

Act No. 31, 1912.

An Act to consolidate the statutes relating  
to Jurors. [26th November, 1912.]

JURY.  
—

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

*Preliminary.*

**1.** This Act may be cited as the "Jury Act, 1912," and is divided into Parts, as follows:—

Short title and  
division.

PART I.—*Preliminary*—ss. 1, 2.

PART

*Jury.*

PART II.—*Qualifications, disqualifications, and exemptions—*  
*ss. 3-7.*

PART III.—*Jurors' districts—s. 8.*

PART IV.—*Jury lists—ss. 9-16.*

PART V.—*Jurors' books and special jurors' lists—ss. 17-21.*

PART VI.—*Lists for new Courts—ss. 22-26.*

PART VII.—*Trial by jury—ss. 27-31*

PART VIII.—*Jury precepts and summons—ss. 32-51.*

PART IX.—*Challenge—ss. 52-56.*

PART X.—*Striking and impanelling—ss. 57-63.*

PART XI.—*Refreshment—s. 64.*

PART XII.—*Disagreement—ss. 65, 66.*

PART XIII.—*View by jurors—ss. 67-69.*

PART XIV.—*Fees—ss. 70-77.*

PART XV.—*Fines, penalties, &c.—ss. 78-86.*

Repeal.  
First Schedule.  
Saving clause.

**2.** (1) The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All proclamations, rules, orders, notices, summonses, precepts, lists, and jurors' books made or issued under the authority of any enactment hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made or issued hereunder.

## PART II.

*Qualifications, disqualifications, and exemptions.*

Qualification of  
jurors.  
No. 67, 1901, s. 3.

**3.** Except as hereinafter provided, every man above the age of twenty-one years, residing in New South Wales, who has within New South Wales in his own name or in trust for him—

(a) a clear yearly income of at least thirty pounds by the year arising out of lands, houses, or other real estate; or partly out of real and partly out of personal estate; or

(b) a clear real or personal estate of the value of at least three hundred pounds,

shall be qualified and liable to serve on juries for the trial of all issues, civil and criminal, and for the assessment of damages in all actions at law, and to act as a juror in any district court. **4.**

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- (a) who is not a natural-born subject of the King, unless he has obtained letters of denization, or been naturalised, or has resided in New South Wales for at least seven years; or
- (b) who has been attainted of any treason or felony, or convicted of any crime that is infamous, unless he has obtained a pardon thereof, or is within the benefit and protection of some Act giving the force and effect of a pardon under the Great Seal for such crime; or
- (c) who has been twice convicted in any part of the British dominions of any treason, felony, or infamous crime,

Disqualification.  
No. 67, 1901, s. 4.

shall be qualified to serve on any jury under this Act.

**5.** The following persons shall be absolutely freed and exempted from being returned and from serving upon any juries whatsoever, and their names shall not be inserted in the lists to be prepared by virtue of this Act, that is to say—

Exemptions.  
*Ibid.* s. 5.

- (a) Judges of the Supreme Court and district courts, chairmen of courts of quarter sessions, and the ministerial officers of such courts;
- (b) members of the Executive and Legislative Councils and of the Legislative Assembly, and the ministerial officers thereof;
- (c) persons holding offices under the departments of the Colonial Secretary, Surveyor-General, Treasury, and Audit Office.
- (d) the mayor, town clerk, and principal surveyor of the city of Sydney;
- (e) clergymen in holy orders, priests of the Roman Catholic faith, and other ministers of religion having established congregations;
- (f) barristers and solicitors duly admitted to practise, and actually practising, and their clerks;
- (g) coroners;
- (h) stipendiary magistrates;
- (i) gaolers, sheriff's officers, constables, and peace officers;
- (j) physicians, surgeons, apothecaries, and druggists in actual practice;
- (k) persons exempted by the Commonwealth Act No. 2, 1905, or any Act amending the same;
- (l) licensed pilots and masters of vessels actually employed in trading;
- (m) household officers and servants of the Governor;

(n)

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- (n) schoolmasters and parish clerks;
- (o) such other persons holding office or being in the public service as the Governor exempts from service on juries either generally or for a limited period, of which exemption notice shall be given to the sheriff;
- (p) managing directors, managers, cashiers, and tellers of banking establishments;
- (q) persons above the age of sixty years who claim exemption at any court of petty sessions held for correcting the jury list as hereinafter provided; and
- (r) persons incapacitated by disease or infirmity from discharging the duty of jurymen.

Exemption to be claimed.  
No. 67, 1901, s. 6.

**6.** No person otherwise entitled to exemption from service as a juror shall be exempted unless he has claimed such exemption by notice to the sheriff thirty days at the least before he is summoned.

Qualification of jurors upon inquests under writs of inquiry and commissions.  
*Ibid.* s. 7.

**7.** (1) No person who is not duly qualified according to this Act to serve as a juror shall be liable to be summoned or impanelled to serve as a juror upon any inquest or inquiry by or before any sheriff or coroner by virtue of any writ of inquiry, or by or before any commissioner appointed under the Great Seal or the seal of the Supreme Court.

(2) Provided always that nothing in this section contained shall extend to any inquest before any coroner by virtue of his office.

## PART III.

*Jurors' districts.*

Governor may fix jurors' districts.  
No. 3, 1905, s. 3.

**8.** The jurors' districts for any city, town, or place (including the city of Sydney), at which any court for the trial by jury of civil or criminal issues, or for the assessment of damages, or any court of quarter sessions or district court, is appointed to be held, shall comprise the land within such radius from the court-house of such city, town, or place as the Governor, by notification in the Gazette, may fix:

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Provided that such radius shall not be less than ten miles; and where there is more than one such court-house the radius shall be taken from such court-house of such city, town, or place as the Governor, by such notification, may determine:

Provided also that until the jurors' district for any city, town, or place is so notified, the district as fixed by this Act shall continue to be the jurors' district for such city, town, or place.

PART IV.

