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# THE LAW JOURNAL.

## *OCTOBER*, 1857.

## THE ACTS OF LAST SESSION.

*The Right of Appeal in Criminal Cases.*—(20 Vic., Cap. 61.)

It is a common saying that "second thought is the best thought." Often men resolve to do things which in cooler moments they heartily repent. Many a verdict has been pronounced that the jurors would give worlds to be able to re-call and re-consider. How often have men lost their property,—nay, their lives owing to mistaken impressions produced on the minds of jurors? How often have the same results followed a want of preparation or an unexpected turn in the course of testimony? It is the wisdom of the law to preserve life, liberty, and property. It is the design of the administration of the law "to attain the justice of the case." The practice of granting new trials in cases where property and civil rights are at stake is of the greatest antiquity. The policy of the practice has never been questioned, but on the contrary, been the subject of just admiration. It is a graceful acknowledgment of human frailty, and an unmistakeable proof of the laws anxiety to do wrong to no man. It is that feeling defined in the Institutes of Justinian as "constans perpetua voluntas jus suum cuique tribuere,"—a constant and perpetual will to render to every one that which belongs to him. But of all rights appertaining to men in the social state that of property is much inferior to both *liberty* and *life*. It having been ascertained that for "the doing of complete justice between man and man" in civil cases, an opportunity of re-considering verdicts was essential, so in criminal cases for a like purpose the like opportunity is desirable. Jurors, judges and witnesses are quite as liable to err in a criminal as in a civil case. To admit the "soft impeachment" in the one instance and deny it in the other, is simply childish and absurd. Every verdict involves one or more propositions of fact, each having its legal consequences. It is for the jury, under the direction of the presiding Judge as to the law, to find the facts of a case, which if found in the general form of "guilty" or "not guilty" which as usually happens is the verdict in a criminal case, may be the doom of the accused. For the prevention of the consequences of mistakes in *law* there has been in Upper Canada since 1851 a Statute allowing the reservation of points of law arising out of criminal cases for the deliberation and opinion of the full Courts—upon the adjudication of which either for or against the accused is the judgment to stand or be reversed: (14 & 15 Vic., cap. 13). Judges, however, are not less likely—indeed not so likely to err as jurors. Hence the propositions of fact, either owing to prejudice, indifference, or want of comprehension, may be untruly found. Were the finding under such circumstances to be conclusive, the law would be an instrument of wrong and not the arbiter of right. Hitherto such, much to the reproach of our system of jurisprudence, has been the state of the law. No longer shall it be so—thanks to the legislature of last Session.

The Act, in its preamble, takes no pains to conceal the defect, but boldly and plainly recites that "by law the right of appeal on convictions for criminal offences is *allowed* only on questions of law reserved by the Judge, by whom such offences are tried:" (20 Vic., cap. 61). This is the mischief—now for the remedy. "Where *any person* shall be convicted before any Court of Oyer and Terminer or Gaol Delivery or Quarter Sessions of any *treason*, *felony* or *misdemeanor*, *such person* may apply for a new trial to either of the Superior Courts of common law where such conviction has taken place before a judge of either of such Courts, or to such Court of Quarter Sessions when the conviction has taken place at such sessions upon any point of law or question of fact *in as full and ample a manner as any person may now apply to such Superior Court for a New Trial in a*