limited to the number of the panel. In provinces that provided for an indefinite panel, you had a situation that wherever the judge thought a large number of jurors should be summoned, perhaps because there was an extraordinary number of cases, the practical result was that in each one of that large number of cases, the Crown had this indefinite advantage at least up to the full extent of the number the judge might admit the summoning of, because of this right of stand by.

Sir WILFRID LAURIER: What is wrong in that? It is the panel.

Mr. DOHERTY: But the question is, is it desirable that for the purposes of "stand aside" the Crown would have the right to apply it to an exceedingly large number? Just in proportion as you increase the number of the panel you increase the advantage to the Crown resulting from "stand by." This custom of "stand by" grew up originally as an abuse. That is the way it found itself in the common law. One of the things that was done after the revolution of 1688 was to seek to curb the right of the Crown to control the nature of the jury, and whereas previously the Crown had had practically an indefinite right of challenge, it was by legislation absolutely limited to the right of challenge for cause, and practically the way the "stand aside" came into existence was that the Crown said "well, I can only challenge for cause, but I will stand you aside until I make up my mind." That was the origin of it, and this original abuse came to be accepted and to be recognized, but it was, even at that early date, recognized as a tremendous engine of possible abuse. It is material to the answer to my right hon. friend's question that I should say that while you could not find a statute fixing the number of the panel, nevertheless the accepted panel—the panel that in practice was summoned—was forty-eight jurors. That is the way Manitoba got her forty-eight, and, as an hon. gentleman from Ontario pointed out this afternoon, it is so in Ontario, where, though by statute the judge may order an indefinite number, the practice is to summon forty-eight.

Mr. CARVELL: We have only twenty-one in New Brunswick.

Mr. C. A. WILSON: What is the number in Manitoba?

Mr. DOHERTY: The number in Manitoba was forty-eight, until this legislation was enacted; that is to say, it was forty-eight in the Winnipeg district and a smaller number in the other districts of the province. I do not recall the exact number.

Mr. CARVELL: Thirty-six.

Mr. DOHERTY: That was the situation up to the enactment of the legislation in Manitoba. Four provinces limited the number of the panel, and our Criminal Code, working in view of that provincial legislation, in effect provided the number of "stand bys" up to forty-eight, or up to sixty in Quebec, and left the Crown under the obligation, after that many had been made, of taking the men that were on the panel, unless it could indicate a reason why they should not be taken. Under the law of the provinces that permitted an indefinite number, whenever a judge ordered an extraordinarily large number—and he might do it for perfectly legitimate reasons—by the simple combination of the two laws the Crown that in Quebec could "stand by" sixty at most, and in Manitoba, up to that time, could "stand by" forty-eight at most, and that in other provinces could "stand by" a lesser number, became by the change of the legislation—whenever a province changed its legislation in that sense—entitled to "stand by" whatever number the court had seen proper to summon because it had a large number of cases to deal with. Now, in all fairness—I leave it to all fair men in this House, lawyers or laymen, as to whether that is a desirable situation in a country which boasts of its inheritance of British institutions, and boasts of none more than its inheritance of the system of trial by jury.

Mr. MACDONALD: What is the trouble now?

Mr. DOHERTY: The hon. gentleman does not see the trouble yet?

Mr. MACDONALD: No.

Mr. DOHERTY: The existence of that state of affairs was something that caused me to believe that the essence of the advantage of trial by jury is destroyed when you leave in force a system which makes it possible for the Crown to find its own jurors. I would not wait until somebody had come to me and said, "There is a man who suffered from a possible injustice; now is your time to remedy it." There is an old adage about the folly of locking the stable door after the horse is gone. I thought I would lock the stable door while the horse was still there; and that is the very head and front of my offending.