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COLONIAL LEGISLATURE.

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JURY BILL.

The House resolved itself into a Committe of the whole on the further consideration of the Bill for regulating the qualifications of Jurors, &c.

The Hon. J. S. Macdonald considered it improper to exclude fire-engine men, as proposed. Fire-engine men were sufficiently exempted already. They were free from militia duty and statute labour. In case of a fire when in Court, all would turn out as well as firemen.

Mr. Rae thought that every man of legal age who was a householder, and who had been resident in the Colony for twelve months, should be considered qualified to serve as a juryman. He said they were not bound to pay much regard to property.

Mr. Fraser observed many young men made much better jurymen than their fathers. The old bill, he thought, did well enough. The further consideration of the honourable member (Mr. Thomson's) bill, would be a mere waste of time to the house. The honourable member, he thought, wanted to make a bill for himself and Georgetown. Juries were sometimes composed in which there was neither landlord nor tenant. He thought no man of legal age, sane mind and fair character should be declared incapable of serving on juries.

Mr. Rae would go so far as to make the selection of men to serve as jurors impartial. A man's being twenty years of age and a householder should be requisite qualifications. The very circumstance of a man's keeping a house of his own gave a graver, a more sedate turn to his mind, and tended to make him, as it made it more his interest to be, more observant of social order. He wished the bill had not been brought in; but, as it had been introduced, he would go so far as to endeavour to prevent the packing of juries. That persons should be twenty years of age and householders ought to be indispensable qualifications of jurors.

Mr. Speaker thought it would not be proper to exclude young men of twenty-two or twenty-three years of age, and upwards, residing with their parents, before a division of property, but having with their parents a common interest in the land they cultivate.

Mr. Rae objected that this would bring in many who had never been in the habit of acting upon their own judgment, and who, by previous care and anxiety about their own affairs, were not prepared, with due deliberation and discretion, to judge respecting the affairs of others. He would not then, however, particularly press his private opinions, nor harass others with his peculiar views.

Mr. Thomson supported the views which had induced him to bring in the bill. If it would be an experiment, it would be such a one as had proved satisfactory and successful in Great Britain and New Brunswick. He had merely been using his humble endeavours to raise the qualifications of jury-men, both as to property and mental qualifications: his main object was to have juries fairly drawn, to the prevention of packing.

Mr. Le Lacheur could find no very particular objection to the old bill, except the selection of grand jurors from the magistracy and high stations. He would like a short act to cause grand jurors and petit jurors to be drawn promiscuously from persons of similar qualifications. He once asked (twenty-four years ago, when young and inexperienced,) an old gentleman, the oldest lawyer in the Court in which he put the question, what was the use of a grand jury. "Had you asked me," replied the old gentleman, "what was the abuse of a grand jury. I might have been able to answer your question. A grand jury is a secret tribunal, before which a man is dragged that he may there undergo a proper *keel-hauling*, and from thence, frequently on the accusation of the perjured, sent to trial, and, it might be, to condemnation" A man, said Mr. Le Lacheur, from the most base and unprincipled motives, might come before a grand jury, and, on oath, prefer a charge of guilt against the innocent. In consequence, the innocent man might be sent to trial and degradation; for trial in itself, even of the innocent, on criminal charges, almost ever carried along with it some of the consequences of guilt. To have once been suspected and tried, if not sufficient cause for future trials, was, at least in many cases, sufficient to lay a man under suspicion all his life after. Again, with respect to grand juries, although he was very far from intending to impeach the conduct of any grand jury-man, how easy was it, he would ask, for such a one, over a cup of coffee, or it might be over a cup of wine, to let slip what had been preferred against a man in the grand jury room; and the evil consequences which might result to the accused from such indiscretion he need not stop to point out. If all were drawn out of one box, the grand jury first and the petit jury next, a man would then, in reality, be tried by a jury of his peers. A man accused might then have a neighbour of his own rank and station upon the grand jury, whose knowledge of the general character and habits of the accused might greatly weaken, as weighing with his fellow jurors, the force of the accusation preferred against the man in custody. This mode of selecting grand jurors would, if adopted, prevent many persons from being unjustly sent to trial.

Mr. Gorman replied to the honourable gentleman (Mr. Le Lacheur), that the Chief Justice's definition of a grand jury differed widely from his (Mr. Le Lacheur's). The Chief Justice had informed them, that the gentlemen composing a grand jury were the grand inquisitors of the country; and he (Mr. Gorman) was of opinion that grand juries had very important duties to perform. So far from keel-hauling the character of individuals, he thought they quashed a great many vexatious suits, and were the safeguard of the people. He did not think, either, that the grand juries and petit juries should be drawn from one box, or that every petit jury-man should be qualified to be a grand juror.

