SUPPLEMENT

Brantford Weekly Expositor.

Hon. Mr. Hardy's Speech on his Jury Bill.

The following is a summary of Hon. Mr. Hardy's address on moving the second reading of his Bill to amend the Jurors Act, February 25, 1879.

Mr. HARDY said no radical changes were by this Bill proposed to the present Act relating to Jurors, a measure which had stood upon our statute books since 1858, almost substantially as it was when first passed by the Parliament of that period. Unlike most of our great Charter Acts it had not been dealt with from time to time by the different legislators, as it embodied a scheme which, if interfered with at all, should be treated with reference to the whole and not merely to different sections or fragments of the Act. In 1850 and 1851 the Hon. Robt. Baldwin had both consolidated and amended the Acts in force relating to Juries prior to those periods. The law had been further amended in 1858. The most important of these amendments related to the mode of selecting jurors, and that has always been, and must necessarily be, one of the most important features of our jury system. In 1858 the Jurors Act was, as he had before mentioned, again consolidated and amended by the commissioners for consolidating the Statues, and was passed into law during the session of that year under the guidance of the then Post-master General, the Hon. Sidney Smith.

The amendments which he proposed to introduce would be seen by the copies of the act which hon. members had had placed in their hands and which he would shortly consider. The House was indebted to the hon. member for West Huron (Mr. Ross) and the hon. member for West Middlesex (Mr. Waterworth) for having from time to time directed the attention of the House to the fact that the present jury law was working oppressively to the municipalities by reason of the heavy expenditure which was entailed by its administration The machinery of the present Jury Law was complicated and cumberous. The system being an involved one, it was impossible to make the law absolutely simple. The objects to be attained and the large number of men to be dealt with, in connection with the selection of jurors from all the counties required elaborate machinery, and every part of that machinery must work harmoniously with the rest that it may not render the Act unworkable. The difficulty in framing a measure of this kind was first, in securing the presence on the panel of men whom all would acknowledge as fitted for the position, and secondly, in providing machinery that would accomplish the end desired, and at the same time fit in with that which now existed. He thought it might fairly be said that the Jury Law in this Province had worked with comparative smoothness, had secured fair trials and had given reasonable satisfaction had indeed, in that particular, proved itself equal to any system under any known code of jurisprudence. The amendments proposed, therefore were designed with a view to lopping off some parts which had rendered it unwieldy and expensive to the municipalities that were charged with the responsibilities and expense of working it. As the House was aware, the selection of jurymen was made in the first instance in each town or township by the Mayor or Reeve, the Assessor and the Township or Town Clerk, who met at a certain statutory period and chose the names of qualified persons which were to be returned. There was no qualification definitely settled by the Act, and among the municipalities there was no generally recognized method of determining what that qualification should be. No two Township Clerks, so far as he knew, had been in the habit of using precisely the same means of arriving at what the qualification actually was. That qualification was ascertained under section six which was as follows :

"The amount in respect of which a person is qualified and liable to serve as a Juror, shall, by the Selectors of each Township, Village or Urban ward be determined by the relative amount of property for which the person is assessed on the assessment roll of the Township, Village or Urban ward of which he is a resident inhabitant at the time of the annual selection of Jurors, and the mode for ascertaining the same shall be as follows, that is to say : The names of one half of the assessed resident inhabitants of the Township, Village or Urban ward, which remain after striking from the said roll the names of all persons entirely freed and exempt or disqualified from serving as Grand or Petit Jurors under any of the provisions of this Act, shall be copied from the assessment roll of such Township, Village or ward, commencing with the name of the person rated at the highest amount on such roll, and proceeding successively towards the name of the person rated at the lowest amount, until the names of one-half of the persons assessed upon such roll have been copied from the same, and the amount for which the last of such persons is assessed upon the said roll shall be that which qualifies every resident inhabitant of such Township, Village or Urban ward or renders him liable to serve as such Juror.

