

I am hardly prepared to say that the latter view is not the true one.

The certificate seems certainly intended by parliament for the benefit of the jurymen, and the sheriff is compelled to give it upon demand. That the latter officer may not be compelled to work for nothing he is allowed 20 cents for every certificate given to any juror of his having served.

The juror is not bound to ask for it, nor is the sheriff I think bound to provide it unless asked for.

It would seem an unsafe principle to introduce into practice that whenever the law allows a party to get a certificate in a cause, or in any thing connected with legal proceedings, that the official who is bound to give it if required, may always take it for granted that it will be required, prepare it beforehand, and require payment from some public fund on which the burden is cast by law, if the officer be required to do the work.

I think the applicant fails on this part of his case.

I now turn to the disallowed mileage items.

The case made by the sheriff is that he put in the affidavits of his bailiff, stating the number of miles travelled to make such service.

He gives copies of them, he states that the Quarter Sessions examined them, that the bailiff examined them, that his evidence was to the same effect as his affidavits, but the court decided on striking off from one account 111 miles, and from another 17 miles, not specifying how many miles were taken from each service.

He also produces affidavits from two of the justices in Quarter Sessions advocating his view of the reasonableness of his claim.

His counsel rested chiefly on section 164 of the Jury Act, which is as follows:—

"Upon proof by affidavit, &c., of such several services having been executed, or in the case of the sheriff of such travel having been necessarily performed in going to effect the service of such summonses, the affidavits being accompanied with a detailed account showing the number of miles actually and necessarily travelled in going to serve each juror, (so that at the end of the service the officer summoning the jury shall only be entitled to mileage for the number of miles actually travelled,) and upon the account being properly audited, and an order of the Court of Quarter Sessions being made for the payment thereof, the treasurer shall pay," &c.

It is conceded that the auditing of the sheriff's account justly pertains to the Court of Quarter Sessions. I assume that in making such audit the court acts judicially and not merely ministerially. As an inferior court we can of course compel them to audit, but where they do actually audit, examine, and pass judgment upon the account, disallowing part of the mileage claimed, and allowing the rest, I cannot see my way to the right to review their discretion. To do so would be of course to transfer the duty of audit, that is of any audit in which any discretionary power rested from the Quarter Sessions to this court.

The very statements made by the applicant of the kind of proof he offered, and the course taken by the court in orally examining his bailiff as to the services, to my mind justify the action of the Legislature in vesting in a local court, presided over generally by the county judge, and required to have a certain number of members always present, the duty of examining into the accuracy of the claims made by officials on a public fund. The members of such a court, from local knowledge, ought to be specially qualified to sift each claim for mileage, and to ensure due protection to the country treasurer.

I cannot enter into any discussion as to the peculiar accuracy or inaccuracy of the disputing parties, in disposing of the question.

No principle of law is suggested to be involved in the decision.

Assuming that the Court of Quarter Sessions act judicially in auditing these accounts, I must further express my regret at the production of affidavits from two of the functionaries there presiding, to aid an application against the decision of their coadjutors.

This part of the claim also, in my opinion, fails.

It remains for me to consider the charges for copies of panels.

No explanation has been offered in the papers before us, of any grounds on which these items were rejected.

Two copies are demanded for the Court of Assize, six copies for Courts of Quarter Sessions and County Courts, and in another account six copies of panels of grand and petit jurors for Quarter Sessions and County Courts.

Hardly aware of the view taken by the Court of Quarter Sessions on these claims, I must merely express my opinion, formed from the statute.

Under section 59 of the Jury Act, the Courts of Assize and Nisi Prius, and Sessions of the Peace and County Court, issue precepts to the sheriff for a competent number of grand and petit jurors. By section 60, the sheriff may return the same panel of petit jurors for the Quarter Sessions and County Court, when the same day is appointed for their sitting. By section 75, the sheriff shall to each precept return a panel. The names of the jurors contained in the proper jury list for the year, whose names shall be drafted from the list in manner after provided. Section 84 directs the sheriff, on his return to ven. fac. on precept, under authority of which the panel is drafted, to annex a panel to said writ or precept, containing the names, &c., of these drafted in such panel, and shall transmit one copy thereof to the clerk of the clerk of the peace for the proper county, and another to the clerk of the crown and pleas in her Majesty's Court of Queen's Bench at Toronto, or to the deputy clerks of the crown, as the case may be.

Then section 161, giving the tariff of sheriff's fees, provides for each panel of jurors, whether grand or petit, returned and summoned by him in obedience to any general precept for return of grand or petit jurors for any sittings, &c., of Assize and Nisi Prius Sessions of the Peace, or County or Recorder's Court, respectively, under this act, \$4.

Sub-section 2. For copies of such panel, to be returned to the offices of the Superior Courts of Common Law at Toronto, each \$1.

It seems to me that the propriety of the charges must rest on these clauses.

A difficulty occurs from the relative wording of clauses 84 & 161.

By the first clause (84), having annexed the panel to the precept (apparently without reference to the court from which it issues), the sheriff is to send one copy to the clerk of the peace of the proper county, to the clerk of the Queen's Bench at Toronto, or to the deputy clerk of the crown, as the case may be.

Now, if this clause stood alone, it might be assumed that only two copies of each panel annexed to a precept should be returned by the sheriff—one to the office of the clerk of the peace for the county, and if in York and Peel to the clerk of the Queen's Bench, and if in an outer county to the deputy clerk of the crown.

In no other way can I understand the peculiar wording, "as the case may be."

But the tariff (section 161), after allowing the sheriff \$4 for every panel, grand or petit jurors, returned to any general precept for either superior or inferior courts, proceeds thus:

"For copies of such panel, to be returned to the offices of the Superior Courts of Common Law at Toronto, each \$1."

Now, these words would appear to intimate that a copy of every panel for Assizes and Quarter Sessions, and County Court and Recorder's Court, is to be sent to the Queen's Bench and Common Pleas at Toronto.

It is not easy to understand the object of the Legislature in making any such provision for the inferior court panels, even if considered necessary as to the assize panels.

This reading, if adopted literally, would compel the sheriff, on every panel, from whatever court, to send one copy (under clause 84) to the clerk of the peace, and one to each of the superior courts, or three copies of each panel. But the only fee allowed by the tariff for copy of panel, is for copies to be returned to the offices of superior courts in Toronto, and his right to charge any fee whatever must depend on the language of the tariff.

At the Assizes there are two panels for grand and petit jurors. Thus he would seem to be entitled to one dollar for a copy of each for the Queen's Bench and Common Pleas in Toronto—\$4 in all.

The same fees for copies would be allowed in the Quarter Sessions and County Court jury panels, as there would be three panels—thus, six copies.

As the act is drawn, I hardly see any other manner in which I can construe it.