VII Jury Trial

Until relatively recently in the history of the common law, an accused's right to trial by jury was virtually unassailable. Jury trial was the normal method of dealing with all those offences which make up the central core of the criminal law, including those of a fairly trivial nature. Summary trial was limited to minor assaults, offences against the Vagrancy Acts and Game laws and infringements of the small amount of regulatory legislation of the time. In England, by the mid-19th century, there had been a decline in the severity of punishments along with a reform of magisterial law. For example, justices were required to sit in public except when conducting committal proceedings, and this made possible a gradual extension of the scope of summary jurisdiction. Minor indictable offences were made amenable to summary conviction if the accused consented and in return, magistrates could only impose lesser penalties.[1]

Summary trial, as its name suggests, is a shorter procedure than jury trial: there are no addresses to the jury by counsel or summing up by the judge; the requirements for the recording of the proceedings are generally much less strict[2] and there are, of course, no jury deliberations. Trial on indictment is a more expensive process in terms of both time and money. Aspects of trial on indictment, such as the expenses of the jury[3] and the cost of shorthand writers and recording equipment have no counterpart in the lower courts. In addition, jury trial takes longer than the summary trial, even for a case of similar gravity and complexity.[4] Nonetheless, the right to judgement by one's peers, especially where the liberty of an individual is at stake, is seen as being an important and central part of the administration of justice in many Commonwealth countries.[5] If this right does not flow from Magna Carta, at least its existence supports and gives effect to the ideal contained in the Charter.[6] The belief in the superiority of jury trial seems to be based on two grounds: firstly, that the traditional jury, selected virtually at random, brings a more impartial mind to bear on the issues than can magistrates and judges who inevitably become "case-hardened" and may be too ready to accept the prosecution's case; secondly, jury trial has other distinctive features such as being presided over by a professional judge and representation of both parties by counsel, the pace of the hearing is slower and once the trial has started it proceeds to a conclusion without interruption. This results in the issues being brought out more clearly and examined more thoroughly than is possible in a busy magistrates' court with a crowded list.[7]

Whatever the intrinsic worth of jury trial may be, its corresponding disadvantages mean that a widespread right to jury trial is no longer attainable in today's overcrowded criminal courts. Delays produced as a result of trial by jury are being tackled in three ways: by restricting jury trial to a very limited number of offences; by reforming jury trial practices and procedures and lastly, by abolishing jury trial altogether.

Those offences for which there is an absolute right to jury trial are being gradually reduced throughout the Commonwealth. In the Seychelles, for example, only murder and other offences carrying the death penalty carry a right to trial by jury. The vast majority of indictable offences may be tried on indictment or summarily; either the accused or the prosecution has the choice of which mode of trial to pursue. By making more offences amenable to summary trial it is generally hoped that more defendants will consent (where they have that option) to a hearing before a magistrate, the quid pro quo being the narrower range of sentences that lower court judges can impose. But before considering in detail offences triable either way, the option of totally withdrawing the right to jury trial for some minor indictable offences must be examined.

This solution has an obvious advantage over the situation where the defendant or prosecutor is given a choice as to the mode of trial: the number of jury trials for this class of offences is not merely reduced, but completely eliminated. In the past, the number of offences triable exclusively in a court of summary jurisdiction has been very limited, usually only involving those offences for which extremely minor penalties may be imposed. For example, in New Zealand, section 66 of the Summary Proceedings Act, 1957, as amended, preserves the right of a person charged with an offence punishable by imprisonment for more than a three month period to be tried by jury. Recent English experience has shown that increasing the number of offences for which jury trial is no longer available may not be a viable response in some jurisdictions.