To comply with that section literally, it would be necessary to make a search throughout the whole assessment roll to find the name of the person assessed at the highest figures, then the second, third and so on, as provided by that section. That, he apprehended, was never done, and, as each clerk had his own way of determining the amount of qualification, widely different results were arrived at. In securing returns upon this point from the various municipalities he had endeavored to obtain figures from counties representing all sections of the Province. The table he had before him covered eleven counties. In the County of Huron the minimum qualification ranged from $150 to $2500 in different municipalities, with an average qualification of $951.66; in Frontenac from $40 to $400, the average minimum qualification for the county being $203.46; in York the average minimum qualification was $1244.44, the amounts varying from $200 to $1600 and so on. The townships in these various counties from which returns have been obtained numbered 128, and the average minimum qualification of these 128 townships was $600.72. The villages, 43 in number, showed an average minimum qualification of $451.80. The town average minimum qualification distributed among 28 towns from different sections was $435.00. Five cities also had been taken, in which the average minimum qualifications of all the wards were as follows:—Toronto $984.44, Hamilton, $682.85; Brantford, $760.00; Kingston, $600 and London $460 or an average of $685.46. The average minimum qualification of both towns and cities taken together was $479.71. It had been thought that it would much simplify the Act if a medium figure could be determined on which could be fixed as the Juror's qualification, in each of these classes of municipalities, but, as would be seen by the figures quoted, this would require careful examination to determine what that figure should be. It had been thought that an amount somewhat less than the average in each case should be fixed so that no one might fairly be said to be excluded, who had at present the requisite qualification. It should not be inferred that the standard of the Jurors would thereby be lowered, for the process of selection prescribed would rectify that. It widened the basis of selection somewhat, but a little care on the part of the selectors would obviate any ill result which could possibly flow from that. By this enlargement of the circle of those qualified, they would reach a class of intelligence which had not before been available, which had in fact under the operations of the present law been practically excluded from exercising the high and important functions of Jurors. The qualifications in cities would necessarily be higher than in towns villages or townships, therefore the present Bill provided as follows :—

"Unless exempted, every person residing in any County or other local Judicial division in Ontario, who is over the age of twenty-one years, and in the possession of his natural faculties, and not infirm or decrepit, and who is assessed as owner or tenant for local purposes upon property, real or personal, belonging to him in his own right, or in that of his wife, of the value of not less than six hundred dollars in Cities and four hundred dollars in Towns, Incorporated Villages and Townships, shall be qualified and liable to serve as a Juror, both on Grand and Petit Juries, in Her Majesty's Superior Courts of Common Law, having general Criminal or Civil jurisdiction throughout Ontario, and in all Courts of Civil or criminal jurisdiction within the County or other local judical division of the County in which he resides."

Under the present law, magistrates were exempted from serving upon juries in the inferior Courts, and upon petit juries at Assize and *Nisi Prius*. A class numbering about six thousand and composed of the most intelligent men in the Province was thus disqualified. There could be no good reason why these men should not be called upon petit juries in the Superior Courts. He would himself have felt very much inclined to make them eligible to serve upon grand and petit juries in the Inferior Courts, but when it was considered that they were part and parcel of the Court of Quarter Sessions, it would be quite plain they could not in part compose the jury. But while the Inferior Courts would not have the benefit of their presence upon juries, their eligibility to serve in the others would free a certain class of men now placed upon Petit Juries in the Superior Courts and leave them free to serve in the Inferior Courts. Thus, though they would not have the benefit of the magistrates they would have the benefit of the presence and counsels of those whom the magistrates displaced.

MR MEREDITH—Why not make only two jury lists for both courts.

