

Jurors Act, R. S. O. 1897 ch. 61, and for default of 3 of the jurors so summoned and returned, the names of 3 talesmen were added and annexed to the panel, in the manner prescribed by sec. 103 of that Act, as amended by 5 Edw. VII. ch. 13, sec. 7, one of such talesmen being a person who had been summoned and returned as a juror upon the petit jury panel of jurors for the trial of criminal causes at the said Court; and the indictment upon which the prisoner was so tried and convicted was found, as it was said, by 7 of the grand jury so constituted.

It was contended for the prisoner that sec. 662 (2) of the Criminal Code, in so far as it enacted that a true bill might be found by 7 grand jurors, instead of 12 as heretofore, was ultra vires of the Dominion Parliament, and that sec. 103 of the Jurors Act, as amended, in so far as it authorized the adding of talesmen, or of talesmen taken from the petit jury panel, was ultra vires of the Ontario legislature.

It does not appear at what stage of the proceedings these objections were taken. Britton, J., was asked, but declined, to reserve a case upon them, and now Mr. Mackenzie, on behalf of the prisoner, renews the objections and moves, pursuant to sec. 744 of the Code, for leave to appeal. . . .

I think we ought not, by granting leave, to intimate any doubt of the validity and regularity of the proceedings. The provincial legislature has enacted, by sec. 66 (3) of the Jurors Act, that the number of grand jurors returned to serve at courts of oyer and terminer and general sessions of the peace shall be 13 and no more, and no one will now argue that this is not a matter relating to the constitution of the provincial Courts, and therefore within the purview of the local legislature. On the other hand, ever since the decision of *Regina v. O'Rourke*, 32 C. P. 388 and 1 O. R. 464, we have in this province consistently held that the selection and summoning of jurors were not matters relating to the constitution of the courts: *Regina v. Cox*, 2 Can. Crim. Cas. 207; but came within sec. 91 (27) of the B. N. A. Act, as relating to procedure in criminal matters in respect of which Parliament alone had power to legislate. We have, however, also held that Parliament had effectively exercised that power by adopting the provincial law on the subject, and by legislating by relation and reference to that law as it does in sec. 662 of the Criminal Code: *Regina v. O'Rourke*, supra.