practitioners will have to pay an annual contribution to the Law Society, under the authority of an Act passed last Session.

NEW TRIAL FOR FELONY!

To the Editor of the Lower Canada Law Journal:

In the case of *Regina v. Daoust*, reported in this month's number of the Law Journal, the decision seems in my humble opinion one which is to be regretted, inasmuch as it is universally acknowledged to be desirable, in all cases of criminal jurisprudence where there is not some express provincial statutory provision to the contrary, to follow the English precedents and thus keep the laws of the two countries, which relate to criminal matters, as much as possible alike.

Now altho' "it seems hitherto to have been assumed that no new trial could be granted in cases of felony,"* and even Russell in former editions states that it should not be granted; still the later decisions lie the other way, and in the fourth London edition of Russell, brought out last year by Charles Spengel Greaves Esq., Q. C., the opinion given by Mr. Justice Mondelet at Daoust's trial is maintained to be the correct one. At page 213 (Bk: vi. cap: 1,) of this edition it is laid down that "where the defendant has been convicted on an indictment either for felony or for a misdemeanor, a new trial may be granted at the instance of the defendant where the justice of the case requires it;" and most certainly if ever the justice of any case required it it was that of Mr. Daoust.

Speaking of this edition of Russell the "Quarterly Journal of Jurisprudence" for May 1866, (*London, Butterworths, 7 Fleet st.*) says—its "chief value is imparted to it by the editorship of Mr. Greaves, and for this work no one at the bar could present better claims. Some of the most important statutes that have been passed in late years, with the view of amending our criminal procedure and law were framed by his own hands." "In his editorship of this book he has done full justice to his eminent attainments and reputation." "We have in this book a safe and standard treatise on our criminal law."

In Welsby's fifteenth edition of Archbold (1862) the same thing is maintained, and it is there stated that "it was formerly *said* that no new trial could be granted in a case of treason or felony where the proceedings had been regular, but now the Court of Queen's Bench, when the record is before that Court, will in its discretion order a new trial in cases of *felony*, where evidence has been improperly admitted, or where the jury have been misdirected." And surely, if it is a principle that a new trial may be granted "where evidence has been improperly admitted," it is a good deduction from it, that a new trial may be granted where important evidence has been omitted from ignorance of its existence, as in the case under discussion.

The contrary opinion—that there can be no new trial in a case of felony—which Mr. Justice Drummond calls "the old law," was founded upon a *remark not a decision* of Lord Kenyon's, made in *R. v. Mawby, Bart., et al:* 6 *T. R.* 638, when, in granting a new trial for misdemeanor, he said, "In one class of cases indeed, greater than misdemeanors, no new trial can be granted at all," and this has since generally been looked upon as a statement of what the common law was held to be at the time; but Lord Kenyon did not give judgment upon the case of a new trial for felony, and, even if he had, might he not have mistaken the common law? How often do we find the decisions of the first jurisconsults subsequently over-ruled. Mr. Greenleaf has published a volume, compiled with great labour and perseverance, of "over-ruled decisions."

I make these remarks, Mr. Editor, simply because I hold it to be a desideratum that we in Canada should keep pace with the liberal and advanced views of modern English criminal legislators, and in the hope that should the question again be brought before our Courts it may obtain a reconsideration.

IVAN T. WOTHERSPOON.

Quebec, 10th August, 1866.

* Denison and Pearce, C. C. p. 281.