

of Her Majesty's subjects in the Northwest Territories, the Dominion Parliament could pass such an act as the Northwest Territories Act of 1880, giving power to try for treason, and in various ways altering the statutory rights of a man put upon his trial for that crime. For instance, it provided that he should be tried before two magistrates—one a stipendiary magistrate and the other a justice of the peace—and a jury of six persons, instead of by a judge and a jury of twelve; and it also limited his right of challenging jurors to six instead of thirty-five, as under the Act of William III. The contention would be that it was not competent for the Dominion Parliament, under the words of the Act of 1871, to make a law which took away from a criminal charged with treason, which was a crime against the State, the right to be tried by a jury of twelve men, whose verdict must be unanimous. The Dominion Parliament was itself the creature of statute, and it could do nothing more than the Imperial Legislature had authorized it to do; and the question was whether an Act of Parliament, which took away the right of a man to be tried in the way in which the law of the land said he should be tried, was an Act of Parliament necessary to secure either the due administration, the peace, the order, or the good government of the Territory.

The Lord Chancellor said it might be passed for the purpose, although it might not serve its end. It was not every Act of Parliament that did serve its end.

Mr. Bigham said it might be a provision intended for the purpose.

The Lord Chancellor asked whether that was not really the meaning of the words—made for the due administration?

Lord Monkswell said that the words administration, peace, order and good government necessarily implied the enforcement of the criminal law.

Mr. Bigham said that Parliament did not purport to create any new offence, or to alter the definition of treason in any way. All that it purported to do was to provide a method by which a person charged with the crime could be tried; and a different method from that under which he was previously entitled

to be tried, limiting the safeguards and the rights which he previously had.

Sir Barnes Peacock enquired whether it was necessary for good government that persons should be tried for crimes and offences?

Mr. Bigham—Certainly; but is it necessary for good government that a man should be tried by six jurors instead of by twelve?

Lord Hobhouse said that might be very desirable in a thinly peopled country. It was the case in India, and the Legislature were to judge of that.

Lord Esher enquired whether the word provision in the section included a statute.

Mr. Bigham—Certainly.

Lord Esher—Then they might pass an act for the peace, order and good government of the province. How could those words be limited?

Mr. Bigham said he should contend that unless the statute passed under the powers of section 4 of the Act of 1871 was necessary, or at all events conducive to the purposes referred to in that section, it was *ultra vires*.

Lord Esher pointed out that the word "necessary" was not in the section nor anything equivalent to it. The argument came to this, that although the statute was made with the intent and for the purpose of peace, order, and good government, yet it was *ultra vires* if the Privy Council thought it was not necessary.

Mr. Bigham—Or did not serve the purpose

Sir Barnes Peacock pointed out that the same words occurred in the Act relating to India under which the Penal Code and the Code of Criminal Procedure had been passed, and if they had the effect contended for no trial could take place in India. Every man who was convicted in India would have the same right to appeal from a sentence of death or transportation.

Mr. Bigham said he could only put the point as he understood it and as he believed it was put before the court below, that it could never have been intended that the Dominion Parliament should legislate with reference to a crime which affected the State in the way that treason did. The learned counsel then stated that he proposed to pass over the second and third points taken in the petition and deal with the fourth, which,