COCKBURN, C.J., in rendering judgment, observed:—"I have no hesitation in expressing my own opinion, that, after the jury have retired to consider their verdict, and have remained in deliberation a full and sufficient time, if they are not agreed, and there is no reasonable expectation of their coming to a unanimous decision, it is within the province of a judge presiding on a criminal trial, in the exercise of his discretion, to discharge the jury."—"Since Blackstone's time, the case has several times arisen in which the illness of a juror, or the illness of the prisoner, has been held a sufficient ground for the discharge of the jury; and nobody has questioned that in these cases a second trial might be had, and the accused put a second time on his defence. We find, in the case of *Rex* v. *Cobbett*, that most excellent and learned judge, Lord Tenterden, discharged a jury of his own act and in the exercise of his discretion, after they had been in deliberation fifteen hours; and other instances have been cited where judges have acted in a similar manner. It appears to me that, if the true principle on which justice ought to be administered is regarded, it is essential in trial by jury not to abridge the judge's discretion, but to leave it unfettered. Our ancestors insisted on unanimity as the very essence of the verdict, but they were unscrupulous as to the means by which they obtained it; whether the minority gave way to the majority, or the reverse, to them appeared to have been a matter of indifference. It was a struggle between the strong and the weak, the able-bodied and the infirm, which could best sustain hunger, thirst, and the fatigue incidental to their confinement. It was said by the prisoner's counsel that it was competent to judges, and the duty of judges, to carry with them in carts a jury, who could not agree, to the confines of the county where the trial was held, or even beyond the county. I doubt whether there is authority for this assertion. The dicta that are to be found in the Book of Assize have been copied servilely by text writers, and that has given rise to this opinion. I question very much whether such a practice ever existed; I am sure it has not in modern times. But suppose it to have been so, we, now-a-days, look upon the principles on which juries are to act, I hope, in a different light. We do not desire that the unanimity of a jury should be the result of anything but the unanimity of conviction. It is true that a single juryman, or two or three constituting a small minority, may, if their own convictions are not strong and deeply rooted, think themselves justified in giving way to the majority. It is very true, if jurymen have only doubts or weak convictions, they may yield to the stronger and more determined view of their fellows; but I hold it to be of the essence of a juryman's duty, if he has a firm and deeply rooted conviction, either in the affirmative or the negative of the issue he has to try, not to give up that conviction, although the majority may be against him, from any desire to purchase his freedom from confinement or constraint, or the various other inconveniences to which jurors are subject. When, therefore, a reasonable time has elapsed, and the judge is perfectly convinced that the unanimity of the jury can only be obtained through the sacrifice of honest conscientious convictions, why is he to subject them to torture, to all the misery of men shut up without food, drink, or fire, so that the minority, or possibly the majority, may give way, and purchase ease to themselves by a sacrifice of their consciences? I am of opinion that so far from the practice of thus discharging a jury being a mischievous one, it is one essential to the upholding of the pure, conscientious, and honest discharge of the duties of a juryman."—"In this case it appeared that the jury had been five hours only in deliberation, but it was within a few minutes of midnight of the Saturday; and, further, on the Monday the judges were bound to be at Bodmin in discharge of their duties, that being the commission day of the assizes. The judge was therefore placed in a position of very great difficulty, in consequence of the Sunday intervening. In the first place, the question arose, whether the judge should not adjourn till the Sunday, and take the verdict of the jury on the Sunday. It is laid down in distinct terms by high authority, that of Lord Coke and Comyns, that Sunday is not a juridical day; and it is idle, I think, to contend that the taking of a verdict, the delivering of a verdict on the part of the