MR. HARDY—Had desired to do this as it would somewhat simplify the process of selection, but when it was desired to have magistrates upon petit juries it would be seen that for reasons already given this would be impossible. There was no great difficulty practically in working with four jury lists, though it added somewhat to the complexity of the proceedings. Another feature which would strike any one familiar with the working of the jury law, was the very large number of names sent up from each municipality as compared with the small number selected and placed upon the jury list, and the still smaller number actually drafted for service upon juries. He had returns upon that point from sixteen counties. In 1878, in the County of Simcoe there were 3426 names sent up to the Clerk of the Peace, tabulated, entered on the jurors roll and submitted to the county selectors. They chose 384, leaving over three thousand names either untouched or rejected, and of this number only 264 were actually called upon during the year to serve upon panels of jurors. In Huron 3765 names were sent up—but 384 were selected, and but 286 were drafted by the Sheriff for actual service. In Wellington 3907 were sent up, while but 384 were selected and 288 drafted; in Bruce the number sent up was 4431, selected 384, drafted 283, while in York 6471 were sent up, but 864 were selected and 860 drafted. These figures without giving other instances would show that there was much waste of effort and time and a large expenditure by the municipalities without any corresponding result. He then proceeded to read the relative numbers of other counties in the same year, showing that in the sixteen there was a total number of names sent in to the County selectors of 44,988, of whom there were selected 6373, the total number actually drafted being 5134. The average for each County would thus be :—total returned 2812, selected 398, drafted, only 321. It would be seen thus that the cost to the whole Province of selecting Jurors was unnecessarily large, and it was advisable to introduce some scheme which would simplify the process of selection. The scheme he had endeavored to elaborate in this Bill would, he thought, materially aid in that result, and would relieve the various County Councils throughout the Province, from a large portion of their present expenditure. The Bill provides that the county selectors shall meet at a period anterior to the meeting of the municipal selectors, and, taking the voters lists for a basis shall carefully go over the names, and decide what number of Jurors will be required for actual service in that year, and shall apportion them among the various municipalities according to the voting population of each. They will then direct that three times the specified number shall be sent up from each municipality, and from these they will make their selection. The selectors for each municipality will each begin their selection from the list at a different letter of the alphabet, the letter being fixed and determined upon by the county selectors at their first meeting. So far as possible, under this Bill, the first year the selectors for each municipality would have a different letter of the alphabet to begin with, and in future selections each would proceed with the letter at which they left off. This plan would operate in this way. Supposing the county selectors decided that 288 jurors would be the number required for the year, three times this number of names, or 864, instead of 2800 or 3000, would be sent up by the local selectors. Supposing that out of the 288, one locality is allotted 50 as its number, 150 names would have to be sent up, which would be chosen in the following manner :—Twice the number required, (or in the case mentioned, 300) would be taken in rotation from those qualified; then these names would be gone over and two-thirds of them selected, eliminating those least qualified to act, leaving 200; a ballot would then be taken on the selection of the actual number required, namely, 150 out of the 200. He thought it well to recognize the ballot in making choice of these names so as to present some safeguard against any attempt at packing the Jurors' rolls. If an attempt were made to pack a Jury, it would be frustrated by the means taken of making a choice. It might be said that no such attempt has been made in the past, but no one could say that it would not be made at some time in the future, and the wise legislator would pull down no safeguards without erecting new ones in their places. This simplification of the process of selection would save a great deal of expense to the municipalities, as well as to the various counties, and was in the interest of economy. Taking the years 1875, 1876 and 1877 the total average cost of Grand and Petit Jurors to the various County Councils per year in the Province was $138,462 71. The amount paid to Jurors was $100,164.21, summoning Jurors cost $13,703.81, and the amount paid to the county selectors was $5,144.69. The other items of which this amount was composed could only be estimated, but he had consulted persons who were in a position to give information with regard to them and had arrived at the following results :—Clerks of the Peace in 37 counties at $350 (which he considered a low average) $12950, and the primary selectors of 650 municipalities $10 per each municipality, or a total of $6500, thus making up the total before given, or an average of $3742 per annum for each County. Any amendment to the present law which would tend to reduce this expense might fairly be considered as in the right direction. Having provided for the return of a certain number of jurors (which would be on an average about 864 for each County) another element came in. The bill provided that the county selectors should not only determine the number to be sent up each year, but they would also fix the number of the panel to be returned to each Court. It would be noticed that the Clerk of the Peace was not by the Bill made one of the county selectors. In 1858 the person occupying this office was not generally a practising lawyer, and might properly form one of the County Board, but now as a rule he was a lawyer practising in the Courts and was usually the County Attorney. He might therefore be interested in the formation of the jury list—not necessarily so, but there was a temptation. The Bill provided that he should be present at the meeting, but should take no part in selecting names and in case of a tie the County Judge would have two votes.