*Jury lists.*

**9.** The clerk or, if there be more than one, the senior clerk of petty sessions of the police district in which is situated any town or place where any such court is appointed to be held, shall, within the second week of October in every year, issue a notice in writing to the chief constable of the said police district in the form contained in the Second Schedule to this Act, requiring him to make out during the second, third, and fourth weeks of the month of November then next ensuing a true list of all men within the jurors' district for such town or place liable to serve on juries according to this Act; and shall at the same time furnish him with the form of return set forth in the Third Schedule to this Act.

Notice to chief constables to make out lists.  
No. 67, 1901, s. 10.  
Second Schedule.

Third Schedule.

**10.** (1) The said chief constable shall forthwith after the receipt of the said notice, prepare and make out in alphabetical order a true list of every man residing within such jurors' district, qualified and liable to serve on juries as aforesaid, with the true christian and surname correctly and legibly written at full length, and with the true residence, degree, calling or business, and nature of the qualification of every such man in the proper columns of the said form of return.

Lists to be prepared by chief constables.  
*Ibid.* s. 11.

(2) The chief constables of other police districts within which portions of such jurors' district may be shall assist such first-mentioned chief constable in preparing and making out such list, by communicating to him the name, residence, addition, and nature of the qualification of every man within such police districts, qualified and liable to serve on juries as aforesaid.

**11.** The said chief constable having made out such list shall, on the last Saturday in November, affix on the principal door of every court-house and police office in his district a notice in the form contained in the Fourth Schedule to this Act; and shall keep the original list

Lists to be open for inspection.  
*Ibid.* s. 12.  
Fourth Schedule.

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list or a true copy thereof to be inspected by the inhabitants of the said jurors' district at any reasonable time, without fee, to the end that due notice may be given of any names improperly inserted in or omitted from the said list.

Special petty sessions to be summoned.

No. 67, 1901, s. 13.  
No. 118, 1902, s. 4.  
No. 3, 1905, s. 5.

**12.** The said clerk of petty sessions shall, before the twentieth day of November in every year, cause all the justices resident within the jurors' district to be summoned to attend a special petty sessions, at the usual place of meeting of the petty sessions for the police district in which such town or place as aforesaid is situate, within the first fourteen days in the month of December then next, for the purpose of correcting and allowing the jury list for such jurors' district.

Correction and allowance of lists.  
No. 67, 1901, s. 14.

**13.** (1) The said justices shall hold a special petty sessions accordingly, and they or any two of them shall sit *de die in diem* until the said lists are corrected and allowed as hereinafter provided.

(2) The said chief constable shall then and there produce the list of men qualified and liable to serve on juries by him prepared and made out as aforesaid.

(3) The justices attending such sessions shall thereupon examine the said list, and shall strike out therefrom the names of all persons not liable to serve or disqualified from serving upon such juries, and also the names of those who are disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, and also the names of all men of bad fame or of immoral character and repute; and shall insert in such list all names improperly omitted, and correct all errors and inaccuracies therein.

(4) If the said justices are divided in opinion upon any question as to the striking out or adding of any name, the decision thereof shall be determined by ballot.

(5) When such list is duly corrected it shall be allowed by the justices present, or two of them, who shall sign the original list and three fair copies thereof with their allowance thereof:

Provided that where no circuit court or court of quarter sessions is appointed to be held at such town or place, one fair copy only shall be necessary.

Sheriff's officers to attend court.  
*Ibid.* s. 15.

**14.** The sheriff's officers acting in such jurors' district shall attend the petty sessions on notice in that behalf from the clerk of petty sessions, and there afford to the justices all such information touching the names, residences, and business of the persons mentioned in the lists as it is in the power of such officers to afford.

Lists to be transmitted to sheriff and district court judges.  
*Ibid.* s. 16.

**15.** (1) If the Supreme Court or a circuit court or court of quarter sessions is appointed to be held at such town or place, the clerk of petty sessions shall, on or before the last day of December, transmit one of such fair copies to the sheriff, and if a district court is appointed to be held at such town or place, he shall, on or before such date, transmit one of such fair copies to the judge thereof.

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(2) The said clerk shall keep the said original corrected list among the records of his office; and shall have one of such fair copies ready to be produced in the Supreme Court or circuit court, or in any court of quarter sessions when the same is required therein.

**16.** The sheriff shall keep the lists so transmitted to him among the records of his office.

Sheriff to record lists.  
No. 67, 1901, s. 17.

PART V.

*Jurors' books and special jurors' lists.*

**17.** Within ten days from the receipt of such list for any jurors' district, the sheriff shall make out therefrom a book to be called the "jurors' book" for such district, and shall in the said book transcribe in alphabetical order the names of all persons contained in the said list, beginning under each letter of the alphabet with the surname of each person, together with the addition of the residence, degree, calling or business, and qualification of each person.

Jurors' books to be made out from list.  
*Ibid.* s. 18.

**18.** The said jurors' books shall be kept by the sheriff among the records of his office, and shall be ready to be produced in court upon the trial of every issue, and shall be brought into use on and from the first day of January after the allowance of the said list, and shall be used for one year then next following or until a new list has been duly prepared, corrected, and allowed for another year.

Jurors' books to be in use for one year or until new lists allowed.  
*Ibid.* s. 19.

**19.** The judge of the district court to whom any such list is transmitted shall in like manner prepare a jurors' book for such court.

District Court jurors' book.  
*Ibid.* s. 20.

**20.** (1) Immediately after making out the jurors' book for any district the sheriff shall make out therefrom a list to be called the "special jurors' list" for such district, and shall in the said list insert in alphabetical order the name of every person described in the said book as a justice of the peace, lessee of the Crown, banker, bank director, merchant, accountant, engineer, manager of a station, broker, chemist, druggist, warehouseman, commission agent, architect, or as the owner or tenant of any lands or tenements of the yearly value of one hundred pounds and upwards, together with the residence and addition of such person, and shall prefix to every name in such list its proper number from the first name down to the last in a regular arithmetical series.

Special jurors' list.  
*Ibid.* s. 21.

