

Provincial Legislature.

HOUSE OF ASSEMBLY.

Wednesday, January 31.

PAYMENT OF JURORS.

The House went into Committee of the whole, on the bill to provide for the payment of Grand and Petit Jurors. Mr. Taylor in the Chair.

Mr. Thomson stated the object of the bill; but his observations were almost entirely inaudible in the gallery. We gathered casually from the Hon. Member's remarks, that the inhabitants of Charlotte County generally, complained very much of the inconvenience of being compelled to travel from great distances to the shire town, to serve as Jurors, and of being detained there two or three weeks at a time, at great expenses without receiving any compensation; and the Hon. Member therefore strongly contended that Jurors should be paid a reasonable compensation for their actual expenses.

Mr. Wyer supported the arguments of his Hon. Colleague.

Mr. J. M. Wilmot had no objection to confining this bill to Charlotte County, and if it should be found to work well there, then it might hereafter be extended to other Counties, but he would be against making it a general bill at present. He thought, if the bill was passed at all, that the expenses of paying Jurors should be paid by the suitors whose causes they tried.

Hon. Mr. Speaker said, that the Hon. Member of the Bill had referred to the practice of the United States as an argument in its favor; but he (Mr. Speaker) would ask, what was the practice of England? Trial by jury was a very high privilege, one of the greatest blessings of the British Constitution; and therefore it could not be considered as so very great a hardship, to serve on a Jury without payment; because all men must be subject to that duty, to be entitled to the benefit of that great privilege themselves. Such a bill as this would destroy the independent and patriotic feeling of the country, by making a duty connected with one of its dearest privileges, a mere mercenary employment. It could not be supposed, that a sufficient number of men could not be found in each County, to serve as Jurymen without receiving money for so doing. These were trivial burdens, which the people must occasionally submit to in turn, for the good of the whole. He did not at all like the principle of taxing a County to pay Jurors; such a tax would amount to a large sum, and would cause much more discontent than was now felt by those who were called upon to serve as Jurors. If Sheriff took care to use due discrimination, they might always select as Jurors those who were most competent to the task, and most able to bear the burden, so that there never need be any great public inconvenience. In England, the principal mind of the County were always selected as Grand Jurors, and it was very proper that they should bear a part of the burden, as they were best able to do so; and if the same principle was followed here, there would be no complaints of hardship in performing this important public duty. In civil cases, already Petit Jurors did receive a small payment, and special Jurors had 25s. each for every case; but of course, in criminal cases, Jurors got nothing, because no costs at all were paid in such cases. He (Mr. Speaker) would be sorry to suppose that the people of this country would not perform their duty as Jurors cheerfully, without compensation; because trial by jury was one of the greatest privileges a British subject could enjoy, and to which all were equally entitled; and therefore the serving as Jurymen was a common duty, which all men mutually owed to each other. He (Mr. Speaker) cared nothing for the practice of the United States in such matters; and he did not like the principle, that men should be paid for performing any duty, which they were called on by the constitution of their country occasionally to render for the public good. The same persons did not serve always; their turn came only in rotation; and in most of the Counties in this Province, there was a sufficient population to bring the duty round to each individual only once in two years. He was therefore, for these reasons, against the bill.

Mr. L. A. Wilmot was decidedly in favour of paying Petit Jurors, because the burden on them was certainly very great. The theory of serving one's Country by the performance of common duties was all very well, but it did not bear equally on the people; because Jurors did not all reside close to the places where courts were held, but many of them were compelled to come from a great distance to attend their duty, and to incur great expense and inconvenience. It was not every man that was fit for a Juror, though all were liable to the duty, and therefore the Sheriff must select his Juries from the most intelligent part of the people, without reference to their worldly circumstances; and it had long been a matter of great complaint in York County, that persons were obliged to come down to Fredericton, and stay a long time away from their homes and business, without compensation, and under a penalty of being fined 5s. a day for absence. It often happened, that the yeomanry of the County were summoned as Jurors in the summer season, when they ought to be attending to their husbandry and crops, and they were frequently obliged to go home for such purposes, and submit to being fined as much as 30s. each for such unavoidable absence. Many farming men, indeed, had rather pay such fines, than neglect their business at such times, unless they could be paid for their services, so as enable them to employ other persons to look after their business during their absence from home. If all the people were wealthy, it would do very well; but this unpaid Jury system would not answer people whose time was money, and whose crops imperatively required their whole attention. He (Mr. W.) therefore hoped the majority of the Committee would at least be for paying Petit Jurors.

