

served had not been summoned, Lord Ellenborough is reported to have said: "If we listen to such an objection, we might set aside the verdicts given at every assize, where the same thing might happen from accident and inadvertence, and possibly sometimes from design, especially in criminal cases." The defect, if any, in the trial in that case was probably such as would be cured by the verdict under sec. 21 of the Criminal Law Act 1826. It was formerly thought that in cases of treason, felony, and misdemeanour the court had power to order a venire de novo, even after verdict and judgment, on the ground of the misconduct of the jury: (see 2 Tidd's Practice, 922). On *Reg. v. Murphy*, sub nom. *Attorney-General for New South Wales v. Murphy*, 21 L.T. Rep. 598; L. Rep. 2 P.C. 535, the Privy Council held that in a case of felony, where the indictment is good, and before a competent tribunal the prisoner has been given in charge to a jury, in due form of law, empanelled, chosen, and sworn, and a verdict of conviction or acquittal has been returned, such verdict is final, and the court has no power to order a venire de novo. This decision was given in a case where the prisoner had been tried and convicted in New South Wales upon a charge of murder, and application had been made after verdict to the court for a rule for a venire de novo on an affidavit which stated that one of the jury had informed the deponent that the jury pending the trial had had access to newspapers which contained a report of the trial with comments thereon. Apparently, the power of the court, in its discretion to grant a rule for a venire de novo or new trial on the ground of misconduct of the jury, was assumed still to remain in cases of misdemeanour. The Privy Council, in *Murphy's* case, followed their previous decision in *Reg. v. Bertrand*, 16 L.T. Rep. 752; L. Rep. 1 P.C. 520, and the judgment of Mr. Justice Blackburn, in *Reg. v. Winsor*, 14 L.T. Rep. 195; L. Rep. 1 Q.B. 289. It would seem, therefore, that the Criminal Appeal Act, 1907, has not affected the right of the court to grant a writ of venire de novo in cases of misdemeanour, where there has been misconduct on the part of