

No. VIII.

An Act for regulating the constitution of Juries
for the trial of Civil Issues in the Supreme
Court of New South Wales. [9th October,
1829.]

JURIES FOR CIVIL
ISSUES.

WHEREAS by an Act of Parliament passed in the ninth year of Preamble.
the reign of His present Majesty intituled "An Act to provide 9 Geo. IV. c. 83 s. 8.
"for the Administration of Justice in New South Wales and Van
"Diemen's Land and for the more effectual Government thereof and
"for other purposes relating thereto" it is provided that if either of
the parties plaintiff and defendant in any action at law brought in the
Supreme

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Supreme Court of New South Wales shall be desirous of having any issue or issues of fact joined between the said parties tried by a jury and shall apply for that purpose to the said Court then and in every such case it shall be lawful for the said Court to award or to refuse a trial by jury as the justice of each particular case may seem to such Court to require and it is further provided by the said Act that the qualifications numbers and summonses of such juries and all other rules for their constitution and proceeding shall be fixed by some general Law or Ordinance to be passed by the Governor of New South Wales with the advice of His Legislative Council Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council That in all actions at law in the Supreme Court of the said Colony wherein the said Court shall award a trial by jury such jury shall consist of twelve persons who shall be subject to such and the like rules and manner of proceeding as are observed upon the trial of any issue of fact joined in His Majesty's Courts of Record at Westminster so far as the same may not be specially provided for in this Act.

Juries to consist of twelve persons.

Qualification of jurors.

Exemptions.

Disqualifications.

Transports again convicted in this Colony disqualified.

Preparation of lists.

2. And be it further enacted That every man (except as herein-after excepted) between the ages of twenty-one years and sixty years residing within the Town of Sydney or within the distance of twenty-two measured miles from the said town to be computed from the Obelisk situated in Macquarie-place in the said town who shall have within the said Colony in his own name or in trust for him a clear income arising out of lands houses or other real estate of at least thirty pounds per annum or a clear personal estate of the value of at least three hundred pounds shall be qualified and liable to serve on juries for the trial of any such issues joined in the said Court as aforesaid.

3. And be it further enacted That the following persons shall not be liable (except by and with their own consent) to serve upon any jury for the trial of any such issue as aforesaid that is to say all the Judges of the Supreme Court Commissioners of the Courts of Requests Chairmen of the Courts of Sessions and all ministerial officers of such Courts respectively all Members of the Legislative Council all persons holding offices under the Government of the Colony all Clergymen in Holy Orders Priests of the Roman Catholic faith Dissenting Ministers all barristers attorneys and solicitors duly admitted to practice and actually practising in the Supreme Court coroners and gaolers physicians surgeons and apothecaries in actual practice all military and naval officers on full pay licensed pilots and masters of vessels actually employed in the service of the Crown Sheriff's officers stipendiary constables or peace officers schoolmasters and parish clerks.

4. Provided also and be it further enacted and declared That no man not being a natural-born subject of the King and no man who hath been or shall be attainted of any treason or felony or convicted of any crime that is infamous (unless he shall have received for such crime a pardon or shall be within the benefit and protection of some Act of Parliament having the force and effect of a pardon under the great seal for such crime) shall be qualified to serve on any such jury for the trial of any such issue as aforesaid.

5. Provided also and be it further enacted That nothing herein-before contained shall extend to the qualifying of any person convicted of any such infamous crime as aforesaid to serve on any such jury the term of whose sentence shall have expired and who subsequently to such first conviction shall have been convicted in this Colony of any such crime as aforesaid.

6. And be it further enacted That the Superintendents of Police for the time-being in the Towns of Sydney and Parramatta respectively

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respectively and the Bench of Magistrates in the Town of Liverpool shall in the first week in the month of November next in this present year and within the first week in the month of October in each succeeding year prepare or cause to be prepared lists of all men of good fame and repute within their respective townships or districts liable to serve on the said juries setting forth their residences titles and qualifications according to the form annexed to this Act.

7. And be it further enacted That the said Superintendents and Magistrates respectively shall cause a copy of the lists which shall be made out as aforesaid to be within three days after the same shall be prepared affixed to the principal doors of the Court-houses and also to the principal door of every public place of religious worship within the said towns respectively with a notice signed with their names that the Justices of the Peace for the said towns and districts respectively will hear at the then next Petty Sessions directed to be held for that purpose as hereinafter mentioned all objections to the said lists. Provided always that the said Superintendents and Magistrates respectively shall keep the original lists or copies of the same to which the inhabitants of the said towns or districts respectively shall have access at any reasonable time within fourteen days after the date of such notice without fee in order that due notice may be given of names improperly omitted or inserted.