Mr. Thomson agreed with the Hon. Speaker.

er, as to the general principle of borrowing from the practice of the U. S. though he thought that in this particular instance an example might be advantageously taken from them. He was also equally opposed to the principle, of paying for the performance of constitutional public duties, which all men were bound to take their share of, and which they ought cheerfully to render without remuneration. But by parity of reasoning, that same principle would equally apply to Members of that House receiving pay; they were exercising a very high privilege, and ought not to take payment for their services to the public, in the capacity of legislators; and therefore, at the furthest, they should look for nothing more than the payment of their actual expenses, and cheerfully render their time and exertions for the public good, in so honorable a situation, without any compensation. And it was the same principle that he contended for, with regard to Jurors; he did not want to have them paid for doing their public duty, but he merely wished that such of them as could not afford to travel from a distance and to reside a long while from home, at their own expense, should have those actual expenses paid them. As to Grand Jurors, there was no analogy between England and this country in that respect: although in England they were always selected from the wealthy classes, yet it was not so here, because there was no such class to be found in country settlements, and therefore Grand Jurors must necessarily be chosen, as well as Petit Jurors, from intelligent but poor men; or at least, from men who had no ready money to spare, and who could not afford to neglect their own business and incur expenses in the discharge of public duties.

Hon. Mr. Speaker thought it very strange, that although this Province had now been erected 55 years, and had got along so well during that long course of time on the present system, without any practical inconvenience, yet that such complaints should now suddenly arise on this subject. While the Province was in its infant state, poor, and thinly inhabited, the people served readily as Jurors without complaint; but now that it was grown far wealthier and more populous, and the burden was therefore much more divided among the people, they wanted to get paid for their services as Jurors. He however contended, that the argument of the Hon. Member for Charlotte, relative to Members' pay, had great weight; it certainly did not look much like public spirit, for Members to say much about paying for other public duties, while they received pay themselves; that argument, therefore, was unanswerable. He thought also, from the apparent disposition of the Committee, that if this Bill should be confined only to Petit Jurors it would most probably pass.

Mr. Fisher said that Members' pay had nothing to do with this question; he was always of opinion that the expenses of Members of this House ought to be paid, because otherwise the constituency could not have a free choice of representatives, as there was not a sufficiency of wealthy men in the country, who could afford to attend on the business of the Legislature at their own expense; he, for one, certainly could not. He was decidedly for the principle of paying Petit Jurors, but not for paying Grand Jurors. It was all very well to talk of the Constitutional principle, and of the practice of England in such matters; but it was their business to consider, not the state of England, but the state and circumstances of New Brunswick, and to adapt things accordingly; and he was by no means so fearful, as the Hon. Speaker appeared to be, of borrowing examples even from the United States. A long time ago, when he went to school, he remembered reading in his school-books the old maxim, "*facis ab hoste doceri*," and he thought the principle might very well be applied in this case. In old countries, persons qualified to serve as Jurors were infinitely more plentiful than they were here, and they were much better able to serve entirely at their own expense; but here the case was very different. He did not want to see Jurors paid for their time in performing public duties, but their actual expense ought to be paid. Last summer, many men were summoned from the distant parts of this County to Fredericton, to serve as Jurors at the Supreme Court; men whose farming operations demanded their unremitting attention, and many of whom had made arrangements for attending to their public duties, as parish officers, and otherwise, at a particular time. They came to Fredericton, expecting to be released at the end of one week, and to be able then to perform the duties for which they had made arrangements for the second week. They had no idea of being detained two weeks in attendance on the court, and after serving one week they went home again, thinking themselves at liberty, and having other pressing engagements to fulfil. What was the consequence? Why, up came the Sheriff after them, with a writ of "*Levi facias*" in his hand, and compelled them all to pay heavy fines for their absence. He (Mr. F.) agreed with the Hon. Speaker, that trial by Jury was one of the most invaluable privileges of British subjects; but it was all a mere bagatelle if men were to be compelled to attend as Jurors, and lose their time and incur heavy expenses, at their own loss. It was indeed a necessary consequence, in every well regulated government, that every man must give up a portion of his own liberty for the free enjoyment of the remainder; all must contribute something gratuitously to the public good, and of course Jurors must do the same. But in this country it was not every man that was qualified to serve as a Juror; that office was one of the most important that any man could be invested with, and it therefore required both considerable talent and perfect probity. But the present system certainly did not cause the discharge of that duty to fall equally on the population of the country; some did nearly the whole of the duty, while others escaped it altogether; but the system of paying the expenses of Jurors would remedy that evil. He did not like the suggestion at all, of confining this bill to Charlotte County; that plan of local operation, with respect to bills on general principles, was too much followed in this