It was proposed to limit the number of Jurors, for when the Jurors Act was originally framed all civil cases were tried by jury, there was no County Judge's Criminal Court and Police Magistrates had not their present summary jurisdiction, so that there was then a necessity for a larger panel. The largest number required for the Sessions, except perhaps in the County of York would be 48 Petit Jurors besides Grand Jurors. There were, however, not more than seven or eight counties which would require that number of petit jurors for the Sessions, and there were perhaps eleven that would not require more than 24. At the Assize probably seventeen counties would require a panel of 48, leaving twenty which would not require more than 36. It was provided that while the county selectors determined the number of the panel to be returned, power was given to the Judges who issue the precepts to direct that a greater or lesser number shall be summoned than are called for by the resolution. It would require a certain amount of observation and experience before the largest benefit could be secured from this clause of the Bill. Power is also given to the County Judge, after the precepts are issued, to require the attendance of an additional number of jurors to provide for the trial of capital felonies or other weighty criminal offences, or the Judge himself, either before or during the sittings of the court, may require a larger number to be returned. It might be objected to this duty being left in the hands of the county selectors, but upon the whole he considered that he had surrounded the exercise of this duty by them with sufficient conditions and limitations and their actions were so much subject to revision at the hands of the judge that a dead lock would be unlikely to occur. Where the challenge is exercised, jurors might be summoned from the body of the Court under the Dominion act of 1869 so that ample means would be found for supplementing the panel. That section of the Act which provided that not less than 48 jurors should be selected was by this Bill repealed, leaving it with the County authorities themselves to reduce the number to 36 or to 24 as might be deemed sufficient for the purposes of the particular Court. He was aware that some persons familiar with these questions were of opinion it would be better to abolish the second selection. What the precise objection to county selectors was he was not in a position to say. Some said they were a useless expense, and others that they had the power to pack a jury. It was in 1858 that this system of county selectors was instituted as it now exists. Prior to that, by the Act of 1850, the Clerk of the Peace selected the names from the assessment rolls and sent them to the Sheriff, who selected and summoned the panel. Subsequently it was enacted that the magistrates in Quarter Sessions assembled should make the selection from the list furnished by the Clerk of the Peace, but in 1858 the present system was introduced. Although it had been strongly urged upon him by some hon. members that it was inadvisable to continue the second selections, he apprehended that it would be found impossible to work our present system efficiently without continuing that Board. They were not an expensive part of the machinery as they cost but $139 per county on an average, and under the system proposed, it was thought that this cost would be reduced by about one third. When dealing with matters of such importance to the community an expense of $100 per County was not of very serious import. As to their packing juries, he did not think this charge could be fairly laid at their door. There would not be so good an opportunity to pack a jury as if the selections were left to the Municipal selectors to make an open selection instead of one by ballot. There might be great objection to allowing two or three irresponsible men to sit down quietly in their office and make this selection openly. From the fact of their occupying the position they did the county selectors would be persons of high character, and the knowledge that their action would be reviewed by a body of intelligent men, who would act as a check upon the municipal selectors There were but two alternatives—the one to place the whole selection in the hands of the municipal selectors who would make their selection openly and by a simple choice of names, or on the other hand to preserve the use of the ballot at the primary selections. It has been thought unsafe entirely to abandon the ballot, and it had been preserved in this measure in a modified form. It will be obvious to any person acquainted with the mode of selection that so long as the ballot is preserved, the second selection is an important factor in making the panel an intelligent one. Upon the County Board there would nearly always be found men of different shades of opinion who would be a check upon each other. Notwithstanding all that had been said against the county selectors, he believed they performed important functions in connection with our Jury system, and he had therefore in this Bill provided for their continuance. The other feature of the Bill was that relating to Grand Juries. The subject of their abolition had been referred to in addresses by learned Judges from time to time, and had formed an interesting topic of discussion in the press of the country and elsewhere. He was himself of opinion that the Grand Jury was an important and useful feature of our jury system, and, in the best interests of the country, should not be abolished. If it were abolished some other instrument performing like functions, would require to take its place, and it was quite possible that other instruments might not work with as much satisfaction. It was a very old branch of our criminal jurisprudence; was in fact one of the institutions hoary with age—yet covered with respectability—ripe in years yet fresh in youth, which had been perpetuated through all changes and law reforms in England, and had been bequeathed to us almost untouched in its simplicity, and he thought he might add in its pristine purity. It had both in this country and in the old land, whence we derived it, performed its functions faithfully and intelligently, and while it had handed over to the tender mercies of the law the law-breaker and the criminal, it had often stood as a shield and bulwark of defence to innocence and patriotism. It might fairly be claimed for it that it had in this country performed its functions conscientiously and intelligently at a cost, which had not, upon the whole, been disproportionately burdensome. What other system could be devised in substitution for it, that would challenge public confidence in a like degree! He confessed that as yet he had failed to find that problem satisfactorily solved by the advocates of its abolition. It would not do to trust the work to the prosecuting Attorney, as it would be to his interest to send up for trial all persons sent up by the magistrates, and the same observation would apply to Queen's Counsel, who might for the time being be prosecuting. It would require to be entrusted to some regular officer, and that would involve payment to him by salary or otherwise. In that case would the work be more economically or more efficiently performed? or might not the annual charge upon the municipalities be greater than that of the Grand Juries. But whatever might be said as regards its abolition, he thought it would be conceded that it might, without disadvantage be modified in the interest of the public, both with regard to the despatch of business, and from an economical stand-point, and that without interfering in any way with its entire efficiency. The proposition was to reduce the number from 24 to 13 and to provide that seven might find a true bill instead of twelve. This would enable the panel to be formed with less trouble and expense and would, at the same time, perhaps embody as much intelligence as a larger number.

