

## No. IV.

An Act to make further provision for the Trial of Cases in the Circuit Courts of New South Wales and to amend in certain respects the Act providing for Trial by Jury in such Courts. [17th August, 1841.]

JURY TRIALS.

**W**HEREAS by an Act of the Governor and Council of New South Wales passed in the fourth year of the reign of Her present Majesty Queen Victoria intituled "*An Act to provide for the more effectual Administration of Justice in New South Wales and its Dependencies*" provision was made for the establishment of Circuit Courts in the Colony of New South Wales and whereas by another Act of the said Governor and Council passed in the same year intituled "*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*" it was enacted that all issues both civil and criminal should be tried in such Courts by a jury and whereas the Act hereinbefore last recited has been found in some respects to require amendment and it is necessary to make further provision for the trial of cases in Circuit Courts in manner hereinafter mentioned Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That from and after the passing of this Act it shall be lawful for the Governor for the time being of the said Colony by any Proclamation or Proclamations by him from time to time for that purpose issued to apportion and divide the said Colony into three or more "Circuit Districts" and to ascertain and fix the boundaries and limits of every such district and such limits and boundaries from time to time to alter as occasion may require and from and after any such apportionment and division as aforesaid every Circuit Court now or hereafter established or appointed to be holden under or by virtue of the said first recited Act shall be a Court of "Gaol Delivery" in and for the particular district only within which it shall have been or shall be so appointed to be holden Provided always that every such Circuit Court shall be a Court of Oyer and Terminer and of Assize and *Nisi Prius* for the said Colony of New South Wales.

Preamble.

4 Vict. No. 22.

4 Vict. No. 28.

Powers of Circuit Courts as Courts of Gaol Delivery.

2. And be it declared and enacted That every such Circuit Court shall have power and jurisdiction not only to try issues in all actions but also to inquire into and assess damages therein and that all persons convicted in any such Court of any crime or offence cognizable therein shall be subject and liable to the same penalties and punishments as by law could be inflicted on them if convicted of any such crime or offence in the Supreme Court of the said Colony.

Powers of Circuit Courts as to the assessing of damages and as to punishments.

3. And be it enacted That from and after the passing of this Act so much of the said recited Act passed to provide for the trial by jury of cases in the said Circuit Courts as enacts that all issues of fact in civil actions tried therein shall be tried by a jury and also so much of the same as enacts that all such issues and all crimes and misdemeanors therein prosecuted shall be tried by a jury of inhabitants of the towns or places where such Courts shall respectively be holden shall be and the same is hereby repealed.

Certain provisions of the Jury Act.

Sect. 1 repealed.

4. And be it enacted That from and after the passing of this Act all crimes and misdemeanors prosecuted in any such Circuit Court as aforesaid and all issues of fact in civil actions therein coming on to be tried

Jury in future to be residents within the town or place where Circuit Courts are holden or thirty miles therefrom.

*Jury Trials.*

tried (and which issues shall by the Supreme Court have been directed to be tried by a jury) shall be respectively tried by a jury of twelve inhabitants of the Colony resident in the town or place where such Circuit Court shall be appointed to be holden or within a distance of thirty miles therefrom and all damages in any such action which may have been directed to be assessed by a jury shall be inquired into and assessed in like manner and it shall be lawful for the Judges of the said Supreme Court to frame and issue writs of *venire facias* accordingly.

In ordinary cases the trial in actions to be by assessors.

5. Provided always and be it enacted That except in cases where the said Supreme Court in pursuance of the power vested therein in that behalf shall direct any such trial or assessment to be by a jury the trial of all issues and assessment of all damages in actions in every such Circuit Court shall be by the Judge before whom such Court shall be holden and by two assessors being Magistrates of the Colony and resident in or within thirty miles of the place where such Court shall be holden in the same manner and subject to the same rules in all respects as if such trial or assessment were had in the said Supreme Court before and by one of the Judges thereof and two assessors in Sydney.

Summoning of assessors.

6. And be it enacted That it shall be lawful for the Judges of the said Supreme Court fourteen days at the least before the intended day of trial or assessment as the case may be to issue a precept or precepts to the Sheriff for the summoning of assessors for all such cases and the Sheriff shall accordingly by himself or his lawful deputy or officer six days at the least before such day of trial or assessment summon such and so many Magistrates being not less than three nor more than six resident as aforesaid as the said Judges shall direct or in the absence of any such direction as the said Sheriff shall think fit and every such Magistrate shall be summoned in the same manner and by writing in the same form (as nearly as may be) as respectively now are or hereafter may be prescribed by law for the summoning of jurors.