(2) The sheriff shall annex such list to the jurors' book from which it has been made out, to be kept and produced therewith.

**21.** The sheriff shall forthwith transmit a copy of such list to the clerk of the petty sessions from which he has received the general list from which the same has been extracted, and such special jury list shall be kept by the said clerk of petty sessions ready to be produced in any such court as aforesaid when required therein.

Copies to be sent to clerks of petty sessions.  
*Ibid.* s. 22.

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## PART VI.

*Lists for new courts.*

On proclamation of new court, jury lists may be directed to be prepared.

No. 67, 1901, s. 23.

Lists to be prepared within three months.

*Ibid.* s. 24.

Sheriff to prepare jurors' book and special jurors' list.

*Ibid.* s. 25.

District Court Judge to prepare jurors' book.

*Ibid.* s. 26.

Jurors' books and lists to come into force immediately, and to continue in force until new books and lists prepared.

*Ibid.* s. 27.

**22.** If the Governor by proclamation directs a circuit court, or district court, or court of quarter sessions to be held at any town or place where provision has not theretofore been made for the preparing and settling of the jury lists for such town or place, the Governor may direct the bench of magistrates of the district wherein such town or place is situate to cause jury lists for such town or place to be prepared.

**23.** (1) The said bench of magistrates shall thereupon, within three months after the receipt of such direction, cause to be prepared lists of all jurors within the jurors' district for such town or place.

(2) The clerks of petty sessions, chief constables, and justices shall do and perform, within the said period of three months, all such acts, matters, and things in and towards preparing, correcting, allowing, and transmitting the jury list for such jurors' district as are required to be ordinarily done under the provisions of Part IV of this Act.

**24.** The sheriff shall, within the said three months, make out from any such list transmitted to him a jurors' book and special jurors' list for such district according to the provisions of Part V of this Act.

**25.** The judge of the district court to whom any such list is transmitted shall, within ten days from the receipt of such list, make out therefrom a jurors' book for such court according to the provisions of Part V of this Act.

**26.** (1) Every such jurors' book and special jurors' list when settled shall come into force, and the persons whose names are therein set down shall be liable to serve as jurors immediately after such book or list has been made out by the sheriff or the district court judge, as the case may be.

(2) Every such book or list shall continue in force until a new jurors' book or special jurors' list has been made out under the provisions of this Act.

(3) If any jurors' book for a district court prepared under the provisions of this Part of this Act shall take effect between the months of April and October in any year, no new list shall be prepared until the year then next following.



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## PART VII.

*Trial by jury.*

**27.** (1) All crimes and misdemeanours prosecuted in the Supreme Court, the circuit courts, or courts of quarter sessions shall be tried by a jury consisting of twelve men chosen and returned according to the provisions of this Act. Trial by jury in criminal cases. No. 67, 1901, s. 28.

(2) Except as by this Act is otherwise provided, such jury shall be subject, as nearly as may be, to the same rules, regulations, and manner of proceeding as were observed upon criminal trials in the Court of Queen's Bench in England before the seventeenth day of September, one thousand eight hundred and forty-seven.

**28.** (1) Upon application made to the Supreme Court by the Attorney-General or other prosecutor, or by or on behalf of any defendant, in any criminal cause depending in the said court or in any circuit court (except in cases of treason or felony), the said court may order a special jury to be summoned for the trial of the issue in such cause. Criminal special jury Ibid. s. 29.

(2) Every such special jury shall be taken from the special jurors' list for the jurors' district within which such cause is to be tried, and shall be summoned, struck, and sworn in like manner as special juries under this Act for the trial of civil issues, and shall be liable to the same fines and forfeitures, and entitled to the same exemptions as are by this Act authorised with respect to such juries.

(3) Provided that any defendant making application for a special jury shall serve upon the Attorney-General or other prosecutor a notice in writing of such application at least four clear days before the time of his making the same.

**29.** Subject to the provisions of this Act and of any other Act in force for the time being, all actions at law and civil issues of fact in the Supreme Court shall be tried, and all damages and sums of money recoverable in any such action after judgment by default or upon demurrer (other than such damages as are usually assessed or computed by the court or some officer thereof) shall be assessed, before one or more judge or judges of the said court, whether the trial or assessment is had in the said court or in any circuit court, by a jury consisting of four persons duly qualified according to law as special jurors, and returned and chosen as hereinafter mentioned. Trial and assessment in civil cases. Ibid. s. 30.

**30.** Upon application made to the said court by either the plaintiff or the defendant in any action, at any time after issue joined, the said court may order that the trial shall be had by a jury consisting of twelve persons, who shall be returned under the provisions of this Act Juries of twelve. Ibid. s. 31.

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Act either from amongst the class of special jurors or of common jurors, or in cases to be tried on circuit partly from each class, as the court thinks fit to order.

Trial by jury in unprovided cases to be governed by English rules.  
No. 67, 1901, s. 32.

**31.** In every such case of trial or assessment as aforesaid, and in every other case whatsoever of trial by jury under the provisions of this Act, when no other mode of proceeding is by this Act specially provided, the jurors and jury and every assessment or trial by them shall, as far as may be practicable, be subject to the same rules and manner of proceeding as would in England have been observed in an action at law in the courts of Westminster or on a trial at nisi prius, before the seventeenth day of September, one thousand eight hundred and forty-seven.

## PART VIII.

*Jury precepts and summonses.*

General jury precepts.  
*Ibid.* s. 34.  
Fifth Schedule.

**32.** (1) From time to time, and as often as occasion demands, precepts according to the form contained in the Fifth Schedule to this Act, to be called "general jury precepts," shall be issued, directed to the sheriff, requiring him to summon jurors for the trial of issues and assessment of damages in the Supreme and circuit courts and the courts of quarter sessions.

(2) Every such precept returnable in the Supreme Court or any circuit court shall be under the hand and seal of a judge of the Supreme Court.

(3) Every such precept returnable in a court of quarter sessions shall be under the hand and seal of a chairman of a court of quarter sessions or a justice of the peace.