8. And be it further enacted That Special Petty Sessions shall be held in the first week of December in this present year and in the first week of November in every succeeding year in each of the said towns at which the said Superintendents and Magistrates respectively shall attend and produce the lists so prepared as aforesaid and thereupon the Justices so assembled shall strike out of such lists the names of all persons not liable to serve or disqualified from serving as jurors and also of such as are disabled by lunacy or inability of mind deafness blindness or other permanent infirmity and shall insert all names improperly omitted and correct all errors and mistakes in such lists and that the said Justices shall within two days after the meeting of such Petty Sessions cause notice in writing to be given to the parties who may be affected by any such omissions insertions or corrections and require them respectively on a day certain to shew cause if any they may have against the same and the said Justices shall fix a day not being more than six days after such notice for hearing the said parties and finally settling the said lists.

9. And be it further enacted That as soon as the said lists shall be settled as aforesaid the same shall immediately be transmitted by the said Justices to the Sheriff and the Sheriff upon receiving such lists shall within ten days after the receipt thereof in each and every year cause to be transcribed fairly in a book to be kept in his office for such purpose and to be styled the "Jurors' Book" the names of all persons contained in such lists respectively with the addition of their respective residences titles and qualifications in alphabetical order beginning under each letter of the alphabet with the surname of each person and such jurors' book shall thereupon be and continue in force for the ensuing year.

10. And be it further enacted That a true and faithful copy of the said jurors' book shall be by the said Sheriff in each and every year as soon after as conveniently may be made and shall be delivered upon oath by the said Sheriff to the Clerk of the Supreme Court in order that the same may be referred to in the said Court at the trial of every issue as aforesaid.

11. And to the end that all persons liable to serve on any such juries as aforesaid may bear an equal share of the public duty imposed upon them be it further enacted That as often as a writ of *venire facias*

Lists to be affixed to
the doors of the
Court-houses and
Churches.

Special Petty
Sessions to be held
for correcting the
lists.

Lists to be trans-
mitted to the Sheriff
to be entered in a
book.

Copy to be sent to
the Supreme Court.

Jurors to be sum-
moned in alphabetic
al order.

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facias as hereinafter provided shall be delivered to the Sheriff requiring him to summon jurors for the trial of any such issues as aforesaid the Sheriff shall and he is hereby required to summon all persons (not being on the special jury list as hereinafter provided) whose names shall be transcribed in such jurors' book according to the order in which such names shall successively be placed until every such person shall have been summoned in his turn and in case any such person shall make default every such defaulter shall be summoned a second time or oftener until he shall have served for such default or defaults and such order shall be observed in each succeeding year the Sheriff beginning with the names in the new book next after the names of the persons in the last book who were last summoned to attend on such juries as aforesaid.

Venire facias.

12. And be it further enacted That in case the said Court shall award a trial by jury in any such action as aforesaid it shall be lawful for the said Court to issue a general *venire facias* for the trial of all and every issue or issues of fact joined as aforesaid and ordered for trial by jury in the said Court and the form of such *venire facias* shall be settled by the said Court and shall direct the Sheriff to summon so many jurors to attend the said Court and at such time or times as the said Court shall direct and appoint Provided always that the names of no more than thirty-six nor less than eighteen persons duly qualified to serve as jurors as aforesaid shall be included in any such *venire facias* and that every such *venire facias* shall be issued to the Sheriff eight clear days before the attendance of the jurors shall be required and that the said jurors shall be severally summoned by the said Sheriff or his proper officer four clear days before their attendance shall be required and every such summons shall be in writing and signed by the Sheriff or his deputy to the following effect—

Form of summons

MR. A. B. (*naming the juror*) you are required to appear as a juror at the Supreme Court in Sydney to be held on the day of next and there to attend from day to day until you shall be discharged by the said Court.

(Signed)

C. D. Sheriff.

and the said summons shall be left at the respective places of abode of the said jurors.

Penalties for jurors not attending when summoned.

13. And be it further enacted That if any person duly summoned as a juror as aforesaid shall make default and fail to attend the said Courts (upon proof on oath of such person being duly summoned as aforesaid) every such person shall forfeit to His Majesty's use a sum not exceeding Ten Pounds at the discretion of any Judge or Judges of the said Court to be levied by attachment by order of the said Court.

Names to be drawn from a box.

14. And be it further enacted That at the sitting of the said Court for the trial of any such issue as aforesaid the name addition and place of abode of each juror summoned as aforesaid shall be written on a separate piece of card or paper and put into a box and when such issue is called on to be tried the Chief Clerk or other ministerial officer of the Court shall in open Court draw therefrom until twelve men appear who are not objected to or challenged and after the trial such names shall be returned to the box to be kept with the other undrawn names and so *toties quoties* as long as any issue shall remain to be tried.

Talesmen.