House, though it was a very improper one; and hereafter they would find the evil of it. Their enactments ought always to be as general as possible, because serious difficulties might otherwise arise, from the prevalence of different laws in different counties. He was decidedly for this bill, so far as related to Petit Jurors; and thought they ought to be paid, as well for criminal as for civil cases.

Mr. End highly approved of the bill, on the principle, that all services that were paid for were the best performed; nor could he ever see any reason why persons should be called from a distance to perform an important public duty, as Jurymen, without compensation for their expenses. Trial by Jury, no doubt, was a very fine thing in theory, and perhaps in practice too; though it also often was a very great evil in practice, where Jurymen were not well qualified for their important duty, and very fatal errors often happened from the ignorance and incompetency of Jurors; but still the system was as perfect an institution as any human institution could be. But, that people should be compelled to leave their distant homes, under a heavy penalty, to perform a duty to help their fellow subjects to a portion of British privilege, at their own expense, was a very great grievance. This bill, however, did not go far enough; it merely contemplated, that persons summoned by the Sheriff as Jurors should be entitled to payment; but as thought that when the panel was exhausted, and bystanders were taken as *talesmen*, they were quite as well entitled to compensation as those actually summoned. Such *talesmen* might have had business in the court, they might be just preparing to leave it, and it might be quite as much inconvenience to them to be compelled to stay, as for others to come there at all, and therefore they were equally entitled to payment. He (Mr. E.) would therefore move an amendment to that effect, at the proper time.

Mr. Wyer suggested that Coroner's Juries should also be included in the bill.

Mr. Weldon was opposed to the bill. It was legislating quite unnecessarily, when there were no petitions before the House from Jurors, containing any complaints on the subject. Such a bill would operate much more hardly on the several counties, than the evils arising from serving on Juries occasionally. It would be nothing more nor less than a general taxation; great expenses would be incurred in paying Jurors; poor people now were often sued for taxes, and this bill would increase that evil tenfold, with all the concomitant hardships of costs of various kinds. Constables, magistrates, assessors and collectors' fees must all be paid, and thus an immense amount of general taxation in counties would be created. If any particular county wished for any such bill, let them have it; but he was against imposing any such tax on the Province generally, without an actual call for it from the people themselves. The same men did not serve always as Jurors, but the whole population did the duty alternately; it bore equally on the people, and there were no complaints against it. Then, should this bill pass, how were the Jurors to be paid? Where were the funds to come from? County Treasurers could not have such funds, without additional assessment on the people; perhaps such an assessment would not be collected for six months after it was ordered; then the parties entitled to payment must travel to the County Treasurer to get their money, and their travelling expenses perhaps would swallow up the whole; so that the remedy would be as bad as the disease. If this principle of taxation for payment of public duties were adopted, it must in fairness be extended to all public duties; every parish officer and every trivial service must also be compensated, and so there would be no end to the taxation. The bill was totally unnecessary; and therefore he moved that its further consideration be postponed for three months.

