

tions ; and there is judicial support for the theory that the creative process, from being, through its transitional stages, intimately allied with procedure, in its outcome develops plainly the character of constitution. This view is, at least, strongly favoured, if not deliberately asserted, by the late Sir Adam Wilson, (then Chief Justice of the Common Pleas) when considering, as the President of the Court, en banc, the case of *Reg. v. O'Rourke*, (reported in the aspect then assumed, in 32 C.P. 388) a "cause célèbre" of the day, from the County of Halton.

The application which provoked his expression of opinion was in the nature of a Crown case, attempted to be reserved by the Assize Judge, upon the trial of the prisoner for murder. The ground of complaint was that the Dominion Legislature had, to the applicant's prejudice, improperly delegated an authority they alone possessed—that they had inexcusably and weakly abnegated the right of initiative in legislation, by enacting that all requirements of Provincial Acts relating to the qualification, selection and summoning of jurors to participate in a civil cause, should be applied to a criminal trial.

The Chief Justice, while agreeing with the majority of the Court, that the exception taken was not an appropriate one to be ventilated in a Crown case reserved, declared it to be his undoubted and firm belief that, though the incidents attending the formation and convening of the jury were unquestionably procedure, the moment these good men and true had assembled and were ranged in the box, they became as essential a factor in the constitution of the Court as the Judge himself. The dictum, after all, is not surprising, when it is learnt that even a constable, on one occasion, appealed to the Court (the grade, unhappily, has been forgotten) as a component atom in its constitution.

To employ as an illustration of this an incident of recent occurrence—in what relation to the Court would the negligent crier be held to stand, who failed, one afternoon, to announce the resumption of a sittings of the Assize Court ; and whose omission called for the re-swearing of a witness, who had been given the oath, in ignorance of the episode with its subverting possibilities ?