In 1973 a Committee was set up in England under the chairmanship of Lord Justice James to examine the allocation of business between the different levels of the criminal courts. The immediate stimulus for the setting up of this Committee was the need to alleviate the pressures on the Crown Court which had been building steadily since the Court's inception in 1971, and to reduce delays in the disposal of Crown Court business. Interestingly, the point has been made that at this stage, the Crown Court had become a victim of its own success: the efforts which had been made by the new court

administration to make proceedings on indictment more efficient had been fairly successful in some areas with the result that proceedings in the Crown Court had become a more attractive proposition than they had been under the system which existed prior to 1971, and more defendants were therefore exercising their option to have their case heard in this forum. This underscores a point which has been made before: developments to deal with delays cannot be enacted without due consideration of their possible consequences. They will not be operating in a vacuum and may have an impact on other parts of the system and on the future operation of the courts.

The James Committee considered various methods of making justice more expeditious, and, based upon its recommendations, the English Criminal Law Amendment Bill, 1976, provided, inter alia, that certain cases of theft and related offences of dishonesty, where the value of the money or property involved did not exceed twenty pounds were to be tried exclusively by the Magistrates' Courts.[9] Cases of criminal damage other than arson, where the value of the damage did not exceed one hundred pounds were also proposed to be transferred to the lower courts. This meant that the right to elect trial by jury was to be abolished in those cases. The Committee had felt that it was confronted with the issue of providing expensive justice to trivial cases at the price of delaying justice to the serious cases which appropriately deserve expensive justice, and its members concluded that society should not pay that price. This is how the Committee viewed the conflicting claims and how they resolved them:

> In the last analysis, society has to choose between two conflicting aims. On the one hand is the existing right of the citizen to be tried by a judge and jury on any charge of theft or criminal damage, however small the amount involved. On the other is the right, especially important defending a serious charge, to be heard as soon as possible. These two requirements have to be met with resources which are finite and cannot be expanded without limit. At present, defendants on serious charges are suffering the injustice of long-delayed trial, while the time of the Crown Court is partly occupied with minor cases of low monetary value.[10]

Although the Government accepted this position and embodied it in the original Bill, the proposal met with vehement opposition from the public, the press, professional bodies and Parliament.[11] The opponents of the proposal rejected it because it was founded, as Lord Edmund-Davies stated in the debates in the House of Lords, "frankly and expressly, on the basis of expediency".[12] To them, the right of anyone charged with theft to a jury

trial, however small the amount involved, cannot be overridden by the right of a defendant on a serious charge to be tried as speedily as possible.

Eventually, after prolonged debate in the House of Lords, the Government withdrew this clause from the Bill, and replaced it with one much narrower in scope. Those offences which were triable either way which are now only triable summarily are offences under section 1 of the Criminal Damage Act, 1971, (excluding arson) and aiding, abetting, counselling or procuring, or attempting or inciting another to commit such an offence where the value of the property does not exceed two hundred pounds.[13] The restriction on the right to jury trial could not be extended beyond this, at least, for the time being. It is interesting to note the later remarks of Lord Hailsham:

> We began this Bill in an atmosphere of almost excited controversy....I can remember the speeches ....of those who thought that the rule of Magna Carta and trial by jury was being brought to an end...because of the Government's then intention to implement the James Committee on the subject of small thefts. I admit...that I was among those who advised the Government to give in on that point. I think I was right to do so; all the heat has been removed from the Bill by that very wise concession, because public opinion is not ready for that kind of amendment. However, I now want to say, in the cool of the evening, that I think the James Committee and the Government's original intentions were perfectly right. We shall come to them in the end.[14]

Certainly, the right to jury trial has been more severely restricted in some other Commonwealth jurisdictions. Canadian society has long accepted the monetary criterion for determining the forum for trying theft which was so vigorously rejected in England. Section 483 of the Canadian Criminal Code reads as follows:

> The jurisdiction of a magistrate to try an accused is absolute and does not depend upon the consent of the accused where the accused is charged in an information
> (a) with
> (i) theft, other than theft of cattle,
> (ii) obtaining money or property by false pretences,
> (iii) unlawfully having in his possession any property or thing knowing that all or part of the property or thing or the proceeds was obtained by or derived directly or indirectly from the commission in Canada of an offence punishable by indictment, or
> (iv) having, by deceit, falsehood or other fraudulent means, defrauded the public or any person, whether ascertained or not, of any property, money or valuable security,

