileged to hand up
presentments only of offenses of which they had taken notice from their own
knowledge or observation. Their powers to summon witnesses for the pur-
pose of a general inquiry would, however, support their use of information
gained from third parties who were not seeking to institute criminal proceedings
in their own names.

See State v. Morris, 104 N. C. 837, 839, 10 S. E. 454, 455 (1889).
United States v. Kilpatrick, 16 Fed. 765 (W. D. N. C. 1883); Housel &
Wals, op. cit. supra note 9, 8225; 2 Wharton, loc. cit. supra note 9.
the subject of inquiries; and this has been defined to mean, in one
instance, knowledge gained from witnesses testifying concerning mat-
ters other than those under consideration.

Pennsylvania is in accord with the federal view and has stead-
fastly refused to allow individuals and their witnesses to go before the
grand jury and prefer charges. Illinois has held, as has Maryland,
that the grand jury may inquire into all offenses against the common
law that come to its knowledge from any source; and these holdings
would indicate an inclination to allow the body to act on information
received from a third party.

Although the common law is not well defined as to the power of
grand juries to summon witnesses to appear before them and give testi-
mony in the absence of a direction or charge from the court or the solic-
tor, some authorities indicate that they did have general inquisitorial
powers. It has been stated that they had the authority originally to
summon witnesses to give testimony in a general inquiry, and that they
could found presentments upon the evidence of such witnesses. In
Wharton’s Criminal Procedure the theory is set forth that under
the old English practice the grand juries might institute all prosecu-
tions whatsoever, and this statement is supported by a reference to the
Report of the English Commissioners of 1879.

In Lewis v. Commissioners and State v. Wilcox the North
Carolina court expressly denied the grand jury the right to send for
witnesses generally for the purpose of testifying as to mere matters of
inquiry which might lead to a presentment. This same view is adopted

24 Ibid.
25 2 Wharton, loc. cit. supra note 9.
26 McCullough v. Commonwealth, 67 Pa. 30 (1870); Commonwealth v. Green,
126 Pa. 531, 17 Atl. 878 (1889); Petition of McNair, 324 Pa. 48, 187 Atl. 498
(1936).
27 People v. Graydon, 333 Ill. 429, 164 N. E. 832 (1929); People v. Sheridan,
349 Ill. 202, 181 N. E. 617 (1932).
28 Coblentz v. State, 164 Md. 558, 166 Atl. 45 (1933).
29 Justice Brown, in discussing the powers of the grand jury under the ancient
English system, said, in Hale v. Henkel, 201 U. S. 43, 59, 26 Sup. Ct. 370, 373,
50 L. ed. 652, 659 (1906), “We are pointed to no case, however, holding that a
grand jury cannot proceed without the formality of a written charge. Indeed,
the oath administered to the foreman ... indicates that the grand jury was
competent to act solely on its own volition.”
30 See note 7, supra.
31 2 Wharton, op. cit. supra note 9, §1260.
32 74 N. C. 194 (1876). The plaintiff was summoned by the grand jury to tes-
tify in mere “matters of inquiry” to “... enable that body [the grand jury]
to ascertain whether the witness knew of any violation of the criminal law,
and, if he did, to make a presentment of it to the Court.” The summons did
not command his attendance at a term of court, nor did it purport to be issued
by or under the authority of the court, nor to have been issued in behalf of the
state. In this suit for compensation for his time before the jury, the plaintiff
was denied relief on the ground that there was no provision of law for the pay of
witnesses where they are summoned merely to testify in matters of inquiry before
the grand jury, and that the grand jury had no authority to summon them for
such a purpose.
33 104 N. C. 847, 10 S. E. 453 (1889).
in Pennsylvania. The practice adhered to by the federal courts, however, allows the grand jury to examine witnesses before a presentment has been made. It is sufficient to inform the witnesses of the names of the parties with respect to whom they will be called to testify.

