gin of the "stand by." And, though, at the outset, it was merely a claim on the part of the Crown justified by no provision of law, and in fact running counter to the special provision which prohibited the Crown's right to challenge to the challenge for cause, it was nevertheless persisted in until, from being an abuse at the outset, in virtue of the continued practice it was accepted and acquiesced in. Speaking of the methods which, even after the revolution, were resorted to in order notwithstanding the provisions of the law to give undue advantage to the Crown, he points out two means by which the Crown sought to control the trials, namely by the sheriff selecting a panel known to be favourable, or by punishing the jurors by fine or imprisonment if they failed to give a desired verdict. After the revolution, a third means was employed, namely of enlarging the panel, in some cases to more than 200, and making use of the Crown's right of standing aside in order to pack the jury. Prior to the revolution the panel appears to have been limited in practice to forty-eight. Then he goes on to speak of the right of challenge by the defence, with which we are not concerned. By the common law, the King might challenge peremptorily without being limited to any number. This was regarded as unfair to the subject, and it was enacted by 33 Edward I, chapter 4, that none should challenge for the King except for cause certain, and this also is re-enacted by 6 George IV, chapter 50. The practice, as I mentioned a little while ago, appears to have grown up for the Crown to withhold its reasons for challenging until the whole panel was exhausted. A strenuous effort was made in several cases to upset this practice, and to compel the Crown to assign a cause at the time of challenging, but without success. The case of O'Coigly and others is notable in this regard. Counsel there pointed out that the authority for this practice was Staunford, who had set it up in his Pleas of the Crown. Hale and Blackstone appear to have adopted this opinion, and the practice became general.

There is the origin of the "stand aside." It originated in what, at the time of its beginning, was certainly an abuse, but it seems to have been acquiesced in and accepted, and I am not criticising—although I might desire to criticise it—so long as its scope is kept within definite limits, as it is and was in our law in all these provinces where a limited panel is provided. The attempt by the Crown in any province to

[Mr. Doherty.]

resort to the means which I have already referred to as having been employed on the part of the Crown to control trials, namely, the enlargement of the panel in some cases to more than 200, I do not interfere with, but this latter consequence of it, making use of the Crown's right of standing aside in order to pack the jury, will not be permitted. It is not necessary, in order to justify this legislation, as I was called upon to do, to point out cases where that power has been abused. It is, in my judgment, sufficient that it should appear, as it clearly does appear, that the condition of the two legislations as they stand—the provincial legislation, not only in Manitoba but in four of the other provinces, and our Criminal Code legislation—combined, make that abuse possible. In my judgment it is the duty of one in my position, when it is brought to my attention, that under existing laws there is room for abuse, to look for and apply a remedy.

Moreover, I desire again to call attention to the fact that this legislation does not propose absolutely to limit the right of the Crown to stand aside; it leaves that right absolute up to the number of forty-eight jurors. Inasmuch as under the existing law the number may be very much greater—I am informed that in one instance the number was 150; that may have been justified by the exigencies of the business before the court—this legislation simply puts under the control of the court the right of the Crown to proceed to "stand by" a greater number than forty-eight. It seeks to correct the above that is possible under existing conditions, but not by absoltuely withdrawing the exercise of the right of standby for a greater number. I quite recognize, as pointed out by the member for St. John, that there may be conditions and circumstances under which the right ought to be exercised for a greater number. But under this legislation, that is left to be determined not by the Crown alone but by the judge who sits there as arbiter to see that everything is conducted fairly between the Crown on the one side and the accused on the other. This legislation merely throws an additional safeguard around the liberty of the subject, and does it without imposing any undue restriction upon the Crown. The Crown, when it has reason for doing so, can always address itself to the judge; and if we all have that confidence which hon. gentlemen have expressed in the judiciary, we may all feel assured that the judiciary in dealing with an applica-