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HOUSE OF ASSEMBLY.

WEDNESDAY, FEB. 19.

The House went into a Committee for the consideration of a Bill to authorise the payment of Grand and Petit Jurors.—Mr. Taylor in the chair.

Mr. BOYD said the general opinion was that there was a necessity for such a measure as is contemplated by the Bill under consideration, as jurors are at present the only class of persons who are not paid for their services. The judges of the land, and clerks of the courts and other officers are paid; and the members of the Assembly themselves receive remuneration. It was not proposed to insert a large sum in the Bill, and it was meant to apply to persons living at a distance and possessing limited means. There was no desire if a strong objection existed against it, that persons living in towns where the courts ordinarily meet should be affected by it; but certainly those living at a distance should obtain relief. In the County of Charlotte, he believed the sentiments of the inhabitants were unanimous in favour of the plan; and he understood such would be found to be the case throughout the Province.

Mr. WELDON wished to make a few remarks upon the Bill which he considered as very objectionable. There were no petitions in favour of the system which was proposed, except from the County of Charlotte, whence one was presented some years ago; and which embraced a novel principle, and one that is unknown in the mother country and the colonies. At present persons are not chosen as jurors more than once in two years. He objected to the proposition to pay jurors for their services, particularly Grand Jurors who are generally individuals in good circumstances, and who may have business at the court. Besides in carrying out the details of the Bill more inconvenience would be caused, than results at present from their not being paid; a large assessment must be made, and he would think that the amount for each county, would be £200; which would be increased by the expense of collecting and issuing writs to enforce assessments. There had just been a proposal made to assess that County for £2000, to enable it to meet its engagements; he was satisfied they were not prepared for any additional public burthen. For these reasons and because no necessity appeared to exist, there being no petition in its favor, and jurors not having made any complaint, except in the county of Charlotte, he trusted the Bill would not pass.

Mr. HANINGTON thought it necessary that part of the Bill at least should be passed.—The attendance at Court was a great hardship upon persons who are called upon to serve as Petit Jurors; but which did not bear equally upon Grand Jurors; whose attendance was not so long, and who were in themselves a more important body. There was at present before the House, a Bill for regulating the manner of selecting grand and petit jurors; and if that should pass into a law, the payment of jurors would be called for more strongly than at present; when the Sheriff returns the names of persons who are at hand. He trusted the Bill would pass and that its details would be made satisfactory to the country. There had formerly been a petition from the county of Westmorland, praying that payment should be made to the Petit Jurors; and he supposed the reason why there is none at present, was owing to the presumption that it was unnecessary, the justice of the claim being admitted.

Mr. J. M. WILMOT saw no necessity for passing the Bill, and was satisfied the evils that would result from the system are greater than any benefit to be derived from its introduction. He had no objection to pass a Bill for the County of Charlotte.

Mr. GILBERT had no objection to the Bill if it were intended to be a local measure.—Having been so often agitated, he thought it should be decided without discussion. The duties of a Juror were one, in which every freeholder knew he may be called upon to bear his part. If petit jurors were paid, then all would accept it. Another objection was, it would lead to a tax, that must be raised by the people; and for the obtaining a measure that would generally be disliked, and which in his country would be extremely unpopular. If Jurors were paid five shillings a day each, as was proposed, it would retard the business of the country at least a week.

Mr. BARBARIE was against the Bill altogether, as the idea of paying jurors by taxation was odious. It was a duty in which every man must take his share, and to which all must contribute. But as to assessing the county to pay those persons, he should object to it altogether; and he trusted the Committee would pause, and not pass a law which was not wanted by the Province. If the county of Charlotte, where there was more noise than any where else, wanted a particular law which would be limited in its operation, he should not object to it; but he had no idea that it should become a general law. Before such a law should pass, the Committee ought to be satisfied that it was in accordance with the general wish; and he was convinced it was not.

Hon. SPEAKER was against the principle of the Bill, there was nothing British in it; and which would have a tendency to degrade the Grand Jury; who should be the principal men in every county; and if Petit Jurors required pay, let the amount be included in the bill of costs. But the present measure was so great a departure from all that is British that he would not look at it. Jurors being paid in the United States, formed no reason why it should be done in this Province. He thought the Bill should be disposed of summarily.

