

II.—*Observations on the Law relating to the Qualification and Selection of Jurors, with Suggestions for its Amendment.*—By Constantine Molloy, Esq., Barrister-at-law.

[Read Tuesday, 16th May, 1865.]

I PROPOSE in this paper briefly to direct attention to the expediency and necessity of some amendment being made in the law with reference to the qualification and selection of jurors; and, with that view, to submit some suggestions to the consideration of this Society.

The law on this subject is principally contained in the Jurors' Act, 3 & 4 William IV. ch. 91, which is an Act to amend and consolidate the laws relative to Jurors and Juries in Ireland. This statute was enacted in 1833, just one year after the passing of the Irish Reform Act; and, as it was found expedient in 1850 to adopt a new standard of qualification for the elector, so also is it necessary now to fix some new qualification for the juror. As the law at present is, having a lease for his holding is an indispensable part of the juror's qualification, except in one or two classes of jurors who form a very small portion of the whole; and whether, from the disinclination of the landlords to grant or of the tenants to take leases for their holdings, the persons holding by lease have of late years in this country been reduced to a very small number, so much so, indeed, that it will soon be very difficult if not impossible, in many counties to procure a sufficient number of persons duly qualified to serve as jurors; and hence the necessity for some change in the law.

The first section of the Jurors' Act prescribes the juror's qualification. He must be a man between the ages of twenty-one and sixty, resident in the county in which he is qualified in respect of property; and those who are qualified to serve as jurors in counties in respect of property may be divided into three classes: Firstly; every man having in his own name, or in trust for him, within the county in which he resides, £10 by the year, above reprises, in lands or tenements, or in rents issuing out of any lands or tenements, or in lands, tenements, and rents, taken together, in fee-simple, fee-tail, or for the life of himself or some other person or persons. Secondly; Every man who shall have within the county in which he resides £15 by the year, above reprises, in lands or tenements, held by lease or leases originally made for an absolute term of not less than twenty-one years, whether the same shall or shall not be determinable on any life or lives. Thirdly; Every resident merchant, freeman, and householder, having a house or tenements in any city, town, or borough, of the clear yearly rent of £20—such city, town, or borough not being a county in itself.

These three classes comprise all the persons who are qualified to serve as county jurors in any of her Majesty's courts of record in Dublin, in all courts at the assizes, and on grand juries and petty juries at the quarter sessions. But in counties of cities, and counties of towns, in addition to the three classes already mentioned,

there is a fourth, namely—every resident merchant, freeman, and householder, having lands, or tenements, or personal estate of the value of £100. These also are qualified to serve as jurors in any of her Majesty's courts of record in Dublin, and all courts at the assizes for such county of a city or county of a town.

The names of all persons who are qualified and liable to serve as jurors in each county are to be inserted in what is called "The Jurors' Book," and that record is made out in this way: The clerks of the peace in each county, within a week after the Midsummer Quarter Sessions in each year, deliver to the collectors of grand jury cess for each barony a precept requiring such collectors, within a month, to make out and deliver a true list of all persons in their respective districts of collection who are qualified and liable to serve as jurors according to the act. These lists are left open to public inspection for three weeks in the offices of the clerks of the peace, and are afterwards submitted to the justices assembled at the special sessions to be held in October; and the justices are empowered to examine and revise the lists, to insert the name of any qualified person who has been omitted, and to strike out the name of any person who is not qualified or liable to serve, or who is disabled by lunacy, imbecility of mind, deafness, blindness, or other permanent infirmity from serving on juries; and when the lists have been so revised and confirmed, the justices are directed to cause one general list to be made out, containing the names of all the qualified persons arranged according to rank and property. This general list is then delivered to the clerk of the peace, who causes it to be truly and fairly copied into a book to be by him provided for the purpose; this book is called "The Jurors' Book." It is delivered to the sheriffs, and from this jurors' book the sheriff is to select the persons whom he summons as jurors.

