

REPORT AND EVIDENCE, &c.

HOUSE OF ASSEMBLY,

COMMITTEE ROOM,

Thursday, 8th January 1829.

IN Committee on the Bill to ascertain the qualifications and regulate the summoning of Jurors in Criminal Cases.

PRESENT : Messrs. *Viger, Quesnel, Heney, Cuveillier* and *Vallières de Saint-Réal*.

Mr. *Vallières de Saint-Réal* in the Chair.

Read the order of reference.

The following Report was proposed to your Committee :

Your Committee in examining the different questions which were referred to them by your Honorable House, have deemed it expedient to follow the distribution of the matter adopted in the order of reference. For this reason the first subject to which their attention was turned, and on which their labour was bestowed, was an inquiry concerning the Laws which ascertain the qualifications and regulate the mode of summoning Jurors in Criminal Cases.—The Trial by Jury was unknown to our Canadian Ancestors ; although it is most certain that this institution was formerly made use of in France, both in Criminal and in Civil Cases, it was not in force for a long time previous to the establishment of our Colony. The English people who have not only preserved the Trial by Jury, but justly consider it as one of their most essential rights, have attached themselves to the perfecting of this salutary institution, and introduced it into Canada with their Criminal Laws, immediately after the conquest. The Inhabitants of Canada, therefore, in becoming British Subjects, found themselves invested with the most transcendant privilege which any subject can enjoy or wish for, that he cannot be affected either in his Property, his Liberty or his Person, but by the unanimous consent of twelve free and lawful men, (*liberi & legales*) taken from his neighbourhood. Since that time the Canadians could claim the benefit of the provision of Magna Charta “*no freeman shall be taken or imprisoned, dis seized, or outlawed, or banished or any ways destroyed ; nor will we pass upon him, or commit him to prison, unless by the legal judgment of his Peers, or by the Law of the Land.*”

The Criminal Law of England as it regards Jurors may be divided into Laws establishing Principles and Laws of Regulation.

The first regard :

1^o The right of the subject not to be taken and Judged in Criminal matters but by his Country, that is to say by Jurors.

2nd—The qualities and qualifications of Jurors and persons appointed to summon them.

3rd—The places where they ought to come from.

The last regulate how and by whom the panel ought to be made, the manner in which Jurors ought to be summoned, and contain other details on this important subject.

Your Committee are of opinion that the Criminal Laws of England which establish the principles on the important subject of Juries, are absolutely in force in this Province, and ought to be fully executed ; Therefore, with a few exceptions expressed by the Law, no person can be put under Trial unless he is accused by at least twelve free-holders under Oath, whom the Law calls Grand Jurors or Grand Inquest, that is to say, accusing Jurors.

In the same manner no person can be condemned in Criminal matters unless by the unanimous Judgement of twelve Jurors under Oath, whom the Law calls Petty Jurors or proof Jurors. No person doubts that Jurors, Grand or Petty, must be free holders, but the common Law is silent on the value of the real property which they must hold, and the Statutes having made provisions concerning Petty Jurors alone, it follows that to be a Grand Juror, it is sufficient to be a free holder, however trifling may be the value of the property which one may possess.

It is an omission (*casus omissus*) in the English Law, as it was introduced in to Canada by the Act of the Imperial Parliament of 1774, because it is certainly very important that Grand Jurors be qualified to
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