

trial for High Treason in 1839-40, and in *Mansell v. the Queen*, (in error) 8 E. & B. 54. And now in Baltimore by the Act of 1860, ch. 308, sec. 18,² in all criminal cases, in which the person indicted has or may have the right of peremptory challenge, the State's Attorney shall have the right to challenge peremptorily any number of jurors not exceeding five.

The provisions of Stat. 22 H. 8, c. 14, made perpetual by Stat. 32 H. 8, c. 3, declared that no person arraigned for any petty treason, murder, or felony, should be admitted to challenge peremptorily over twenty jurors. But Stat. 1 & 2 P. & M. c. 20, s. 7, restored the number of thirty-five in trials for petty treason as in high treason, but left it at twenty in the other felonies. And this latter provision was adopted in the Acts of 1737, ch. 2; 1744, ch. 20, and 1751, ch. 14. The Act of 1809, ch. 138, sec. 13, reduced the number of peremptory challenges to twenty in all cases, and allowed them only in certain cases of felonies. But by the Act of 1816, ch. 45, the prisoner in every case of felony was allowed to challenge the same number *of jurors as before the passage of the Act of 1809, ch. 138. **157** And by the Act of 1841, ch. 162, the right of peremptory challenge was extended to every person indicted for any crime or misdemeanor, the punishment whereof was confinement in the penitentiary. Art. 50, sec. 15³ of

² Balto. City Code, sec. 618.

³ This section was repealed and re-enacted by the Act of 1872, ch. 40, (Code 1911, Art. 51, sec. 19), which provides as follows: "The right of peremptory challenge shall be allowed to any person who shall be tried on presentment or indictment for any crime or misdemeanor the punishment whereof by law is death or confinement in the penitentiary, and to the State on the trial of such indictment or presentment; but the accused shall not challenge more than twenty, nor the State more than four jurors, without assigning cause."

Before this legislation the state had no right of peremptory challenge except in Baltimore under the Act of 1860, ch. 308, note 2, *supra*.

The act does not prescribe the order in which the challenge shall be made, or direct whether the state or the prisoner shall first exercise the right. This is left to the discretion of the trial court. *Turpin v. State*, 55 Md. 462; *Rogers v. State*, 89 Md. 424. It may be exercised at any time before the juror has been sworn. *Rogers v. State*, *supra*.

The right of peremptory challenge is a right not to *select* but simply to *reject* jurors without assigning cause; and where the accused has exercised this right in respect of any member of the panel and the juror thus challenged has retired from the box, the challenge cannot thereafter be withdrawn. *Biddle v. State*, 67 Md. 304.

An objection that a juror is disqualified must be made by a challenge for cause before the juror is sworn, unless the party objecting did not know, or by the exercise of reasonable diligence could not have known, of the disqualification. *Young v. State*, 90 Md. 579; *Busey v. State*, 85 Md. 115; *Johns v. Hodges*, 60 Md. 215; *Green v. State*, 59 Md. 123.

In civil cases, under Code 1911, Art. 51, sec. 13, twenty names are drawn from the panel of petit jurors by the clerk, and each side has a right to strike four, the remaining twelve constituting the jury for that