Special jury precepts.  
*Ibid.* s. 35.  
Fifth Schedule.

**33.** Whenever a jury of twelve or of four special jurors is required in the Supreme Court or in any circuit court for the trial of any issues, a judge of the Supreme Court shall issue a precept under his hand and seal, according to the form contained in the Fifth Schedule to this Act, to be called a "special jury precept."

Common jury precepts.  
*Ibid.* s. 36.

**34.** Whenever a jury of twelve common jurors is so required a judge of the Supreme Court shall issue a precept under his hand and seal according to the said form, to be called a "common jury precept."

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**35.** Every jury precept shall specify the time when and the place where the attendance of the jurors is required, and shall be issued and delivered to the sheriff eight clear days before the time so specified, if such attendance is required in the city of Sydney, and in all other cases fourteen clear days before such time. No. 67, 1901, s. 37.

**36.** (1) In every such precept returnable in the Supreme Court or any circuit court, the judge issuing the same may, if he think fit, require the sheriff to summon any number of jurors, not being more than four times the number to be impanelled upon any one trial. Number of jurors to be summoned. *Ibid.* s. 38.

(2) No such precept returnable in a court of quarter sessions shall require the sheriff to summon at any one time more than forty-eight or less than thirty-six jurors.

**37.** The sheriff shall give priority to every jury precept whether returnable in the Supreme Court, or a circuit court, or a court of quarter sessions, according to the time of its receipt at his office. Priority of precepts. *Ibid.* s. 39.

**38.** (1) Every court sitting for the trial of prisoners may, on motion for that purpose made on behalf of either the Crown or any prisoner, order the sheriff to summon and return to the court— Enlarged or separate jury panel may be ordered by the Court. *Ibid.* s. 40.

- (a) an enlarged jury panel, not exceeding twenty-four jurors, in addition to those already summoned; or
- (b) a separate jury panel, of not less than thirty or more than sixty jurors,

to be taken from either the general or the special jury list, as the court thinks it for the interests of justice to order.

(2) Every person liable to serve as a juror, and residing within twenty miles of the place of trial, being summoned under any such order and having no lawful excuse, shall be bound to attend, and liable to be proceeded against for non-attendance as if he had been summoned under a precept in the ordinary course.

**39.** At any time before the trial of a person committed or held to bail, every judge of the Supreme Court on application to him in chambers on behalf of such person or of the Crown (of which last-mentioned application such person has had due notice) shall have the same power as in the next preceding section is mentioned in respect of the intended trial of such person, whether in such court or in a circuit court or in a court of quarter sessions. The like order by a judge before trial. *Ibid.* s. 41.

**40.** (1) The Supreme Court and circuit courts and all courts of oyer and terminer and gaol delivery and courts of quarter sessions shall respectively have and exercise the same power and authority as they have heretofore had or exercised in issuing any writ or precept, or in making any award or order orally or otherwise for the return of a jury for the trial of any issue before any of such courts respectively, or for the amending or enlarging any panel of jurors returned for the trial of any such issue. Power reserved to courts of issuing precepts and making orders, &c., as heretofore. *Ibid.* s. 42.

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(2) The return to every such writ, precept, award, or order shall be made in the manner used and accustomed in such courts respectively in England before the seventeenth day of September, one thousand eight hundred and forty-seven, save and except that the jurors shall be qualified according to this Act.

Special rule or order for summoning jury. No. 67, 1901, s. 43.

**41.** The Supreme Court, or any judge thereof, may make all such rules or orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury for the trial of any cause or matter depending in such court at such time and place and in such manner as the court or judge thinks fit.

Provision for cases where the sheriff is interested. *Ibid.* s. 44.

**42.** (1) In every case wherein it is made to appear to the Supreme Court or to a judge 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.

(2) 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.

Jurors to be chosen by lot. *Ibid.* s. 45.

**43.** (1) When a jury precept is delivered to the sheriff, he shall choose in manner following the persons to be summoned from those whose names appear in the appropriate jurors' book or special jurors' list for the district within which the attendance of jurors is by the said precept required:—

- (a) Cards printed or stamped only with the same numbers as are prefixed in the said book or list to the names of persons liable to be summoned shall be placed in a rotating ballot-box approved of by the Minister of Justice.
- (b) Such box first having been made to rotate for one minute at least by the sheriff or his deputy, as many cards shall be drawn forth one at a time as there are jurors required to be summoned.
- (c) Where the number on any such card indicates the name of a juror whom the sheriff or his deputy knows to be dead or to have left the district, another card shall be drawn in its place; and a special return shall be made to the court, with the names of the jurors summoned, of the names of all jurors so omitted, with the cause thereof.
- (d) The persons whose names in the said book or list correspond with the numbers on the cards so drawn shall be the jurors to be summoned.

(2) If through any casualty there is no jurors' book for such district in existence for the current year, the sheriff shall choose the jurors as aforesaid from the jurors' book for the year preceding.

Summons to jurors. *Ibid.* s. 46. Sixth Schedule.

**44.** The sheriff shall forthwith issue to each such juror a summons in writing signed by himself or his deputy in the form contained in the Sixth Schedule to this Act.

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**45.** (1) Such summons shall be—

Service of summons.  
No. 67, 1901, s. 47.

- (a) delivered to such juror or left at his usual place of abode at least four clear days before the time specified for his attendance, if his attendance is required in Sydney, and in other cases at least eight clear days before such time; or
- (b) sent to him by post with the sheriff's seal of office thereon, in which case two additional days shall be allowed between the day of service and the time specified for his attendance.

(2) A duplicate of every summons so sent by post shall be stamped by the postmaster, or some person duly acting for him, at the time of delivery at the office for transmission; and such duplicate shall be evidence that the juror named was served in the ordinary course of post.

**46.** In determining the persons to be summoned for a special or common jury, those persons who, during the time that the jury book has been in use, have attended at a court in pursuance of a summons, or served on a jury, shall be excluded—

Jurors not liable to be summoned until list exhausted.  
No. 3, 1905, s. 4.