As yet, both sides of the question had not been argued—and the people have heard but one side, that favouring its demolition. It had not yet reached that advanced stage when the defenders of the Grand Jury as an institution had thought it necessary to come to its defense; but he ventured the opinion that when it came to be fully argued before the people, if the necessity for that arose, public opinion would speak out strongly in its defense. He was of opinion that the surest way to preserve an institution good in itself was to eliminate that which was objectionable from it, to reform the institution itself, not destroy it. The average amount per annum paid to Grand Jurors in the years 1875, 1876, 1877 was $23,044, and to petit Jurors $77,153,-01, or a total of $100,197,55. In the case of Grand Juries a saving of eleven-twenty fourths was proposed to be made, or a net sum of $10,-562.08, and in the latter one-fourth, or $19,288.25 being a total saving in these items alone of $29,850.33.

MR. MEREDITH—Does that include the cost of summoning?

MR. HARDY said that it did not. The additional cost of summoning Grand Jurors was $4,445.04 upon which an additional saving would be effected of $2,087,89. He was aware that the question would be raised as to the power of the Legislature to deal with the question of Grand Juries as proposed. He was not in a position to pronounce with certainty how far those powers extended, as the case prepared for submission to the Supreme Court had not been argued. As would be observed by hon. members, he had divided the Bill into two parts: one, containing the amendments over which he was inclined to think the House had full power, and the other, those concerning which the power of the House is not so well ascertained. He was inclined to think the reduction of the number who had power to find a Bill from 12 to 7 was as a matter of procedure not within the power of the House. It had been stated by the Hon. the Attorney-General last session, that a case had been prepared for submission to the Supreme Court to determine how far, with regard to this question, the jurisdiction of this House extends. It was found impossible to secure an argument of the question early in the year, for the Dominion Government were about going to the country, and the new Government had not yet been able to give their attention to the question. The decision of the Supreme Court would, when obtained, finally settle the question. Part one might now be enacted by the House and Part two be brought into effect at any time by the proclamation of the Lieutenant-Governor. The savings each year proposed by this measure might be fairly estimated for each County and for the Province generally, as follows :

On the amount paid to Grand and Petit Jurors $807.22 per County or a total of $29,850.33 for the entire Province—on cost of summoning Jurors $117.58 per county or $4352.-08 throughout the Province. The amount paid to selectors in each county would, he thought, be reduced by one-third or $46.35 or to the Province $1714 90; by the reduction of the number of names returned, each County would be benefited to the amount of $133.44 and all the Counties $4937.28. It would be evident that the smaller counties would not profit so much under this head as the larger ones. On Sheriffs' certificates, the saving would average $40 for each County or $1480 for the Province. Upon Certificates to selectors the saving for the County and Province respectively would be $15 and $555. On Records, the additional fees payable to the County would be in the Superior Court $29,-03 or $1074 for the Province and in the County Courts on the same $32.32 in each County or $1206 00 for the Province, thus aggregating a total saving each year to the Province of $45,169.59 or on an average for each County of $1220.94. From these figures would have to be deducted the one fourth cost of a full panel of 48 petit jurors, which would be required at Assize, in perhaps 17 counties $4976.00. This would leave a net annual saving of $40,193.09 to the Province, or an annual average to each county of $1086.44. It might be said that a full panel of 48 jurors would also be required in some counties at the General Sessions in June and December. That would, no doubt be found to be the case, but he was inclined to think there would be found as many counties where the panel required would be but 24 and this would stand as an offset against the others, and no deduction should therefore properly be made from the proposed savings on that account. The foregoing figures are exclusive of the decease in the municipal or primary selections which would be considerable but which he had no means of correctly estimating.

He did not pretend to say his measure was a perfect one or as comprehensive as it might have been, but he submitted it was in the right direction, and proposed to deal with a question which had of late been growing in importance and attracting the attention of the most intelligent men connected with the administration of our municipal affairs. He invited criticism—friendly criticism. He promised hon. gentlemen opposite as well as hon. gentlemen on his own side of the House that any suggestions they might favour him or the House with, with a view to the improvement of the measure, would receive every consideration at his hands and at the hands of the Government. If the measure met with the approval of the House and became law, he thought he might fairly claim that it would do much towards relieving the counties of a considerable portion of the heavy burden now borne in connection with the administration of Justice, and he thought that any measure dealing with any of our popular institutions and which, while not disturbing them or destroying their influence or efficiency, yet contrived to relieve the people of each county in the Province of taxation to the amount of nearly $1100.00 per annum and the Province to the extent of over $40,000.00 per annum would not only meet with the acceptance of the people but they would hail it as a substantial measure of Law Reform.

The honorable gentleman resumed his seat amid loud cheers.