Mr. BROWN said the subject had been frequently before the House, and there had al-

ways been a respectable minority in favour of entertaining it. He did not like the continual reference to the United States. He recollected when he formerly brought in a Bill for enlarging the powers of Grand Jurors, that similar imputations were thrown out; and the very next year he read in the Halifax Royal Gazette, a notice requiring accounts to be brought in, that they might be audited by that body; a similar practice prevailed in the mother country, and there was in the statutes at large an act transferring it to Ireland. It was really too hard to be continually referred back to Yankees; a people who speak the same language with ourselves, whose institutions are based upon those of England; and who in any difficulty refer with confidence to parliamentary rule and the decisions of British courts.—With respect to Grand Jurors, he had no desire that they should be paid; nor was he disposed to impose a tax for their payment. But he would mention that the principles of the Bill were already recognised, and they would apply to this Province, unless it were shown that they should be departed from.—Jurors at home receive a shilling for every cause which they try, and which would go as far as three in this country; the sum therefore should be so raised as to meet the difference of living between this and the mother country. He thought the allowance to a Juror should not be less than five shillings a day. At present all the officers of courts are paid; while the unfortunate Juror must work for nothing and find himself. The hon. gentleman said he was not so anxious about the paying of Grand Jurors; but with respect to the others if the system of assessment were objected to, the fee might be raised from one shilling to five.

Mr. BEARDSLEY was satisfied the people from all parts of the Province were in favor of the measure; and with reference to the allusion made by his Honor the Speaker, he would merely observe that there is nothing political connected with it; and the proposition was perfectly constitutional. Many persons he said were unable to pay the expense that must be incurred, when attending as Jurors, and complain of their inability and detention, often for ten days or a fortnight from home; and application had been made to him to bring in a similar Bill, or to give it his support if one were brought in by another. He thought the measure was a proper one; and felt certain that any assessment which it might cause, would not be complained of. Many persons are now exempt, who would then have to attend; and the law was required on that account, for sometimes a second cause could not be tried, owing to the absence of Jurors, caused by their inability to support themselves. With reference to raising the fee to five shillings he did not care about it, as it would not bear hard upon the public; but so far as litigants were concerned, he thought law expenses were already sufficiently high.

Mr. END had practised during the last 14 years in this Province, and had long been of opinion that the attendance of Jurors was extremely burthensome upon individuals, and that in many cases they were unable to pay those expenses which their attendance as jurors caused them to incur, while they were liable to be fined if they did not attend; and they did so to support the invaluable privilege of trial by jury. But any hardship in doing so should be avoided, he had known many persons however who had been harassed in this way, who did not attend for their mere private benefit, but were giving stability to the institutions of the country. He thought it should be as much a charge as the payment of Sheriffs and others; it was impossible to do without jurors, and yet they were not paid. During five years in which the question had been discussed, he had always been an advocate for the payment of jurors; and he regretted that the learned member for York, Mr. Wilmot, was not present, as he should be certain of his support. With reference to the payment of jurors, he could point out a mode by which that could be arranged; debentures could be made out payable in each county, which would answer as well as current coin. He thought no difficulty could arise in carrying the plan into effect; and the Bill might be passed for a limited time. If it were decided to pay the jurors, the Bill for choosing Jurors would prevent any thing like collusion, and no private feeling or favour could be exercised.

Hon. SPEAKER said the Bill introduced by the learned member for Carleton, would relieve Jurors very materially; and was conclusive against the measure contemplated by the Bill before the Committee. The petit jurors would be effectually relieved.

Mr. BARBARIE was surprised to find a measure such as that contemplated by the Bill, brought under the consideration of the Legislature; and if as was proposed the jurors were to be paid by means of assessment it would be found to be a serious burthen; first there must be an assessment for the amount of funds that would be required, then a person must be sent to collect the assessment; then there would be delinquents who must be sued, and costs in that way would be incurred. It would never do as a general measure; it was not sought for generally throughout the Province. The Committee should pause; perhaps it might be granted to Counties that desire it; but he hoped the Bill would not pass.

Mr. HILL said the object of the Bill was not to burthen a poor man, but to relieve him. In England where is an immense population, and the chief portion of the duties of Jurors is performed by the wealthier classes of society, who do not require payment. The effect of the Bill would be to equalise the burthen, as it affects the poor as well as the rich man; and it was intended to give him merely sufficient for his support. The grand jury were a wealthier class, and were not detained so long as the petit jurors; and even with reference to them, they would not receive pay, when they lived within a certain distance, or could return to their homes

every evening. The expense of collecting the assessment would be no more than it is at present, except the commission. The Bill which had been alluded to in debate, would insure a rotation in the service of jurors.

