

## No. XXVIII.

An Act to provide for the Trial by Jury in Civil and Criminal Cases in the Circuit and other Courts to be holden within the Colony of New South Wales and its Dependencies.  
 [23rd October, 1840.]

JURY TRIALS.

WHEREAS by an Act passed by the Governor and Legislative Council of New South Wales in the present Sessions of the said Council intituled "An Act to provide for the more effectual <sup>4</sup> Victoria No. 22. *Administration of Justice in New South Wales and its Dependencies*" it is amongst other things enacted that it shall be lawful for the Governor of the said Colony by Proclamation or Proclamations under his hand issued and published from time to time by and with the advice of the Executive Council of the said Colony to direct Circuit Courts to be holden in or at such towns and places within the said Colony as he shall by the advice aforesaid think fit to appoint and to fix from time to time and vary or alter as occasion may require the times for holding the said Courts respectively and whereas it is necessary to provide for the trial of issues of fact in civil actions and also of crimes offences and misdemeanors respectively in such Circuit Courts and in the Islands of New Zealand in like manner as by an Act of the said Governor and Council passed in the second year of the reign of His late Majesty King William the Fourth intituled "An Act <sup>2</sup> William IV. No. 3. for regulating the constitution of Juries for the Trial of Issues in certain cases in the Supreme Court of New South Wales" and also of 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 <sup>4</sup> William IV. No. 12. *Act of the Governor and Council of New South Wales intituled*" "An Act for regulating the constitution of Juries for the Trial of Issues in certain cases in the Supreme Court of New South Wales and to make further provision for Trial by Jury in Criminal Cases in the said Colony" and as the same are respectively continued by an Act passed in the third year of the reign of Her present Majesty Queen Victoria intituled "An Act further to continue for a <sup>3</sup> Victoria No. 25. 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 in civil or criminal cases in the Supreme Court Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That all issues of fact in civil actions and all crimes offences and misdemeanors which shall be tried or prosecuted in any Circuit Court appointed by any such proclamation or proclamations as aforesaid of the said Governor to be holden in or at any towns or places within the said Colony shall be tried by a jury of twelve inhabitants of the respective towns or places where such Circuit Courts shall be so respectively holden pursuant to such proclamation or proclamations which said jury shall be subject to such and the like rules regulations and provisions as to their qualifications exemptions and disqualifications as are in the said recited Acts made and provided with respect to juries for the trial of issues of fact joined in civil actions and on informations exhibited in the Supreme Court of the said Colony.

All issues in civil and criminal cases to be tried at Circuit Courts by a jury of twelve inhabitants

Subject to the same qualifications &c. as other juries.

2. And be it enacted That whenever the said Governor shall under the provisions of the said first recited Act direct that a Circuit Court

The Judges to issue writs of *venire facias* for such Circuit Courts.

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Court shall be holden in or at any town or place within the said Colony it shall be lawful for the Judges of the Supreme Court to issue a writ or writs of general *venire facias* for the trial of all crimes and misdemeanors and of all issues of fact in any action or other proceeding commenced in the Supreme Court of the said Colony and which by the said Court shall be directed to be tried in or at any such town or place in like manner as such writs are directed to be issued in cases to be tried in the Supreme Court and the said Judges shall by such writ or writs respectively direct the Sheriff of the said Colony to summon so many jurors to attend the said respective Circuit Courts so to be holden in or at such towns or places respectively and at such times and places as the said Judges shall direct and appoint Provided however that the names of not more than forty-eight nor less than thirty-six persons duly qualified to serve on juries as aforesaid shall be included in any such *venire facias* and that every such *venire facias* shall be issued to the Sheriff fourteen clear days before the attendance of such jurors shall be required and that the said jurors shall be severally summoned by the Sheriff or his deputy or proper officer six clear days before their attendance shall be required and every such summons shall be in writing signed by the Sheriff or his deputy and shall be to the following effect—

Form of Sheriff's summons.

Mr. A. B. (*naming the juror*) you are hereby required to appear as a juror at the Circuit Court to be holden 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 left at the respective places of abode of the jurors.

Jurors making default to be fined.

3. And be it enacted That if any person duly summoned as a juror as aforesaid shall make default and fail to attend the said Circuit Court for which he shall be so summoned (upon proof on oath of such person being duly summoned as aforesaid) every such person shall forfeit and pay a fine or sum not exceeding ten pounds at the discretion of the Judge of the said Court to be levied and appropriated in like manner as fines imposed by the Supreme Court and such fines shall form a fund for the payment of the jurors as by the said recited Act of the second year of the reign of King William the Fourth is provided and shall be accounted for in like manner as other fines and forfeitures imposed by the said Court.