- (a) from service as common jurors until the list of names in the jury book has been exhausted; and also
- (b) from service as special jurors until the list of names on the special jurors' list has been exhausted.

**47.** Whenever the sheriff is required by any jury precept to summon jurors for the trial of issues in the Supreme Court or court of quarter sessions at Darlinghurst on any particular day or days, and is also required by any other jury precept to summon jurors for the trial of issues on the same day or days in the Supreme Court in King-street, he shall not summon for either court the same jurors whom he has already summoned to attend at the other court, but he shall omit from any summons for either court the names of all such jurors as he has already summoned for the other, conforming in other respects in the matter of such summons to the directions of this Act.

Same jurors not to be summoned at the same time to attend at courts at Darlinghurst and King-street.  
No. 67, 1901, s. 49.

**48.** The sheriff in civil cases may omit the summoning of persons whom he knows to be incapacitated by disease from attending as jurors:

Jurors incapacitated by disease.  
*Ibid.* s. 50.

Provided that he shall specially return to the court the names of all such persons, with the ground on which he has omitted to summon them.

**49.** The sheriff on showing to the satisfaction of a judge of the Supreme Court that the name or description of any juror has been mistaken may, by the leave of such judge in writing, cause the mistake to be corrected and the party to be thereafter summoned by his right name and description:

Mistakes in names may be corrected.  
*Ibid.* s. 51.

Provided that in every such case there be no question as to the identity in fact of the juror.

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Sheriff's return to  
general precept.  
No. 67, 1901, s. 52.

**50.** Upon the day and at the place named in any jury precept for the appearance of the jurors thereby required to be summoned, the sheriff shall by himself or his deputy return the said jury precept into the court holden at the place where such jurors are so required to attend, and shall annex to the said precept a panel containing the names in alphabetical order of the persons so summoned by him in pursuance of the said jury precept, and shall also therewith furnish to the clerk of the said court the names of the said persons, with their respective additions and places of abode written upon separate pieces of card, each piece of card being as nearly as may be of equal size.

Informalities, &c.,  
not to invalidate  
verdict.  
*Ibid.* s. 53.

**51.** No omission or informality with respect to any lists or precepts or panels returned in pursuance of this Act shall affect or invalidate any verdict returned by a jury which is in other respects according to law.

## PART IX.

*Challenge.*

Right of challenge.  
*Ibid.* s. 54.

**52.** Subject to the provisions of this Act, and of any Act for the time being in force, challenge to the array and to the polls of jurors may be made and shall be allowed in every court for such and the like cause, in such and the like form and manner, and under and subject to the like laws, rules, and regulations in every respect, as by law was or were established, used and practised in like cases in the courts at Westminster before the seventeenth day of September, one thousand eight hundred and forty-seven.

Challenge for cause.  
*Ibid.* s. 55.

**53.** In all inquests to be taken before any court wherein the King is a party, notwithstanding it be alleged by them that sue for the King that the jurors of those inquests or some of them be not indifferent for the King, yet such inquests shall not remain untaken for that cause, but if they that sue for the King will challenge any of those jurors they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the court, and it shall be proceeded to the taking of the same inquisitions as it shall be found if the challenges be true or not, after the discretion of the court.

Standing jurors by.  
*Ibid.* s. 56.

**54.** Nothing herein contained shall affect the power of any court to order any juror to stand by until the panel shall be gone through at the prayer of those prosecuting for the Crown as has been heretofore accustomed.

Challenge in  
criminal cases.  
*Ibid.* s. 57.

**55.** (1) The same right of challenge to jurors shall exist in cases of misdemeanour as in cases of felony.

(2)

*Jury.*

(2) No person shall, except for cause shown, be allowed in either case more than eight, or if the offence charged be capital, twenty challenges.

(3) The Crown shall in every case have the same, but no greater, right.

(4) Every peremptory challenge beyond the number so allowed shall be void, and the trial shall proceed as if no such challenge had been made.

**56.** (1) No omission, error, or irregularity by the sheriff or any of his officers in the time or mode of service of any jury summons, or in the summoning or return of any juror by a wrong name (where there is no question as to his identity), shall be cause of challenge either to the array or to such juror. Informalities in summoning jurors. No. 67, 1901, s. 58.

(2) No matter which might have been objected by way of challenge to the polls or to the array, as the case may be, shall invalidate or affect any verdict in any case, civil or criminal, unless the objection is taken by way of challenge. Objections must be taken by challenge. Ibid.

## PART X.

*Striking and impanelling.*

**57.** (1) Upon calling on for trial by a jury of twelve persons any criminal issue joined in the Supreme Court or a circuit court, or a court of quarter sessions, the clerk of the court shall, in open court, put into a box provided for that purpose the pieces of card furnished as aforesaid by the sheriff, and shall draw out therefrom the said pieces of card, one after another, until twelve men appear without just cause of challenge, which said men, being duly sworn, shall be the jury to try such issue. Impanelling jury in criminal trials. Ibid. s. 59.

(2) If the whole number of such pieces of card is exhausted, by challenge or otherwise, before twelve men are duly sworn, either the Crown or the prisoner may pray a tales, whereupon the court or judge or chairman, as the case may be, may command the sheriff or his deputy forthwith to appoint as many good and lawful men of the bystanders (being qualified and liable to serve as jurors for the district) as may be sufficient to make up twelve men for the trial of the said issue. Tales allowed. Ibid.

(3) The pieces of card containing the names of the jurors so drawn and sworn as aforesaid shall be kept apart by themselves until such jury have given in their verdict and the same has been recorded, or until such jury is, by consent of the parties, or by leave of the court, discharged; and then the said pieces of card shall be returned to the box, there to be kept with the other names remaining undrawn.

*Jury.*

Different issues may be tried by the same jury.

No. 67, 1901, s. 60.

**58.** Where no objection is made on behalf of the King or any other party, the court may—

- (a) try any such criminal issue with the jury that have previously tried or been drawn to try any other such issue, without their names being returned to the box and redrawn; or
- (b) order the name of any man on any such jury whom both parties consent to withdraw, or who is justly challenged or excused by the court, to be set aside and another name to be drawn from the box, and try such issue with the residue of such original jury and with such man whose name is so drawn, and who appears and is approved as indifferent.