It is obvious that this plan of casting upon the cess-collectors the duty of ascertaining who are qualified to serve as jurors is a defective one, as the cess-collectors have not the means of adequately performing that duty. It is no part of their business as cess-collectors to know the tenure upon which each cesspayer holds the land in respect of which he pays the cess. That involves an inquiry into the private affairs of the cesspayer which the latter, misunderstanding the object of the collector's inquiry, may regard as a piece of impertinent curiosity on his part and so refuse to give him any information; or if he happen to understand the collector's object, and be a person anxious to avoid the trouble of having to attend at the assizes or sessions as a juror, he may deny that he has a lease; or, again, if he be a person anxious for the little importance which he imagines the fact of serving as a juror at the assizes would give him, he may pretend to the collector that he has the requisite lease. But in neither case, whether he altogether withholds information, or knowingly and for the purpose of misleading the collector gives wrong information, can he be punished; so that it is next to impossible for the collectors adequately to perform their duty in this respect. And if any person would take the trouble of examining the jurors' book for any county with which he happens to be well

acquainted, he will find that while it contains the names of several persons who are not qualified, it omits the names of others who are.

Now this defect in the mode of ascertaining who are qualified to serve as jurors arises from the law requiring a lease for life or term of years as part of the qualification of those who must always in this country form the great bulk of the jurors—namely, the occupiers of land; and that part of the qualification might well be dispensed with. There is no magic in the parchment of a lease; the possession of it will not render its fortunate holder a more intelligent or impartial juror than he would be if he had the land without the lease. Furthermore, as the occupiers of land who now hold by lease are very few in number, and are yearly still further decreasing, there arises a great necessity for dispensing with a lease as part of the qualification; and unless some change of this kind is made, the administration of the law by trial by jury will be attended with great difficulty, owing to the impossibility of procuring a sufficient number of persons qualified to serve as jurors. A difficulty of this kind has already occurred in one county, where the administration of the criminal law at two successive quarter sessions was for the time brought to a stand-still; and I may refer to this as an example of what will probably occur again and elsewhere if the law is allowed to remain as it is at present, for the cause which produced the difficulty to which I refer is not local, but general. Formerly, letting by lease was quite a usual tenure in Ireland, but now it is the exception instead of the rule. The modern and improved plan of estate management, which every year is becoming more general, is not to give leases, but to oblige the tenant to enter into a species of agreement which is little if at all better than a mere tenancy at will. Whether such a course is calculated to encourage industry and promote improvement is foreign to the present paper, but its effect on the system of trial by jury is well worthy of consideration.

The Barony of Geashill is one of the four baronies that constitute the Tullamore Quarter Sessions district or division, in the King's County; and from a Parliamentary Return, printed by order of the House of Commons in 1863, it appears that this Barony has an area of 30,874 acres, and a population of 4,562 persons; that 176 persons were qualified to vote for members of parliament in that year; and of persons rated to the relief of the poor there were as follows: at £10, and under £20, 138; at £20, and under £50, 94; at £50, and under £100, 31; at £100 and upwards, 261. Yet in this vast territory, with so many persons in it who in point of social position and intelligence are in every respect qualified to serve as jurors, it so happens, owing to the peculiar qualification required by law, that there are only two persons who possess that qualification, and whose names appeared on the Jurors' Book for 1859, '60, '61, '62, and '63; and I may add, of my own knowledge, that these two persons are not liable to serve as jurors, for they are, each of them, over sixty years of age. A similar state of things, though not to the same extent, prevails in the other baronies, the number of persons qualified to serve as jurors has become very small, and the result has been that a serious difficulty has occurred to which I will now

refer, as it shows the great necessity for some change being made in the law as to the qualification of jurors.

