

of the Jury be challenged after some of them are sworn, the court refers it to those that are sworn, to examine whether the challenged be just or not. But if the first or second Man be challenged, the Court usually appoints some of the Rest to try the Challenge, who are therefore called *Tryers*. And if some of the Jurors be challenged, and the Challenge Made good against him, the Number is to be made up out of the Rest in order as they stand in the pannel *styles Pract. Reg. 336*. Where a full Jury appears not, or being full falls short by Challenges, the Justices may cause the Sheriff to supply those wanting out of persons present standing about the Court, who are returned upon some other pannel to serve there, if so many of these can be had *288 W. 3 cap. 32 § 3 junct.* or out of other bystanders having lands or Tenements freehold or Copy hold of the yearly value of 5 pound sterling to be taken in any County of England where the trial is, or 3 pound sterling in any County of Wales where the trial is, *485 W. 8 M. cap. 24 § 14. 19 junct. 10 A. cap. 14 § 4*. Which supply of Jurors is called a *Galles de Circumstantibus*. *Opt. it seems agreed*, that if all the persons returned be challenged and Drawn, there shall not be a *talus* awarded, but allow *Varino facias*, for the words tales plainly refer to some others to whom the persons returned are to be like, *Stam. pl. Cor. 1538. Hawkins pl. Cr. lib. 2 chap. 91 § 14*. Therefore these Jurors returned in place of a whole Jury challenged, are not improperly termed *Maiors*. The *Galles* men may be challenged, as if they had been sworn upon the *Varino facias* to try the issue *35 H. 8 cap. 6 § 7. 788 W. 3 cap. 32 § 3 junct.* Jurors failing to appear lose issue, albeit the Jury be filled up by the *Galles*. But the Justices before whom the crime is to be tried, may upon a Reasonable Excuse proved by two witnesses, Discharge them, *35 H. 8 cap. 6 § 10. 11. 485 W. 8 M. cap. 24 § 15 junct. 10 A. cap. 14 § 4*. Jurors appearing at trial shall not have their Charges allowed, if the trial do not proceed for want of a sufficient Number, their appearance being

being to no purpose *styles Pract. Reg. 340*. Nor can a Jury which doth not appear full be adjourned; for such a Jury is not accounted a Jury *styles ibid. 65*.

The first twelve men returned upon the Jury that appear, are sworn to try the Prisoner, if none of them be challenged, and the Rest in the Pannel Depart. The Clerk calls R. S. the first Jury man in the pannel, bids him look upon the Prisoner, and lay his right hand on the Book, and the Prayer swears him thus: *You shall well and truly try, and true Deliberance Make between our sovereign Lord the King, and the prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to Your Evidence. So help you God. Kiss the Book.* And so others in the Pannel, one after another, to the Number of 12 are sworn. The 12 being thus sworn, are called the *Panel*, or *petty jury* (in Latin Jurata from Jurare to swear) whose sworn Judges upon Evidence in Matters of fact, are the Jury of life and Death. The Clerk gives the Under Sheriff the large pannel to write out the Names and Additions of the Jury men only who are sworn upon a small parchment pannel in titled thus, *Nomina Jur. Jur. Dominum Regem & A. B. Prisonar. ad Barram*, and put the Sheriff's Name to it. Then the Clerk bids the Prayer Repeat, if any one can Inform my Lord & the King's Justices, the King's Attorney or Advocate, before this Request be taken, between our sovereign Lord the King, and the Prisoner at the Bar, let them come forth, and they shall be heard; for the prisoner stands at the Bar upon his Deliverance; and all others that are bound by Recognizance to give Evidence against the prisoner at the Bar, come forth and give your Evidence, or else you forfeit your Recognizance. The Clerk says to the prisoner, *A. B. hold up thy hand*, and turning to the Jury says, *you of the Jury look upon the Prisoner, and hear him to his cause; he stands indicted in this County of B. C. by the Name of A. B.*