Col. ALLEN thought the payment of jurors would be a highly acceptable measure, if payment were made from the provincial funds; but it would be quite contrary if it were to be derived from assessment. There was a petition in favour of the Bill from Charlotte County; it could be passed with reference to that county, and if found to work well there, it could be extended to other parts of the Province. He should not oppose the Bill, if limited in that way, but if it were intended to make it a general measure he should oppose it.

Hon. Mr. JOHNSTON said if the measure were so acceptable to Charlotte County, it should be confined to it; it had been proposed by a former member; and was now introduced by the hon. member who had recently taken his seat. In the county which he represented however, his constituents did not think it any hardship to attend as jurors, it only happened once in a year except in St. John, and he heard no complaint; as persons were selected who were well able to bear their expenses. In his view of the subject it was considered rather a matter of convenience, as many persons assembled for the purpose of doing business; they were rarely kept more than three days, and were never called from any great distance. But if the duty were considered as a hardship generally, the House would have heard by petition. He meant these remarks to apply chiefly to the grand juries; petit jurors had an arduous duty to perform, and should receive a small remuneration. Still he would not relieve them by assessing the county, but would let litigants pay; he should regret to see the system of assessment introduced for such a purpose.

Hon. Mr. CRANE thought it would be objectionable to pass a Bill like that before the House, and at the same time give to it a local operation. But having understood the inhabitants of Charlotte county, were desirous of having provision made for jurors, he would let them have it, and if a good effect was produced, the principle could be extended. He was satisfied that in his part of the county it was not wanted, particularly as related to grand jurors, who were generally selected from among persons in better circumstances, and who would not wish to receive pay. He would agree however that the petit jurors should be paid by the parties who were litigant; but there was a difficulty attending that: there would be probably fifty or sixty actions brought, jurors often attend ten or eleven days; and probably are not required at all, and receive no compensation. He thought it would be more equitable if they were entitled to receive one shilling for every suit that may be brought, and which should be taxed the same as other costs in the first instance. In this way justice would be done jurors, and it would have a beneficial effect on the country.

Mr. CONNELL was favourable to the Bill, he knew persons who were put to much inconvenience, when attending as petit jurors; he did not see any great necessity for paying grand jurors.

Mr. BOYD moved that the words grand jurors should be struck out.

Mr. BARBARIE moved that the farther consideration of the Bill, be deferred till that day three months.

Mr. WILSON hoped the motion would not be carried; gentlemen might say what they liked but the attendance on juries is a great hardship in this country, where wealth is not so generally disseminated as in England. He would not agree however, that counties should be assessed for the payment of jurors, he could point out another way: the circumstances of the country were in a thriving condition, and they had plenty of money.—If £100 were required for each county, £1200 would pay all the expenses, and that might be taken from the Province treasury. He was astonished to hear it said that a new principle was about to be introduced; it was already adopted when a shilling was given; and the proposal was only to increase the amount; and if that sum were not sufficient why not increase it; he said at present a penalty is imposed when parties do not attend, and which in many instances they can badly afford to pay. While he would support the Bill he was opposed to the principle of assessment, and thought a section should be introduced authorising payment to be made from the treasury.

Mr. FISHER wished to say a word or two before putting the question; much hardship doubtless was felt by parties serving as jurors, and if any relief could be afforded he would vote for it. But the Bill under consideration involved the principle of taxation. There was another way in which the difficulty could be met, there might be an enactment relieving jurors from statute labour. He was amused with the idea broached by the hon. member from Westmorland, who had proposed a tax on lawyers. There was a difference between the fees of jurors and the judges fees, which were incurred for services actually performed; he was satisfied however that exacting the jurors' fees when law-suits were commenced, would be productive of more harm than good.

Mr. BEARDSLEY saw clearly that the Bill would not pass. He was satisfied the tax proposed would not be a penny a head. He would willingly accede to the proposal to take the amount from the Province fund; they might easily spare five or six hundred pounds for that purpose; when an office was to be created, there was no complaint of the want of money. He concluded by saying that grand jurors were often as poor as the others, and he was in favour of paying both.

