so superseded the use of "attaints" that there is scarcely an instance of an attaint later than the sixteenth century.

The duty of a jury is to decide the facts of a cause tried by them. The duty of a judge is to decide what is the law respecting these facts. It has been truly said: "If it be demanded, what is the fact? the judge cannot answer it; if it be asked what is law? the jury cannot answer it. * * * * * The fact is to be tried, that is, as it is intended, by the verdict of twelve men. That is called in law a *trial*."

"The principal of trial by jury is," says a learned and eloquent writer on "Trial by Jury," "that questions of fact, involving the rights of the people, shall be determined by the people themselves, in contradistinction to the decision of those facts by fixed and salaried judges, appointed by and dependant upon the sovereign power in the state." *

The assembling of a jury to try a cause is so managed that protection is afforded to both sides in an action, in order that fair play shall be observed. When a jury is demanded to try a cause, it is asked, "And this the said A. prays may be enquired of by the country;" or, "And of this he puts himself upon the country, and the said B. does the like." The court then commands the sheriff, "that he cause to come here, on such a day, twelve free and lawful men, of the body of his country, 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." The sheriff returns the names of the jurors in a panel (a little pane or oblong piece of parchment) annexed to the writ. After a certain delay and some forms have been gone through, the jury is assembled to hear the cause.

"Let us 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; so that he may be not only the less tempted to commit wilful errors, but likewise be responsible for the faults either of 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, connections, and relations, so that they may be challenged upon just cause; while, at the same time, by means of the compulsory process (of *distringas* or *habeas corpora*) the cause is not likely to be retarded through defect of jurors. Thirdly, as to the place of their appearance there is a provision most excellently calculated for the saving of expense to the parties. The troublesome and most expensive attendance is that of jurors and witnesses at the trial; which therefore is brought home to them, in the 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, persons whose learning and dignity secure their jurisdiction from contempt. 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.

"The jurors contained in the panel alluded to before, are either special or common jurors. Special juries were originally introduced in trials at Bar, when the causes were of too great a 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."—*Blackstone.*

In the present day, juries in civil causes procure refreshments when the judge takes his, but the custom of the jury being kept without meat, drink, fire, or candle, unless by permission of the judge, till they are unanimously agreed, is a method of accelerating unanimity which was not unknown in other constitutions of Europe, and in matters of greater concern. For by the golden bull of the empire, if, after the congress was opened, the electors delayed the election of a king of the Romans for thirty days, they were fed only with bread and water till the same was accomplished. In England, it has been said, that if the jurors do not agree in their verdict before the judges are about to leave the town, the judges are not bound to wait for them, but may carry them round the circuit from town to town in a cart. The modern custom seems to be for the judge to discharge the jury; and a recent case, (that of a woman who was tried for murder, and who, after the jury had been discharged by the judge because they could not agree in their verdict, contended that the judge had acted illegally,) appears to have determined the question that a judge has the power.

The necessity for unanimity in the verdict of a jury, seems to be almost peculiar to the English constitution; at least, in the *nembda* or jury of the ancient Goths, there was required (even in criminal cases) only the consent of the major part, and in case of equality, the defendant was held to be acquitted.

In Scotland, the ordinary jury, consisting of fifteen, give their verdict by a majority. Trial by jury, in civil causes, is only partially adopted. It was not, until lately, added to the jurisdiction of the supreme civil tribunal, denominated the Court of Session. Trial by jury in Scotland is limited to certain descriptions of cases, and is not popular; in this respect there is a great difference between English and Scotch law.

* Trial by Jury, the Birthright of the People of England. p. 14. London; Hardwicke, 192, Piccadilly. One Shilling.