

on the second trial, every juryman was called to say whether he had formed any opinion on the subject or not?

JUDGE CHASE. My construction of the law is quite the contrary. I have always seen triers sworn to decide these questions. How is this done in your country. Challenges for favor must be decided by triers. I suppose there must be triers sworn.

*Mr. Nicholas.* I believe the books lay down this distinction. Challenges to the array are either principal challenges, or challenges for favor—causes for principal challenges are always tried by the court; challenges for favor are always tried by triers.

JUDGE CHASE. Well, sir, your challenge is for favor, because you state the juror to be unfavorable to the traverser.

*Mr. Nicholas.* This book states it as a cause of principal challenge.

JUDGE CHASE. Show me that book: it is not the best authority. Have you Coke upon Littleton in the house? If I had it we would see the whole doctrine at once. I am persuaded that Coke upon Littleton states that the challenges for favor must be decided by triers. The oath of the triers is laid down there. Challenges to the array are for partiality in the sheriff.

Coke upon Littleton being produced, and the judge having examined it, observed, the case is clear. Principal challenges to the array, or the whole jury at once, is always for partiality in the sheriff, and not in the jurors.

*Mr. Nicholas* said that the law might perhaps consider the return of a partial juror, as sufficient to ground a challenge to the array, on the principle of partiality in the sheriff, and wished to know if he was correct in this idea of the law.

JUDGE CHASE. No, sir, the law is not so. You must proceed regularly. You may bring in proof if you can, that any juror has delivered his opinion upon that case heretofore; or you may examine the juror himself, upon oath, to this effect. You may do either, but not both; and this alternative offered, you must consider not as a strict right.