

cil, which this decision overrides, viz.: *Queen v. Watson*, 17 A.R. 221-251; *Regina v. McDonald*, 31 U.C.R. 337; *Regina v. Dunlop*, 15 U.C.R. 118, and the judgment of MacMahon, J., gave on this particular act in the case of *Regina v. Toland*, 22 O.R. 505, deciding that 53 Vict., c. 18, s. 2, was *ultra vires* of the Ontario Legislature?

What is the result of this decision in *Reg. v. Levinger*? Does it not say in unmistakable terms that the nomination of a court for the trial of offences comes within s. 92, s-s. 14, of the British North America Act, and not under s. 91, s-s. 27, of the same Act? The respective powers of the Dominion and Provincial legislatures being laid down by this Act, the Dominion legislature has, according to this decision, been trenching upon the powers of the local legislatures. The Dominion legislature has no right to constitute the forum where offences against their laws may be tried, and consequently they have erred in saying that certain offences shall only be tried in Court of Oyer and Terminer and not before the Sessions, as they have done by c. 174, s. 4, by which treason, libel, murder, rape, and all offences under ss. 21, 22 & 23 of c. 162 are exempted from the jurisdiction of the Sessions. (See *Taschereau, Canada Criminal Acts*, 2nd ed., pp. 641, *et seq.*). A recent decision of the Supreme Court, however, (*Re County Court Judges of British Columbia*, *ante* p. 72), seems to us to be in antagonism with *Queen v. Levinger*.

The legislature had the power to enact such a law subject to the provisions of s. 94, which provides that such Acts shall only have force when enacted and adopted by the Provincial legislature. But have such Acts been adopted, and do chapters 48 and 49 of R.S.O. give the adoption required by s. 94 of the British North America Act? For my part, I do not see that these Acts give the necessary adoption required by said section of the British North America Act. Should this view be correct, and the law as laid down in *Queen v. Levinger* be sound, viz., that the nomination of the forum in which cases against the laws of Canada shall be tried is a matter of constitution of the court and not a matter of procedure in criminal matters, then the Dominion legislature has trenched upon the constitution of the courts unduly by the enactments of c. 174 and otherwise. Under s. 101 of the British above-mentioned North America Act, the Dominion has power to constitute additional courts.