

is told. He does not go away; he stays until called.

Mr. C. A. WILSON: Until when?

Mr. DOHERTY: Until the panel is exhausted, and then the Crown begins over again and will have to call that juror.

Mr. C. A. WILSON: And then he goes on the jury.

Mr. DOHERTY: Yes. That is why I say that if you summon sixty jurors the time will come a great deal quicker when the Crown will have to take the man it "stood by" than if you summon 250 jurors.

Mr. C. A. WILSON. No.

Mr. DOHERTY: If your panel be 250 jurors, as it may be, supposing I am the first man of the 250 and I am ordered to stand by, the Crown will have to call, and stand by the other 249, if it likes, before it will have to come back and call me again. Therefore, if I am the first man of sixty the chances of the prisoner to compel the Crown to call me, notwithstanding its "stand-by," are immensely greater than they would be if I am one of 250. The matter is so obvious that I need not elaborate it. That was the situation created not alone by the legislation of Manitoba as combined with our provision in the Criminal Code, but that was a situation that existed as regards five of the nine provinces before the legislation in Manitoba.

Mr. MACDONALD: Does the minister say that in any province in the Dominion, at the opening of any court, there have been provided 250 jurors who might be stood aside?

Mr. DOHERTY: I do not know of a case in which there were 250 jurors. What I am pointing out is that the legislation makes it possible for that number to be summoned. Why is this discretion given to the court? I am making no complaint against legislation which empowers the judge to summon the necessary number of jurors, because there may be conditions that require it, as in the particular case that was referred to.

Mr. PUGSLEY: The minister says that discretion is given to the court. Is any discretion left with the court when their powers are limited by reason of special cause having to be shown?

Mr. DOHERTY: There is discretion in the determination whether there exists the special cause.

[Mr. Doherty.]

Mr. PUGSLEY: That is not discretion; it is finding as to the fact.

Mr. DOHERTY: The hon. gentleman will observe that this clause does not define any particular fact or facts which are to be found as justifying it; it leaves that for the court itself. I think my hon. friend will realize, if he thinks it over, that he did not grasp what the requirements of special cause are. He spoke as if special cause meant special cause why an individual should be set aside. What the law requires, is special cause why in a particular case the Crown should be given greater latitude than 48.

Mr. PUGSLEY: What would be that cause?

Mr. DOHERTY: I was coming to that. The hon. gentleman, in giving an illustration where this would work badly, described a case providing precisely the special cause that would justify the change. He spoke of a case where on account of strong public feeling there might be very great difficulty, indeed, in getting a fair and impartial jury. He thought there might be danger of not getting a fair trial if the number was limited to 48. Now the provisions about extending the number are pretty much on the same footing as the provisions under which a court can order a change of venue.

Mr. CARVELL: Then what is the necessity for this legislation?

Mr. DOHERTY: Under the present legislation a judge, even if he thought it was an outrage and there was no reason for it, would have to sit back impotent on the bench and see the Crown stand by 150 men. This legislation is to place in the power of the judge the opportunity of seeing that no abuse occurs, and I may say that in endeavouring to give power to the judge to prevent abuse I have this afternoon brought on my own devoted head a torrent of about as unjustifiable abuse as I think it ever was my misfortune to listen to. There is no use in my protesting what my motives are.

Mr. CARVELL: You are on record.

Mr. DOHERTY: There are minds so constructed that if there are facts and circumstances that make it possible that a man might have acted on a vile motive, those minds immediately conclude to the vile motive.

Mr. PUGSLEY: Who is the minister hitting at now?