Crompton, J. (p. 57), said: "I certainly am not able to say that in my judgment there is anything which appears on this record which has that effect, to prevent fresh process issuing. I think that an abortive trial of this kind is not a termination of the proceedings, however it has occurred, whether by the act of the judge, or by the act of the jury going away, as it was put at the argument—the act of the mob disturbing the proceedings."

Further, the same learned Judge says that the rule is that the jury ought not to be discharged unless there is some very strong reason, which, we think, is for the Judge to decide on, in favour of it. See also what was said by Blackburn, J. (pp. 64, 65). In the case of *Winsor* v. *Reg.* the whole question was again reviewed on writ of error, and the discretionary power of the Judge to discharge a jury was maintained, (L.R. 1 Q.B., pp. 390-6). The learned counsel for the plaintiff in error referred the Court to Mr. Bishop's work on Criminal law. It is to be observed, however, that the whole of Mr. Bishop's dissertation turns on the words of the amendments to the Constitution of the United States, art. 5: "nor shall any person be subject for the same offence, to be twice in jeopardy of life and limb." He then goes on to say that jeopardy begins when the full jury is sworn. This, he contends, is the jurisprudence in the United States. In answer to the objections of sickness, &c., Mr. Bishop gets over the difficulty by saying that as this is unforeseen the prisoner never was really in jeopardy at all, although he thought he was. One might as well say that a man who was acquitted was never really in jeopardy, and that therefore he might be tried again. If according to American law "being in jeopardy" means being on trial, the discharge of the jury, no matter from what cause, gives the accused a plea in bar, founded on the express words of the constitution, to every other proceeding.

Wade's case in 1 Moody has been especially referred to. It is said to be the nearest case to the present; but Wade was pardoned. No one ever suggested that the discharge of the jury before verdict was a bar to another trial, else the pardon would have been unnecessary. But we need not go so far a-field for precedents. In the case of *Reg.* v. *Derrick*, 2 Legal News, p. 214, on an indictment for feloniously forging, the jury were permitted to separate twice with the consent of the prisoner, and they gave a verdict, the irregularity not having been observed. On motion in arrest of judgment the Court reserved the question as to whether the trial were regular. We thought it was a mistrial; that the jury, having separated, could give no verdict; that the verdict was a nullity; and we directed that the prisoner should be tried as if no trial had taken place. We do not wish it to be understood for a moment that we do not accept in its fullest sense the doctrine, that when a jury is empanelled to try a prisoner they ought to give a verdict. It seems to us that this is the sequence of the rule that no one shall be twice tried for the same offence; but if from any cause the jury separate without giving a verdict, then the prisoner has not been tried, and the former imperfect trial is not a bar to further proceedings. We think this is equally true in felonies as in misdemeanors. It in no way wars with the rule of law laid down in *Reg.* v. *Daoust* (10 L. C. J., p. 221) that there can be no new trial in a felony. Still less do we wish it to be understood that we think courts should discharge a jury simply for lack of evidence, but we think there are cases in which it becomes the duty of the Court to discharge the jury, and one of these cases would be where it was manifest to the Court that a witness was spirited away, without any fault of the Crown, in the interest of the prisoner, and in order to defeat justice. We are, therefore, of opinion that the writ of error should be quashed, and that the prisoner be remanded.

Sir A. A. Dorion, C.J. It is not necessary to decide whether the discharge of the jury was proper or not. In the *Charlesworth* case the Court held that it is for the judge who presides at the trial to determine whether the occasion justifies the discharge of the prisoner.

Writ of error quashed.

F. X. Archambault, for the prisoner.

Mousseau, Q. C., for the Crown.

MONTREAL, Sept. 17, 1880.

Sir A. A. Dorion, C.J., Monk, J., Ramsay, J., Cross, J.

The Citizens Insurance Co. (defts. below), Ap-