Now if, as Dr. Lushington puts forward as the judgment of the Judicial Committee, that the legal signification of granting an Appeal is not simply an investigation of any legal questions that might have arisen, but involves an examination of the evidence, and the whole course of the proceedings on the trial—is this intended by the 41st Section? The express power given to the Court to grant *new trials*, would seem to imply an exercise of discretion, as on an investigation of the merits and dissatisfaction therewith, or on the ground that the conviction was unsatisfactory by reason of some irregularity in the conduct of the trial. If the whole proceedings are open to re-examination, can it be doubted that Appeals will be encouraged? And will not the Court appealed from be slow to refuse Appeals? If such an Appeal was not contemplated, should not the section be more carefully worded? If it is intended, is it not worthy of consideration that the present mode of proceeding is plain and simple; and judging from experience, has produced no inconvenience or injustice, and has never (that I am aware of) called forth in this Province, any individual or public complaint of a failure of justice in the improper conviction of a prisoner? If such a case should arise, there is always ready the prerogative of the Crown to interfere. This, in a proper case, I feel assured, never has been, and never will be invoked in vain.

It cannot be denied that it is an anomaly, that in a civil suit involving no great principle, and of comparatively trifling amount, a new trial can be obtained, when the same is denied in cases involving liberty, reputation, life and death. Theory is clearly with the appeal. The question is, are there practical difficulties of an insuperable character in the way. If so, there is overwhelming force in the observation, that "If the thing is impracticable, and can be obtained only with such injury to the administration of justice as to outweigh all the advantages which can be anticipated, we must put up with anomalies, and be content with that which in theory is imperfect and unsatisfactory, but which in practice works well."

In 1860, when the subject of establishing a Court of Appeal in criminal cases was before the House of Commons, Sir George C. Lewis presented the difficulties in the way of establishing a Court of Appeal in criminal cases, with much force and ability, and shewed that the opinions of a majority of the Judges were opposed to it, and that the practice of the civilized world went generally against it. From this speech I take the liberty of extracting some of these opinions. He says—

"Before the Committee of 1848 Lord Denman said—'What I would state in one word, as my objections to the general power, is, that there would be no antagonism; there are no adverse parties as in civil cases;' and that principle is explained somewhat more fully in the letter of Mr. Baron Rolfe, now Lord Cranworth:—'With respect to the inexpediency of any right of appeal in criminal cases, I beg leave to add, in addition to what has been stated by Baron Parke, that a new trial would very rarely indeed be practicable. In civil cases the plaintiff has a direct personal interest in the result of his cause, and when a verdict obtained by him is set aside, and a new trial is ordered, he is obliged, in order to gain his suit, and save himself from the obligation of paying the defendant his costs, to take proper steps for bringing all necessary witnesses to a second trial. But this is not the case in criminal prosecutions; a large proportion of prosecutors come forward only because they are bound to do so; the whole proceeding is rather a burthen imposed on the prosecutor, than a measure which he voluntarily adopts, for the sake of personal redress, and I conceive that in nine cases out of ten, when a new trial is ordered, there would be so much difficulty in getting the prosecutor and witnesses together that no second trial could efficiently take place.'

Sir George then says—"It may be urged, however, that while there is some ground for the distinction between the two classes of cases, there is still a great practical grievance to be remedied. Will any gentleman present take upon himself to affirm the frequency of wrong convictions by juries in criminal cases? If not, the whole groundwork of the proposed measure falls. I will quote (he says) the views of one or two eminent legal authorities on this point.

"Baron Parke, now Lord Wensleydale, when examined before the Committee, said—'I think that the complaints of the present mode of administering the Criminal Law have little foundation, for the cases in which the innocent are improperly convicted, are extremely rare. Some