choice between two undesirable results: either to place the title and mortgage guarantee creditors of this company in a better position than similar creditors of other title and mortgage companies not engaged in the banking business, or to place them in a relatively worse position by allowing diversion of the assets of the company into the hands of the banking and trust creditors.[24] In order to place the title and mortgage guarantee creditors in a position to enforce double liability, the court was forced to a questionable interpretation of the applicable procedural provisions of the Banking Law,[25] by which exclusive authority to enforce double liability is vested in the Superintendent of Banks.[26] It may be suggested that by use of the doctrine of subrogation, the title and mortgage guarantee creditors of the company would have been provided a sounder basis of protection, while at the same time the stockholders would have been protected by the use of a measure of recovery more commensurate with the actual loss.[27]

Criminal Law—Grand Jury—Voluntary Communications to Grand Jury as Criminal Contempt.—[Illinois].—The defendant wrote two inflammatory letters to the regularly impanelled grand jury in which he offered to present on oath evidence of a conspiracy among the state's attorney, the county assessor, and a newspaper to defraud the state of revenue. Upon the filing of an information prepared by the state's attorney, incorporating the letters, the defendant was adjudged guilty of criminal contempt. On appeal, *held*, that the communication voluntarily made to the grand jury obstructed the due administration of justice and was therefore a contempt of court. *People v. Parker*.[1]

While, with the institution of public agencies for the prosecution of crime, the early common law power[2] of the grand jury to prefer indictments at the instance of private

[24] See Pink v. Alden, 23 N.Y.S. (2d) 365, 368 (App. Div. 1940).

[25] N.Y. Cons. Laws (McKinney, 1937) c. 2, §§ 80, 113-a.

[26] The court in the instant case avoided the procedural difficulty as follows: a creditor of a bank or trust company holding an unsatisfied judgment may bring suit to enforce the double liability provisions when the Superintendent of Banks has possession and fails or refuses to bring suit. In the instant case the Superintendent of Banks could not have possession because the company was already in the possession of the Superintendent of Insurance, and the creditors could not obtain judgment because all creditors' actions were enjoined by the court in the rehabilitation and liquidation proceedings. Since the performance of these conditions is therefore impossible, the creditors are excused from performance thereof, and may bring suit. Pink v. Alden, 23 N.Y.S. (2d) 365, 370 (App. Div. 1940). This reasoning was of course based on the assumption that the creditors were to be viewed as creditors of a banking and trust company.

[27] The advantage gained by the title and mortgage guarantee creditors through the acquisition of power to enforce double liability in their own right may prove more theoretical than actual in the present case, since the deficiency of banking assets in relation to banking claims may prove to exceed the $2,000,000 par value of the outstanding stock, which is the upper limit of recovery under any theory.

[1] 30 N.E. (2d) 11 (Ill. 1940).

[2] Thompson and Merriam, Juries § 609 (1882); Regina v. Russell, Car. & M. 247, 174 Eng. Rep. R. 492 (1841); In re Opinion to the Governor, 4 A. (2d) 487 (R.I. 1939). For statutory provisions in various states see American Law Institute, Code of Criminal Procedure (with commentaries) 484 (1931).

prosecutors has been removed in some states by judicial decision,[3] the early common law rule still exists in Illinois.[4] Where the early common law rule is still in force there are several reasons for retaining the possibility of subjecting a private person to punishment for bringing charges before a grand jury in a particular case. The charges may serve to influence the result in a proceeding already before the grand jury, and any attempt so to influence it is generally held to be an interference punishable as a contempt.[5] Likewise the charges may have a tendency to divert the grand jury from cases regularly presented to it, and this too would seem to be a contempt.[6] Finally the grand jury may be completely occupied with previously planned work.[7]

The foregoing reasons, however, are of less weight with reference to the giving of information regarding offenses of public officials than with reference to misconduct of private persons. Offenses of private persons can be adequately prosecuted without giving the private prosecutor direct access to the grand jury; if the police and public prosecutor refuse to act, the magistrate's warrant with the resulting examination is adequate. The grand jury, however, is the only law enforcement agency in a position to investigate the activities of public officers. Such investigation is beyond the scope of normal police activity, and the magistrate does not possess the broad investigatory powers necessary to cope with these offenses.[8] The grand jury, whose place in the

[3] McCullough v. Commonwealth, 67 Pa. 30 (1870); State v. Love, 23 Tenn. 255 (1843). See also Justice Field's Charge to Grand Jury, 30 Fed. Cas. No. 18255 (C.C. Cal. 1870). Compare, however, Hale v. Henkel, 201 U.S. 43, 63 (1906), where the court quotes from Frisbie v. United States, 157 U.S. 160, 163 (1895), the following: ". . . . it is for the grand jury to investigate any alleged crime, no matter how or by whom suggested to them. . . . ." See Kidd, Why Grand Jury's Power Is a Menace to Organized Crime, 12 Panel 32 (1934), for a condemnation of cases deviating from common law rule.

In some jurisdictions the grand jury has been largely eliminated. For the relative position of the grand jury in the criminal justice procedure of the United States, see statutes collected in American Law Institute, Code of Criminal Procedure (with commentaries) 414 (1931); Morse, A Survey of the Grand Jury System, 10 Ore. L. Rev. 101, 122 (1931). The grand jury has been recently abolished in England. Lieck, Abolition of Grand Jury in England, 25 J. Crim. Law 623 (1934).

