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THE question of what constitutes being twice in jeopardy within the meaning of the Fifth Amendment to the Constitution of the United States, has lately arisen in two notable murder trials and has evoked the expression of diverse views among lawyers as well as laymen. While it is a well-known principle of law that "no person shall be twice put in jeopardy for the same offense," the application of the principle appears to be not always a problem of easy solution.

In the Thorn case there seems to be no justification for the defense to invoke the protection of this rule, and although it was at one time maintained by distinguished lawyers that the breaking down of the first trial was, under this principle of law, a bar to any further proceedings, the weight of opinion now is in harmony with that of the United States Supreme Court, which is, in the words of Mr. Justice Shiras, "that courts of justice are invested with the authority to discharge a jury from giving any verdict whenever in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of justice would otherwise be defeated, and to order a trial by another jury, and that the defendant is not thereby twice put in jeopardy within the meaning of the Fifth Amendment of the Constitution of the United States." Leading cases in various state courts of last resort have declared in favor of the same view, and a Georgia case goes so far as to hold that "a trial judge can properly discharge the jury in a murder case on account of the death of the mother of one of the jurors." This is the extreme view, and the chief-justice dissented from his

associates in carrying their conclusion so far. The change of sentiment among lawyers as to the application of the rule is gratifying; now even the counsel for the defense in the case of Thorn do not question the authority of Judge Scott to discharge the whole jury at the illness of one of its members, and to order another trial.

The Luetgert case presents a different aspect. Here the application of the principle in the event of a disagreement of the jury is clouded by much greater diversity of opinion. The courts of several states, Pennsylvania among the number, have held that "if a jury in a capital case is discharged from inability to agree, the prisoner may plead that fact in bar to another trial, yet in Illinois the state's attorney announced his intention to try Luetgert a second time. Whatever one's prejudices as to the innocence or guilt of Luetgert, he cannot but feel that it is on the whole, a beneficial interpretation of the rule that prevents the necessity of a prisoner's making repeated defenses to the same charge. "Better that some guilty escape than that the innocent should be oppressed unduly."

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WITH the retirement this month of Mr. Justice Field a most notable public career comes to an end, the Supreme Court of the United States loses a valued member, and the bench and bar a man whose services to state and nation will never be forgotten. Justice Field is closely identified with the early history of California, where, as chief justice of its highest court, he played a leading part in forming and moulding the legislation and jurisprudence of the state. When the change was made in the constitution of the Supreme Court, the number of its judges being increased to nine, Justice Field was offered one of the new positions by President Lincoln; a Democrat appointed by a Republican. During the remainder of the war, and in the troublous times that followed, familiarly known as the Reconstruction Period, in the decisions of the many momentous questions, Justice Field's voice was constantly heard, and declining years seem to have diminished his energy but little. His opinions have been characterized by that clearness and vigor of style, depth of thought and logical treatment of the subjects discussed, which in the judgment of his best qualified critics, distinguish him as one of the ablest members of the high tribunal with which he has been so long identified.

It is interesting to note that coincident with the retirement of Justice Field in this country is announced that of an eminent

English jurist. Lord Esper, whose long career in the Court of Appeals, as Master of the Rolls, has just closed, leaves behind a record which will add to the glory of English law. The departure from active life of two such men is just cause for sadness and for regret that the hand of Time cannot be turned back, to the end that others may continue to enjoy the fruits of labors which these men have shown themselves so well able to perform.