such is the uniform practice and such are the provisions of the Stat. 35 Henry 8 ch. 6. But it is contended that as three were wanted in the first instance to supply the deficiency and the prisoner (having challenged only fifteen) was entitled to five more peremptory challenges a less number than eight could not be applied for by the prosecutor or awarded by the court - and the same ground is taken against the second order - But this idea is unsupported by authority: several authorities have indeed been cited and relied on in aid of the objection made to the number of Talesmen awarded, which when examined only go to shew, that courts may if they please to prevent the delay that might be occasioned by the Defendants challenges award a greater number than was on the original pannel and this is admitted, but no case has been cited or authority referred to which devises the power of courts to award only so many Talesmen as would with those sworn make up the number of twelve or in support of the position that a less number cannot be awarded than would be sufficient to make up the deficiency, after the Defendant has gone through with his challenges or in other words that as the number deficient and the remaining peremptory challenges to which the party was entitled amounted together to eight not less than eight could legally have been awarded in the first instance - Nor is the Idea strengthened by the reason of the case, for if so many must always be awarded as will leave a sufficient number to supply the deficiency after the Deft. has compleated his challenges it would be impossible to ascertain the number proper to be summoned. for besides peremptory challenges a prisoner is entitled to challenges for cause without number - and it is not to supply deficiences occasioned by peremptory challenges only that Talesmen are awarded but deficiences occasioned in Criminal Trials by any other cause must be made up by Talesmen as in civil cases, in which peremptory challenges are not allowed: There is no principle laid down more broadly in the books than that the award of Talesmen must be repeated until the legal number of Twelve is compleated, the subsequent Tales being always for a less number than the former - and this

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precludes the idea that the award must always in the first instance be of so many as to leave enough to supply the deficiency after the party has compleated his challenges, for in that case there could never be a second Tales ordered - It is true that in capital cases courts may if they please award an order to the sheriff to summon more than the precise number necessary to supply the deficiency though there is no obligation on them to do so. and if in this case the prisoner or his Counsel had requested a greater number to be summoned he would have been gratified - but an order for three only in the first instance and one in the second was prayed by the attorney for the State and each prayer and order acquiesced in at the time by the Counsel for the accused. The second Tales was for a less number than the first and each was for the precise number necessary with those sworn to make up the legal number of twelve - and in strictness of Law that is all that is required in such case - and as far as this Court are informed is in strict conformity with the practice throughout the State. The second question "whether after the prisoner has pleaded generally to the Indictment, the Jury were legally sworn and charged on one of the Counts only" is fully resolved by a case reported in 3 Burrow and East 106 in which it is said "that if an Indictment contains several counts for seperate offences the Court may quash it before the party has pleaded or the Jury are charged - but if it should not be discovered until after the Defendant has pleaded or the Jury are charged the Judge may put the prosecutor to elect on which charge he will proceed." That case goes much farther than the present for in that it is laid down, that not only after the party has pleaded generally to the Ind.t but after the Jury are sworn upon the whole issue for they are never charged before they are sworn, the Court may make the prosecutor elect on which Count he will proceed: and in this case though the attorney for the State did not elect to proceed on the first Count alone until after the prisoner had pleaded yet it was done before the Jury were either charged or sworn - and if the position taken in the case referred to is tenable the proceedings on the part of the case before the Court are correct - The next and only question remaining to be considered is whether the Ind.t containing

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