

by a public carriage road diagonally on a level, and there was also at the same spot crossing the railway nearly at right angles a private way leading to C.'s store-yard. There was a gate on C.'s side of the railway opening into his yard, which was a private gate under C.'s control, but nearly immediately opposite, on the other side of the railway, there was one gate across both the private way and the public carriage road, and this gate was under the control of the defendants, there being a gate-keeper stationed there by them, pursuant to section 47 of the Railways Clauses Consolidation Act. Any one going with a carriage, &c., to C.'s yard passed through this gate across the railway, and in at the private gate opposite, and *vice versa* on leaving the yard. The plaintiff's carman, with his cart and horses, having unloaded in C.'s yard one evening after dark, was about to leave, and having opened C.'s gate, the gate opposite being nearly closed, hailed the defendants' gatekeeper on the opposite side of the railway, to know if the line was clear, and he answered, "yes, come on." The cart and horses accordingly proceeded, and were run into by a train:—*Held*, that though section 47 in terms imposed the duty on a railway company of merely keeping "the gates closed across the public carriage road, except when carriages, &c., shall have to cross the railway," yet the duty was implied of using proper caution in opening them; that, whatever might have been the consequence, had the way which the plaintiff's carman was using been simply the private way, as he could not get across the railway without passing through the public gate, it was the gatekeeper's duty to open or refuse to open it for him; that what the gate-keeper said was equivalent to opening the gate, and he, therefore, was guilty of negligence in connection with his duty, for which the defendants were liable. *Lunt v. London & North Western Railway Co.*, Law Rep. 1 Q. B. 277.

*Criminal Law—Felony—Discharge of Jury, effect of—Second Trial—Writ of Error.*

The record of a conviction for felony showed, that on the trial of the indictment, the jury being unable to agree, the judge discharged them; that the prisoner was given in charge of

another jury at the next assizes, and a verdict of guilty returned, and judgment and sentence passed. On writ of error:—*Held*, that the judge had a discretion to discharge the jury, which a Court of Error could not review; that the discharge of the first jury without a verdict was not equivalent to an acquittal; that a second jury process might issue; and that there was no error on the record. *Winsor v. The Queen*, Law Rep. 1 Q. B. 289.

We have already noticed this case, vol. 1, L. C. L. J., p. 103, but as it is a case of great importance, it may not be uninteresting to insert here an abridgment of the report in the April number of the Law Reports.

On Friday, the 17th of March, 1865, Charlotte Winsor and Mary Ann Harris, indicted for the murder of one Harris, were arraigned and pleaded not guilty. The trial began on the Friday, and the jury retired about seven o'clock on the Saturday evening. At five minutes before midnight, the jury, not being able to agree, were discharged. At the next session, a motion was made on the part of the Crown, that Charlotte Winsor be tried separately, and that Mary Ann Harris should be admitted to give evidence on her trial. This was allowed by the Court, and Charlotte Winsor was convicted. A writ of error was then issued, and it was contended, before the Court of Queen's Bench, on behalf of the plaintiff in error, 1st, that the discharge of the jury was wrongful; that the judge had power to discharge only in cases of evident necessity, as the death or illness of a juror; and in cases where the discharge has been for the benefit of the prisoner, and at his instance. 2nd. That the verdict could have been taken on the Sunday. 3rd. That though the judge may discharge a jury in a case of misdemeanour, if they do not agree, he has no power to discharge them in a case of felony. 4th. If the judge had a discretion, the Court of Error can review his mode of exercising it. 5th. The second trial was illegal, because the prisoner could not be put upon her trial a second time. Lastly, The evidence of Harris was improperly admitted: before it could have been received, either a verdict of not guilty ought to have been taken, or she should have pleaded guilty, and sentence also should have been passed.