Compensation to assessors and fine for non-attendance.

7. And be it enacted That upon every such trial or assessment as last aforesaid the assessors shall be selected from the list of Magistrates so summoned in like manner as is directed in the case of assessors summoned to the said Supreme Court and every assessor shall for every case on which he shall serve whether of trial or assessment be allowed the sum of ten shillings which shall immediately be paid by the successful party and be eventually taxed and allowed as costs in the cause and every Magistrate summoned as an assessor who shall neglect to attend in obedience to the summons served upon him shall on proof of such service be liable to the same fine at the discretion of the presiding Judge as may be by law imposed by the said Supreme Court for non-attendance in the case of any special juror and every such fine shall on a return thereof to the said Supreme Court be levied and appropriated as fines on jurors in the said Court now are or hereafter may be by law levied and appropriated.

Provision in cases of deficiency in the list of special jurors.

8. And be it enacted That whenever a special jury shall have been awarded for the trial of any such issue or issues as aforesaid and there shall not be sufficient number of persons qualified as special jurors and resident as aforesaid for the striking of a "Reduced List" as by law directed in such cases it shall be lawful for the Sheriff or his deputy to make up the number required for that purpose from the list of common jurors and no exception shall afterwards be allowed in respect thereof or for that any number of such jurors (if on such reduced lists) were or are included in the jury panel.

Provision for cases where the Sheriff is interested.

9. And be it declared and enacted That in every case wherein it shall be made to appear to the said Supreme Court or to one of the Judges

*Jury Trials.*

Judges thereof that the Sheriff is a party or in any manner interested the *venire* or precept to be issued therein shall be directed and delivered to the Coroner or such other person as the said Court or Judge shall in that behalf appoint and such Coroner or person shall thenceforward have and exercise for the purposes of such writ or precept all the powers and duties of the Sheriff of the said Colony.

10. And be it declared and enacted That all crimes and offences which have been and are respectively cognizable in the said several Circuit Courts shall until the constitution of grand juries within the said Colony continue to be so cognizable and may be tried in the said Courts respectively upon information or informations exhibited therein by and in the name of Her Majesty's Attorney or Solicitor General for the time being of the said Colony or either of them or in case of their absence from any such Court by and in the name of such other person as the Governor for the time being of the said Colony shall have appointed or shall hereafter appoint in that behalf.

Declaratory clause  
as to prosecutor in  
Circuit Courts.

11. And be it enacted That it shall be lawful for the Governor at any time or times hereafter as he shall see fit by warrant under his hand and seal to nominate and appoint some fit and proper person to act as and be the Sheriff in and for every or any such Circuit District and the Sheriff first so appointed shall continue in office until he shall be re-appointed or another person shall be appointed in his stead in manner next hereinafter mentioned and it shall be lawful for the Governor on the first Monday in the next and every succeeding year to nominate and appoint in manner aforesaid the same or some other fit and proper person to act as and be the Sheriff for every or any such district for the year next following and every such Sheriff so appointed shall as soon as conveniently may be take before one of the Judges of the Supreme Court the oath of allegiance and an oath faithfully to execute his office and every Sheriff appointed as last aforesaid shall continue in office during the space of one whole year then next following and until he be re-appointed or another person be appointed and sworn into office in his stead in manner aforesaid and if the Sheriff for any such Circuit District shall die or depart from the said Colony or become otherwise incapable of executing the duties of his office then and in such case another person shall be appointed and sworn in like manner and such person shall continue in office for the remainder of the year and until he be re-appointed or another person be appointed and sworn into office in his stead as aforesaid and every such Sheriff during the time of his continuance in office shall in and for the district for which he shall have been so appointed have and execute the same powers and duties and enjoy the same privileges and be subject to the same liabilities in all respects as by law belong to the office of a Sheriff and the powers duties privileges and liabilities of the Sheriff of New South Wales shall within such district cease and determine.

Governor may  
appoint District  
Sheriffs.

Continuance of such  
Sheriffs in office.

Powers &c. of such  
Sheriffs.