according to truth; and it is not stronger than the want of a freehold, which, though a ground of challenge, hath been repeatedly adjudged insufficient after verdict." *People* v. *Jewett*, 6 Wend. 387.

In *James* v. *State*, 53 Ala. 380, (1875,) a new trial was refused under these circumstances: The State Code, § 4063, prescribed certain qualifications for jurors, and a subsequent act made it the duty of the court, "before administering the oath prescribed by law" to any juror, to ascertain that he possessed the qualifications prescribed by the Code, "and the duty required by the court by this act shall be considered imperative." In selecting the panel, the court caused eight questions to be put to each person. None of these questions inquired of the jurors in respect of their qualifications under said section, nor did the defendant ask nor request the court to ask any such questions, neither objecting nor accepting.

The cases of *Orcutt* v. *Carpenter*, 1 Tyler, (Vt.) 250, (1801;) *Guykowski* v. *People*, 1 Scam. (Ill.) 476; and *Watts* v. *Ruth*, 30 Ohio St. 32, (1876,) are cited and relied upon by the defendants here. In the Vermont case a juror was a freeholder when his name was put into the box, but not when he was drawn, summoned, and served as a juror in the case. The new trial was refused *on this ground*, because "the juror being legally qualified when put into the box, his subsequent disqualification by divesting himself of his freehold, and thus not being a freeholder when drawn, summoned, and sworn, should have been taken advantage of in challenge, and cannot prevail after verdict." The Illinois case is a direct authority for granting a new trial, because one of the jurors was an alien when sworn, of which fact the defendant was ignorant at the time; but in *Greenup* v. *Stoker*, 3 Gilman, (Ill.) 202, the decision is by the same court, criticised *and confined strictly to capital cases*, while in *Chase* v. *People*, 40 Ill. 356, the doctrine is wholly repudiated and overruled.

In the Ohio case, read in the argument, the juror was cited as a talesman, and was not 21 years old, but was accepted without inquiry as to his competency, though personally known to the party and his counsel. No objection was made nor question asked of him, because he was thought to be 21 years of age. In denying the motion for a new trial on this ground the court says:

"If a person, not having this qualification, is retained upon the panel without the knowledge of the party or his counsel, after due diligence and inquiry has been made to ascertain the juror's qualification at the time of impaneling the jury, a new trial should be granted. If, however, no inquiry was made of the juror, and thereby arose a want of reasonable diligence in ascertaining the qualification of the juror at the time of impaneling the jury, the party will be held to have waived all objection to the juror. This rule extends to each and every element that goes to constitute a qualified juror, save such as *the statute* requires the court *sua sponte* to ascertain. * * * It is not a sufficient showing, on a motion for a new trial, that the party, at the time the jury was impaneled, was ignorant of the fact of the incompetency of such person for a juror, and that he believed him to be competent. He must, at the proper time, have examined the juror touching his qualifications. Noth-

ing short of such an investigation will furnish a showing of reasonable diligence."

Here we have no statute requiring *the court* to ascertain the qualifications of its jurors.

But the defendants here in argument insist that, conceding the doctrine to be as announced in this opinion, they do not fall within it because Gray, being "duly sworn, elected, and impaneled as a juror" on the first day of the term when the *venire* was returned, they had a right to rely upon this without anything further, and that, therefore, they have waived nothing; or, in other words, have been guilty of no laches or negligence, or want of proper diligence. But the answer to this argument, in the light of the foregoing cases, is obvious; and the solution of the question depends upon *the time when* the right of challenge accrues to a party, and what is meant by the impaneling of a jury and an examination of a juror upon his *voir dire*. Nothing is better settled than that a party cannot, either with knowledge of a juror's disqualification or from supineness and culpable negligence in ascertaining whether he is qualified or not, speculate upon the result of a trial, holding in reserve whatever he may know or can afterwards ascertain to vitiate the verdict, if against him. Our statute requires the names of jurors to be "publicly drawn from a box," and under our and the Tennessee practice the *venire facias* must issue a certain number of days before the commencement of the term. The evident object and purpose of these and various other somewhat similar provisions is to *publish* to litigants and others interested the jurors selected by law to try the issues presented for determination in the court, thereby giving ample opportunity for investigation and inquiry as to their qualifications, characters, connections, relations, etc., "that so they may be challenged upon just cause." 3 Bl. Comm. 355.

Besides, the proper time for challenge is after issue joined in a cause, especially in a civil suit, and when the cause is called for trial. Thomp. & M. Jur. § 286, and cases cited. Mr. Chitty, in his work on Criminal Law, on this precise subject says:

"*The time for the trial having arrived*, the clerk calls the petit jury on their panel by saying: 'You good men that are impaneled to try the issue between our sovereign lord, the king, and the prisoner at the bar answer to your names upon pain and peril that shall fall thereon.' When this is done, and a full jury appears, the clerk of the arraigns calls the prisoner at bar and says to him: 'These good men and true, that you shall now hear called, are those which are to pass between our sovereign lord, the king, and you; if, therefore, you, or any of you, will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard.' * * * From the words of the clerk's address to the prisoner, it is evident that this is the proper time to exercise the right of challenge." 1 Chit. Crim. Law, 532, 533.

And an examination of all the cases cited in this opinion shows that the objections were always taken "on the trial," or "when the