Striking jury in civil cases.

*Ibid.* s. 61.

**59.** (1) At the opening of the court upon any sitting for the trial of any civil issue under the provisions of this Act, the clerk or other ministerial officer of the court shall put into a box provided for that purpose the pieces of card furnished as aforesaid by the sheriff.

(2) Upon any such issue being called on to be tried, such clerk or officer shall in open court draw out the said pieces of card, one after another, until twice the number of jurors required to be impanelled appear, and after all causes of challenge allowed remain indifferent and approved of, or until the whole number of such pieces of card is exhausted.

Tales.

(3) In case a sufficient number of jurors named on such pieces of card are not in attendance, the full number of jurors so directed to be drawn shall be completed by appointment of the sheriff or his deputy from amongst the bystanders, being persons returned in the sheriff's books as jurors either special or common.

Impanelling jury in civil cases.

*Ibid.* s. 62.

**60.** (1) In civil issues, upon twice the number of jurors required to be impanelled being completed, a list of their names shall be delivered by the sheriff or his deputy to the plaintiff or his attorney or counsel, by whom one-fourth of the whole number of names contained in such list may be struck therefrom, and the list so reduced shall then be delivered to the defendant or his attorney or counsel, by whom an equal number of names may be also struck therefrom.

(2) The jurors whose names then remain upon such list, or the first four or twelve of such jurors (as the case may require), shall be the jurors for the trial of the issue or issues in question, and shall be sworn and impanelled accordingly.

(3) After every such trial the cards so drawn as aforesaid shall be returned to the box, to be kept with the others remaining undrawn.

Trying different issues by the same jury in civil cases.

*Ibid.* s. 63.

**61.** Where no objection is made on behalf of any plaintiff or defendant—

- (a) any number of different issues may be tried by the same jury that have been previously drawn for or have tried any other issue without having their names returned to the box; or

(b)



*Jury.*

(b) the court or judge may order the name of any juror on such jury whom the parties consent to withdraw or who may be challenged or excused to be set aside and another juror to be drawn from the box from the names remaining undrawn, who shall be subject to the same mode of striking as the original jurors, to try the issue or issues with the residue of such original jury.

**62.** The provisions contained in the three next preceding sections shall be equally in force with respect to cases of assessment of damages— When damages assessed only. No. 67, 1901, s. 64.

**63.** Where—

- (a) the defendant, in a case of assessment of damages, or
- (b) either the plaintiff or defendant, in a case where there is an issue for trial,

Reducing list where one party does not appear. *Ibid.* s. 65.

does not appear in person, or by counsel or attorney, the list of jurors may be reduced on his behalf by the clerk or other officer of the court.

PART XI.

*Refreshment.*

**64.** The court or judge on any trial may order to be supplied to the jury— Judge may order refreshment for jury. *Ibid.* s. 66.

- (a) in a criminal case, whether of felony or misdemeanour, such reasonable refreshment as the court or judge thinks fit;
- (b) in any other case, any refreshment not being fermented or spirituous liquor,

at any time after the jury have been impanelled and sworn, and notwithstanding that they have retired to consider of their verdict.

PART XII.

*Disagreement.*

**65.** Where the jury upon the trial of any felony or misdemeanour have retired more than twelve hours, if it be found, after examination on oath of one or more of them, that they are not likely to agree, the court or judge may discharge them. On criminal trials. *Ibid.* s. 67.

**66.** (1) Where the jury upon any civil trial or assessment of damages under this Act have remained six hours or upwards in deliberation, if all of them do not agree as to the verdict to be given or amount In civil cases. *Ibid.* s. 68.

*Jury.*

amount of damages to be assessed, the decision of three-fourths in number of them shall be taken and entered as the verdict or assessment of all.

(2) If, after having remained the whole twelve hours or upwards in deliberation, three-fourths in number of the jurors do not concur in any such verdict or assessment, then such jurors shall be discharged, and the cause may without any new process for that purpose be again set down for trial or assessment (as the case may be) either at the same or any subsequent sittings, as the court or presiding judge may order.

## PART XIII.

*View by jurors.*

Order for view.  
No. 67, 1901, s. 69.

**67.** (1) Whenever it appears expedient to any judge of the Supreme Court in any cause depending in the said court that some of the jury should have a view of any place in dispute in the cause, such judge may order such view upon the payment by the party applying for the same of such sum as to the said judge seems reasonable.

(2) Such sum shall be paid over to such jurors as have such view and attend the trial, and shall be taxed and allowed as other costs in the cause.

View by two or more.  
*Ibid.* s. 70.

**68.** Two or more jurors, as the judge shall direct, mutually chosen by the parties, or, in the case the parties cannot agree, nominated by the sheriff, shall be shown the place by two persons appointed by the said judge.

Viewers to be part of panel on trial.  
*Ibid.* s. 71.

**69.** In every such case the said viewers, if in attendance upon the court, shall be the first of the jurors named in the sheriff's list, whether they are in the panel returned for the particular day of trial or not, and shall not be struck therefrom by either party; and such viewers so in attendance, together with so many of the jurors whose names first stand on the reduced list as may be necessary to make up the full number of jurors required, shall form the jury to try the cause.

## PART XIV.

*Fees.*

Compensation to be fixed by Governor.  
*Ibid.* s. 72.

**70.** The Governor may fix from time to time the rates of compensation to be paid to jurors for attendance in the Supreme and circuit courts and courts of quarter sessions.

**71.**

Act No. 31, 1912.

*Jury.*

**71.** (1) Every juror summoned in pursuance of any precept as aforesaid who attends any such court shall for every day during his attendance upon such court, whether he has actually served upon a jury or not, be entitled to receive compensation for such attendance at the said rates. Jury to be paid accordingly. No. 67, 1901, s. 73.