The question was then put on Mr. BARBARIE'S motion and the Bill was lost.

In the afternoon the Bill authorising the choosing Jurors was again committed, and was opposed by Mr. Wilmot and Mr. Street, who were not present on the preceding day, and was supported by those gentlemen who were advocates of the measure on that occasion; and after a short discussion, the farther consideration of the Bill was postponed, and the Committee again reported progress.

THURSDAY, FEB. 20.

This being the last day for receiving private petitions, we were rather beyond our usual hour of attending, and when we entered the gallery, the House had just resolved itself into a Committee of the whole, for the further consideration of the Bill, authorising the drawing of grand and petit jurors; and Dr. Wilson was addressing the Committee, in opposition to a motion made by Mr. Hill, with a view to ascertain the sense of the House, that the farther consideration of the Bill be deferred till that day three months.

Mr. END repeated that he was favorable to the Bill under consideration, and was opposed to vesting in a ministerial and executive officer, a power that was most tremendous, which to-day might be exercised by a good man against whom there would be no complaint, and at a future period by another who might abuse it. And it was the more necessary that such a state of things should no longer continue, now that another constitution had been introduced into the colony; under which if the term Sheriffs would apply to the county Sheriffs, they would become the mere instruments of the government; and altho' he might have no desire to impute improper views to those in authority, yet he would not agree to an officer continuing to exercise the power of selecting jurors who must support the measures of government, he they what they may; a case of treason might occur, and he would provide that a Jury should be chosen fairly and dispassionately, and that the conduct of the Sheriff should be placed beyond the reach of suspicion; but if that officer pursuant to the dispatch, was bound to take his cue from the government, then he must either choose a jury in accordance with their wishes or resign his office. The altered state of the times therefore called loudly for the Bill under consideration, that the discretionary powers which is at present exercised, might be taken away, and that the sheriff should no longer select jurors at their pleasure. Objections he said had been taken on the preceding day, to the qualifications for a juror being of a pecuniary nature, but at present the law points out no other qualification; and it is left to the Sheriff to select in his discretion those persons who not only have money, but also those possessing good sense and judgment. But the clause which had been proposed yesterday by Dr. Wilson, would prevent the return of improper persons; as the Sheriff upon consulting the law would find, that he could not select those who do not understand the English language, those of corporeal or mental imbecility, or who were deficient in education or experience; and he trusted aliens would be added, as it was improper that they should be placed on juries. He hoped the law would be explicit as to who are eligible for office, and with that safety valve there could be no difficulty in the operations of a Bill, which as he before said, the state of the times loudly called for; and if his construction of the dispatch was correct, and the sheriff as a public officer must support the government in its measures, it became necessary that all discretionary power, as respects the selection of jurors, should be taken from a person, who must necessarily submit to its control.

Hon. SPEAKER said, with reference to the dispatch to which allusion had been just made, it had reference to the Provost Marshal, and not to the Sheriff, who was purely a ministerial officer, and who it was expected would faithfully discharge his duties. The dispatch referred to large salaried men, and it was deemed only proper that those who were receiving the Queen's bounty, should support her government; and if they would not do so they must resign any office possessing political power.—It therefore merely went to ensure the performance of the duties of office for the good of the people; and involved no new constitutional principle.

Mr. STREET inquired what was the subject under consideration; he thought the question of the dispatches had nothing to do with the Bill, and did not like this round about way of proceeding; if it were desirable to enter into discussion upon the subject, let the House go into Committee, and not meet it by a side wind; he was prepared to give his opinion at any time, but would not do so when discussing the merits of a jury bill. With reference to the Bill it seems it does not contain any necessary provision for the proper qualification of Jurors; and while it would introduce a new system, it was encumbered with machinery that would render it more troublesome in its operation than the present mode. He had heard nothing to satisfy him that suitors would have any better security for the just administration of the laws than they now possess; there would be less intelligent men on juries, because the names of all persons are to be filed, and those of jurors afterwards drawn from a box; and some of them might be incompetent. In this way persons might be obtained who were unfit to discharge their duties, and who would be brought from a great distance; whereas if the selection were left to the Sheriff less hardship would be caused. The attendance of jurors was in itself a tax and hardship for which they were not paid, and he would not make it more onerous than it was at present; and altho' the payment of jurors might be a proper measure, yet it had been decided that it was impracticable. The learned gentleman said he was not aware of any practical evil that had resulted from the

manner in which jurors had hitherto been chosen, or that it led to the improper discharge of their duties. If there were an efficient Sheriff no injury could result from the present mode. The Legislature might if it were thought proper raise the qualification of jurors, without interfering with those laws which prevail at home, and throughout the colonies. He was therefore disposed to support the motion for postponing the farther consideration for three months.

