for his apprehension was issued. These proceedings being ineffectual, Mr. Mousseau, on the part of the Crown, moved that the jury be discharged. This was on the 7th, and the Court adjourned until the 8th. On the 8th, Turner not having been found in the meantime, the Court granted the motion on the part of the Crown, discharged the jury and remanded the prisoner. The Attorney-General's fiat for a writ of error was obtained by the prisoner, and it is contended that the Judge of Sessions, who made these orders in the Court below, acted illegally in discharging the jury, that the separation of the jury without giving a verdict was equal to an acquittal, and that the prisoner could never be tried again.

If we were satisfied beyond all doubt that the Judge of Sessions had no right to discharge the jury, and that his discharging them because a Crown witness had failed to appear, was a complete bar to any further trial on this indictment, it would, perhaps, be competent for us to give the prisoner the relief he asks by the present proceeding. It, therefore, becomes important to decide whether the law is clear on this point, and how it stands.

I understand the argument urged on behalf of the plaintiff in error to be, that no one can be tried twice for the same offence; that after the jury are sworn they must give a verdict, and that if they are discharged without giving a verdict, this is an acquittal or equal to an acquittal of the prisoner. The learned counsel for the plaintiff in error, however, admitted one class of cases as an exception to this rule. They said if the separation was due to absolute necessity, or as they term it to the hand of God, the prisoner might be tried as if no trial had taken place. They also admitted as a further exception, the case where the jury could not agree. It seems that the case where the jury broke up of their own accord without the authority of the Court, as, for instance, when a juror went away unperceived, was also considered to be one of the cases which would have the effect of allowing the prisoner to be tried anew. And, finally, it was hardly denied that if a Crown witness disappeared owing to the manœuvres of the prisoner, the Court would be justified in discharging the jury and remanding the prisoner. But they say the Court cannot discharge the jury without proof, and without specifically putting it on record that there was evidence of collusion between the prisoner and the witness.

We are at a loss, amidst all these exceptions, to see the force of the rule relied on. We can perfectly understand that the law might lay down an inflexible rule such as the plaintiff in error contends for; but how such a rule can be gathered from a practice with so many exceptions is not so easily understood. We can also understand that writers on the law should lay down as a general rule that the jury once sworn should give a verdict, and the correctness of this doctrine is not destroyed by the existence of exceptions, which in no respect affect the absolute rule, that a man cannot be twice tried for the same felony, or for a misdemeanor, if once acquitted. It appears to us that this is all that can be drawn from what Lord Coke said. It is impossible to suppose that he did not know that in his time jurors were discharged, for Hale says that *nothing is more ordinary* than after the jury have been sworn and heard evidence, for the Court to discharge them for lack of evidence, and that this has been the course for a long time. Coke was therefore laying down in a few words the general rule.

But we have recent authority to guide us, in the case of *Reg.* v. *Charlesworth*, (9 Cox, p. 44,) insisted on by the counsel for the plaintiff in error. It was a misdemeanour, and a witness refused to be sworn to give evidence. The Court fined the witness and committed him for contempt, and the jury were discharged from giving a verdict. The Court set out the facts on the record, and the defendant obtained a rule calling on the Crown to show cause why judgment "should not be entered for the defendant, that he be dismissed or discharged of and from the premises in the information in this prosecution specified and charged upon him, and that he depart without delay in that behalf, and every the award of jury process, and all other proceedings in this prosecution should not be stayed." The case came on for hearing before Chief Justice Cockburn, Wightman, Crompton and Blackburn, JJ. The rule was discharged, not because of any objection to the form of the proceedings, but simply because the grounds set out were not a bar to further proceedings (Cockburn, C.J., at p. 52 to 53).