

The Legal News.

Vol. III. SEPTEMBER 25, 1880. No. 39.

DISCHARGE OF JURY BEFORE VERDICT.

A question of some interest was raised in the case of *Jones v. Reg.*, reported in the present issue; yet when the authorities come to be looked at, it is susceptible of no difficulty whatever. The question was simply whether the act of the Judge of Sessions, in discharging a jury after they were sworn, and before the trial was concluded, could be reviewed on a writ of error, and whether it was a bar to a second trial. The authorities are so conclusive that the pretention raised on the part of Jones vanishes into thin air. The whole question of the discharge of juries without verdict, and of the validity of so-called second trials, was fully discussed in the celebrated case of Charlotte Winsor, tried for murder. That was certainly a remarkable case, for the Judges of the Court of Queen's Bench in England, in the year 1866, were confronted with a passage from Coke, that "a jury sworn and charged in case of life or member cannot be discharged by the Court or any other, but they ought to give a verdict." The jury in the *Winsor* case had been discharged, after five hours' deliberation, because unable to agree, and because it was on a Saturday night, and the Judges had to hold an assize in another county on the Monday morning. Yet Chief Justice Cockburn had no hesitation in maintaining the validity of the proceeding. "It was said by the prisoner's counsel", he remarked, "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." If a man may be tried again where the jury disagree after deliberation, there seems to be more reason to say that he may be tried again where, as in the *Jones* case, the jury never arrived at the stage of deliberation, never were in a position to deliberate, and never even had the evidence for the Crown submitted to them. In fact, there is nothing to support such a pretention as that of Jones, except vague statements, as for example, that a prisoner cannot be twice put in jeopardy. But "when we talk of a man being twice put in jeopardy," observed Crampton, J., on one occasion, "we mean put in jeopardy by the verdict of a jury, and he is not tried nor put in jeopardy until the verdict is given."

THE COURT OF QUEEN'S BENCH.

The Montreal appeal term of this Court has been adjourned to the 2nd of November next, and it is understood that when the sittings are resumed, an attempt will be made to inaugurate in part the system which has been strongly urged by Mr. Justice Ramsay. This, in brief, may be described as a sitting from day to day, for about four days in each week, with intervals for examination of the records, for deliberation, and for judgment. It is said that the judges will be relieved from the Quebec Criminal term. It is to be hoped that this arrangement will result in a material diminution of the list of inscriptions.

NEW PUBLICATIONS.

LETTRES SUR LA REFORME JUDICIAIRE, par S. Pagnuelo, Avocat, Montreal, J. Chapleau & Fils.

We have here a reprint of a valuable series of articles written by Mr. Pagnuelo, of the Montreal bar, upon the administration of justice in this Province, with suggestions as to the reforms which are desirable and necessary. These letters have attracted considerable attention while in course of publication in the daily press, and we have no doubt that many of