

The *O'Rourke* case subsequently came before the full Court of Queen's Bench, 1 *O. R.*, 464, on a submission by the prisoner on a motion on a writ of error, allowed to issue on the fiat of the Attorney-General, to determine the objection theretofore strenuously though abortively urged in the Court of Common Pleas. On this second and much more exhaustive inquiry, it was, by the judgment of the Court, unhesitatingly conceded that criminal procedure was involved in the point advanced; the decision further adjudging the Dominion fully competent, by adoption, to utilize the machinery—the furthest they were thought to have gone, which the Local Legislature had furnished for controlling the preliminaries, looking to the perfecting of the jury as the guaranteed complement of the Court on the hearing of a civil action.

A singular feature of both arguments was that counsel for the Attorney-General of Ontario tendered the bold contention that everything discussed was within the domain of constitution.

One can well understand the position, where the sole difficulty is whether or not some procedure enacted by the Provincial Legislature has been recognized by the Dominion, with the purport and design of affecting their own criminal practice; but what of the situation where there are prescriptions by the Dominion that evince no such recognition—far-reaching sanctions, perhaps—as to which provincial law is altogether silent, probably because the usual course of trial by jury in a civil matter makes the distinctive treatment needless? Are they, apart from their tendency, to be always deemed procedure, or are they to be reckoned as inseparable from constitution?

It is interesting to observe that there are original directions of the Dominion Parliament, much akin in scope to those vitalized by them for criminal purposes—which came under review in *Reg. v. O'Rourke*, and which, by the ruling there, we must obviously class with procedure—notably the method for obtaining talesmen, empowering the Court, where a panel has been exhausted, to impress unwary and retiring citizens, irrespective of qualification, to precipitately serve as substitutes.