15. And be it further enacted That when a cause appointed to be tried by a common jury shall be called on and a sufficient number of jurors summoned to attend such Court shall not be in attendance it shall be competent to either party to the cause to pray a *tales* and the Court or Judges may then command the Sheriff or his deputy forthwith

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forthwith to summon as many good and lawful men of the by-standers (being qualified and liable as jurors aforesaid) as shall be sufficient to make up a full jury for the trial of such cause as aforesaid.

16. And be it further enacted That every juror who shall attend the said Court in pursuance of such summons as aforesaid shall be entitled to receive for every day during his attendance upon the said Court a compensation for his expenses at and after the following rate that is to say if such person shall reside within the town of Sydney or within two miles thereof the sum of two shillings for every day such juror shall attend the said Court and if such juror shall reside at the distance of more than two miles from the said town the sum of five shillings for every day such juror shall be so in attendance and the further sum of eight-pence per mile for every mile he shall reside beyond the limits of Sydney.

17. And be it further enacted That the Chief Clerk of the Court or other proper officer shall keep an account of the number of days each juror shall be called and answer to such call and duly attend the said Court and after the expiration of the time appointed by the Court for the attendance of such jurors respectively the said Clerk or other proper officer shall deliver to every such juror a short account or memorandum in writing setting forth the number of days such juror may have been in attendance upon the said Court and the distance from Sydney (if such juror reside more than two miles beyond Sydney) from which such juror may have attended and the sum of money to which such juror may be entitled and the said memorandum shall be taken by such juror to the Sheriff and the Sheriff shall thereupon pay to such juror the sum of money to which he may be entitled as aforesaid.

18. And in order to provide a fund for the payment of the said jurors as aforesaid be it further enacted That there shall be paid by the party or parties who shall obtain a verdict in any cause tried by a common jury as aforesaid into the hands of the Chief Clerk or other proper officer of the said Court the sum of two pounds and such and the like sum shall be allowed to such party or parties in the taxation of costs and all sums of money so received by the said Clerk or other officer of the said Court shall be paid over to the Sheriff and the same together with all fines and forfeitures levied under this Law or Ordinance shall form and be a fund for the payment of the expenses of jurors in attendance upon the said Court as aforesaid and shall be paid and applied to such purpose accordingly.

19. And be it further enacted That the Judges of the said Supreme Court may grant a rule where it appears expedient that the jury should have a view of any place in dispute and that any Judge or Judges of the said Court may order such sum as such Judge or Judges may think reasonable for defraying the expenses of such view to be deposited in the hands of the Sheriff by the party applying for such view and such sum shall be paid over to such jurors as shall have had such view and shall be taxed and allowed by the Master or other proper officer of the Court in like manner as the other costs of the same and that two or more jurors as shall be mutually agreed upon between the parties to the suit shall be shewn the place by two persons to be appointed by the Court Provided that the names of the viewers shall be returned by the Sheriff and provided also that such viewers shall be first sworn to try the issue.

20. And be it further enacted That in every case wherein a jury shall have been granted as aforesaid for the trial of any issue or issues if either of the parties plaintiff or defendant shall make application to the Court stating his desire to have the said issue or issues tried by a special jury the Judges of the said Court shall forthwith issue directions

The Clerk of the Court to note the attendance of jurors who are to be paid by the Sheriff.

Successful party to pay a certain sum which with fines &c. shall form a fund for the payment of jurors.

Jurors if expedient to view any place in dispute.

If a jury be granted the Court if required shall order a special jury.

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tions for summoning a special jury constituted as is hereinafter more particularly described for the trial of such issue or issues between the said plaintiff and defendant.

Qualification of special jurors.

21. And be it further enacted That every man described in the said jurors' book as an Esquire or person of higher degree or as a Bank Director or as a Justice of the Peace or as a merchant (such merchant not being a general retail dealer) shall be qualified to serve on special juries for the trial of issues in the Supreme Court as aforesaid and shall in consideration of such qualifications be exempted from serving except with his own consent on any common jury as aforesaid.

Special jurors' list.

22. And be it further enacted That the Sheriff shall within ten days after he shall have received the lists of jurors from the Magistrates extract from the said lists the names of all persons who shall be qualified and liable to serve on special juries and shall cause the names so extracted to be fairly and truly copied out in alphabetical order together with their respective places of abode and additions which lists shall be called the "Special Jurors' List" and be subjoined to the jurors' book and the said Sheriff shall prefix to every name in such list its proper number beginning the numbers from the first name and continuing them in a regular arithmetical series down to the last name and shall cause the said several numbers to be written upon distinct pieces of parchment or card being all as nearly as may be of equal size and after all the said numbers shall have been so written shall put the same together in a separate drawer or box and shall there safely keep the same to be used for the purpose herein-after mentioned.

Mode of striking special jurors.