> where the subject-matter of the offence is not a testamentary instrument and where the alleged value thereof does not exceed two hundred dollars;

This then is a limited class of indictable offences for which there is no right to jury trial; for the most serious criminal offences, which include murder and treason, the defendant has an absolute right to jury trial in Canada. One exception to this rule exists in the province of Alberta where an accused, charged with an indictable offence may, with his consent, be tried by a judge of the superior court of criminal jurisdiction without a jury.[15] It appears that this option is frequently exercised.[16] Outside of these categories there exists a large class of indictable offences for which an accused may elect his mode of trial. In this class of offences are included rape, bribery, criminal negligence and manslaughter. This category of offences may be tried, at the option of the accused, by judge and jury, by a single judge or by a magistrate, unless the Attorney General requires trial in a superior court. This option of trial by a single judge rather than by judge and jury is not widely available in other jurisdictions.[17]

The right to jury trial as it exists in Canada is notable in another respect. Although, in other countries, the consent of the accused, with the concurrence of the justice, is a necessary prerequisite for the summary hearing of those offences which may be tried on indictment or summarily, this is not the case in Canada, nor in Scotland. Thus, in these two jurisdictions, there is no right to jury trial where the accused is charged with an offence that is triable either way. The choice as to mode of trial is that of the prosecutor and not of the defendant. Concern has been voiced in England as to the possible consequences where the choice as to mode of trial is not that of the defendant; in particular, whether there is more likelihood of an appeal because the accused feels that he has been unfairly dealt with.[18] This fear would not appear to have been realised in Canada or Scotland.

In Scotland the procurator fiscal (i.e. the prosecutor) makes the first decision whether the case should be proceeded with at the summary level or be sent on petition to a sheriff sitting with a jury or to the High Court of Justiciary. If the case is to go on petition, the procurator fiscal then makes his investigation of the incident and sends the resulting materials to the Crown Office. At this stage, the original decision is reviewed by senior officials and confirmed or sent back for summary trial.[19]

> We are most anxious...that there should not be introduced into the Scottish criminal system a right on the part of the accused to opt for jury trial. While in general we do not think that persons accused of crimes against property or crimes of violence would opt for jury trial,

> persons accused of driving offences might do so in the hope of finding a sympathetic jury, and delays in disposing of criminal business. In any event, we think that jury trial in Scotland, as a matter of right, is unnecessary. In summary cases in the sheriff court, as in solemn, the Scottish system of prosecution is based on direction by the Lord Advocate, a corps of professional prosecutors, the need for corroboration of evidence and the trial of cases by professional judges, and legal aid availability. It may be that in England the jury is thought to offset any shortcomings of prosecution by the police, lack of corroboration of evidence, and the trial of cases by lay magistrates.[20]

Recent experience in South Australia may tell us more about the extent to which defendants, given a choice as to mode of trial, will elect trial by jury. In that state, the power of courts of summary jurisdiction to hear minor indictable offences was first given by the Minor Offences Procedure Act, 1869, and the consent of the accused was required. A 1931 amendment to that statute removed the necessity of consent. It was for the court to decide, after it had heard all the evidence of the prosecution, whether it would dispose of the case summarily. Since November 30, 1972, however, a person accused of a minor indictable offence may elect to be tried either by a special magistrate or by a jury. Notwithstanding that the accused consents to be tried summarily, the court may still commit him for trial.[21] From December 1972 to November 1974, 72 persons charged with minor indictable offences elected to be tried in the Central District Criminal Court before a judge and jury rather than be tried by a special magistrate, and approximately 10 such persons elected to be tried by jury in the Northern and Southern Criminal Courts. The South Australia Criminal Law and Penal Methods Reform Committee was informed that soon after the amending legislation came into operation about 16 persons each month elected to be tried by juries for minor indictable offences but that this number gradually decreased to about three or four per month. A record of the number of minor indictable offences tried summarily in magistrates' courts could not be obtained, but it seemed likely to the Committee that by far the greater number of persons charged with these minor offences elected to be tried by magistrate rather than by a jury.[22]