Missouri has held that, without stating in the subpoena in what particular matter or cause they were to testify, the grand jury might subpoena witnesses to appear before it and testify generally. The only restriction placed on the body in the conducting of a general inquiry is that it cannot compel a witness to answer a question when his answer might cause his own incrimination and conviction. Likewise the Maryland and Illinois courts have supported the grand jury’s unrestrained powers by saying that they have plenary inquisitorial powers and may call witnesses before them in the course of their investigations. Tennessee’s criminal code empowers the grand jury to send for and examine witnesses in regard to certain specified crimes, without having received the permission of, or an order from, the court. In several of the states, though no specific mention is made of any such restriction, it would seem to follow, as a natural consequence of the general restraints that are placed upon the grand juries, that the independent summoning of witnesses to appear before that body for the purpose of a general inquiry is not a permissible practice.

Authorities on the common law powers of the grand jury make no reference to this body’s using its powers of presentment as a means to make a mere report without intending that the framing of a bill of indictment should follow. Though a bill of indictment could be made without having been preceded by a presentment, the purpose of a presentment, when made, was to lay a basis upon which an indictment might be framed by the officers of the court. In some instances the

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Footnotes:
84 Petition of McNair, 324 Pa. 48, 187 Atl. 498 (1936) (though a presentment may be made from the personal knowledge of the grand jurors, they may initiate an investigation and inquiry only when charged by the court, and then only under prescribed limitations).
86 Ward v. State, 2 Mo. 120 (1829); State v. Terry, 30 Mo. 368 (1860) (jury may ask witness whether he knows of any violation of the criminal law).
88 People v. Graydon, People v. Sheridan, both supra note 27.
89 See State v. Taylor, 173 La. 1010, 1029, 139 So. 463, 470 (1931); Commonwealth v. Green, 126 Pa. 531, 538, 17 Atl. 878, 880 (1889); Butler v. Commonwealth, 81 Va. 159, 161 (1885).
NOTES AND COMMENTS

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statutes and decisions used the terms presentment and indictment synonymously as an indication that their use was the same.

In *State v. Wilcox* the North Carolina court defined the duty of the grand jury as being to originate presentments upon "... information, which they deem credible and which is so specific as to the nature of the offence and witnesses as to enable the prosecuting officer to frame an indictment upon it." This last phrase, stated by earlier North Carolina decisions, seems to indicate that in this state the presentment is to be made only as the basis for the framing of a bill of indictment.

In other states, however, the courts have indicated that grand juries may sometimes make a presentment in the nature of a general report, merely pointing out the existence of evil conditions without giving any specific instructions sufficient to be made the basis of a bill of indictment. But, where such reports are recognized, restraints have been imposed so as to prevent any reflection on the conduct of specified private individuals or placing them in a position of public scorn without affording them opportunity to answer the accusations made against them.

Where the report concerns public officers' misconduct in office, the courts vary as to whether the same restraints should be imposed.

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43 House & Wals, op. cit. supra note 9, §222.
44 See State v. Cain, 8 N. C. 352, 353 (1821) ; State v. Cox, 28 N. C. 440, 444 (1846) ; State v. Ivey, 100 N. C. 539, 540, 5 S. E. 407 (1888).
46 In the case of In re Jones, 101 App. Div. 55, 92 N. Y. Supp. 275 (2d Dep't 1905), the majority opinion, in denying a motion to quash a presentment which reported an investigation into the records and minutes of the clerk of the Board of Supervisors of Nassau County, stated: "I think that if under the guise of a presentment the grand jury simply accuse, thereby compelling the accused to stand mute, where the presentment would warrant indictment so that the accused might answer, the presentment may be expunged; but I do not think that a presentment as a report upon the exercise of inquisitorial powers must be stricken out if it incidentally point out that this or that public official is responsible for omissions or commissions, negligence or defects." But the dissent expressed the view that: "All of the old forms of criminal pleading being abolished, the people being limited to an indictment, which shall charge the commission of a definite crime... and a presentment being the equivalent of an indictment in the common law... it follows that any other action on the part of a grand jury in dealing with a citizen is without authority of law..." The New York Supreme Court in a later case, In re Osborne, 68 Misc. 597, 125 N. Y. Supp. 313 (Sup. Ct. 1910), expressed the opinion that this dissenting opinion was founded on the better reason; and that, although such a report may be made when confined to matters or facts of general interest, the action of the grand jury should be checked when it makes a report in which it accuses a citizen or officer of acts or conduct which in themselves are not criminal. It was also held in In re Heffernan, 125 N. Y. Supp. 737 (Kings Co. Ct. 1909), that a mere report without indictment, charging certain officials with neglect in the performance of their duties, should be set aside and expunged from the records because the grand jury lacked the authority to make such a report. But in the case of In re Healy, 161 Misc. 582, 293 N. Y. Supp. 584 (Queens Co. Ct. 1937), the court held that the statute, N. Y. CRIMINAL CODE (Cahill, 1928) §260, requiring the grand jury to inquire into misconduct in office of public officers authorizes that body to hand up pre-
In the federal courts the grand jury, upon its adjournment, often makes a presentment upon some subject of public interest, pointing out the existence of certain public needs, conditions which should be remedied and similar matters of general interest. Such presentments are regarded as harmless and are accepted by the courts, though they are rarely, if ever, acted upon. If, however, such a presentment is used to assail the conduct of a public officer, a motion will lie to expunge it from the records of the court.47

