

nature having been adduced. The judge who presided at both of these trials, granted a motion for a new trial. At the next term, when the day for trial was about to be fixed, another judge was presiding, and he reserved the point, under C. S. L. C., cap. 77, sec. 57, as to whether a new trial could be legally had :—

*Held*, that the question was properly reserved under the statute.

*Held*, also, that a new trial after conviction of a felony cannot be legally had.

*Semble*, that the proper course to be taken by the defendant was to apply for a pardon ; but that the court would not pronounce any opinion upon this part of the case reserved, leaving the Crown Officer at liberty to take such steps as he should think proper.

The following case was stated by Mr. Justice Aylwin for the opinion of the judges, under C. S. L. C., cap. 77, sec. 57. (See 1 L. C. Law Journal, p. 70.)

"Upon an indictment for feloniously forging a certain endorsement of a promissory note, for the payment of the sum of \$300, with intent to defraud, and with a similar count, charging the defendant with uttering the said endorsement with intent to defraud, he was, on the 30th of March last, tried before the Honorable Mr. Justice Mondelet, at this court in Montreal, and found guilty.

On the 20th of April last, upon a motion, founded upon two affidavits (of which motion and affidavits, together with the indictment, copies are annexed), the learned judge ordered that the verdict should be set aside, and awarded a new trial.

On the 25th September last, Mr. *Ramsay*, on behalf of the Crown, moved that a day for the trial should be fixed. Whereupon, being of opinion that I had no authority to take a second trial, after the former verdict of guilty, I directed that the opinion of the Court of Queen's Bench, in Appeal, should be asked : first, whether a second trial can be legally had ; and, secondly, as to the course to be pursued, should there be no authority to take the new trial.

I have now respectfully to ask the opinion of this court, in respect of the premises, and have directed the defendant to be admitted to bail until the first day of the approaching term in appeal.

Montreal, 25th September, 1865."

MONDELET, J.—At the March Term, 1865, of the Court of Queen's Bench, at which I presided, Daoust was tried on an indictment for forgery of an endorsement on a promissory note. From the evidence adduced at the trial there seemed no doubt, and I charged the jury, as I never shrink from doing where my conviction is strong, to return a verdict of guilty, and the jury did so. The most important evidence was that of Desforges, who stated that he had never authorized the prisoner to sign his name. The prisoner was subsequently put upon his trial for forging the same name on another note, and this time the jury found a verdict in his favour, new evidence having been adduced, tending to show that the prisoner had been authorized by Desforges to sign the name. The prisoner now stood between two fires—between a verdict of guilty and a verdict of not guilty. Towards the end of the term, Mr. *Ouimet*, the prisoner's counsel, moved for a new trial on the first indictment, in order that the witness Legault, who testified that Desforges had authorized the prisoner to sign his name, might be heard. Mr. *Johnson*, who then represented the Attorney-General, said that, under the circumstances, he did not think proper to oppose the granting of a new trial. I, having presided at both trials, and being *au fait* with the circumstances of both, having no possible doubt that Daoust either believed himself authorized, or was really authorized to sign the name of Desforges, considered it not only justice, but an imperative duty, to grant a new trial. I wish to be clearly understood on this point. I did this, first, because an imperative sense of justice urged me to it ; and, secondly, because I believed the court had the power to do it. In the following (September) Term, Mr. Justice Aylwin, who was then presiding, reserved the case for the consideration of the full bench.

It will be understood that my conviction must be very strong when I still adhere to it, though I find four judges, for whose abilities I entertain such profound respect, differing from me in opinion. I start from this point : That the Court of Queen's Bench has the power to remedy any evil that comes before it, provided there be no law to the contrary. Starting from this point, I put the