

No. V.

QUARTER SESSIONS. An Act to provide for Trial by Jury at the Courts of Quarter Sessions to be held at Melbourne and Port Macquarie. [15th August, 1838.]

Preamble. **W**HEREAS by a certain Act or Ordinance of the Governor and Legislative Council passed in the third year of the reign of His late Majesty King William the Fourth intituled "An Act to consolidate and amend the Laws for the transportation and punishment of Offenders in New South Wales and for defining the respective powers and authorities of General Quarter Sessions and of Petty Sessions and for determining the Places at which the same shall be holden and for better regulating the summary jurisdiction of Justices of the Peace and for repealing certain Laws and Ordinances relating thereto" it was among other things enacted That Courts of General Quarter Sessions for the Colony of New South Wales should be held at Sydney Parramatta Campbelltown Windsor Maitland and Bathurst and at such other places within the said Colony and at such times as the Governor for the time being should by any Proclamation duly issued for such purpose appoint and at

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at no other place whatsoever and whereas His Excellency the Governor hath in pursuance of the said recited Act issued his Proclamation whereby the towns of Melbourne and Port Macquarie respectively are appointed as places at which Courts of General Quarter Sessions shall be held and whereas it is necessary to provide for the trial of crimes offences and misdemeanors cognizable in the said Courts of Quarter Sessions respectively by Juries in like manner as by an Act of the Governor and Council passed in the second year of the reign of His late Majesty King William the Fourth intituled "*An Act for regulating the constitution of Juries and for the Trial of Issues in certain cases in the Supreme Court of New South Wales*" as also by another Act passed in the fourth year of the reign of his said late Majesty intituled "*An Act to continue for a limited time an Act of the Governor and Council of New South Wales intituled 'An Act for regulating the constitution of Juries and for the Trial of Issues in certain cases in the Supreme Court of New South Wales'*" and as the same are respectively continued by an Act passed in the first year of Her present Majesty Queen Victoria intituled "*An Act further to continue for a limited time an Act intituled 'An Act for regulating the constitution of Juries and for the Trial of Issues in certain cases in the Supreme Court of New South Wales'*" is directed with respect to the trial of issues joined on criminal informations in the Supreme Court Be it therefore enacted That all crimes offences and misdemeanors which shall be prosecuted in the said Courts of Quarter Sessions to be held at Melbourne and Port Macquarie respectively shall under the like provisions as are by the said last recited Acts made respecting the trials of issues arraigned before the Supreme Court be tried by a jury of twelve inhabitants of the said Colony who shall be subject to such and the like rules regulations and provisions as to their qualifications exemptions and disqualifications as are in said last recited Acts made and provided with respect to juries for the trial of issues joined on informations exhibited in the said Supreme Court Provided however that nothing herein contained shall restrain or in any manner interfere with the power and authority by law vested in the said Courts of Quarter Sessions to take cognizance in a summary way of crimes misdemeanors and other offences not punishable with death which have been or shall be committed by transported felons or other offenders whose sentences have not expired or been remitted.

2. And be it further enacted That every man who shall reside within the distance of fifty miles from the respective towns of Melbourne and Port Macquarie and who shall be qualified as in the said last recited Acts is directed with respect to juries for the trial of issues joined in the Supreme Court shall be liable to serve on juries for the trial of crimes offences and misdemeanors in the said Courts of Quarter Sessions respectively.

3. And be it further enacted That the Justices in their respective Petty Sessions which shall be holden at the said towns of Melbourne and Port Macquarie shall within the first week of the month of October in the present year and in the first week of the month of January in every succeeding year prepare or cause to be prepared lists of all men within their respective townships or districts liable to serve on the said juries setting forth their christian and surnames residences titles additions and qualifications according to the form annexed to this Act and the said Justices or any two or more of them shall respectively subscribe the said lists with a declaration that each such list contains to the best of their knowledge and belief the names of all persons liable to serve on juries in the district for which it is made and qualified according to the provisions of the said recited Acts.

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Lists to be affixed to
Court-houses and
Churches.

4. And be it further enacted That the Police Magistrates for the said towns of Melbourne and Port Macquarie respectively shall cause copies of the said 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 with a notice signed with their names respectively that the Justices of the Peace for the said towns and districts 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 Police 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.

Special Petty Ses-
sions to be held for
correcting the lists.

5. And be it further enacted That Special Petty Sessions shall be held in the third week in the month of October in this present year and in the third week of the month of January in every succeeding year in each of the said towns at which the said Justices respectively shall attend and produce the lists so prepared and verified as aforesaid. And thereupon the said Justices so assembled shall examine such list *seriatim* and 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 finally settle the same and the said lists when so settled shall be final and shall continue in force until the jury list for the year next ensuing shall be made out and transmitted to the Sheriff as hereinafter directed.

Justices who have
prepared lists to
vote at such Ses-
sions.

6. And be it further enacted That it shall and may be lawful for the said Justices who shall have prepared and submitted such lists as aforesaid to assist and vote at such Petty Sessions aforesaid upon all questions which may be put respecting the character qualification disqualification or exemption of every person named in any such list or of any person whose name may be proposed to be added thereto. Provided always That if any question should arise respecting the striking out or adding of a name the same shall be decided by ballot.

Proviso for vote by
ballot.

Certificate to be
subjoined to lists.

