

## Jurors, and Challenges to them. C H A P. C L X X X V I.

‘ **T**his is that happy way of Tryal, that notwithstanding all shakings  
 ‘ of State and Revolutions of Times, hath been continued from  
 ‘ time beyond all memory to this present day, the beginning whereof  
 ‘ no History specifies, it being contemporary with the foundation of this  
 ‘ State, and one of the pillars of it both as to Age and Consequence :  
 ‘ that Maxim, *Ad questionem facti respondent Juratores*, being as ancient  
 ‘ and fundamental as that other, *Ad questionem Juris respondent Judices* ;  
 ‘ the one being as liable to be controlled by a Writ of Error as the other  
 ‘ by an Attaint, both Essential to the Justice of this Nation. And al-  
 ‘ though Jurors are in other things subject to His Majesties Commissioned  
 ‘ Judges, yet they are not so in point of Judgment, which after some  
 ‘ pangs and throws was happily asserted in the case of the *Habeas Corpora*  
 ‘ prosecuted by *Bussel* and others, by a sacred and nigh an unanimous O-  
 ‘ pinion of all the Judges.

§. 1.  
Trial by  
Jurors.

‘ This Tryal is the Birthright of every Subject of *England*, and is put  
 ‘ to him by way of question, How wilt thou be tried? Which is thought  
 ‘ to be so just and equal for him to chuse, that the Waiver of it is revenged  
 ‘ with *paine fort & dure* ; no punishment being judged too severe for one  
 ‘ that refuseth so just a Trial.

‘ So happy is our Condition, that every Englishman ( in matters of  
 ‘ Crime and Forfeitures ) passeth a double Jury ; neither to my apprehen-  
 ‘ sion doth the Coufner and care of the first Inquest differ from the last,  
 ‘ but only in consequenc brought on by Custom, the Indictment being as  
 ‘ much found to be true by the one as the other.

‘ These Jurors are returned by the Sheriff by virtue of a Precept to that  
 ‘ purpose, against which at the Common Law both the King and the  
 ‘ party had two lawful Challenges, one peremptory, to the other upon  
 ‘ cause shewed.

§. 2.  
Challenge.

‘ But forasmuch as Life, Liberty and Estate are all at stake in cases of  
 ‘ Felony, it is provided by 33 *E. 1.* that the King shall not challenge per-  
 ‘ emptorily, but must shew his cause, which shall be enquired and tried  
 ‘ if true, as alledged, and if found otherwise, shall be rejected.

‘ Yet the peremptory Challenge remaineth for the party, although not  
 ‘ so amply as at Common Law, according to which he might challenge  
 ‘ 35 without cause shewed, and as many more as he could upon cause  
 ‘ shew : but now by the Statute of 32 *H. 8. 3.* this peremptory Chal-  
 ‘ lenge is reduced to 20 ; to challenge peremptorily beyond which num-  
 ‘ ber, is to waive his Trial ; and to stand unto which is a great offence,  
 ‘ and grievously punished in our Law, that person being judged unworthy  
 ‘ of Life, whose Innocency is not clear to endure an English Trial.

‘ The Jurors ought to be fairly impanelled, and duly returned, by  
 ‘ the Sheriff or other sworn Bailiff, and not at the nomination of the  
 ‘ Juror himself or any other, by 11 *H. 4. 9.* or else the Indictment is  
 ‘ void by that Statute. And they are to be *liberi & legales homines* : for  
 ‘ first they must be *liberi*, not Villains born : 2. *legales*, not convicted or  
 ‘ attainted, and so slaves to punishment as well as to their own Vices ;  
 ‘ and an Outlary in a Personal Action seems to be not only a good  
 ‘ Challenge, but also good cause to set aside the Indictment. *Jones Resp.*  
 ‘ 196.

§. 3.  
17th good  
Jurors.

‘ They