Although the South Australian experience was very positive, it is fairly clear that the quality of summary justice must be maintained, or even upgraded, to avoid an increase in the number of elections for jury trial in those jurisdictions where the choice is the defendant's. In other words, one valid and desirable method of encouraging defendants to consent to summary trial in cases for which that mode of trial is appropriate, is by

making summary trial more attractive. This is particularly so given that it seems that when indictable offences have become triable summarily at the option of the accused there is a tendency, in England at least, for the number of prosecutions to go up markedly. This carries with it the suggestion that prosecutions were not previously being brought when they could have been or else some more minor charge was being used because of the delays involved.[23] Given the increasing extent to which offences are being made triable either way, it is a factor which must be borne in mind.

At present, the main attractions of summary trial are that it is usually quicker and carries a liability to a lighter sentence. As the James Committee pointed out, expedition in the disposal of cases should be an integral feature of summary trial and it is essential that cases should come on quickly for hearing in magistrates' courts.[24] Unfortunately, the combination of an increasing number of petty traffic cases and the extension of the jurisdiction of the lower courts is making such expedition difficult to achieve, and this is putting pressure on the courts to process cases even more quickly. One criticism brought against the English Magistrates' Courts is that their business is conducted too hurriedly without adequate consideration being given to the cases.[25] It goes without saying that a defendant who is dissatisfied with the quality and thoroughness of his hearing before the magistrates is more likely to lodge an appeal and may, in future exercise his right to jury trial.

Lesser penalties are often provided for the summary conviction of indictable offences. In Canada, for example, every one convicted of an offence punishable on summary conviction is liable to a fine of not more than $500 or to imprisonment for not longer than six months, or both, except where otherwise expressly provided by law.[26] Under section 169(4) of the Seychelles Criminal Procedure Code, no sentence of imprisonment exceeding three months or a fine of more than 250 rupees can be imposed upon the summary conviction for an indictable offence. In some other countries, however, there is a trend away from such lenient penalties. In New Zealand, for instance, the maximum penalty on summary conviction for an indictable offence is three years' imprisonment or a fine not exceeding $1,000, or both.[27] A 1978 amendment to the Summary Jurisdiction (Procedure) Act of Guyana extended the criminal jurisdiction of magistrates to allow them to try certain indictable offences summarily, and provides that "the court may sentence (the accused) to any punishment or punishments to which the High Court could have sentenced him if he were convicted of such offence in the High Court",[28] although sentences in excess of three years' imprisonment or

a fine of $4,000 cannot be imposed. In such instances, the penalties are obviously not as attractive.

We saw earlier that expediting committal proceedings while lessening the burden of the lower courts, may produce an increased workload for the trial courts; similarly, by redistributing offences between higher and lower courts and making summary trial more attractive, the caseload problem may simply be being transferred from one court level to another. The problem itself has not been eradicated, it has simply disappeared from one court, only to reappear at a later date in another. Redistribution by itself is clearly not enough.

Apart from reallocating criminal cases between various court levels and restricting access to jury trials, attempts have been made throughout the Commonwealth to streamline the jury trial process per se. Factors which are perceived to slow down the jury trial process are the assembling of the jury; the requirement of unanimity and the hearing of complex cases.

"Jury engineering" is a phenomenon, if not a science, which is widely known and used in the United States, but which, fortunately, is much rarer in Commonwealth jurisdictions. In the United States it generally entails a detailed questioning of each individual prospective juror to elict details of his background and possible prejudices. This consumes a large pool of jurors and a substantial amount of time. In England, two steps have been taken to discourage any emulation of this practice in the English criminal courts. In 1973 the Lord Chief Justice issued a Practice Direction:

> A jury consists of twelve individuals chosen at random from the appropriate panel. A juror should be excused if he is personally concerned in the facts of a particular case, or closely connected with a party to the proceedings or with a prospective witness. He may also be excused at the discretion of the judge on grounds of personal hardship or conscientious objection to jury service. It is contrary to established practice for jurors to be excused on more general grounds such as race, religion or political beliefs or occupation.

