

MISCONDUCT OF JURIES.

In a recent appeal to the Criminal Appeal Court a conviction was quashed on the ground that the jury might have decided the case upon other considerations than those offered by the evidence which was before it. The foreman of the jury, during the course of the trial, had asked the prisoner's counsel whether it was intended to call evidence of character on behalf of the prisoner, with the object, as it afterwards transpired, of inducing certain of his fellow jurymen to concur in a verdict of guilty, which was the verdict eventually returned. This case serves to recall the powers possessed by the court to deal with verdicts given by juries which have been guilty of misconduct. It will be remembered that sec. 20 (1) of the Criminal Appeal Act, 1907, abolished writs of error and the powers and practice of the High Court in respect of motions for new trials and the granting thereof in criminal cases. Under the former practice, the King's Bench Division had power to order a new trial, after a general verdict for the Crown, upon indictments or informations for misdemeanour tried in that court, or on a record of that court: (Archbold's Criminal Pleadings, 23 ed., p. 291). Misconduct of the jury could be made the ground of an application to the court for a new trial in such cases. Although this power has been abolished, the Criminal Appeal Act, 1907, has not affected the right of the court to grant a writ of *venire facias de novo juratores*. Thus before verdict, the judge at the trial may, if a necessity for so doing becomes apparent, discharge the jury and order a fresh trial to be had before a new jury. For example, in the course of a trial, one of the jurors, without leave, left the jury box and also the court, whereupon the judge discharged the jury and ordered a fresh jury to be empanelled. This was held to be the only course that could have been with propriety adopted: (*Reg. v. Ward*, 10 Cox C.C. 573). If the case had proceeded to its end and the jury in question had given a verdict, the court would in its discretion have refused to order a *venire de novo*. So in *Hill v. Yates* (12 East. 229), where a new trial was asked for after verdict on the ground that a juror who had