Jury to be chosen by ballot.

4. And be it enacted That upon the trial of all cases civil or criminal in such Circuit Courts respectively the juries for the trial of each respective case shall be chosen and selected by ballot from the list of jurors so summoned as aforesaid in like manner as directed and appointed as to trials by juries in the Supreme Court and in case of a deficiency of the juries so summoned to attend at such Circuit Courts respectively the necessary number of persons to compose such respective juries shall and may be supplied and made up by a tales in the same manner as is directed in and by the said last recited Act respecting juries in the Supreme Court and a like allowance shall be paid to juries attending at the said Circuit Courts respectively as by the said last recited Act is directed to be paid to jurors attending the Supreme Court.

Tales may be prayed.

In places where there are no juries.

5. And be it enacted That in case the Governor of the said Colony shall by his proclamation or proclamations as aforesaid direct a Circuit Court or Circuit Courts to be holden in any town or place wherever provision shall not have been theretofore made for the preparing and settling of the jury lists for such town or place it shall be

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be lawful for the said Governor to direct the Police Magistrate and Bench of Magistrates of the district wherein such town or place shall be situate to cause jury lists for such town or place to be prepared and such Police Magistrate and Bench of Magistrates shall in pursuance of such direction and they are hereby authorized and required within three months after the issue of any such proclamation or proclamations in the year in which the same shall have been so issued and in the first week in the month of January in every succeeding year to prepare or cause to be prepared lists of all jurors within such town or place respectively or district or within thirty miles of such town or place where such Circuit Courts are respectively appointed to be holden as aforesaid liable to serve on juries setting forth their christian and surname residence 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 such lists with a declaration that such lists contain to the best of their knowledge and belief the names of all persons liable to serve on juries in the town place or district for which it is made and qualified according to the provisions of the said recited Acts.

The Governor may direct lists to be prepared.

6. And be it enacted That the said Police and other Magistrates as aforesaid shall cause copies of the said lists which shall be so 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 doors of every public place of religious worship within the said town place or district with a notice signed with their names respectively that the Justices of the Peace for the said town place or district will hear at the next Petty Sessions directed to be holden for that purpose as hereinafter mentioned all objections to the said lists Provided always that the Police Magistrates of such districts respectively shall keep the original lists or copies of the same to which the inhabitants of the said towns places 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.

Lists to be published.

7. And be it enacted That Special Petty Sessions shall be holden within fourteen days after the preparation of the first lists and in the third week in the month of January in every succeeding year in each of the said towns places or districts 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 lists *seriatim* and 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 the said lists when so settled shall be final and continue in force until the jury list for the next ensuing year shall be made out and transmitted to the Sheriff as hereafter directed.

Special Petty Sessions to be held in the third week in January for examining lists.

8. And be it 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 as 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 shall arise respecting the striking out or adding of a name the same shall be decided by ballot.

Justices to vote on all questions of character qualification &c.

9. And be it enacted That after the said lists shall have been finally settled and approved in Petty Sessions in manner as hereinbefore directed a certificate shall be subjoined and subscribed by such Justices

Any question to be decided by ballot.

Certificate of Justices as to the settlement of lists.

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Justices as may be there present stating that the same have 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.

*Lists to be transmitted to the Sheriff.*

10. And be it 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 for such purpose and to be styled the jurors' book for the said towns places or 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.

*Special jury may be summoned.*

11. And be it enacted That in every case wherein a jury shall have been granted for the trial of any issue or issues by the Judges of the Supreme Court in any Circuit Court appointed to be holden in pursuance of the provisions of the said recited Act of this Sessions if either of the parties plaintiff or defendant shall make application to the Court stating his desire to have such issue or issues tried by a special jury the Judges of the said Court shall forthwith issue directions 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.

*Qualifications of special jurors.*

12. And be it enacted That every man described in the said respective jurors' book for the town place or district in which such Circuit Courts respectively shall be appointed to be holden as aforesaid as an esquire or person of higher degree or as a Justice of the Peace or as a merchant (such merchant not keeping a general retail shop) or as a bank director shall be qualified to serve on special juries for the trial of issues in the said Circuit Courts respectively.

