ONTARIO LEGISLATURE.

Third Parliament—Third Session.

LEGISLATIVE ASSEMBLY,
Monday, March 4.

The following is the conclusion of Monday night's debate:—

After recess,

ACT RESPECTING BRIDGES.

Mr. MOWAT introduced a Bill respecting bridges.

TRIAL BY JURY.

Mr. MOWAT resumed the discussion on this subject. He said that as he had addressed the House at length upon it last year, his remarks would be brief on the present occasion. He admitted that there was a good deal to be said in favour of the principle of the Bill, but all the reasons given in its support, he believed, were entirely theoretical. While it was a great innovation, there was really no practical grievance to be remedied by the change. He had a great respect for old institutions, and unless there were visible evils connected with them he would be slow to remove them. Instead of finding that any evils had resulted from the present system of unanimity of jurors, he had found that it was a great safeguard to the administration of justice. He did not agree with the mover of the Bill in repudiating the opinions of the judges in matters of legislation. On the contrary, it was their duty to consult the judges, and to avail themselves of their great experience; otherwise, they would be legislating blindly and not for the interests of the people. Our judges had the experience of both eminent advocates and of judges, and if there was any class whose judgment should be valued it was the judiciary. His hon. friend (Mr. Bethune) had the experience of an able advocate with a large practice, and by-and-bye, no doubt, he would also have the experience of a learned judge, but he (Mr. Mowat) would much prefer to accept the judgment of his hon. friend as a judge than his judgment now. It was a principle admitted by the hon. member himself that a jury in some cases was not the best tribunal, and it was their duty to see that the best practicable tribunal should be obtained for every class of cases. Sometimes an arbitration, sometimes a referee, sometimes a judge, and sometimes a jury, was the best, according to the particular case. The principle of the Administration of Justice Act, so far as it related to this matter, was that the judges could better determine what cases should be tried by a judge and what by a jury than anybody else. At that time the House had sufficient confidence in the judges to leave this matter in their hands, and he felt that the diffidence with which they had assumed the duty had now pretty much passed away, and that they were exercising wisely the discretion thus entrusted to them. The experiment which the country was now making deserved a longer trial than it had received (hear, hear), even if there was any doubt as to its utility. Perhaps after a little more experience the House would be able itself to decide what classes of cases should be tried by a judge and a jury respectively. He would be very glad to meet his hon. friend and others who supported this measure in a Committee and discuss it, but it wat too late to do so this session. The mover of the Bill had, however, accomplished a good deal by the discussion; he had found supporters on both sides of the House. When, by-and-by, the hon. member occupied a responsible position as a member of a Government, he might have a different understanding on the subject than he had now as a private member. He hoped the hon. member would not press the measure until he arrived at such a position, for which he was eminently fitted, and which he would fill with credit. (Cheers.)

Mr. BETHUNE remarked that he would prefer the Attorney-General's assistance to the Bill to his flattery to himself. All he had to say with reference to his remarks was that he had so strong an opinion in favour of this measure that if he were in the Attorney-General's place he should not hesitate to introduce it. (Opposition cheers.) This Bill was of necessity theoretical, and if that were an argument against it, it would apply to every reform introduced into the House. He could not see why twelve jurors were required to agree when it was notorious that twelve judges could not agree, and when seven of these judges were permitted to decide matters of fact as well as matters of law. In addition to the countries he had previously mentioned, New South Wales, Tasmania, South Australia, New Zealand, the Cape of Good Hope, and Jamaica had adopted the principle of this Bill. To meet the objection of expense, he proposed that the number of jurors should be reduced, by which he had no doubt the Province could save $100,000 a year. If juries were composed of seven or nine, 24 or 21 might be sufficient instead of 48 as at present. He was satisfied to let this question of unanimity rest entirely if the Government would reduce the number of jurors so far as criminal trials were concerned, a measure which he believed would receive the approval of any Minister of Justice of the Dominion. Personally, he had the highest respect for our judges, but he pointed out that the most eminent jurist in this whole Dominion was notoriously the worst judge of fact, and there had been many brilliant advocates who made poor judges. He had no thought in introducing this measure but to do his duty to the country, and he now left the responsibility of it with the Attorney-General. It was, of course, quite impossible to have the measure carried when the leader of the Government and the leader of the Opposition were opposed to it—(Opposition cries of "Try it")—but the responsibility of the matter had left his mind.

Mr. SCOTT said that when he last discussed this measure he was not prepared to judge how far the country was in favour of it. Since then he had discovered that there was a strong feeling in its favour, and he intended voting for the Bill.

Mr. FRASER said it struck him that the last section of the Bill, providing that a jury notice should not be dispensed with except upon an order made by a judge in Chambers, would have the effect of bringing additional practice to Toronto.

Mr. BETHUNE—Does the hon. gentleman mean to say that I have introduced this Bill to bring additional practice to Toronto? If he does, he had better so plainly.

Mr. FRASER meant to say that would be the effect of the section, and, as a country practitioner, he did not think it would be desirable. The jury notice, if struck out, should be struck out on application to the judge in *Nisi Prius;* that mode had been found to work well, and was less expensive than the mode proposed, which would necessitate a visit of the parties to Toronto. Cases of ejectment and of account, he believed, everybody would prefer to have tried by a judge, as one person could better deal with such cases than twelve. He had a great respect for the jury system, and he had not been able to see that judges tried cases better than juries. Applications for jury notices to be struck out had been made on the ground that twelve sworn men would not give a true verdict, a ground which would wipe out the jury system altogether. The Bill did not propose that jurors should be summoned in any different way from what they were now, nor did it propose to reduce their number; it simply was intended to do away with unanimity. But the effect of this Bill would be that if three jurors held out against the other nine, they would feel that there was no use of further discussion, for the nine could bring in a verdict in spite of them. The majority could say to the three, "If you three do not agree to a verdict, we shall just wait for an hour or so, and get in a verdict without you." The result would be that discussion would be stifled, the three would be coerced into agreement with the nine, and there would be unanimity after all. He could understand reducing the number of a jury to nine, but there could be no possible reason why the verdict of