Then, in 1977, the number of peremptory challenges of jurors given in section 12(1) of the Juries Act, 1974, was reduced from seven to three,[30] which severely curtails an opportunity for "jury engineering".[31] In Canada, the number of peremptory challenges accorded an accused under the Criminal Code varies with the severity of the punishment for the offence charged.

An accused charged with high treason or first degree murder has 20 peremptory challenges; if the offence is one punishable with more than five years' imprisonment the accused has 12 challenges and for an offence liable to less than five years' imprisonment, there are four peremptory challenges available.[32]

Traditionally, unanimity in jury decisions is required; that is, all the jurors must be convinced beyond a reasonable doubt of the accused's guilt and convict, or all be convicted of his innocence and acquit. A "hung" jury would result in the dismissal of the jury and a re-trial. In the event of this occurring, not only are there essentially two full-blown trials, which are time-consuming in themselves, but the initial jury deliberation is usually a lengthy process.[33] A New Zealand study concluded that the incidence of disagreements between jurors was not sufficient to justify the abrogation of the established principle of unanimity.[34] In contrast, a study of the County courts in Victoria found that the figures show a reasonably steady but significant number of hung juries each year, amounting to 183 cases in seven years. It was suggested that the introduction of majority verdicts might diminish the number of hung juries, although the possibility existed that many juries which are "hung" under the unanimity system are so badly in disagreement that the majority system would still not produce a verdict.[35]

In Nigeria, trial by jury takes place only in Lagos State. Provision is made for the acceptance of majority verdicts although the requirement of a unanimous verdict is retained for capital offences. For a non-capital offence, the verdict must be unanimous if it is given within two hours after the jury began to consider its verdict. If it is given more than two hours after deliberations began, it may be a majority verdict provided the jury (of eight in non-capital offences) are agreed in proportion of 7:1 or 6:2. On a trial of a capital offence, if on the expiration of two hours after deliberations began, not less than one out of 12 jurors agree that the accused person is not guilty of the capital offence with which he is charged but guilty of a lesser offence, the judge may accept such a majority verdict.[36]

The Juries Act of South Australia provides that in non-capital cases a majority verdict of 10:2 shall be taken as the verdict of all the jurors where they have remained in deliberation at least four hours. In capital offences, the jury may be discharged if they are unable to reach a unanimous verdict after four hours although a majority verdict of manslaughter is competent.[37]

Majority verdicts were introduced in England by section 13 of the Criminal Justice Act, 1967:

> (1) Subject to subsections (3) and (4), the verdict of a jury in proceedings in the Crown Court or the High Court need not be unanimous if -
>
> (a) in a case where there are not less than 11 jurors, 10 of them agree on the verdict; and
>
> (b) in a case where there are 10 jurors, 9 of them agree on the verdict.
>
> (3) The Crown Court shall not accept a verdict of guilty by virtue of subsection (1) above unless the foreman of the jury has stated in open court the number of jurors who respectively agreed to and dissented from the verdict.
>
> (4) No court shall accept a verdict by virtue of subsection (1) above unless it appears to the court that the jury have had such period of time for deliberation as the court thinks reasonable having regard to the nature and the complexity of the case, and the Crown Court shall in any event not accept such a verdict unless it appears to the court that the jury have had at least two hours for deliberation.

This formula has a little more flexibility than the sliding scale used in Nigeria and South Australia; it takes into account the very important factor of case complexity. In terms of the use made of majority verdicts, in England, it appears that at least in 1968 and 1969, just under 10 per cent of trials were decided by majority verdicts.[38]

Complex, technical cases do present difficulties for the jury trial process. It has been suggested that trial by ordinary jury may be outmoded in relation to what is known as commercial prosecution. The evidence is complex, involving a large number of documents, books of account and financial records - evidence which "is largely beyond the understanding of the common jury".[39] The use of special juries have been put forward from time to time as a method of overcoming this problem. The special jury would consist of persons whose education or training in a particular field would enable them to follow the evidence in certain cases much more closely than the ordinary juror.[40] As a solution, however, this remains largely untested.