Mr. Clark was decidedly of opinion that the qualifications of a juror should be mental, and not dependent upon any casual or external circumstance of money or land. He saw, however, that a discretionary power should rest somewhere. It was, he believed, contemplated by the bill under consideration, that that power should be vested in the magistrates. But magistrates were as likely to prove unfaithful as sheriffs. He was afraid too that magistrates might not always prove competent judges in the matter. He thought, upon the whole, the sheriff would be the most likely person to discharge the discretionary power in a proper manner; and if he should be found to be abusing his trust, by a representation of facts in the proper quarter, he would doubtless be removed. He, (Mr. Clark,) if he became aware of the abuse of such a trust by any sheriff, whoever might be the man, would be one of the first to complain and demand his dismissal from office. Again to advert to the qualifications of jurors, he thought it would be impossible to make any other distinction than such a one as he recommended; and that distinction, it appeared to him, was all that was called for. It was by no means an easy matter, if the qualifications were to depend upon the possession of property, in money or lands, to say who possessed the qualification. Many men were reputed the possessors of property, who in fact were, literally and truly, nothing but the nominal owners thereof.

Mr. Speaker was afraid the duty intended to be imposed upon the magistrates was not clearly understood. All that was to be required of them was, that they should give in lists of such men, in their respective districts, as were qualified to serve as jurors. From the lists so given jurors were to be summoned; the names of the men summoned were all to be put into one box, and from that box names were to be promiscuously drawn for the formation of juries.

Mr. Thomson explained. It had been said by an honourable member that the sheriff's general knowledge of persons in his neighbourhood was likely to be greater than that of the magistrates. According to the bill, the lists were to be made out by the Justices of the Peace and the Sheriff of each county; the knowledge of both parties would therefore be united.

Mr. Rae said he understood some honourable members to think, that generally to be of the legal age of twenty-one would be a sufficient qualification. In this opinion he could not concur. There should be a higher qualification than mere majority. That jurors should be householders was a wise and necessary qualification, and, besides, it was a plain and simple one.

Mr. Palmer said, he had listened to the debate with great attention. The subject was one of the very greatest importance. Trial by jury is the great palladium of the people. Whatever affects that privilege, affects the rights and power of every individual of the community. He would willingly go heart and hand along with any one who would revise and improve the Jury Bill. Taking a retrospective view of the conduct of sheriffs, with respect to summoning juries, as far as he was acquainted with it, he saw no reason to complain of it. He (the sheriff) does every thing on oath, and is amenable to the country on his bond. There was a summary way of proceeding against the sheriff, in any case of delinquency, according to which he might be imprisoned or fined to any amount. There had been no great evil occasioned by the conduct of any individual sheriff. The selection of sheriffs rests with the Governor, who chooses persons of intelligence, property and responsibility. The sheriff is amenable for all escapes of prisoners, and his deep responsibility renders it highly probable that, in all cases, he will be anxious to discharge his duty. Mr. Thomson says he wishes to raise the qualifications of jury-men. That could not be done, (said Mr. Palmer,) by simply requiring by law that a juryman's qualifications should be of a certain specified character. They would have to take such men for jurors as the country could afford. The proper qualifications of jurymen were of the mental order, and these could be improved only by the spread of education among the people. The present onward march of intelligence, he was happy to say, he trusted, would soon effect much that was desirable on that head. What they at all times wanted on juries was men of good, sound judgment, and such men, happily, even in the present state of the Island community, were to be found, and that, too, in some measure, independent of education. It had been said that professional men took advantage of ignorant juries, and frequently obtained verdicts contrary to justice and the facts of the case. But, were not honourable members aware, that when, from ignorance, misapprehension of evidence, and the deceitful arts (if they would have it so) of counsel, a jury gave an improper verdict, a new trial was usually applied for and granted. New trials, he admitted, were generally owing to the want of intelligence on the part of juries; but still he maintained that jurymen were, taking them all in all, as intelligent as the country could afford. Changing the system would not improve the general intelligence of jurors; it would not affect the materials from which jurymen were to be selected. It had been said that both the grand and petit juries should be taken from the same panel, and drawn from the same box. To do so would be contrary to the law of England. The duties of grand juries and of petit juries are separate and distinct. A grand jury is appointed not to try a man, but to prevent a man's being put upon his trial, without a sufficient reason to suspect his being guilty of the crime preferred against him. They are supposed to be beyond the reach of all petty influence; and, without sufficient cause, to send no man to trial: and, when they do send a man to trial, he is committed to the hands of his peers. The possession of an estate was not a necessary qualification of a petit juror; a man's understanding was not to be measured by the breadth of his land. Jurors were not like electors. For jurors, sound judgment and good characters are all that should be required. The country, he said, is not ripe for the proposed improvement: an increase of population and of intelligence must be waited for. The time, he was happy to think, was not far distant when the Colony would want neither for numbers nor intelligence. At present it would not be expedient to prosecute the consideration of the bill any further. Mr. Palmer concluded by seconding the motion of Mr. Gorman.