(2) Provided that in all cases in which there is a regular steam conveyance, or the passage can be conveniently made wholly or in part by water, the allowance of such portion of the journey as has or might have been performed by water shall be limited to the actual amount of the steerage or cabin passage money payable, according to the station in life of the juror.

(3) Every talesman serving with such jurors shall be entitled to the same compensation as a juror residing within five miles of the said court.

**72.** Every person summoned or nominated to act as a juror in any district court shall for his attendance be entitled to the same compensation and allowance for his travelling expenses as are provided for jurors attending the Supreme Court or any circuit court under a general jury precept. District courts. Ibid. s. 74.

**73.** So long as any country juror, unavoidably or bonâ fide for the purpose only of attendance on the panel, remains in the city or town where the court holds its sittings, he shall be entitled to payment in respect of every day of such detention, whether the court actually then sits or not. Country jurors. Ibid. s. 75.

**74.** Where the jury has sat on the same trial in any civil case more than three days, the presiding judge may direct the prevailing party to pay them severally, or to the sheriff or his deputy for their use, in respect of the fourth and every subsequent day such additional sum or sums, over and above the amount to which they are entitled in accordance with the said rates, as the said judge under the circumstances thinks reasonable and proper; and such sum shall be allowed as costs in the cause. Prolonged sittings. Ibid. s. 76.

**75.** (1) In every action in the Supreme Court the plaintiff on entering the case for trial shall pay to the Prothonotary— Fee to be paid on setting down case for trial. Ibid. s. 77.

- (a) in a case of assessment of damages, the sum of one pound;
- (b) in a case of trial by a jury of four, the sum of two pounds;
- (c) in a case of trial by a common jury of twelve, the sum of three pounds;
- (d) in a case of trial by a special jury of twelve, the sum of six pounds.

(2) Such sum shall be allowed as costs in the cause.

(3) Provided that when the order for such jury of twelve has been made on the application of the defendant, the said sum of three pounds or six pounds, as the case may be, shall be paid by such defendant on the making of the order to the Prothonotary, or such order shall lapse and not take effect.

**76.**

*Jury.*

Costs of special jury  
unless judge certify.  
No. 67, 1901, s. 78.

**76.** The party applying for or electing a special jury of twelve for the trial of any civil issue shall pay all expenses occasioned by the trial of the cause by the same, and shall not have any further allowance for the same upon taxation of costs than such party would be entitled to in case the cause had been tried by a common jury or a jury of four as hereinbefore directed, unless immediately after the verdict the judge before whom the cause was tried certifies under his hand that the same was a cause proper to be tried by a jury of twelve special jurors.

General rules as to  
jury fees.  
*Ibid.* s. 79.

**77.** The judges of the Supreme Court may make general rules touching the payment of the fees payable by law for juries.

## PART XV.

*Fines, penalties, &c.*

Liabilities of clerks  
and constables.  
*Ibid.* s. 80.

**78.** Every clerk of petty sessions or chief constable who wilfully neglects or refuses to execute any of the duties hereinbefore prescribed and appointed to be by him executed shall for every such neglect or refusal forfeit any sum not exceeding fifty pounds, whereof one moiety shall be paid to the Colonial Treasurer for the purposes of the general revenue, and the other moiety shall, with full costs, go to any person suing for the same by action of debt in the Supreme Court or in any court of petty sessions to the extent of the jurisdiction of such court.

Liability of justices.  
*Ibid.* s. 81.

**79.** (1) Every justice of the peace summoned under this Act to attend at any special petty sessions for correcting and allowing any jury list, who fails or neglects to attend such special petty sessions without any reasonable cause for such non-attendance, shall be liable to a fine not exceeding the sum of ten pounds, which shall be summarily imposed by the Supreme Court upon the motion of the Attorney-General and upon the fact of such non-attendance being duly proved to the satisfaction of the said court.

(2) The clerk of the bench shall at the said special petty sessions make an entry in writing of the name of every justice of the peace residing in the jurors' district and so summoned as aforesaid, distinguishing those that attended and those that were absent at the correction and allowance of the said list as aforesaid, and shall at the final adjournment of the said special petty sessions transmit a certificate thereof to the Attorney-General, verified by declaration.

(3) Such certificate shall be *primâ facie* proof of the non-attendance of the justices therein stated to have been absent from the said special petty sessions.

Liability of sheriff.  
*Ibid.* s. 82.

**80.** If the sheriff neglects or refuses to discharge the duties hereinbefore required of him, or otherwise fails well and faithfully to do

*Jury.*

do and perform any of the acts, matters, and things hereby required to be by him performed, he shall for every such breach of duty be summarily fined a sum not exceeding fifty pounds, at the discretion of the court in relation to which such duties, acts, matters, and things were required to be discharged, done, and performed.

**81.** If any juror who has had a view of any place in dispute in any cause according to the provisions hereinbefore contained makes default when the cause in which he was appointed a viewer is called on for trial, the court or judge may, unless reasonable cause be shown, impose upon such viewer a fine not exceeding the amount of ten pounds over and above the fine to which he is liable under the provisions hereinafter contained for non-attendance as a juror. Liability of viewers. No. 67, 1901, s. 83.

**82.** (1) If upon calling over the names upon any jury panel returned as hereinbefore required, any person whose name appears thereon fails to attend, or after appearance wilfully withdraws himself from the presence of the court, such court may summarily impose any fine not exceeding twenty pounds upon the person so failing to attend or withdrawing himself, unless good cause for his absence be made to appear on oath to the satisfaction of the said court. Liability of jurors making default. Ibid. s. 84.

(2) Provided that any such court may at any time exempt from attendance, either during the session or for any less period, any person summoned as a juror, who shows to such court on oath sufficient grounds for such exemption.

(3) Provided also that no juror summoned for the trial of civil issues shall be compelled to attend any sittings for more than three consecutive days unless the presiding judge shall otherwise order.