*Sheriff to make out special jury book in alphabetical order.*

13. And be it enacted That the Sheriff shall within ten days after he shall have received the lists of jurors for the said several towns places or districts aforesaid from the Magistrates as aforesaid extract from the said lists the names of all persons who shall be qualified and liable to serve on special juries for such towns places or districts respectively and shall cause a list of the names so extracted to be fairly and truly made out in alphabetical order together with their respective places of abode and additions which said list shall be called the "Special Jurors' List" of the respective town place or district from the jury list of which it shall have been so extracted and shall be subjoined to the jurors' book of such town place or district respectively 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 alike in appearance as may be and of an 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 as may be required.

*Special juries to be struck as is now by law directed.*

14. And be it enacted That whenever the said Supreme Court shall have awarded a jury for the trial of any issue to be tried in any Circuit Court appointed to be holden as aforesaid and either plaintiff or defendant shall require a special jury for the trial of such issue the special jury to be selected and chosen for the trial of such issue shall be struck elected chosen drawn and summoned in like manner

as

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as special juries are struck elected chosen drawn and summoned for the trial of issues in the Supreme Court of the said Colony.

15. And be it enacted That the same special jury may try any number of cases in which a special jury shall have been awarded for the trial of any issue or issues in the same Circuit Court wherein such special jury shall be summoned to attend as special jurors upon the parties plaintiff and defendant consenting thereto in writing any thing in this Act to the contrary notwithstanding.

16. And be it enacted That wherever the said Supreme Court shall have awarded a special jury for the trial of any issue or issues in such Circuit Courts respectively the expenses occasioned thereby and the allowance to be made to such special jurors shall be borne and paid in like manner as the expenses and allowances of special juries in the Supreme Court.

17. And be it enacted That all persons who shall be summoned to attend the said Circuit Courts respectively as jurors under the provisions of this Act shall be subject and liable to such and the like rules forms course and manner of empanelling and proceeding in all respects on the trial of any issue and shall be entitled to receive such and the like respective rates of allowance for attendance upon the said Circuit Courts respectively as are prescribed by the said recited Act of the second year of His late Majesty and in default of 2 William IV. No. 8. such attendance shall be subject and liable to such and the like forfeitures to be recovered in like manner as in and by the said recited Act is directed and provided.

18. And whereas by the said first recited Act passed in the 4 Victoria No. 22. present Sessions of the Legislative Council of the said Colony provision is made for the appointment of Resident Judges at the Dependencies of Port Phillip and New Zealand respectively who are thereby invested with and authorized to exercise within the said Dependencies respectively all such and the like powers as are vested in and exercised within the said Colony of New South Wales by the Judges of the Supreme Court thereof resident in Sydney. And whereas it is necessary to make provision for the trial at the said Dependencies of civil and criminal issues by juries in like manner as is directed by the said recited Act passed in the second year of the reign of His late 2 William IV. No. 3. Majesty King William the Fourth with respect to the trial of civil issues in the said Supreme Court and as directed by an Act passed in the fifth year of the reign of His said late Majesty intituled "An Act 5 William IV. No. 25. 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 to make further provision for Trial by Jury'" with respect to criminal issues tried in the said Court as the said Acts are continued by the said recited Act passed in the present Sessions of the said Legislative Council. Be it therefore enacted That all crimes and misdemeanors and all civil issues of fact which shall be tried or prosecuted in any Court of competent jurisdiction within either of the said Dependencies whether in the Supreme Court or in any Court of Quarter Sessions shall be tried by a jury of twelve inhabitants of the said Dependencies respectively who shall be subject to such and the like rules regulations and provisions as to their qualifications exemptions and disqualification as in this Act are made and provided with respect to juries for the trial of such issues respectively in the said Circuit Courts. Provided that nothing herein contained shall be construed to alter the law with respect to the trial of civil issues before two assessors. And provided also that nothing herein contained shall restrain or in any manner interfere with the power and authority by law vested in any Court of

*Prisons Regulation.*Qualifications for  
jurors.

General 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.

Duties of Justices  
Deputy Sheriffs and  
other officers in  
respect to juries.

19. And be it enacted That the several duties required by the said recited Acts to be performed by the Justices Sheriff and other officers shall be required to be performed by the Justices Sheriff or Deputy Sheriff and other officers in each of the said Dependencies and subject to the same rules provisions penalties and regulations in every respect.

## 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 Surnames at full length.	Title Quality Calling or Business.	Nature of Qualification.
Maitland Macquarie- street.....}	Adams John	Esquire	{ Freehold one hundred pounds per annum.
Bathurst George-street..	Bowles James	Grocer	{ Four hundred pounds of personal estate.

A. B.  
Superintendent of Police or  
Magistrate for