The Hon. Mr. Pope confessed he differed in opinion from the honourable member for Charlottetown. He had never known juries to be packed, but yet the best possible choice, he believed, was rarely made. Sheriffs had it not always in their power to make such a choice as they themselves approved of. They were obliged to entrust the discharge of the general duties of the office to deputies. When he had the honour to fill the situation of Sheriff for Prince County, he determined to select none for petit jurors, but men respectable for moral character and intelligence, and gave instructions to his deputy, in accordance with such intention; but, as his deputy was not bound under a penalty in every thing relating to the office fully to act according to his instructions, and as in such case no travelling expenses are allowed, he (the deputy), to his (Mr. Pope's) great annoyance, selected such men for jurors as best suited his own convenience. This evil he (Mr. Pope) would certainly like to remedy, but was afaid the bill before them would not effect so desirable an object. He would not like the grand and the petit jurors to be drawn from the same panel. The powers of a grand jury were of very great extent and of no less importance; and perhaps to none but individuals whose standing in society and whose property might be considered a guarantee for a faithful and independent discharge of their duties, should powers so extensive and important be entrusted: they were called upon to perform many duties of a disagreeable and almost invidious character, for which, were they poor men, a sense of their dependence might disqualify them. He (Mr. Pope) did not, however, wish to be understood that he thought a higher degree of intelligence requisite in a grand than in a petit juror; quite the reverse; but what he maintained was, that, from the peculiar and extensive nature of his powers and duties, it was necessary that a grand juror should possess that degree of independence in society which property confers, and which the less onerous duty of a petit juror made less necessary for him to possess. He (Mr. Pope) thought the present mode of selecting grand jurors preferable to the one proposed. He would not, however, vote against the bill, unless, after a fair trial, he should see reason to condemn it. On the third reading, perhaps, he might be better able to propose amendments.

Mr. Thomson, in support of his bill, said, his great anxiety for the success of so very important a measure as he had presumed to introduce, led him earnestly to invite honourable members to give the bill their best consideration, and the benefit of whatever amendments might present themselves to their minds. He was far from thinking he had brought in a perfect bill; but, by the united labours of honourable members, he was desirous to advance it as near to perfection as possible. At present, he said, the law required no qualification of grand jurors, but the bill would raise their qualification to that of petit jurors. By the law of Great Britain, the qualifications of grand jurors and petit jurors were the same; and if there was no objection to an equality of their qualifications, why should they not be drawn from the same panel? A property qualification, he insisted upon it, should be indispensable. It is property, he said, which holds and binds society together. But although he thought it necessary that a juryman should have some property, as a stake, in the country, he was far from intending that such a qualification should render mental qualifications unnecessary. A stake of some property in the country and the being able to read and write, were the two principal qualifications which he wished to carry. The honourable and learned member for Charlottetown had said he saw no great evil resulting from the old system; and yet, on the first reading of the bill, he had acknowledged that he had, on some occasions, seen persons in the jury-box who were unfit to sit there. If the honourable and learned gentleman was aware of the existence of so great an evil as that men utterly destitute of the requisite qualifications, were now admitted to form a constituent part of a jury, to decide respecting property, and, at times, upon the life or death of a fellow creature, was it no part of the legislative duty of that honourable gentleman to prevent so enormous and crying an evil? He (Mr. Thomson) had seen enough to know the truth of the statement of the honourable member from Bedeque. It was notorious that Under sheriffs frequently made the most improper selections of men to act as jurors The tendency of his (Mr. Thomson's) bill was to prevent a continuance of the evil.