Hon. SPEAKER said if the learned gentleman had been in his place when the debate commenced, or had heard what fell from the learned member for Gloucester, he would have been aware that the nature of the dispatches had been adduced as a reason why the proposed alteration in the law should take place, considering the Sheriff as thereby placed under the controul of the Executive, and therefore liable to be dismissed if he did not act in accordance with their views; and he was explaining away such misconstruction, and showing that the dispatch had no bearing upon the measure then before the House. He hoped however that in future the learned gentleman would himself follow the course he had pointed out, and not travel out of any discussion in which he might take part.

Mr. WILMOT did not deem it necessary to recapitulate his remarks of yesterday; and was in favour of the motion for postponement.

Hon. Mr. JOHNSTON said he would also vote for the motion. The Bill he said went to take away the exercise of discretionary powers by the Sheriff, while an amendment proposed yesterday by Dr. Wilson, and which had been alluded to, went to restore it, and must leave to that officer a large discretionary power still. Should the Bill pass, he felt satisfied it would be attended with injurious effects. Another had been rejected yesterday which went to provide compensation for jurors, where attendance at Courts was considered as a hardship; while the operation of the present measure would be to have them summoned from remote parts of the country. Another result would be that in St. John persons would be chosen to decide on most important occasions, who might be unacquainted with trade; instead of having intelligent members of the community, whom the Sheriff could as at present select. He was surprised at the allusion that had been made to the dispatch, and did not see how it could affect the question, even if it applied to the subject under discussion, as the appointment of Sheriff is an annual one; and if that officer does not discharge his duty faithfully he may be changed; the same would happen under the dispatch were it applicable to persons so situated. He had not heard any substantial argument urged in favour of the Bill; but much to satisfy him that it should not pass.

Mr. END said the hon. member for Queen's had forgotten that Special Juries could be chosen in all cases of importance; and then went on to describe the manner in which such juries are struck. The law now requires that the list of names shall be taken from the poll-book; and very few counties contain any other. The present Bill however provides that a freeholders' book shall be kept, by which much facility will be afforded in striking Special Jurors.

Mr. L. A. WILMOT said either the attendance upon jurors must be considered an onerous duty instead of a privilege as it really was, or the conduct of Sheriffs was partial and improper. One or the other of these must prevail, to authorise the introduction of a Bill resembling that under discussion. But he had never heard any complaint, and was satisfied that it was considered a privilege. Then he had never heard any charge with reference to Sheriffs in that particular. If a Sheriff acted partially he might be dismissed and also punished. He considered the Bill an improper one, and not wanted by the country, and which would not work well in any county; and he should introduce an amendment, by which the county of York, would be exempted from its operation.

Mr. JORDAN said when the Bill was originally introduced, he was favourable to the measure; but he was of a different opinion at present; and was convinced it would not answer for the county of St. John. (Here there was so much noise in the grand jury room over head, that it was impossible to hear distinctly.) We understood him however to say, that the Sheriff at St. John was an excellent man, and only selected respectable men for jurors. If the Bill passed in its present shape, all persons of property would be compelled to serve. He was willing to pass the measure however, with reference to those counties which wished it.

Mr. HILL said his object in making the motion for postponement had been misunderstood; he stated in making it, that he was desirous of ascertaining whether the Committee were disposed to entertain the Bill, which had already undergone discussion. There were objections however, to giving it an unlimited duration. The difficulty which had been suggested with reference to the qualification might be easily removed. Was it right that such a power as that now possessed, should continue to be exercised by Sheriffs? He was favourable to the Bill, and thought the discretionary power should be removed. As to the qualifications; he would have the names of every male person of mature age returned; and the Sheriff with one or more justices in session, should strike off such as they might deem not eligible. It could not be expected that a perfect system could be introduced; the best that could be devised would be liable to objection. He should therefore vote against the motion he had made.

Mr. WILMOT said since he spoke yesterday, amendments had been introduced which went to remove part of the difficulty complained of. But where the deputy exercises power, it was more dangerous than