7. And be it further enacted That after the said lists shall have been finally settled and approved in Petty Sessions in manner as aforesaid directed a certificate shall be subjoined to each such list and subscribed by such Justices as may be there present stating that the same has been carefully examined and corrected according to the best of the knowledge and belief of the major part of them and that all persons then named in such lists are qualified to serve on juries according to the provisions of this Act.

Magistrates in the
district to be sum-
moned to Petty Ses-
sions.

8. And be it further enacted That the said Police Magistrates for the towns of Melbourne and Port Macquarie respectively shall cause all the Magistrates of their respective districts to be specially summoned to attend the said Special Petty Sessions and the Justices there assembled shall sit *de die in diem* until the jury lists shall be settled as hereinbefore directed and if any Magistrate after having been so summoned shall neglect or fail to attend at any such Special Petty Sessions or if attending shall refuse or fail to vote accordingly upon any question that shall be put every such Magistrate so refusing or failing to vote or so neglecting or failing to attend unless he can shew reasonable cause shall forfeit and pay for every such offence the sum of twenty pounds to be sued for in the name of the Attorney General and to be appropriated in the same manner as all fines and forfeitures levied under this Act and the Clerks of the said

Penalty for non-
attendance.

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said Petty Sessions respectively shall note the names of all such Magistrates as shall attend the said Special Sessions and as shall be absent from the same from day to day and at the close of the said Sessions shall transmit a certified list thereof to the Attorney General.

9. And be it further enacted That as soon as the said lists shall be settled as aforesaid the same shall be immediately transmitted by the said Justices to the Sheriff and the Sheriff upon receiving such lists shall within ten days after the receipt thereof cause to be transcribed fairly in a book to be kept in his office or the office of his deputy for such purpose and to be styled the jurors' book for the said districts respectively the names of all such persons contained in such lists respectively with the additions 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 until the jury lists for the year ensuing shall be transcribed by the Sheriff into the jurors' book.

10. And be it further enacted That true and faithful copies of such respective jurors' books shall be made by the said Sheriff as soon as conveniently may be and shall be delivered upon oath by the said Sheriff to the Clerk of the Peace for the said Courts of Quarter Sessions in order that the same may be referred to in the said Courts at the trial of any criminal case.

11. And be it further enacted That it shall be lawful for the Chairman of the General Quarter Sessions for the said districts respectively and he is hereby required full fourteen days before the time appointed for holding such Courts respectively to issue a precept under his hand and seal to the Sheriff of New South Wales or his deputy requiring him to summon so many jurors to attend the said Courts respectively at such time and place as shall be therein mentioned and appointed and such precept shall not require more than twenty-four nor less than eighteen persons duly qualified to serve as jurors to attend the said Courts respectively at any one Session thereof.

12. And be it further enacted That the said Sheriff or his deputy shall upon receiving any such precept as aforesaid summon so many persons duly qualified to serve as jurors to attend the said Courts of General Quarter Sessions respectively at such time and place as shall be specified in such precept and as hereinafter provided that is to say all persons duly qualified by law to serve as jurors who shall reside within the distance of fifty miles from the said towns respectively shall be summoned to attend the said Courts of General Quarter Sessions to be holden at Melbourne and Port Macquarie respectively according to the order in which their names shall be transcribed and placed in the jurors' book for the said districts respectively and every such summons shall be in writing and signed by the said Sheriff or his deputy to the following effect—

“ Mr. A. B. (naming the Juror)

“ You are hereby required to appear as a Juror at the Form of summons.
 “ Court of General Quarter Sessions to be held at
 “ 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 or Deputy Sheriff.”

And the said summons shall be served personally upon or left at the places of abode of the said jurors respectively full six days before their attendance shall be required as aforesaid.

Licensed Publicans.

*Penalty on jurors
for not attending.*

13. And be it further enacted That if any person being duly summoned as a juror to attend either of the said Courts of Quarter Sessions respectively shall make default and fail to attend the same shall on proof upon oath of being duly summoned forfeit a sum not exceeding ten pounds at the discretion of the Justices sitting in the said Courts to be recovered levied and appropriated in such and the like manner as other fines and forfeitures imposed and incurred at Courts of General Quarter Sessions are or shall be recovered levied and appropriated unless some just cause for such defaulter's absence shall be made to appear by oath or affidavit to such Court as aforesaid.

*The like form to be
observed as in the
Supreme Court.*

14. And be it further enacted That all such and the like forms rules regulations and provisions shall be adopted observed and followed in drawing the names of jurors for the trial of issues in the said Courts of Quarter Sessions respectively and in praying and allowing a tales to make up a full jury and such and the like rates of compensation shall be allowed and paid to jurors attending the said Courts respectively as are made and provided in like cases with respect to the trial of actions at Law in the Supreme Court by the said recited Act passed in the second year of the reign of His late Majesty King William the Fourth.

*Fines or penalties
for neglect of duty*

or influencing jurors.

15. And be it further enacted That any Sheriff or Deputy Sheriff Justice of the Peace or Clerk of the Peace or any other minister or officer shall refuse neglect or fail to do and perform all and every the acts matters and things hereby required to be by him or them respectively done and performed and if any person shall be guilty of the offence of corrupting influencing or attempting to influence any such juror or any such juror shall consent thereto every such person so offending shall incur and become liable to such and the like fines forfeitures and penalties to be recovered levied enforced and applied in such and the like form and manner as in and by the said recited Acts are provided and directed in like cases with respect to the trial of actions at Law in the Supreme Court.