

was within their discretion in such cases to grant or refuse a new trial, and if no injustice had been done the party would be left to get rid of the verdict as he might; that such objections might overthrow half the verdicts at the Assises, where the same thing might happen from accident or inadvertence, and possibly, especially in criminal cases, from design. The Court relied on a case "of a Juryman," cited by the Lord Ch. J. as overruling the case in Willes. There one Robert Curry had answered to the name of Joseph Curry in the Sheriff's panel, and had been sworn by that name on the trial of a prisoner for a capital offence, there being a person named Joseph Curry, but not *then resident in the County, 445 and Robert Curry having been summoned as a juryman; and it was held no mis-trial—the objection being a mere misnomer of the person intended to serve and matter of challenge, and no ground for a writ of error much less for a summary application.⁵ In *Dovey v. Hobson*, 6 Taunt. 460, the question again arose, where a person not summoned was sworn on a jury in the name of another for whom a summons to appear on that jury had been delivered, the former having taken the house that the latter had left, but this time the objection was taken *before verdict*, and a *venire de novo* was awarded. The Court admitted the authority of *Hill v. Yates* in cases exactly similar, but expressly said that the "case of a Juryman" cited there would certainly have been ground of error. *Doe v. Michael*, 16 Q. B. 620, is like this case, for there a juryman, summoned as a special juryman in another cause, answered for another by mistake and was sworn, and the defect was only discovered when the jury returned to deliver the verdict, and it was held to be a mis-trial and a *venire de novo* awarded. In *Rex v. Tremearne*, 5 B. & C. 254, on an indictment for perjury, R. H. Williams, who was not on the panel, was under age, and was disqualified to serve, answered for his father, J. Williams, appeared in his stead, and served for him without the knowledge of either prosecutor or defendant, and a new trial was granted on the ground that here the juryman was disqualified to serve; see as to disqualification, *Clarke v. Shane*, 3 H. & McH. 101. These cases qualify the cases of *Hill v. Yates*, so far as its authority depends upon inconvenience, and "the case of a Juryman" is on one point overruled. And in *Earl Falmouth v. Roberts*, 9 M. & W. 469, where A. B. the elder was summoned on a special jury and A. B. the younger by mistake answered for him and was sworn and sat in the case, after verdict for the plaintiff a new trial was refused, *it appearing that the clerk of the defendant's attorney was aware of the mistake at the time, and made no objection, and the defendant's attorney himself not negating properly*

⁵ This case is followed in *Munshower v. State*, 56 Md. 514. There in a trial for murder a talesman was summoned as Joseph H. Brown and was sworn on the panel to try the case as Joseph B. Brown. The latter was his correct name and he was the person intended when the name of Joseph H. Brown was selected and placed in the box to be drawn as a juror. There was a verdict of guilty and on a motion in arrest of judgment it was held that the mistake in the middle initial of the juror was no ground for arresting the judgment, there being no mistake as to the identity of the person.