In a number of Commonwealth jurisdictions, attempts to redistribute offences among criminal courts and to streamline the jury process have been abandoned or rejected in favour of total abolition of jury trial. The right to trial by jury no longer exists in India;[41] in the East African nations;[42] in Nigeria, except Lagos State; in Bangladesh;[43] in Singapore;[44] in Fiji[45]

or in the Solomon Islands.[46] In these countries, indictable offences are heard by judges sitting with or without assessors. Thus, to a great extent, trial by jury no longer exists in the Commonwealth. Unfortunately, it has not been possible to gauge the extent to which this has expedited criminal proceedings.

Footnotes

[1]For a more detailed discussion see D.A. Thomas, "The Allocation of Cases to Jury Trial" in N. Walker and A. Pearson (eds.), The British Jury System (Cambridge, 1975), pp. 67-81, and South Australia, Criminal Law and Penal Methods Reform Committee, Third Report, Court Procedure and Evidence (Adelaide, 1975), p. 6.

[2]For example, section 169 of the Seychelles Criminal Procedure Code provides that a magistrate hearing a minor indictable offence summarily does not have to record the evidence in detail, merely noting certain specified particulars.

[3]A survey of South Australia found that in the six months ending June 30, 1974, over $67,000 was paid in jury fees - South Australia Criminal Law and Penal Methods Reform Committee, supra footnote 1 at p. 88.

[4]Great Britain, Home Office, Report of the Interdepartmental Committee on the Distribution of Criminal Business between the Crown Court and Magistrates' Courts (London, 1975), Cmnd. 6323, para. 25. See also J. Daniels, "Trial By Jury: Sacred Cow or Alien Transplant?", (1974), 6 Review of Ghana Law 106 at pp. 114-15.

[5]Indeed, in some jurisdictions, the right to trial by jury is entrenched in the Constitution. For example, Article 20(2)(9) of the Bahamas Constitution reads: "(2) every person who is charged with a criminal offence...(g) shall, when charged on information in the Supreme Court, have the right to trial by jury."

[6]New Zealand, Royal Commission on the Courts, Report (Wellington, 1978), paras. 142-43.

[7]Great Britain, Report of the Interdepartmental Committee etc., supra footnote 4 at para. 36.

[8]I.R. Scott and C.T. Latham, "A Comment on the Report of the James Committee", [1976] Criminal Law Review 159 at p. 162.

[9]Clause 23 of the original version of the Bill. According to one estimation, this twenty pound limit in theft and property cases should have removed 5,000 cases each year from the Crown Court - "The Criminal Law Bill", [1977] Criminal Law Review 65 at p. 68.

[10]Great Britain, Report of the Interdepartmental Committee etc., supra footnote 4 at para. 87.

[11]For a detailed discussion of this reaction see S. Shetreet, "The Administration of Justice: Practical Problems, Value Conflicts and Changing Concepts", (1979), 13 University of British Columbia Law Review 52, and E. Griew, The Criminal Law Act, 1977 (London, 1978).

[12]378 Parl. Deb. H.L. (1976) 5th Ser. 848.

[13]Criminal Law Amendment Act, 1977, c. 45 section 23.

[14]382 Parl. Deb. H.L. (1977) 5th Ser. 74.

[15]Canadian Criminal Code R.S.C., 1970, c. C-34, section 430.

[16]Saskatchewan, Office of the Attorney General, Study of the Organization of the Courts in Saskatchewan, (No. 2), (1974), p. 46.

[17]The Minister of Justice and Attorney General of New Zealand has recently published a paper - "A New Court Structure for New Zealand" - outlining the Governments response to the Report of the Royal Commission on the Courts. It contains a proposal that every person charged with an indictable offence will continue to be entitled to be tried by a jury, but the Crimes Act will be amended to permit an accused to elect trial before a High Court judge alone, save in very serious cases.