In the month of August last year a cattle dealer was robbed of a large sum of money, in fact all his capital; the money was afterwards found concealed in a stable, and a man charged with the offence was brought before the magistrates, who sent the case for trial to the next Tullamore Quarter Sessions, which would be held in October, and they took bail for the appearance of the accused. When the Sessions came on, the accused, for some reason or other, did not wish to be tried at that sessions, and as the Crown would not consent to a postponement, he effected his object by exhausting the panel by his challenges, so that a jury could not be had to try the case, and the trial had to be postponed to the following January Sessions, and the accused stood out on bail in the mean time. But at the January Sessions the accused again succeeded in exhausting the panel by his challenges, although the sheriff had taken care to have every available person on the jurors' book summoned; yet the number of qualified persons in the district was so limited, that after deducting the persons summoned on the grand jury, and those challenged by the prisoner, a full jury of twelve did not remain, and the Crown was obliged to bring the prisoner to trial in another quarter sessions district, a proceeding that was attended with considerable expense, and is not altogether free from doubt as to its legality. Besides, the failure in having a trial at the October sessions inflicted a great hardship on the prosecutor; it seriously interfered with his livelihood, for almost all his capital lay in the money that had been stolen, and this the police were obliged to retain in their hands, as it would be necessary to have it produced for identification at the trial; so that the result of the unsatisfactory state of the jury laws, so far as the poor cattle dealer was concerned, was that he was deprived of his capital from October to January.

A change in the law as to the juror's qualification is therefore not only expedient, but necessary, and I think an amendment dispensing with the lease as part of the qualification, and rendering every man between the ages of twenty-one and sixty residing in any county, and whose name appeared on the rate-books as the occupier or lessor of lands or premises in such county rated to the relief of the poor at £25 and upwards, qualified to serve as a juror in the county in which he resided, would be attended with great advantage. In the first place, raising the qualification from a freehold or leasehold interest of £10 or £15, as at present, to a rating of £25, would secure a class of jurors superior to the present one. It may be objected that this would be too high a qualification, and would confine the jurors to a small number, that would not be sufficient for jury purposes, and that in fact the remedy would be as bad as the disease. But I do not anticipate that such would be the result. I think that the number of persons qualified under the new system here proposed would be more than sufficient for all the purposes of trial by jury. I think that such a change in the qualification would have the same effect on the number of persons qualified to be jurors, that the Parliamentary Franchise Act of 1850 had in increasing the

number of electors : and such a change in the qualification would be attended with this further result, that it would so increase the number of jurors that the sheriff would no longer be obliged, as he may be at present, to summon the same persons to every assizes and sessions ; and that a juror, having attended at a sessions and assizes, would not be required to attend again at an assizes or sessions during the same year. Any person in the habit of attending the courts in Dublin, or at the assizes or sessions in the country, must have observed that it is almost always the same persons who are serving on the juries. Beyond all question, it is a great hardship on these persons to be always called on to serve as jurors, while others equally competent, and who in justice ought to bear part of the burden, are never required to serve. This anomaly, which in a great measure arises from the necessity that exists at present for summoning the same persons, would be removed by the increase in the number of jurors that would result from the change in the qualification which I have suggested. The duty of serving as a juror could be divided, and each juror would not be required to attend at more than one assizes and one sessions in each year. This advantage is secured to jurors in England by the English Jury Act, the 6th Geo. IV. ch. 50. By the 42nd section of that statute a man is exempted from being again summoned for a certain period, which in some of the shires is so long as four years, and in none less than one year. And in this country, with regard to juries in the Civil Bill Court, it is provided by section 100 of the Civil Bill Act, that no person shall be summoned or compelled to serve on such juries more than twice in one year, or who shall have been summoned and shall have attended any jury at the assizes or any court of nisi prius, or at the quarter sessions, within the six previous months. The advantage enjoyed by jurors in England should be conferred upon jurors in this country, and the sheriff should be rendered liable to a penalty in case he again summoned a juror within a certain period, unless he had the order of a judge or chairman of a county, who should be empowered, in case it became necessary to summon the juror again within such period, to give the sheriff an order to that effect.