Mr. Jordan and Mr. J. M. Wilmot briefly opposed the bill, and supported the motion for postponement.

Mr. McLeod also expressed his concurrence in the sentiments of the Hon. and learned Member for Kent; and hoped at least, even if the bill should be sustained, that it would have no reference to Grand Jurors, nor to criminal cases.

Mr. Thomson replied. Mr. Palmer objected to the bill as it was, but would be for confining it to Petit Jurors, and for making the expenses payable by *suitors* in the cases tried by the Jurors; but was against taxing the counties for such payment. Mr. Beardsley contended that this bill was absolutely necessary in Carleton and other parts of the Province. Great complaints existed there, as to the hardships arising from compulsory attendance as Jurors at their own expense. It was but just that persons, especially those in indigent circumstances, should be maintained while performing a public duty. The discriminating power of Sheriffs was another great evil, and ought to be peremptorily prevented. Sheriffs had the power of selecting individuals as Jurors, at their own discretion, and therefore they might at any time ruin any man, against whom they entertained ill will; therefore they ought to be compelled to select Jurymen in regular rotation only, without any option of choice. The Hon. Member concluded with some further observations, corroborating Mr. Fisher's statements, relative to the inconveniences sustained by persons attending as Jurors, and being also fined for premature absence; and expressed his hope that the bill, especially as regarded Petit Jurors, would be sustained.

Hon. Mr. Speaker replied; and

Mr. End rejoined.

Mr. Hanington briefly contended that the arguments of the Hon. and learned Member for Kent (Mr. Weldon), relative to taxing counties for payment of Jurors, were unanswerable; but expressed his desire that the bill should pass, with reference to Petit Jurors, and that their payment should come from suitors only.

After a few more words from the Hon. Mr. Speaker and Mr. Fisher, the question was taken, on the motion for postponement; which was negatived by the following division:—

Yeas—Messrs. Allen, M'Almon, Weldon, Jordan, J. M. Wilmot, Barlow, M'Leod, Stewart.—8.

Nays—Hon. Mr. Speaker, Hon. Mr. Crane, Messrs. Fisher, Thomson, Wyer, Hill, Palmer, Beardsley, Woodward, Taylor, Hanington, End.—12.

Hon. Mr. Speaker said that he voted as a nay, because he thought it would be harsh to turn the bill out, while the House was so thin, as many Members were sitting on the Road Committee, and had no opportunity yet of giving an opinion on it.

Hon. Mr. Crane suggested, that the payment of Jurors should in the first instance come from the pockets of *Counsel*, which would make them anxious to expedite proceedings as much as possible.

The Committee then reported progress, &c.

Colonial.

MONTREAL, Jan. 23.—On Sunday last, the waters of the river St. Lawrence, suddenly rose so high as to inundate a great portion of this city and suburbs. The whole of St. Paul street and Griffin town, and part of the St. Antoine suburbs, are covered with water to the depth of several feet. Many houses have, in consequence, been abandoned; and the inhabitants of others have been obliged to take refuge in the upper stories. Yesterday many of the streets were traversed in canoes; and that was the only conveyance by which various parts of the suburbs have mentioned could be visited. To-day the whole is frozen over, and the waters are said to be falling. Much damage has been occasioned by this overflow of water, particularly in cellars and stores not far from the wharves. The losses among the mercantile community are very heavy. We have been informed, that the river has not risen so high since the year 1787, when an almost equally great and destructive inundation took place in this city.—*Gazette.*

THE ARMY.—The order for part of the 83d regt., to leave town for Upper Canada on Sunday, was countermanded, in consequence, we suppose, of recent satisfactory intelligence from Navy Island; and the four Companies now in garrison, will in all probability, remain here for the winter.