It would seem unlikely that the question whether the grand jury could employ special investigators would arise under the old English system, for the jurors' fees were small and there were no provisions for funds which might be used for this purpose. They were forced to rely upon their own knowledge or that gained from their witnesses in getting their evidence and information.48

In this country, however, instances have arisen where the grand jury or its members have employed private detectives, accountants, and counsel. In each case the state courts have ruled that, in the absence of a specific statutory provision giving them that power, such acts were unauthorized.49 The general reasons set forth are that such a procedure is against public policy50 because the grand jury would be prejudiced in favor of the evidence procured for them by such agencies; further, that since the ferreting out of evidence of crime is a statutory duty expressly imposed upon certain officers of the government, the existence of the power in other competent and efficient agencies tends to negative an implied power in the grand jury.51 Some courts have ruled that where the grand jurors themselves bore the expense, the practice was illegal.62

sentiments after such inquiry, notwithstanding that the evidence discovered does not warrant the finding of an indictment. In contrast to the opinion rendered in In re Osborne the court here upholds the prevailing opinion in In re Jones, on the ground that it expressed the intention of the legislature when it formulated the above statute.

In Rector v. Smith, 11 Iowa 302 (1860), a report to the court by the grand jury containing charges against a public officer was held not such a privileged communication as would bar an action for libel; in Bennett v. Kalama-zoo Circuit Judge, 183 Mich. 209, 150 N. W. 141 (1914), a grand jury's report on the conduct of a public official was expunged on the ground that it lacked authority to make presentments on matters other than trespasses to land and violations of the election laws. 47 House & Walser, loc. cit. supra note 43. 48 Dession and Cohen, The Inquisitorial Functions of Grand Juries (1932) 41 Yale L. J. 687, 696. 49 Woody v. Pears, 35 Cal. App. 553, 170 Pac. 669 (1917); Stone v. Bell, 35 Nev. 240, 129 Pac. 458 (1912); Dession and Cohen, loc. cit. supra note 48. 50 Burns International Detective Agency v. Doyle, 46 Nev. 91, 208 Pac. 427 (1922), 26 A. L. R. 605 (1922); 7 Minn. L. Rev. 59. 51 Allen v. Payne, 1 Cal. (2d) 607, 36 P. (2d) 614 (1934); note (1923) 26 A. L. R. 605. 52 People v. Kempley, 265 Pac. 310 (Cal. App. 1928), 12 Minn. L. Rev. 761; Burns International Detective Agency v. Holt, 138 Minn. 165, 164 N. W. 590 (1917); note (1935) 35 Col. L. Rev. 613.
The courts and legislatures in some jurisdictions have given consideration to the problem whether, after considering a bill of indictment placed before it or conducting an investigation on matters given it by the court, the grand jury may, in an attempt to procure more clarifying evidence, have more witnesses summoned to appear before it or more evidence presented for its consideration. Chitty,\(^6\) in remarking upon the common law practice, said: "The true intention seems to be, that \textit{prima facie} the grand jury have no concern with any testimony but that which is regularly offered to them with the bill of indictment. . . . But if they are unable to satisfy themselves of the truth sufficiently to warrant their determination, they may properly seek other information relative to mere facts, but further than this they cannot proceed."

