was, by positive law, to be from the body of the County. The summoning of juries in the Counties is now regulated by the Act of 1870, ch. 220, and ch. 410,[1] and in Baltimore City by the Code of Public Local Laws, Art. 4, sec. 601, *et seq.*[2] and its supplements. It has been decided in State v. Clare, 30 Md. 163, that the terms of these laws must be strictly complied with.[3] This Statute, however, would still apply to the *venire facias* directed under the Act of 1867, ch. 329, and the general rule of this and the other statutes of jeofails is, that all irregularities as to number, qualifications[4] and returns of jurors are aided after verdict in the same action between the same parties. However, it has been holden that mistakes in the Christian name of a juror are not remedied, and they remain as before the Statute; but Lord Chief Justice Willes points out in Wray v. Thorn, Willes, 488, that such mistakes may sometimes be remedied as clerical misprisions under Stat. 8 H. 6, c. 12. In this case the whole subject is very fully gone into, and the Court refused to set aside a verdict because one of the jurors was named "Henry" in the *venire, habeas corpora* and *postea*, his real Christian name being "Harry," as appeared by affidavit. Here there was no variance in the record, and consequently there was no occasion for any amendment, nor could a writ of error or motion in arrest of judgment have been supported, and the matter could only come up on motion for a new trial, or rather for a *venire de novo*. The earlier cases, Fermor v. Dorrington, Cro. Eliz. 222; Hasset v. Payne, *ibid.* 256; Roe v. Devys, Cro. Car. 563; are to the effect, that if one person is named in the panel and another in the *distringas*, and the latter serves on the jury, it is a mis-trial, because none should serve but those on the panel.

In Norman v. Beaumont, Willes, 484, a verdict was set aside, because one of the jurymen, not having been returned on the *nisi prius* panel, answered to the name of a person who was; it not being within the Act, the words of which are "so as upon examination it be proved to be the same man that was meant to be returned," whereas here the juryman was no juryman at all, and the Court said that, in these cases, where the objection could not appear on the record, they always admitted affidavits. But in Hill v. Yates, 12 East, 229, the Court refused to grant a new trial where the son of a juryman, summoned and returned, answered to his father's name when called and served on the jury, the Court saying it

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[1] See now Code 1911, Art. 51.

[2] See now Balto. City Code, sec. 602 *et seq.*

[3] Pontier v. State, 107 Md. 384; State v. Mercer, 101 Md. 535; State v. McNay, 100 Md. 622; State v. Vincent, 91 Md. 718; State v. Keating, 85 Md. 188; Downs v. State, 78 Md. 128; Avirett v. State, 76 Md. 510; State v. Glascow, 59 Md. 210; Green v. State, 59 Md. 123; Friend v. Hamill, 34 Md. 298.

[4] What is cause for challenge cannot be relied on to set aside the verdict, if the right of challenge has not been exercised, provided the disqualification was known before the swearing of the juror, or could have been discovered by the exercise of proper diligence. Young v. State, 90 Md. 579; Johns v. Hodges, 60 Md. 215; Green v. State, 59 Md. 123. Cf. N. Y. Mining Co. v. Midland Co., 99 Md. 506.