

KILLAM, J.—I concur fully in the conclusions of my brother-judges and in the reasons supporting the same, with the exception, perhaps, of holding somewhat different opinions from some of those expressed by the Chief Justice as to the effect of the subsection of the 76th section of the North-West Territories Act, requiring full notes of the evidence to be taken upon the trial, and as to the form of the charge in question. Were it not for the importance of the case, and that a mere formal concurrence in the judgments of the other members of the Court might appear to arise to some extent from some disinclination to consider fully and to discuss the important questions that have been raised, I should rather have felt inclined to say merely that I agree with the opinions which those judgments express.

What I shall add has been written after having had a general idea of the views of my brother-judges, but principally before I had an opportunity of perusing the full expression of their views, and with a desire to present some views upon which they might not touch, rather than with the idea that their opinions required to be differently expressed.

I need not recapitulate the facts of the case or the proceedings taken, and I will refer to the statutes less fully than if I were delivering the sole judgment of the Court.

The prisoner first pleaded to the jurisdiction of the Court before which he was arraigned, and to this plea counsel for the Crown demurred. The decision of the Court allowing the demurrer forms one of the grounds of this appeal. The judgment on this demurrer appears to have been based upon the decision of this Court in Easter Term last, in the case of *Regina v. Connor*, in which the prisoner appealed against a conviction for murder by a court constituted exactly as in the present instance. I was not present upon the hearing of the appeal in that case, and judge of the points raised only from the report in the *MANITOBA LAW REPORTS*. From that report it does not appear that the jurisdiction of the Court was so much objected to as the mode in which the prisoner was charged with the offence, it being contended that he should be tried only upon an indictment found by a grand jury, or a charge made upon a coroner's inquest. It seems, notwithstanding that decision, still to be open to the prisoner to question the power of Parliament to establish the Court for the trial of the offence charged against him. I mean that the point is not yet *res judicata* so far as this Court is concerned. Even if it were so, in the event of any new argument of importance being adduced by the present or any other appellant, it would be quite competent for this Court, though not for the Court below, to reconsider the decision.

The authority of the Parliament of Canada to institute such a Court, and particularly to do so for the trial of a person upon a charge of high treason, is now denied; and it is also contended for the prisoner that the statute was not intended to provide for the trial of a charge of that nature. It has been argued that the powers of the Canadian Parliament are delegated to it by the Imperial Parliament, and that they must be considered to have been given subject to the rights guaranteed to British subjects by the Common Law of England, Magna Charta, the Bills of Rights, and many statutes enacted by the Imperial Parliament, among which rights are claimed to be the right of a party accused of crime to a trial by a jury of twelve of his peers, who must all agree in their verdict before he can be convicted, and the right of a party accused of high treason to certain safeguards provided in connection with the procedure upon his trial. It is also argued that high treason is a crime *sui generis*, that it is an offence against the sovereign authority of the state; and that it must be presumed, notwithstanding the provisions of the British North America Acts and the other Acts giving the Parliament of Canada authority in the North-West Territories, that the Imperial Parliament still reserved the right to make laws respecting high treason and the mode of trial for that offence; and also that the provisions of the Act 43 Vic. c. 25, s. 76, are inconsistent with enactments of the Imperial Parliament, and therefore inoperative. There can be no doubt that the Imperial Parliament has full power to legislate away any of the rights claimed within Great Britain and Ireland. Its position is not in any way analogous to that of the Legislatures, either State or Federal, under the Constitution of the United States, and the American authorities cited by counsel for the prisoner can have no application.