

Take the provision assuring to a prisoner in the Province of Manitoba and in some districts in the Province of Quebec the privilege of electing to be tried by a mixed assemblage of French and English-speaking jurors; or that which appoints the manner and designates the requisites of the return of a panel to facilitate his option—can it be seriously doubted that both, in principle, directly invade the realm of constitution?

Or consider the opportunity provided for a view by the jury of the locus in quo—does not this afford a striking and clear presumption of their contributing to the constitution of the Court, as being the conclusive and supreme judges of the fact? The regulation of challenges, moreover, with the possible profound effects of error on the personnel of the jury—the risk of grievous reaction on the prisoner—surely reveals proceedings and suggests results that denote interference with the constitution of the Court.

Arguing, in conclusion, that any numerical impairment, equally with the entire deprivation of a jury to suitors, is matter of constitution, what shall be said of the Dominion statute regulating the practice on appeals to the Sessions, which, denying this safeguard to contestants, makes the judge exclusive arbiter of law and fact. In *Reg. v. Bradshaw*, 38 Q.B. 564, the court held that the provision of law prevailing when the appeal in that case was heard, that the chairman of the Sessions might proceed to a trial, where neither party had demanded a jury, carried with it no notion whatever of a trenching upon constitution.

But suppose there had been involved in the application the question of the unqualified refusal of a jury—the governing principle of the present procedure on appeals to the Sessions—what would then have been its disposition? And if the Dominion may rightfully extinguish the jury in a criminal appeal, why may they not as reasonably cause it to disappear, in toto, from the system of trial at the Assizes or Sessions? What stronger or greater warrant have they, in truth, for abolishing the jury, or for lowering its efficiency, diminishing its strength, than they have for decapitating a member or two of the Court of Appeal, or of the Divisional Court?