withdrawn : and Monteſquieu tells us, that under the first race of kings in France, about the fifth century, the Ro­mans that remained, and the Burgundians their new matters, lived together under the ſame Roman laws and police, and particularly the ſame forms of judicature. How reaſonable then is it to conclude, that in the Roman courts of judica­ture continued among the Burgundians, the form of a jury remained in the ſame ſtate it was uſed at Rome. It is cer­tain, Monteſquieu, ſpeaking of thoſe times, mentions the *paires* or *hommes de fief,* homagers or peers, which in the ſame chapter he calls *juges, judges or jurymen* : ſo that we hence ſee how at that time the *hommes de fief,* or “ men of the fief,” were called *peers,* and thoſe peers were juges orjurymen. These were the ſame as are called in the laws of the confeſſor *pers de la tenure,* the “ peers of the tenure, or homagers,” out oſ whom the jury of peers were choſen, to try a matter in diſpute between the lord and his tenant, or any other point of controverſy in the manor. So likewiſe in all other parts of Europe, where the Roman colonies had been, the Goths ſucceeding them, continued to make uſe of the ſame laws and inſtitutions, which they found to be eſtabliſhed there by the first conquerors. This is a much more natural way of accounting for the origin of a jury in Europe, than having recourſe to the fabulous ſtory of Woden and his savage Scy­thian companions, as the first introducers of so humane and beneficent an inſtitution.”

Trials by jury in civil cauſes are of two kinds ; *extraor­dinary* and *ordinary.*

1. The firſt ſpecies of *extraordinary* trial by jury is that of the grand aſſiſe, which was inſtituted by king Henry II. in parliament, by way of alternative offered to the choice of the tenant or defendant in a writ of right, inſtead of the barbarous and unchriſtian cuſtom of duelling. For this purpoſe a writ *de magna aſſiſa eligenda* is directed to the ſheriff, to return four knights, who are to elect and chooſe 12 others to be joined with them ; and there all together form the grand aſſiſe, or great jury, which is to try the matter of right, and muſt now conſiſt of 16 jurors. Ano­ther ſpecies of extraordinary juries is the jury to try an at­taint ; which is a process commenced againſt a former jury for bringing a falſe verdict. See the article Attaint.

2. With regard to the *ordinary* trial by jury in civil cases, the most clear and perſpicuous way of treating it will be by following the order and courſe of the proceedings themſelves.

When therefore an iſſue is joined by theſe words, “ And this the ſaid A prays may be inquired of by the country ;” or, “ And of this he puts himſelf upon the country, and the said B does the like ;” the court awards a writ of *venire facias* upon the roll or record, commanding the ſheriff “ that he cauſe to come here, on ſuch a day, twelve free and lawful men, *liberes et legales homines,* of the body of his county, by whom the truth of the matter may be better known, and who are neither of kin to the aforeſaid A nor the aforeſaid B, to recognize the truth of the iſſue between the ſaid parties.” And such writ is accordingly issued to the ſheriff. It is made returnable on the laſt return of the ſame term wherein iſſue is joined, *viz.* hilary or trinity terms; which, from the making up of the iſſues therein, are uſual­ly called *issuable terms.* And he returns the names of the jurors in a panel (a little pane or oblong piece of parchment) annexed to the writ. This jury is not ſummoned, and therefore not appearing at the day muſt unavoidably make default. For which reaſon a compulſive proceſs is now awarded againſt the jurors, called in the common pleas a writ of *habeas corpora juratorum,* and in the King’s Bench *distringas,* commanding the ſheriff to have their bodies, or to diſtrain them by their lands and goods, that they may appear upon the day appointed. The entry therefore on the roll of record is, “ That the jury is reſpited, through defect of the jurors, till the firſt day of the next term, then to appear at Weſtminſter ; unleſs before that time, *viz.* on Wedneſday the fourth of March, the juſtices of our lord the king appointed to take aſſizes in that county ſhall have come to Oxford, that is, to the place aſſigned for holding the aſſizes. Therefore the ſheriff is commanded to have their bodies at Weſtminſter on the ſaid firſt day of next term, or before the ſaid juſtices of aſſize, if before that time they come to Oxford, *viz.* on the fourth of March afore­ſaid.” And as the judges are ſure to come and open the circuit-commiſſions on the day mentioned in the writ, the ſheriff returns and ſummons this jury to appear at the aſſizes; and there the trial is had before the juſtices of aſſize and *nisi prius:* among whom (as hath been ſaid@@\*) are uſually two of the judges of the courts at Weſtminſter, the whole kingdom being divided into six circuits for this purpoſe. And thus we may obſerve, that the trial of common iſſues, at n*isi prius,* was in its original only a collateral incident to the original buſineſs of the juſtices of aſſize ; though now, by the various revolutions of practice, it is become their principal civil employment ; hardly any thing remaining in uſe of the real aſſizes but the name.

If the ſheriff be not an indifferent perſon, as if he be a party in the suit, or be related by either blood or affinity to either of the parties, he is not then truſted to return the jury ; but the *venire* ſhall be directed to the coroners, who in this, as in many other inſtances, are the ſubſtitutes oſ the ſheriff to execute proceſs when he is deemed an improper person. If any exception lies to the coroners, the *venire* ſhall be directed to two clerks of the court, or two perſons of the county named by the court, and ſworn. And theſe two, who are called *elisors,* or electors, ſhall indifferently name the jury, and their return is final ; no challenge being allowed to their array,

Let us now pauſe a while, and obſerve (with Sir Mat­thew Hale@@\*), in theſe first preparatory ſtages of the trial, how admirably this conſtitution is adapted and framed for the inveſtigation of truth beyond any other method of trial in the world. For, firſt, the perſon returning the jurors is a man of ſome fortune and conſequence ; that ſo he may be not only the leſs tempted to commit wilful errors, but likewise be reſponſible for the faults of either himſelf or his of­ficers : and he is alſo bound by the obligation of an oath faithfully to execute his duty. Next, as to the time of their return : the panel is returned to the court upon the original venire, and the jurors are to be ſummoned and brought in many weeks afterwards to the trial, whereby the parties may have notice of the jurors, and of their ſufficiency or inſufficiency, characters, connnections, and relations, that ſo they may be challenged upon juſt cauſe ; while, at the ſame time, by means of the compulſory proceſs (of *distringas,* or *haheas corpora)* the cauſe is not like to be retard­ed through defect of jurors. Thirdly, as to the place of their appearance : which in cauſes of weight and conſe­quence is at the bar of the court ; but in ordinary cases at the aſſiſes, held in the county where the cauſe of action ariſes, and the witneſſes and jurors live : a proviſion moſt ex­cellently calculated for the ſaving of expence to the parties. For though the preparation of the cauſes in point of plead­ing is tranſacted at Weſtminſter, whereby the order and uniformity of proceeding is preſerved throughout the king­dom, and multiplicity of forms is prevented ; yet this is no great charge or trouble, one attorney being able to tranſact the buſineſs of 40 clients. But the troubleſome and moſt expenſive attendance is that of jurors and witneſſes at the trial ; which therefore is brought home to them, in the

@@@[m]\* See the article Assize.

@@@[m]\* Hist. C. L. c. 12.