The Hon. J. S. Macdonald adverted to what he had said respecting the bill on the previous day. He thought the Colony was yet too young, its population too scanty, to admit of the wholesome operation of such a measure. If it were made a necessary qualification of a petit juror that he should be in the occupation of 100 acres of land, and able to read and write, many persons who ought, in the present state of the country, to be eligible, would be excluded from serving on juries. There was also another objection, which he had before made to the bill; it went to throw upon the magistrates the discharge of an active and important duty, which, in fairness, they could not be expected to perform without remuneration for their trouble. He could not see that property should be made a necessary qualification for petit jurors. A good moral character, a plain natural understanding, and a regard to conscience, might, in his opinion, in the present state of the country, be admitted as a sufficient qualification in the majority of a jury.

Mr. Palmer observed that the rejection of the bill for the present would afford an opportunity for the canvassing of the measure among the people, before another session. He considered the country to be too young to admit of the salutary working of the measure, but it was reasonable to suppose, that, in a few years, it would be otherwise.

Mr. Speaker said, had the bill come from the hands of a special Committee, it would, most likely, have been so framed as to meet with greater support from the house; and, therefore, in that opinion, should the motion of the honourable member (Mr. Gorman) be lost, he would (that the bill might not be quite thrown away) move, that the bill be referred to the consideration of a special Committee.

Mr. Palmer said, the country would, doubtless, form a very high idea of the business qualifications of the house, when they should see that bills were tossed about in that way. It would be time enough to bring in such a bill next session.

Mr. Thomson said, the bill had been a week before the house, and honourable members had had sufficient time to propose amendments and remodel the whole, had they been so disposed. He had the more confidence in the bill, that it was not a creation of his own brain. It had been tried and approved elsewhere. It had been the law of Great Britain four years. He did not believe the country was too young for such a law. The country, he thought, could now yield eight hundred such jurymen as he required, one out of every fifty individuals. But he might even go farther, and say one out of every twenty-five, which would give sixteen hundred men qualified to serve as jurymen, a number, he considered, more than sufficient for the Colony. He had not accused any sheriff of improper conduct, with respect to the selection of jurymen; but he had said the present mode of selecting jurymen sometimes rendered the sheriff liable to a suspicion of unfairness; and by this bill he wished to provide against the possibility of such suspicion. If the leading features of the bill were recognized by the house, he cared not what they made the qualifications of jurors.

The question being then called, the Chairman put Mr. Gorman's motion, that the Speaker take the Chair, and the Committee rise without reporting. The Committee then divided, and the question was carried in the affirmative, by the casting vote of the Chairman. —So the Bill was lost.

FISHERY RESERVE BILL.

The Bill for regulating the Fishery Reserves in this Island, was then, according to order, read a second time; and the same was committed to a Committee of the whole House. Mr. D. Macdonald took the chair of the Committee.

The Committee then went through the bill, clause by clause, no very important discussion arising thereon.—Mr. Rae made some remarks, the main purport of which was, that the marshes never having been mentioned in the original grants, the proprietors had never had any controul over them.—Mr Gorman, on the same subject, observed that, in many places, the salt marshes absolutely constituted the sea shore, and as such were certainly to be considered a part of the Fishery Reserves.—The Honourable Mr. Pope, speaking of the right given by the bill to fishermen to choose their fishing stations within the Reserves, and the notice which ought to be given of a place's being required for a fishing station, shewed what a serious injury this liberty might sometimes cause to a farmer. He instanced an excellent farm at Bedeque, of 50 acres, and not more than 7½ chains in front. The farm produced good wheat and abundant crops of potatoes. If a fisherman should pitch upon this as a station, and choose his time well, he might, perhaps, come into the possession of a plentiful crop, without having taken any pains to raise it; and, as there was a mill upon the farm, it would be very convenient for the grinding of the grain. It would just be the place for Nova Scotians. It would not be necessary for them to bring any provisions along with them; they would find a supply for the season ready to their hands. Escheat fishermen and land pirates, he thought, were much the same.

Mr. Speaker resumed the Chair; and it was ordered that the Committee have leave to sit again to-morrow.

Mr. Thomson then moved the following Resolution:—"That this House will, to-morrow, resolve itself into a Committee of the whole House, to consider the expediency of establishing a Copper Currency in this Island." Since he came to this Island, he said, he had observed that a copper currency was much wanted, and business much inconvenienced in consequence of the want. Two years ago a person could not get change, either in silver or copper, for a dollar. The Colony, he said, could not lose by it, were they to order £1000 worth. It required six of the Canadian coppers now in circulation in the Island, to weigh one penny sterling, and four coppers, Halifax currency, equalled the same. In the light of a speculation, it would be a good one to order to the amount he had named. People would then be able to carry something decent in their pockets, though it should only be coppers.

Mr. Gorman said he would second the motion, provided he knew where the mint was to be established. Was it meant to employ Macarthy, the tinker?