[4] See People v. Sheridan, 349 Ill. 202, 208, 181 N.E. 617, 619 (1932); People v. Graydon, 333 Ill. 429, 433, 164 N.E. 832, 834 (1929); Pankey v. People, 2 Ill. 79 (1833) (grand jury investigation instituted by private citizen held illegal on other grounds). In the instant case the court did not in terms reverse the common law rule.

[5] Hitzelberger v. State, 173 Md. 435, 196 Atl. 288 (1938); Commonwealth v. McNary, 246 Mass. 46, 140 N.E. 255 (1923).

[6] See 2 Wharton, Criminal Procedure § 1264 (10th ed. 1918). Courts have divided on this question: held to be illegal in Commonwealth ex rel. Jack v. Crans, 2 Clark (Pa.) 172 (Quart. Sess. 1844); United States v. Kilpatrick, 16 Fed. 765 (D.C. N.C. 1883); held to be permissible conduct in State v. Stewart, 45 La. Ann. 1164, 14 So. 143 (1893); King v. Second Nat'l Bank & Trust Co. of Saginaw, 234 Ala. 106, 173 So. 498 (1937); Hott v. Yarborough, 112 Tex. 179, 245 S.W. 676 (1922). It is a statutory offense in federal courts. 35 Stat. 1113 (1909), 18 U.S.C.A. § 241 (1927). See Duke v. United States, 90 F. (2d) 840 (C.C.A. 4th 1937).

[7] The grand jury in many jurisdictions already has more cases than it can adequately consider. See National Commission on Law Observance and Enforcement [Wickersham Commission], Report on Prosecution 36 (1931).

[8] People ex rel. Livingston v. Wyatt, 186 N.Y. 383, 79 N.E. 330 (1906). See Dession and Cohen, The Inquisitorial Functions of Grand Juries, 41 Yale L.J. 687 (1932).

prosecution of routine offenses has been much criticized,[9] has special advantages in the investigation and the prosecution of the conduct of public officers.[10] It may begin its investigation without the showing of probable cause necessary to a magistrate's investigation, and as a result its investigations are not confined within the limits of a definite charge. It can pursue its activities in secret and is not dependent upon a public officer. It may be true that the force of public opinion would prevent punishment of the informer in cases where there was no personal malice such as was evidenced by the defendant's letters in the instant case.[11] Nevertheless, it would seem that the decision in the present case will operate as a severe restriction upon the giving of aid by private persons in the prosecution of offenses of public officials.[12]

On the other hand, allowing citizens to present information as to crimes of public officials to a grand jury might tend to cause the grand jury to become a political weapon, and large scale investigation of the activities of public officials might seriously cripple the normal operation of the government.[13] These problems suggest the desirability of the plan urged by the Wickersham Report and adopted in some states:[14] a grand jury which would meet at regular intervals for the express purpose of investigating the conduct of public officers. Thus the desired prosecution of malfeasance in office could be had without the intervention of a private prosecutor and the difficulties and dangers which such intervention entails.

Elections—Absent Voter Statute—Challenge of Absent Voter's Electoral Qualifications—[Kansas].—The plaintiff was a candidate for governor in the 1940 general election. While the State Board of Canvassers[1] was counting the ballots mailed in by

[9] Scragg, The Grand Jury, 2 Temple L.Q. 317, 319 (1928); Chamberlain, Correspondence, 5 Panel 3 (1927); National Commission on Law Observance and Enforcement [Wickersham Commission], Report on Prosecution 36, 124 (1931); cf. Hall, Analysis of Criticism of the Grand Jury, 22 J. Crim. Law 692 (1932).

[10] Konowitz, The Grand Jury as an Investigating Body of Public Officials, 10 St. John's L. Rev. 219 (1936); Morse, A Survey of the Grand Jury System, 10 Ore. L. Rev. 295, 333 (1931); Moley, Politics and Criminal Prosecution 145 (1929).

[11] See an Illinois case reported in Davis, The Grand Jury 4–5 (1931), where the representative of a civic organization presented evidence of malfeasance to a grand jury. The state's attorney prepared an information charging contempt of court. The case attracted wide newspaper publicity and the court finally discharged the defendant.

[12] That the first prerequisite of efficient law enforcement is honest, competent officials has been attested repeatedly. Waite, Criminal Law in Action c. xvii (1934); Morse, A Survey of the Grand Jury System, 10 Ore. L. Rev. 295, 365 (1931); Puttkammer, Criminal Law Enforcement, 33 University of Chicago Magazine 12 (1940). The office of public prosecutor in particular must remain uncorrupted because of its position as the gateway to criminal prosecution. Moley, Politics and Criminal Prosecution, c. iii (1929); Cockrell, Successful Justice 244 (1939).

[13] See McNair's Petition, 324 Pa. 48, 187 Atl. 498 (1936).

[14] National Commission on Law Observance and Enforcement [Wickersham Commission], Report on Prosecution 37 (1931); see American Law Institute, Code of Criminal Procedure (with commentaries) 488 (1931), for citations to state statutes; cf. Proposed Illinois Criminal Code, pt. iv (1937).

[1] Kan. Gen. Stat. Ann. (Corrick, 1935) §§ 25–707, 25–1109, qualifying Kan. Const. art. 1, § 2.