The head quarter division of the 85th Light Infantry, under Lieutenant Colonel Mansuelli, arrived here yesterday afternoon, in carriages, from Sorel, which place it left the same morning. The second division, also of two Companies, will immediately follow, and both will remain in town; till they can move into the barracks at L'Annapolis, prepared for their reception, and where the third division will join from Sorel.

The following account of the *locale* of some of the leaders and *Generals* of the late rebellion, who have escaped into the States, is given on the authority of the newspapers only:

Mr. Speaker Papineau, at Washington.

General Brown in gao, at Middlebury, Vermont.

Dr. O'Callaghan, M.P.P. lecturing between New York and Saratoga.

Dr. Cote, M.P.P. at Burlington.

John Ryan, State of Maine.

Mackenzie and Van Ranssalaer, under bail at Buffalo.

Gibson, M.P.P. of Upper Canada, in the vicinity.

A number of minor rebels and traitors are dispersed in different parts of the United States; they are chiefly of that class who had little to lose in Canada.

The Albany papers of the 24th instant state that the American schooner *Savannah*, and steamer *Barcelona*, had been seized by order of General Scott, and placed under the charge of Lieutenant Homans, of the United States Navy, with an armed force. They were bound up the Lake, and probably for the patriots. This looks something like "neutrality."

A violent gale of easterly wind occurred on Saturday night, and yesterday there was a fall of snow. This morning the tide rose higher than ever was known at this season, and has done some damage in cellars in the Lower Town.—*Quebec Gazette*, Jan. 29.

The Light Company of the 34th regiment, with Captain Hammond, Lieutenant Burke, and Ensign Harvey, arrived yesterday about two o'clock, from Halifax, via New Brunswick. They were received on landing by the unpaid volunteers, amounting to upwards of four hundred, fully armed and equipped, and escorted by them to the Jesuits' Barracks. After the 34th had entered the Barracks, the volunteers continued their march along St. John's street, up D'Antoni street, and returned by St. Lewis street, passing the Castle. They were accompanied by the band of the 66th.

The Grenadier company, with Captain Byron and Lieutenant Goodenough, crossed over this afternoon at three o'clock, and marched up to Barracks.—*Id.*

[Extracts of Letters from Upper Canada.] Toronto 20th January, 1838.

"The *Experiment* steamboat has just come in from Niagara, bringing with her 2 companies of the 24th for our Garrison here. All quiet on the frontier. A person direct from Buffalo, reports that McKenzie is there, going about the streets, a forlorn and deserted being;—his dupes are asking for their promised pay, and he has none to give them. Van Ranssalaer and he have quarrelled about *finance* matters, and the former is off.

"From the West, all is quiet, with messengers to say that no more men need be sent there."

Amherstburg, 11th Jan. 1838.

"At 8 o'clock P. M. they (the Rebels) commenced firing on the town, wind blowing fresh from the West.—She (the Schooner) got a mediatly boarded her and took 15 prisoners.

"Brig. General Theller, one Detour, from Lower Canada, Anderson, from the London District, who died last night from a bill received in the breast, Chase, also from the London District, the other persons I do not know.

"We found on board the schooner 300 muskets, with every thing complete, cartridge boxes, bayonets, knapsacks, haversacks, and every thing requisite for campaigning; also,

what we most wanted, one 12, one 9, and one 6 pounder, with plenty of canister and ball, with 10 kegs of powder. The Rebels have left Bois Blanc.

"We have plenty of force and are ready for them. The force at this point now exceeds 1500 men in arms."—19th January.—*Mercury.*

General Lount is captured and now an inmate in Toronto gaol.—He was caught by two men (who suspected the cause of his evident anxiety to escape,) somewhere above Fort Erie where he had embarked in a schooner which was embarrassed by the ice. He says that his days are numbered, but that Mackenzie will yet revolutionize the Province.—*Notes verrouis!*

NOVA SCOTIA.