**83.** (1) If any person, being duly summoned and returned to serve as a juror upon any inquest or inquiry before any sheriff or coroner, or before any of the commissioners hereinbefore mentioned, does not, after being openly called three times, appear and serve as a juror, such sheriff, or in his absence the under sheriff or such coroner or commissioner (unless some reasonable excuse is proved, on oath if required), shall impose upon the person so making default such fine not exceeding five pounds as he thinks fit. Liability of coroner's jurors, &c. Ibid. s. 85.

(2) Such sheriff, under sheriff, coroner, or commissioner shall make out and sign a certificate containing the christian name and surname, the residence, and trade or calling of every person so making default, together with the amount of the fine imposed and the cause of such fine, and shall transmit such certificate to the clerk of the peace for the county or district in which such defaulter resides on or before the first day of the quarter sessions next ensuing.

(3) Such clerk of the peace shall copy the fines so certified on the roll on which all fines or forfeiture imposed at such quarter sessions are copied, and the same shall be estreated, levied, and applied in like manner, and subject to the like powers, provisions, and penalties in all respects, as if they had been part of the fines imposed at such quarter sessions.

*Jury.*

Punishment for  
embracery.  
No. 67, 1901, s. 86.

**84.** Any person who corruptly influences, or attempts to influence, any juror, and every juror consenting thereto, shall be guilty of a misdemeanour.

Recovery of fines for  
non-attendance.  
*Ibid.*, s. 87.

**85.** (1) Whenever any fine is imposed on any juror for non-attendance at any court, a summons may forthwith, or at any time afterwards, be issued under the hand of the presiding judge, calling on the juror to show cause to such court, or to the Supreme Court, if the fine has been imposed for non-attendance at a circuit court, on some day to be named, why execution should not issue for such fine.

(2) The like proceedings, as far may be, shall be taken in every such case as may be now taken after a schedule or return of fines made up and filed as at present.

(3) To every such summons a note shall be subjoined that cause may be shown by affidavit sworn before a justice of the peace or commissioner, and transmitted by post to the Prothonotary, or to the judge who imposed the fine.

(4) Where such affidavit is transmitted to the judge he shall thereupon have power to remit or mitigate the fine; and in default of any order to that effect the fine shall be enforced.

Recovery of other  
fines.  
*Ibid.*, s. 88.

**86.** Except as hereinbefore provided—

(a) all fines imposed under this Act by the Supreme Court or a circuit court or by a judge thereof shall be levied and recovered in the same manner as any other fines imposed by the Supreme Court, or in the manner appointed by law for the recovery of fines imposed by justices of the peace;

(b) all fines imposed under this Act by a court of quarter sessions or by a chairman thereof, shall be levied and recovered in the manner appointed by law for the recovery of fines imposed by justices of the peace.

## SCHEDULES.

## FIRST SCHEDULE.

Reference to Act.	Title or Short Title.	Extent of Repeal.
Act No. 67, 1901...	Jury Act, 1901 ... ..	The whole unrepealed portion, except s. 33.
Act No. 118, 1902	Jury (Amendment) Act, 1902 ... ..	The unrepealed portion.
Act No. 3, 1905...	Jury (Amendment) Act, 1905 ... ..	The whole.

SECOND

*Jury.*

SECOND SCHEDULE.

Sec. 9.

District of  
To the Chief Constable of the district of

Take notice that you are hereby required to make out, during the second, third, and fourth weeks of November next ensuing a true list in writing in the form hereunto annexed of all men within the jurors' district for liable to serve on juries according to the Jury Act, 1912.

C.P.S.

THIRD SCHEDULE.

Secs. 9, 10.

*List of all persons within the jurors' district for liable to serve on juries.*

District (and street, if in a town).	Christian and surname (full length).	Title, quality, calling, or business.	Nature of qualification.
Parramatta ... } Macquarie-street ... }	Adams, John ...	Esquire ...	{ Freehold, £100 per annum.
Sydney ... } George-street ... }	Bowles, James ...	Grocer ...	{ £400 of personal estate.

FOURTH SCHEDULE.

Sec. 11.

*Jury List for 19 .*

Notice is hereby given that I have caused a list to be made out of persons within the jurors' district for [place] liable to serve as jurors, either special or common, during the year 19 , and that a copy of such list lies for inspection in the office of the clerk of Petty Sessions in street, in this city [or town] and that the Justices in Petty Sessions will, on Tuesday, the day of December next, at the police office, in street, proceed to examine and correct the said list, when all persons having any objection to offer thereto may attend if they shall think fit.

Saturday, November, 19 ..

A.B.,  
Chief Constable.

FIFTH SCHEDULE.

Secs. 32-34.

*Form of precept.*

*(To be adopted for general, special, or common juries of twelve and juries of four.)*

To the Sheriff of or his deputy, greeting,—

Pursuant to the Act in such case made and provided, you are hereby commanded that you cause to come before [here insert the style of the court] to be holden at the court-house at , on [here insert the day of the week] the day of now next [or instant] good and lawful men of the jurors' district for aforesaid, duly qualified according to law as jurors [or as "common

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*Jury.*


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"common jurors" or "special jurors" according as the precept shall be intended to be a "general jury precept," "common jury precept," or "special jury precept" to make a jury of the country for the trial of all such issues of fact or other matters as shall be then required to be tried by a general jury of twelve men [or by a common jury or a special jury of four or of twelve men according as the precept shall be intended]. And that you have then there the names of those jurors as by the law is required of you, together with due proof of the service of a summons upon such of the said jurors as shall have been served and of the time and manner thereof and of the causes wherefore the others of such jurors have not been served with such summons and also this writ.

Given under my hand and seal at            this            day of            A.D. 19   .

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Sec. 44.

## SIXTH SCHEDULE.

*Form of summons.*

Mr. A.B. [*naming the juror*], you are hereby required to appear as a juror in the Supreme or Circuit Court or Court of Quarter Sessions [*naming the court*] to be holden at            on            [*here insert the day of the week*] the            day of            next, at ten o'clock in the forenoon; and you are there to attend from day to day until you shall be discharged by the said Court, under penalty of the fine by law imposed in this behalf.

(Signed)

C.D.

Sheriff.