23. And be it further enacted That whenever the said Supreme Court shall have awarded a jury for the trial of any issue and either party plaintiff or defendant shall require a special jury the Chief Clerk or other officer of the Supreme Court shall appoint a time and place for the striking of such special jury and the said officer at the time and place being attended by the Sheriff or his officer who is hereby required to bring with him the special jurors' list and all the numbers so written on distinct pieces of parchment or card as aforesaid shall in the presence of all the parties to the issues to be tried and of their attorneys (if they respectively choose to attend or if the said parties or their attorneys or all or any of them do not attend then in their absence) put all the said numbers into a box to be by him provided for that purpose and after having shaken them together shall draw out of the said box forty-eight of the said numbers one after another and shall as each number is drawn refer to the corresponding number in the special jurors' list and read aloud the name designated by such number and when such forty-eight numbers shall have been drawn the said Sheriff shall prepare two lists of men's names with the numbers as they are written in the special jurors' list and shall deliver one list to the plaintiff or his attorney and another list to the defendant or his attorney and the forty-eight names contained in the lists so delivered shall be reduced to eighteen by the plaintiff or his attorney and the defendant or his attorney each of them striking out at their discretion fifteen different names from each of the said lists.

The summoning and mode of drawing for special juries.

24. And be it further enacted That as soon as any special jury shall be struck as aforesaid the same shall be severally summoned by the Sheriff or his officer to attend the Supreme Court on the day appointed for the trial of such cause according to the form and manner hereinbefore directed for the summoning of common juries and the Sheriff shall on the day appointed for the trial deliver to the Chief Clerk or other proper officer of the Supreme Court the two aforesaid

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aforesaid reduced lists of jurors together with the box from which the numbers were drawn and shall put therein all the numbers corresponding with the names remaining on the said two reduced lists and the said officer shall in open Court draw from the box one number at a time and shall repeat aloud the corresponding name from the said lists until twelve men shall answer which said twelve men being duly sworn shall be deemed and taken to be the special jury.

25. And be it further enacted That the same special jury may try any number of causes in which a trial by special jury shall have been awarded upon the parties plaintiff and defendant consenting thereto in writing any thing in this Act contained to the contrary notwithstanding.

26. And be it further enacted That the person or party who shall apply for a special jury shall pay the fees for striking such jury and all the expenses occasioned by the trial of the cause by the same and shall not have any further or other allowance for the same upon taxation of costs than such person or party would be entitled unto in case the cause had been tried by a common jury as hereinbefore directed unless the Judge before whom the cause is tried shall immediately after the verdict certify under his hand that the same was a cause proper to be tried by a special jury.

27. And be it further enacted That every special juror as aforesaid shall for the trial of each and every issue as aforesaid upon which he shall serve or be summoned and shall attend at the Supreme Court be allowed the sum of fifteen shillings and no more except only in cases wherein a view shall be directed the expenses of which view shall be taxed and allowed as hereinbefore directed with respect to common juries.

28. And be it further enacted That if any special juror shall not attend on being duly summoned or otherwise make default in not appearing in pursuance of such summons as aforesaid every such juror shall be fined in a sum not exceeding Twenty-five Pounds at the discretion of any Judge or Judges of the said Court to be levied by attachment by order of the said Court.

29. And be it further enacted That if any Sheriff or other minister or officer shall wilfully insert or omit in the jurors' book the name of any man not included in the lists of jurors as aforesaid or shall fail to deliver a correct copy thereof to the Clerk of the Supreme Court or shall otherwise fail well and faithfully to do and perform all and every the acts matters and things hereby required to be by him performed such Sheriff or other minister or officer shall be fined at the discretion of the Court.

30. And be it further enacted That any Superintendent of Police Magistrate Clerk of the Petty Sessions or other ministerial officer who shall wilfully neglect or refuse to execute any of the duties in the manner herein prescribed or shall abuse the authority reposed in them respectively under or by virtue of this Act shall forfeit for every such offence the sum of One Hundred Pounds one-half to the King the other to the person suing in the Supreme Court for the same.

31. And be it further enacted That any person guilty of the offence of corruptly influencing or attempting to influence any such juror as aforesaid or jurors consenting thereto may be punished with fine and imprisonment on conviction before the said Supreme Court.

32. And be it further enacted That this Law or Ordinance shall commence and take effect upon and from the passing and publication thereof and shall continue and be in force until the Thirty-first day of December in the year one thousand eight hundred and thirty-one.

Roman Catholic Relief Act Adopted, 10 G. 4, c. 7.

FORM OF RETURN OR LIST REFERRED TO.

The List of all Men within the district or town of
liable to serve on juries.

District or place in Towns add the Name of the Street.	Christian and Surname at full length.	Title Quality Calling or Business.	Nature of Qualification.
Parramatta Macquarie-street }	Adams John	Esquire	Freehold one hundred pounds per annum.
Sydney George-street }	Bowles James	Grocer	Four hundred pounds of personal estate.

A. B.

Superintendent of Police or
Magistrate for