this historical account," said the venerable member of the Privy Council; "and, if their lordships were to pursue it into details, it might not be difficult to show how irregular the course has been, and what anomalies, and even imperfections perhaps, still remain. But they need not do this; it is enough to say they cannot accept the conclusion; what long usage has gradually established, however first introduced, becomes law; and no Court, nor any more this committee, has jurisdiction to alter it; but, on the same principle, neither the one nor the other can, in the first instance, make that to be law which neither the Legislature nor usage has made to be so, however reasonable, or expedient, or just, or in analogy with the existing law it may seem to be."

Rejecting many suggestions which present themselves to our mind in favour of new trials in felonies, and as many or more opposed to an extension of the law in this direction, let us rather, as we have heretofore sought to do, cite authorities on the subject. Of scarcely less weight than a judicial opinion is that expressed by so able a writer on jurisprudence as Sir J. Fitzjames Stephen, who fully considered the present subject at the time of the celebrated case of Thomas Smethurst, of which he says, with pointed truth: "The trial at any time would have excited great public attention; and, as it took place in the latter part of August, after Parliament had risen, it excited a degree of attention altogether unexampled. The newspapers were filled with letters upon the subject, and one or two papers constituted themselves amateur champions of the convict, claiming openly the right of what they called popular instinct to overrule the verdict of the jury" ("General view of the Criminal Law of England," p. 425). The charge was murder by poison. There was reason to think that the scientific evidence on two important points was left in an unsatisfactory condition at the trial. Sir George Lewis, the then Secretary of State, referred the whole matter to the most eminent surgeon of the day—Sir Benjamin Brodie—who stated his opinion, founded by no means exclusively on medical or scientific reasons, that 'there was not absolute proof of the convict's guilt.' This opinion was submitted to the Lord Chief Baron Pollock, who had tried the case, and Smethurst received a free pardon." Deeming this result unsatisfactory for reasons given, Sir Fitzjames Stephen attributes it to defects in the law, and discusses what they are, and how they may be remedied. "Criminal and civil procedure," he says, "would be placed on the same footing by giving the Superior Courts the right to hear motions for new trials on the same terms in criminal as in civil cases. There are several strong reasons for not taking such a course. Important and true as it is that criminal trials are thrown into the shape of private litigations, it is equally true and important that they are in substance public inquiries." He asserts that a higher degree of evidence is required to warrant a verdict of guilty than (in general) to warrant a verdict for the plaintiff, asks, "How could a Court of law say in what cases the jury ought to have doubted?" and points out the "essential distinction between civil and criminal proceedings, strong as the outward resemblance between them may be. The object of the one is to give fair play to litigants in the attack and defence of their existing condition. The object of the other is to ascertain the truth. Granting new trials is well adapted to secure the first object, but has no tendency to secure the second." A more powerful argument, which we think discloses the cause why new trials for felonies have not been clamoured for centuries ago, is that, "in criminal cases, the Crown is bound by an acquittal as much as the prisoner by a conviction. After a verdict of not guilty, a man might leave the dock with impunity, boasting openly of having committed the foulest murder. After a verdict of guilty, he might be condemned and executed, though others might confess their guilt and be condemned and executed on that confession. This shows that, if the prisoner is to be allowed to move for a new trial, the same right ought, for the sake of consistency, to be given to the prosecutor; but there would be great objections to this. It would shock the sentiment which dictated the maxim *non bis in idem*, and on which, by our own law, the right to plead *autrefois acquit* is founded. Considering the suspense and distress of mind which a criminal prosecution causes, this sentiment is probably rational, though the rule which is founded