At the trial, a young girl, Gertrude Dyson, was called for the Crown; she had seen the beginning of the fracas between the defendant and the deceased. The defence was, that the prisoner acted in self-defence on being threatened by the deceased with a knife. The girl swore that she did not see any knife in the hand of the deceased. No knife was found on the deceased when examined a few hours after his death. The girl had, on a preliminary investigation, sworn that she had seen a knife in the deceased man's hand; but she said at the trial that this was not true.

The jury rendered a verdict of manslaughter, and the prisoner was remanded for sentence.

An application was afterwards made to RIDDELL, J., on behalf of the prisoner, for a new trial or for leave to move the Court of Appeal for a new trial, upon an affidavit in which the girl Dyson swore that she did see a knife in the hand of the deceased, but that she had given the evidence she had at the trial because of threats.

T. C. Robinette, K.C., for the prisoner.

T. J. Agar, for the Crown.

RIDDELL, J., in a written judgment, said that he had no power to grant a new trial nor to grant leave to move for a new trial.

After a brief historical statement of the law and practice as to granting new trials in criminal cases, the learned Judge said that, when the Canadian Criminal Code was enacted in 1892—55 & 56 Vict. ch. 29—power was given on the refusal of the trial Judge to reserve a case for the convict—with the leave of the Attorney-General given in writing—to move the Court of Appeal for such a case: when a stated case should come before the Court of Appeal, that Court might order a new trial or make such order as it should deem proper.

Some changes had been made in the practice. The "Court of Appeal" in Ontario is now the Appellate Division of the Supreme Court; and there is no need for a convicted person to obtain the leave of the Attorney-General.

Nowhere is any power given by statute to the trial Judge to grant a new trial.

As to giving leave to move the Court of Appeal for a new trial, no such practice is known to the Common Law; and the sole statutory authority is to be found in sec. 1021 of the Code, R.S.C. 1906 ch. 146, which permits such leave only on the ground of verdict against the weight of evidence.

In this case, not only was the verdict not against the weight of evidence, but the whole evidence, with the exception of that of the