

nical language, it is an application for a *venire facias de novo*. The first six grounds in support of the motion are really grounds, if well founded, for a new trial, and the whole motion was presented to the Court as simply a motion for a new trial. So far as the form goes, it is of little moment, for the grounds being for a new trial, it equally suggests the difficulty which at once suggested itself to my mind, or to whether such a motion could be adjudicated on by me here on the merits. On this point counsel were heard, and I have now to deliver the opinion of the Court on this preliminary point. In support of the jurisdiction, it was argued that Section 80 of the Criminal Procedure Act of 1869 only abolished the statutory regulations with regard to new trials, leaving the common law right as it stood, or as Mr. Clarke has put it in his useful work on the Criminal Law of Canada. "The Statutes authorizing the granting of new trials in criminal cases have been repealed, and now, throughout the Dominion, there is one uniform law, similar to that of England, on this point." It is further said that section 71, of cap. 77, C. S. L. C., gives to one or more Judges of the Court of Queen's Bench sitting on the Crown side, the power of the Court; and that it has been always so practiced. The cases of Notman, Coote and Daoust were mentioned in support of the practice.

In answer, it is said, at common law, in England, no such power exists in a Court of Oyer and Terminer and general gaol delivery; that the power, if it exists at all, lies in the Court of Queen's Bench sitting as a Court of Error, and, further, that Section 10 of the Criminal Procedure Act sweeps away by implication all right to a new trial, except for nullity.

It is not necessary for me to decide the larger question as to whether any new trial exists, except for cause of nullity in the former trial, for I am clearly of opinion that, sitting here, I cannot grant a new trial for any of the six causes first set forth in the motion. The most I could do would be, in my discretion, to respite judgment in order that you might have an opportunity to move the court *in banco* for a new trial. Section 71 evidently only refers to the full power of side of the court. This seems