OPENING OF THE SESSION.

Honourable Gentlemen of the Legislative Council.

Mr. Speaker and Gentlemen of the House of Assembly.

My first duty, and a painful one I find it, is to condole with you on the loss which, since our last meeting, we have sustained; by the demise of his late most gracious Majesty William the 4th, of blessed memory, whose paternal attachment to this Province, which he visited at an early period of his life, will be remembered with gratitude and respect.

The Throne of the British Empire is now filled by his august niece Queen Victoria, the daughter of his late Royal Highness the Duke of Kent, who for many years resided amongst you, when Commander-in-chief British America. Her Majesty's accession has been hailed, in every part of her extensive dominions, with the most enthusiastic loyalty: her youth and sex claim from her subjects their dutiful affection and support.

It is with deep regret I have to notice the late unfortunate events in the Canadas; but I have the satisfaction of informing you that the insurrection has been put down in Lower Canada and that the traitorous attempt made to separate the Upper Province from British rule, has been signally defeated by the gallant conduct of its Militia alone: it is true that a small and desperate band still retain possession of Navy Island; but there is every reason to believe, as measures have been adopted at the recommendation of the President of the United States for the enforcement of the neutrality on the frontier, that these deluded men, deprived of all foreign assistance, will be speedily dispersed.

These Rebellious proceedings have called forth in this Province the strongest expressions of indignation and abhorrence, and the addresses from various quarters which have been presented to me, declare the unshaken attachment of the inhabitants of Nova Scotia to Her Majesty's Person and Government.

I have great pleasure in congratulating you upon the abundant harvest with which it has pleased Divine Providence to reward the labours of the husbandman, and which has diffused the blessings of plenty throughout the Country.

Mr. Speaker and Gentlemen of the House of Assembly.

The Provisional Establishment of two distinct Councils which has recently taken place, and the dispatches which I am instructed to lay before you, afford ample evidence of the gracious attention that has been paid to the representations which you addressed to the Throne in the last session.

I earnestly hope that this important alteration of the ancient constitution of the Province, will be attended with all the advantages which when you advised the measure, you expected it would be accompanied.

I have directed the Public accounts to be laid before you, and I trust you will find that the supplies granted to Her Majesty in the last Session have been faithfully expended. The usual estimates of the Civil Establishment for the present year will be submitted to you, and I have no doubt of your providing for the support of Her Majesty's Government, and for all other necessary services, with your usual liberality.

Honourable Gentlemen of the Legislative Council.

Mr. Speaker and Gentlemen of the House of Assembly.

I have great satisfaction in acquainting you that the Revenue last year has increased considerably; the receipts have been more than sufficient to meet all the demands on the Treasury.

I feel it my duty again to recommend an economical application of our means, by keeping our expenditure within our income.

I most earnestly desire to draw your particular attention to the inefficient state of the Militia; it is not at present what I wish to see it; there is all the good feeling and loyalty I could desire. As it is the Constitutional defence and security of the Province, I am persuaded you will see the necessity of amending the Law now in existence; and the zeal and discipline of twenty five thousand young and willing Sons of your own families ought not to be neglected by Government and the Legislature.

It is the earnest desire and recommendation of Her Majesty's Government that you will enter upon the discharge of your Public Duties, with that spirit of harmony in your proceedings, for which the Legislature of this Province has so long been conspicuous, and which has proved so conducive to the best interests of the Country.

My anxious wish is to see peace, content, and prosperity prevail throughout the Province; and you may rely upon my cordial cooperation, in every measure which can tend to secure and increase these blessings.

The frigate *Inconstant* arrived on Monday, bringing the left wing of the 93d Regiment. They landed yesterday, and were received at the wharf by the Lieutenant Governor, the Speaker and the Members of the Assembly, and welcomed with hearty cheers by the inhabitants. The 93d is a Scotch Regiment, of old renown. We shall probably soon have in Halifax a full garrison and several ships of War.—*Novascotian*, Jan. 31.