Mr. Longworth having seconded the motion of Mr. Thomson, the question was put by the Speaker, and the House divided thereon. Yeas—Mr. Thomson, Hon. Mr. Pope, Hon. J. S. Macdonald, Mr. Palmer, Mr. Longworth, Mr. Hudson,6. Nays: Messrs. Le Lacheur, D. Macdonald, Montgomery, Dalziel, Fraser, Beck, Clark, Forbes, Macintosh, Macfarlane, Macneill, Gorman, W. Dingwell, 13.

Saturday, February 29.

STATUTE LABOUR ACT.

On the motion of Mr. Yeo, the House went into Committee to consider the expediency of amending the Act, 3 Will. 4, cap. 2, intituled "An Act to regulate the performance of Statute Labour on the Highways," &c.—Mr. D. Macdonald in the Chair.

Mr. Yeo said, an alteration in the Statute Labour Act was greatly needed. The statute labour, as now performed, was of little or no service to the country. All the men in the country, liable to perform statute labour, were called out three or four days in each year; but he was of opinion that one day's real labour in each year, from every man so liable, would effect far more good upon the roads than was now obtained by the present Act, so much was the labour imposed by it evaded. He then submitted the following Resolution:—

Resolved, That it is the opinion of this Committee, that it is expedient to amend the present Act for regulating the performance of statute labour on the highways, on the principle that the Commissioners of each District be directed to appoint proper Overseers, in the month of May, each year—the Overseer to take the census of all people liable to perform statute labour, and to calculate the amount of commutation, according to what the Legislature may think proper to lay on each person; viz. for a man of family, having no cattle of any kind, —— shillings; for hired servants, —— shillings; for a man having one horse, or one pair of oxen, —— shillings; for a man, having two horses and one pair of oxen, —— shillings.—The Resolution then goes on to provide regulations for the conduct of Commissioners and Overseers of road work.

Mr. Rae said, he supposed the honourable member who had introduced the proposal to amend the present Statute Labour Act, had said all he had to advance in favour of his motion; and he (Mr. Rae) thought the House had best proceed to the consideration of the subject without loss of time. The Resolution submitted proposed a direct taxation, to which he had already expressed himself hostile, because the country is not yet ripe enough to bear it. It seemed the house was called upon to say, that the people are too lazy to work, too indolent even to make roads for their own accommodation. Would honourable gentlemen again meet them at the hustings and tell them so? They petition for money to make roads, because they know it is taken from them, because they think they have some right to a small share of that which is in fact their own. When they see £100 added to this man's salary, a clerk allowed to that, and public money inconsiderately and profusely scattered away, they think they may as well try for something to serve themselves; they think they may as well make a party in the scramble, and endeavour to secure a trifle. If we support this Resolution, we shall, in fact, declare, that the majority of the people are too lazy to work. Was the house going to pass such a libel upon the mass of the people? He had indeed heard a great deal about how much can be done by money, and how little was done by statute labour. But the honourable gentleman who had spoken to that effect had forgotten or omitted to advert to the many improvident bargains for making and repairing bridges and roads, and to the general slighting of such jobs. That the statute labour was not every where throughout the Island performed as it ought to be, he was ready to admit; but, he trusted, the faults of particular settlements would not be indiscriminately visited upon all the settlements in the Island. If the tax were paid in money, a way would soon be found to divert a part of it from the purpose for which it was raised. Whenever a money tax was raised, the next thing was to take a toll out of it. He saw no occasion for going further into the consideration of the matter.

The Hon. Mr. Pope said, the Resolution proposed was not applicable to the necessity of the case. He, however, was not afraid to adopt it because it might be said it would be telling the people they were too lazy to work. Were it not for laziness they could commute thirty-two hours' labour for five shillings. It was not to work, but, in reality, to play, that, generally speaking, they went out upon the roads at the time when the statute labour should be performed. In his district, however, the people were generally industrious, and the road-work well done, although there were not wanting some instances of idleness. The plan proposed had been objected to as being a direct tax; but he denied that it would be so, for persons would, as at present, be still at liberty to perform the labour personally or to commute for money. The present statute labour act, he said, was certainly unjust in its operation; and if any thing could justify laziness, it was that a poor man, possessed of nothing but his wife and children, was taxed equally with a man worth £500, if he (the latter) did not keep a team. This was an act of evident injustice, an evil which ought to be redressed. They who were possessed of the loaves and fishes should, undoubtedly, be made to pay with some reference to their means. The honourable member from Princetown, perhaps, dreaded this; he might