The law with reference to the qualification of special jurors also requires amendment. By the 24th section of the Jurors' Act, the sheriff or under-sheriff is required, within ten days from the delivery of the Jurors' Book for the current year to either of them, "to take from such book the names of all such persons as are sons of peers, and of all baronets, knights, magistrates, and of persons who have served or been returned to serve the office of high sheriff or grand juror at the assizes, and of all bankers and wholesale merchants who do not exercise retail trades, and of all traders who are possessed of personal property of the value of five thousand pounds, and of the eldest sons of such persons respectively." This duty is always performed by the under-sheriff, who very frequently is a perfect stranger to the county, and has had no connection with it previous to his appointment. Yet under this section he is expected to perform a duty which requires an intimate knowledge of the position,

relationship, and circumstances of the several persons whose names appear on the Jurors' Book. The Jurors' Book itself may show him who are the sons of peers, baronets, knights, magistrates, and bankers, for these particulars may appear on the Jurors' Book; but how is he to ascertain what persons have served or been returned to serve the office of sheriff or grand juror at the assizes? I believe no such record is preserved. Or again, how is he to ascertain who is a wholesale merchant not exercising a retail trade? or who is a trader possessing personal property of the value of five thousand pounds? or again, what persons on the list are the sons of any of the several classes already mentioned? It is impossible for the sheriff to be able to ascertain those particulars, or adequately to perform the duty expected of him under this section. The present qualification for a special juror should be repealed, and there should be adopted in its stead a rating qualification of, say—in counties £100 and upwards, and in counties of cities and towns £50 and upwards.

The persons qualified under this proposed system would always be easily ascertained by the official whose duty it would be to make out the jurors' lists. An examination of the rate book would at once show who they were, and when a person ceased to have the necessary qualification, it would be at once known, and his name could be struck off instead of being allowed to remain on the list, as it is in too many instances at present.

The advantages of a rating qualification as a substitute for the present one are obvious, and I think that the amount of the rating which I have suggested would answer all purposes. But before that or any other amount is finally adopted, it should be ascertained how many jurors such an amount would supply; lest if too high a rating should be fixed upon, the number of persons qualified under it would be insufficient.

There is a strange anomaly in the Jurors' Act with reference to want of qualification as a ground of challenge, for which it is declared by the 20th section to be a good cause of challenge to a common juror. It is expressly provided that it shall not extend in any way to a special juror. This difference ought to be removed, and want of qualification as a cause of challenge should apply to the special as well as to the common juror.

At present the sheriffs are in the habit of summoning too large a number of jurors to the assizes. As far as I have been able to learn, the jury panels at the assizes usually contain from one hundred and sixty to one hundred and eighty or two hundred names. This is a number far beyond what is required, and some limit should be put to the number of jurors which the sheriff under ordinary circumstances would be empowered to summon. Formerly he returned two panels of jurors at each assizes, one for the Crown Court, and the other for the Record Court. It was discretionary with him how many he would summon to the Crown Court provided he returned a competent number, but he was restricted as to how many he would summon to the Record Court, for by the 12th section of the Jurors' Act it was enacted that the number of jurors in any panel for the trial of all issues at the assizes or sessions of *nisi prius*

should not be less than thirty-six nor more than sixty, unless by direction of the judges appointed to hold the assizes, who were thereby empowered to direct a greater or less number to be returned. This 12th section, however, was repealed by the Common Law Procedure Act of 1853, and since then the sheriff returns only one panel for both courts. The rule which formerly prevailed as to the record panel ought to be re-enacted, and the sheriff restrained from summoning an excessive number of jurors, by declaring that the panel should not contain less than say sixty or more than one hundred, unless a judge who should be empowered to make such an order whenever it became necessary had directed a greater or less number. Such a panel would be amply sufficient, and would prevent the abuse that at present exists of unnecessarily summoning a large number of persons to an assizes where their services will not be required.

