The Legal News.

VOL. IV. JANUARY 15, 1881. No. 3.

DISCHARGE OF JURY ON TRIAL FOR FELONY.

One result of the establishment of the *Legal News* has been that the decisions of our Quebec Courts, instead of never being heard of outside of the Province, as formerly, are now widely copied and circulated by our exchanges in the United States and Ontario, and the rulings on questions of general interest and importance are thus becoming well known to the profession at large. We take this in itself to be no inconsiderable advantage, for our Judges have thus the hope of more than local fame to animate them, and the criticism which may occasionally follow cannot have other than a wholesome influence. Among the numerous cases which have thus been rendered accessible to the legal world is *Jones* v. *Reg.*, 3 Legal News, 309, with reference to the discharge of juries before verdict. The *Criminal Law Magazine*, in reproducing this report, appends an interesting note, a portion of which we extract :—

"The allusion of Mr. Justice Ramsay, in his opinion in this case, to that portion of the fifth amendment to the constitution of the United States, which has been incorporated into nearly all of the state constitutions, and which declares, 'nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb,' suggests an inquiry as to the construction given to that expression of the constitution by the American courts. The cases in which this subject has been discussed, extracts from some of which are given below, show a decided conflict of opinion as to the proper interpretation of the phrase 'twice in jeopardy.' Many of the authorities, and particularly the United States courts, hold that it cannot be considered to mean more than the common law plea of *autrefois acquit*, and that it was placed in the constitution for the purpose of making more emphatic the right of the citizen to be secure from a second trial for the same offence; while others contend that unless it was the intention to go further than the common law maxim, the constitutional expression would be useless.

"The case of *People* v. *Goodwin*, 18 Johns. (N.Y.) 187, decided in 1820, was upon an indictment for manslaughter, where the jury had been discharged because they were unable to agree. Spencer, C.J., who delivered the opinion of the Court, says: 'What is the meaning of the rule that no person shall be subject, for the same offence, to be twice put in jeopardy of life or limb? Upon the fullest consideration which I have been able to bestow on the subject, I am satisfied that it means no more than this: that no man shall be twice tried for the same offence.' . . . After discussing the question whether the discharge of the jury amounted to an acquittal, and holding that it did not, and that the power to discharge existed in cases of extreme necessity, whether upon a trial for felony or for misdemeanor, and that such a case of necessity arose where the jury might be presumed as never likely to agree, the Chief Justice continues: 'Much stress has been placed on the fact that the defendant was in jeopardy during the time the jury were deliberating. It is true that his situation was critical, and there was, as regards him, danger that the jury might agree on a verdict of guilty; but, in a legal sense, he was not in jeopardy, so that it would exonerate him from another trial. He was not tried for the offence imputed to him. To render the trial complete and perfect, there should have been a verdict, either for or against him. A literal observance of the constitutional provision would extend to and embrace those cases where, by the visitation of God, one of the jurors should either die, or become utterly unable to proceed in the trial.'

"This view of the effect of the constitutional provision is generally concurred in by the United States Courts. In 1823, the question arose in the case of *United States* v. *Haskell*, 4 Wash. C.C. 402. The jury in that case were discharged after having been kept together three days, there being no prospect of their agreeing, and the Court being satisfied of the insanity of one of the jurymen. The indictment was for a capital offence. Washington, J., says: 'But it is contended that although the Court may discharge in cases of misdemeanor, they have no such authority in