[18]I.R. Scott and C.T. Latham, supra footnote 7 at pp. 166-67.

[19]J.G. Wilson, "Pre-trial Criminal Procedure in Scotland: A Comparative Study", (1965), 82 South African Law Journal 69, 192.

[20]Scottish Home and Health Department, The Sheriff Court (Edinburgh, 1967), Cmnd. 3248, para. 227.

[21]South Australia Justices Act Amendment Act, 1972, (No. 2), section 13.

[22]South Australia Criminal Law and Penal Methods Reform Committee, supra footnote 1 at pp. 92-93.

[23]JUSTICE Society, Annual Members' Conference, 1974, The Future of Trial by Jury, p. 2.

[24]Great Britain, Report of the Interdepartmental Committee etc., supra footnote 4 at para. 70.

[25]Id. at para. 253. See also Papua New Guinea, Law Reform Commission, Indictable Offences Triable Summarily, Joint Working Paper No. 1, (1977), p. 4.

[26]Canadian Criminal Code, supra footnote 14 at section 722(1).

[27]New Zealand Summary Proceedings Act, 1957, as amended, section 7.

[28]Guyana Administration of Justice Act, 1978, (Act No. 21 of 1978), section 4.

[29]Practice Direction (Jurors), [1973] 1 W.L.R. 134.

[30]England Criminal Law Act, 1977, section 43.

[31]Two recent decisions of the Court of Appeal have addressed the issue of jury vetting: in R. v. Sheffield Crown Court, ex parte Brownlow [1980] 2 W.L.R. 892, the Court expressed serious doubts whether there should be any jury vetting at all, either by the prosecution or the defence. It has since held, however, that some degree of scrutiny is necessary if disqualified persons are to be excluded from juries - R. v. Mason, The Times, June 4, 1980.

[32]Canadian Criminal Code, supra footnote 14 at section 562.

[33]For example, section 56 of the New South Wales Jury Act, 1977, provides that where the jury have retired for more than six hours, the court may discharge them if it seems unlikely that they will agree. This would seem to be an attempt to curtail the length of inconclusive jury deliberations.

[34]New Zealand, Royal Commission on the Courts, supra footnote 5 at para. 219.

[35]J. Willis and P. Sallman, "Criminal Statistics in the Victorian Higher Courts: A First Glimpse of the Possibilities", (1977), 51 Law Institute Journal 498, 570 at p. 516. For arguments supporting the majority verdict, see A.K.P.Kludze, "The Jury and the Burden of Proof", (1977), 14 University of Ghana Law Journal 55.

[36]F. Nwadialo, The Criminal Procedure of the Southern States of Nigeria (Benin City, 1976), pp. 206-7.

[37]South Australia Juries Act, 1927, as amended, section 57.

[38]JUSTICE Society, supra footnote 21 at p. 4.

[39]Report by P.D. Connelly, Q.C. to the Parliament of Queensland into the affairs of Queensland Syndication Management Pty. Ltd. and others, (1973), para. 114. See also "Juries 'not competent'", (1979), 5 Commonwealth Law Bulletin 938.

[40]South Australia Criminal Law and Penal Methods Committee, supra footnote 1 at p. 101 and Scotland, Committee on Criminal Procedure in Scotland (Thomson Committee), Criminal Procedure in Scotland (second report) (Edinburgh, 1975), Cmnd. 6218, paras. 51.34-51.37.

[41]Trial by jury was abolished by the Code of Criminal Procedure, 1973, which repealed the Code of Criminal Procedure, 1898.

[42]D. Brown, "Reform of the Administration of Justice", (1966), 2 East African Law Journal 248 at p. 249.

[43]M. Cheong, "Jury Trial: the Singapore Experience", (1973), 11 University of Western Australia Law Review 120.

[44]C.H.S. Jayewardene, "Crime and Justice in Fiji", (1977), 5 Crime et/and Justice 240 at p. 242.

[45]Correspondence from Attorney General's Chambers, Honiara dated February 5, 1979.