In North Carolina the practice of summoning witnesses, as defined by the courts and limited by the statutes, comes under the complete control of the court and its officers. In \textit{Lewis v. Commissioners}\(^5\) it was decided that there is no authority for the examination of witnesses by the grand jury, except where they are summoned, sworn, and sent to that body by the court and accompanied by a bill of indictment upon which their names are indorsed. It has been provided by statute\(^6\) that witnesses may be sworn by the foreman of the jury as well as by the clerk of the court.\(^6\) This statute restricts the foreman, however, to administering such oath or affirmation to those whose names are indorsed on the bill of indictment by the officer prosecuting in behalf of the state, or by the direction of the court. These authorities seem to indicate that the North Carolina grand jury is entirely restricted to the examination of those witnesses whose names appear on the bill presented by the court or prosecuting attorney. Under New York and California statutes\(^7\) grand juries seeking further information about an incident may order the district attorney to issue subpoenas for such other witnesses as they direct.\(^8\) In the federal courts the practice is substantially the same. Justice Field charged\(^8\) the grand jury: "... you will receive all the evidence presented which may throw light upon the matter under consideration, whether it tend to establish the innocence or guilt of the accused. And more: if, in the course of your inquiries, you have reason to believe that there is other evidence, not presented to you,

\(^1\) Chitty, \textit{op. cit. supra} note 7, at 318.
\(^2\) 74 N. C. 194 (1876).
\(^3\) N. C. Code Ann. (Michie, 1935) \$2336.
\(^4\) State v. Allen, 83 N. C. 650 (1880); State v. White, 88 N. C. 698 (1883).
\(^5\) N. Y. Crim. Code (Cahill, 1928) \$609; Cal. Penal Code (Deering, 1937) tit. 2, \$1326.
\(^8\) Charge To Grand Jury, 30 Fed. Cas. No. 18,255 (C. C. D. Cal. 1872).
within your reach, which would qualify or explain away the charge under investigation, it will be your duty to order such evidence to be produced." Other federal court decisions\(^{60}\) have upheld this charge. But the person against whom the bill is brought may not be compelled to appear and give testimony against himself,\(^{61}\) this protection being reserved to him by the Fifth Amendment.

It is apparent from the preceding discussion that the grand jury system, as adopted in the various states of this country, has, in many instances, undergone changes which have lessened in some respects and enlarged in others the powers vested in the grand jury under the common law. In some jurisdictions its full powers have been clearly set out by statutes. In other jurisdictions judicial decisions have provided fairly clear definitions of this body’s authority. There are but few North Carolina authorities which may be relied upon to inform the courts or the grand jurors themselves of the grand jury’s power to proceed on its own initiative. The existence of situations in which there are variances of opinion, as to the grand jury’s authority to make, of its own motion, investigations and reports on matters coming to its attention, is thus easily understood. In order that it successfully fulfill its obligation to protect and uphold the morals and welfare of society, the grand jury must be clearly and accurately informed of its powers to perform these duties. We need clear and definitive legislative enactments to supplement the now scant and obscure authorities on this point.

**FRANK THOMAS MILLER, JR.**

**Ejectment—Common Source Rule—**
**Surface and Mineral Rights.**

An action was brought to establish \(P\)'s mineral rights in a tract of land, the surface rights of which were admittedly in \(D\). \(D\) denied \(P\)'s title and alleged title in himself by virtue of twenty years adverse possession of the mineral rights or seven years adverse possession under color of title. \(P\) offered evidence that in 1912 the land was claimed in fee by the Toe River Land and Mining Co. \(P\) then showed that in that year the land had been conveyed with reservation and exception of the mineral rights, and that through mesne conveyances from the Toe River Land and Mining Co. he had derived such title as that company had reserved to these mineral rights. The surface rights had been conveyed several times, each time with reservation and exception of the mineral right, until in 1918 \(D\)'s immediate grantor had conveyed the tract to

\(^{60}\) See United States v. Kilpatrick, 16 Fed. 765, 772 (W. D. N. C. 1883); United States v. Terry, 39 Fed. 355, 362 (N. D. Cal. 1889); Carroll v. United States, 16 F. (2d) 951, 953 (C. C. A. 2d, 1927).

\(^{61}\) **HOUSEL & WALSER, op. cit. supra** note 9, §230.