There is one other suggestion which I would offer, namely, that the mode of calling the jurors should in both courts be assimilated; at present it is different. In the Crown Court the jurors are called in the order in which their names appear on the panel, but it is otherwise in the Record Court—there the jurors are called by ballot. By the 19th section of the Jurors' Act, the name of each juror on the panel is to be written on a separate card and put together into a box provided for the purpose; and, when any issue is to be tried, the clerk is in open court to draw out twelve of the said cards, one after another, after having shaken them together, and if any of the men whose names shall be so drawn shall not appear, or shall be challenged or set aside, then such further number as shall make up the number of twelve shall be drawn who shall appear, and who, after all just causes of challenge allowed, shall remain as fair and indifferent,—and the said twelve men shall be the jury to try the issue. I cannot see any valid objection to this method being also adopted in the Crown Court; it would get rid at once and for ever of any objection founded on the panel being arranged in a particular way.

These are the observations and suggestions which I beg to submit for the consideration of this Society, and I have to apologize for the crude and imperfect mode in which they are presented.

In referring to what occurred at the Tullamore Quarter Sessions, I stated that the causes that produced that stoppage in the administration of justice were not local but general; and that what then happened would occur again and elsewhere, unless some amendment was made in the law. This statement has been confirmed by the proceedings at the very next Sessions for the county of Wicklow, as appears by the following extract from the *Irish Times* of 23rd June, 1865.

“Tinahely, County Wicklow, 21st June.

“At the Quarter Sessions here, this day, before J. W. Lendrick, Esq., Q.C., chairman of the county, four traversers were in attendance, charged with having obstructed a police-constable in the discharge of his duty, and on the Clerk of the Peace proceeding to call the

Grand Jury to consider the bills of indictment, Messrs. Burkitt and Clare, attorneys for the traversers, challenged the panel as containing the names of persons not qualified to serve as jurors; whereupon, as each grand juror was called, he was examined as to the tenure of his land under Lord Fitzwilliam, the owner of the entire division, and, all but nine having admitted that they had not any leases, the court decided that only those nine were qualified, and consequently the criminal business could not be proceeded with, as nine would not be sufficient to find a bill of indictment, and the traversers were discharged upon giving bail to keep the peace."

## DISCUSSION.

The CHAIRMAN (The Right Hon. the ATTORNEY-GENERAL) complimented Mr. Molloy on the ability he had exhibited in his paper, in treating so important a subject, and was glad that a gentleman of Mr. Molloy's abilities had taken up this important subject. In it he had clearly shown that a necessity existed for legislation on this question; and they could not but have observed the difficulty which had arisen from fixing the qualifications of jurymen at so remote a period. A change of circumstances manifestly pointed out a necessity for some alteration in the qualification, and it appeared to him that the question really to be considered was, what amount of rating would produce in the counties a sufficient and not too large a number of jurors, and at the same time supply a sufficiently intelligent class of men to discharge the important duties of jurymen. He conceived it would be well to postpone the discussion until after the reading of the next paper, which was of a kindred nature.

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### III.—*The Venue for Trials, Civil and Criminal.* By Mark S. O'Shaughnessy, Esq., Barrister-at-law.

[Read Tuesday, 16th May, 1865.]

To secure a full, fair, and impartial trial of such issues as, for the adjustment of personal disputes, or for the protection of public rights, it may become necessary to decide, is surely an object to which, in the interests of the public, none can be pronounced as superior.

That, for a jury, men should always be had in whom this great public trust may be reposed with confidence, there should be upon the face of the panel a body of men such as, by character and station, would be above imputation.

To know whether each locality in which trials may be had would afford a sufficient number of qualified persons, becomes then a necessary element in the consideration of the question as to the qualification of jurors; and to that question, therefore, the complement is, the consideration of the fittest locality in which trials should take place.