county where moſt of them inhabit. Fourthly, the perſons before whom they are to appear, and before whom the trial is to be held, are the judges of the ſuperior court, if it be a trial at bar; or the judges of aſſize, delegated from the courts at Weſtminſter by the king, if the trial be held in the coun­try : persons, whoſe learning and dignity ſecure their juriſdiction from contempt, and the novelty and very parade of whole appearance have no ſmall influence upon the multi­tude. The very point of their being ſtrangers in the coun­ty is of infinite ſervice, in preventing thoſe factions and parties which would intrude in every cauſe of moment, were it tried only before perſons reſident on the ſpot, as juſtices of the peace, and the like. And the better to remove all ſuspicion of partiality, it was wiſely provided by the ſtatutes 4 Edw. III. c. 2. 8 Ric. II. c. 2. and 33 Hen. VIII. c. 24. that no judge of aſsiſe ſhould hold pleas in any county where­in he was born or inhabits. And as this conſtitution pre­vents party and faction from intermingling in the trial of right, so it keeps both the rule and the adminiſtration of the laws uniform. Theſe juſtices, though thus varied and ſhifted at every aſſiſes, are all ſworn to the ſame laws, have had the same education, have purified the ſame ſtudies, converſe and consult together, communicate their deciſions and reſolutions, and preſide in thoſe courts which are mutually connected, and their judgments blended together, as they are interchangeably courts of appeal or advice to each other. And hence their adminiſtration of juſtice, and conduct of trials, are conſonant and uniform ; whereby that confuſion and contrariety are avoided, which would naturally arise from a variety of uncommunicating judges, or from any provincial eſtabliſhment. But let us now return to the aſ­ſizes.

When the general day of trial is fixed, the plaintiff or his attorney muſt bring down the record to the aſſizes, and en­ter it with the proper officer, in order to its being called on in courſe.

Theſe ſteps being taken, and the cauſe called on in court, the record is then handed to the judge, to peruſe and obſerve the pleadings, and what issues the parties are to main­tain and prove, while the jury is called and ſworn. To this end the ſheriff returns his compulſive proceſs, the writ of *habeas corpora,* or *distringas,* with the panel oſ jurors annex­ed, to the judge’s officer in court.

The jurors contained in the panel are either ſpecial or common jurors. Special juries were originally introduced in trials at bar, when the cauſes were of too great nicety for the diſcussion of ordinary freeholders ; or where the ſheriff was ſuſpected of partiality, though not upon ſuch appa­rent cauſe as to warrant an exception to him. He is in ſuch cases, upon motion in court, and a rule granted there­upon, to attend the prothonotary or other proper officer with his freeholder’s book ; and the officer is to take indif­ferently 48 of the principal freeholders, in the preſence of the attorneys on both ſides : who are each of them to ſtrike off 12, and the remaining 24 are returned upon the panel. By the ſtatute 3 Geo. II. c. 25. either party is entitled upon motion to have a ſpecial jury ſtruck upon the trial of any iſſue, as well at the aſſizes as at bar, he paying the extraordinary expence, unleſs the judge will certify (in purſuance of the ſtatute 24 Geo. II. c. 18.) that the cauſe re­quired ſuch ſpecial jury.

A common jury is one returned by the ſheriff according to the directions of the ſtatute 3 Geo. II. c. 25. which ap­points, that the ſheriff or officer ſhall not return a ſeparate panel for every ſeparate cauſe, as formerly ; but one and the fame panel for every cauſe to be tried at the ſame aſſizes, containing not leſs than 48, nor more than 72, jurors : and that their names being written on tickets, ſhall be put into a box of glaſs ; and when each cauſe is called, *1*2 of theſe perſons, whoſe names ſhall be firſt drawn out of the box, ſhall be ſworn upon the jury, unleſs abſent, challenged, or excuſed ; or unleſs a previous view of the meſſuages, lands, or place in queſtion, ſhall have been thought necessary by the court ; in which caſe, six or more of the jurors return­ed, to be agreed on by the parties, or named by a judge or other proper officer of the court, ſhall be appointed by ſpecial writ of *habeas corpora* or *diſtringas,* to have the mat­ters in queſtion ſhown to them by two perſons named in the writ ; and then ſuch of the jury as have had the view, or ſo many of them as appear, ſhall be ſworn on the inqueſt previous to any other jurors. Theſe acts are well calculated to reſtrain any ſuspicion of partiality in the ſhe­riff, or any tampering with the jurors when returned.

As the jurors appear when called, they ſhall be ſworn, unleſs challenged by either party. See the article Chal­lenge.

If by means of challenges or other cauſe, a ſufficient num­ber of unexceptionable jurors doth not appear at the trial, either party may pray a *tales.*

A *tales* is a ſupply of ſuch men as are ſummoned upon the firſt panel, in order to make up the deficiency. For this purpoſe a writ of *decern tales, οctο tales,* and the like, was wont to be iſſued to the ſheriff at common law, and muſt be ſtill ſo done at a trial at bar, if the jurors make default. But at the aſſizes, or *nisi prius,* by virtue of the ſtatute 35 Hen. VIII. c. 6. and other ſubſequent ſtatutes, the judge is empowered at the prayer of either party to award a *tales de circumstantibus* of perſons preſent in court, to be joined to the other jurors to try the cauſe ; who are liable, how­ever, to the ſame challenges as the principal jurors. This is uſually done till the legal number of 12 be completed ; in which patriarchal and apoſtolical number Sir Edward Coke hath diſcovered abundance of myſtery.

When a sufficient number of persons impanelled, or tales­men appear, they are then ſeparately ſworn, well and truly to try the iſſue between the parties, and a true verdict to give according to the evidence ; and hence they are deno­minated “ the jury,” *jurata,* and “ jurors,” *ſc. juratores.*

The jury are now ready to hcar the merits ; and to fix their attention the cloſer to the facts which they are impa­nelled and ſworn to try, the pleadings are opened to them by counsel on that side which holds the affirmative of the queſtion in iſſue. For the iſſue is ſaid to lie, and proof is always first required upon that side which affirms the matter in queſtion ; in which our law agrees with the civil, *ei in­cumbit probatio qui dicit, non qui negat ; cum per rerum natu­ram factum-negantis probatio nulla sit.* The opening counſel briefly informs them what has been tranſacted in the court above ; the parties, the nature of the action, the declaration, the plea, replication, and other proceedings ; and laſtly, upon what point the iſſue is joined, which is there ſent down to be determined. Inſtead of which, formerly the whole record and proceſs of the pleadings were read to them in Engliſh by the court, and the matter of iſſue clearly ex­plained to their capacities. The nature of the caſe, and the evidence intended to be produced, are next laid before them by counſel alſo on the ſame side ; and when their evi­dence is gone through, the advocate on the other side opens the adverſe caſe, and ſupports it by evidence ; and then the party which began is heard by way of reply. See Pleadings.

Evidence in the trial by jury is of two kinds ; either that which is given in proof, or that which the jury may receive by their own private knowledge. The former, or *proofs,* (to which in common ſpeech the name of evidence is uiually confined) are either written or parol ; that is, by word of