

## No. XX.

An Act to consolidate and amend the Laws JURORS AND JURIES  
CONSOLIDATION.  
relative to Jurors and Juries in New South  
Wales. [17th September, 1847.]

**W**HEREAS the Laws relative to the formation and return of juries Preamble.  
for the trial of civil and criminal issues in the Colony of New  
South are numerous and for the most part temporary and it is  
expedient to consolidate and amend the same Be it therefore enacted  
by His Excellency the Governor of New South Wales by and with the  
advice and consent of the Legislative Council thereof That every man Qualification of  
jurors.  
except as hereinafter excepted above the age of twenty-one years  
residing within the Colony of New South Wales who shall have  
within the said Colony in his own name or in trust for him a clear  
yearly income arising out of lands houses or other real estate or a  
clear yearly income arising partly from real and partly from personal  
estate of at least thirty pounds by the year or a clear real or personal  
estate of the value of at least three hundred pounds shall be qualified  
and shall be 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 in this  
Colony.

2. Provided always and be it enacted That all Judges of the Exemptions from  
serving on juries.  
Supreme Court Commissioners of the Courts of Requests Chairman of  
the Courts of General and Quarter Sessions of the Peace and all ministerial  
officers of the said Courts respectively all Members of the Executive  
and Legislative Councils for the said Colony and the respective  
ministerial officers thereof all persons holding offices under the Departments  
of the Customs and Colonial Distilleries and of the Colonial Secretary  
the Surveyor General the Treasury Audit Office and Post Office  
respectively the persons respectively holding the office of Mayor  
Town Clerk and Principal Surveyor of the City of Sydney and of the  
Town of Melbourne all clergymen in holy orders priests of the Roman  
Catholic faith and other ministers of religion having established  
congregations all barristers attorneys solicitors and proctors duly  
admitted to practise and actually practising all coroners and gaolers  
all physicians surgeons apothecaries and druggists in actual practice  
all

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all military and naval officers on full pay all licensed pilots and masters of vessels actually employed in trading all sheriff's officers stipendiary magistrates constables and peace officers all household officers and servants of the Governor of the Colony all schoolmasters and parish clerks or such other persons either holding office or being in the public service as the Governor of the Colony may think it expedient to exempt and shall accordingly exempt from service on juries (and of which exemption notice shall be given to the Sheriff) either generally or for a limited period all managing directors managers cashiers and tellers of any banking establishment all persons above the age of sixty years who shall claim exemption at any Court of Petty Sessions held for correcting the jury list as hereinafter provided and all persons incapacitated from discharging the duty of jurymen by disease or infirmity shall be and are hereby absolutely freed and exempted from being returned and from serving upon any juries whatsoever and shall not be inserted in the lists to be prepared by virtue of this Act.

Disqualifications for serving on juries.

3. Provided also and be it declared and enacted That no man not being a natural born subject of the Queen and no man who hath been or shall be attainted of any treason or felony or convicted of any crime that is infamous (unless he shall have obtained a pardon thereof or shall be within the benefit and protection of some Act of Parliament giving the force and effect of a pardon under the Great Seal for such crime) and no man who has been twice convicted in any part of the British dominions of any treason felony or infamous crime is or shall be qualified to serve on any jury under this Act.

Jurors' districts created.

4. And be it enacted That the Police District of Sydney shall be the jurors' district for Sydney in respect of all Courts to be holden within that city by or before the Supreme Court or any Judge thereof and that the said Police District of Sydney aforesaid shall be the jurors' district for the said city in respect of all Courts of Quarter Sessions held therein and that all other parts of the County of Cumberland without the said Police District of Sydney shall be the jurors' district for the Town of Parramatta and that the jurors' district for every other town or place within the said Colony at which any Court for the trial by jury of civil and criminal issues and the assessment of damages or any Court of General or Quarter Sessions of the Peace has been or shall hereafter be appointed to be holden shall comprise a circuit of thirty miles around every such town or place and be called the "jurors' district" for such town or place Provided always that wherever and whenever from the relative distances of the places for holding any two of such last mentioned Courts the said circuit of thirty miles around each of them would in the direction between them be partially identical then the respective jurors' districts for such Courts respectively shall in such direction as aforesaid be limited and bounded by a straight line between the points of intersection of such circuits.

Clerk of Petty Sessions in the first week in August in every year to require Chief Constable to make out by the middle of September a true list of men in the district liable to serve as jurors.

5. And be it enacted That the Clerk or senior Clerk of Petty Sessions if there be more than one of the police district in which shall be situated any town or place where any such Court for the trial by jury of civil and criminal issues and assessment of damages or of General or Quarter Sessions of the Peace has been or shall hereafter be appointed to be holden shall within the first week in August in every year issue a notice in writing to the Chief Constable of the said police district in the form in Schedule A hereto annexed requiring him to make out before the fifteenth day of September then next ensuing a true list of all men within the jurors' district of 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 Schedule hereto annexed marked B.

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6. And be it enacted That the Chief Constables in every such police district as aforesaid shall forthwith after the receipt of the said notices prepare and make out in alphabetical order a true list of every man residing within their respective jurors' districts and being within the distances hereinbefore specified respectively who shall be 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 and the Chief Constables of other police districts within which portions of any such jurors' districts as aforesaid may happen to be are hereby required to assist such first mentioned Chief Constables in preparing and making out such lists as aforesaid by communicating to them respectively the residences names additions and nature of qualifications of all persons within such last mentioned police districts as shall be liable and qualified to serve on juries at any such time or place as aforesaid.

Lists to be prepared  
by Chief Constables.

7. And be it enacted That the Chief Constable of each police district within which any such town or place as aforesaid shall be situate having made out according to this Act a list of every man qualified and liable to serve on juries as aforesaid shall within the first week of the month of September fix a true copy of such list upon the principal doors of the Court Houses in his jurors' district having first subjoined to every such copy a notice subscribed with his name and stating that all objections to the list will be heard by the Justices of the Peace on the first Tuesday in the month of October then next and shall likewise keep the original list or a true copy thereof to be inspected by the inhabitants of the said jurors' district at any reasonable time within the month of September without fee to the end that due notice may be given of any names improperly inserted or omitted in the said list.

Lists to be published  
by Chief Constables.

2 Wil. IV. No. 3 s. 7.

8. And be it enacted That the said Clerks of Petty Sessions shall respectively before the twentieth day of September in every year cause all the Justices resident within the jurors' districts respectively to be summoned to attend a Special Petty Sessions at the usual places of meeting of the Petty Sessions for the police districts in which such towns or places as aforesaid shall be situate on the first Tuesday in the month of October then next for the purpose of correcting and allowing the jury list for such jurors' districts and the said Justices shall hold a Special Petty Sessions accordingly and the said Justices or any two of them shall sit *de die in diem* until the said lists shall be corrected and allowed as hereinafter provided and the Chief Constable of every such district shall then and there produce the list of men qualified and liable to serve on juries as aforesaid by him prepared and made out as hereinbefore directed and thereupon the Justices attending such Sessions shall 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 it shall be lawful for such Justices to insert in such list all names improperly omitted and to correct all errors and inaccuracies therein and if the said Justices shall be divided in opinion upon any question as to the striking out or adding of any name the decision thereof shall be determined by ballot and when every such list shall be duly corrected at such Sessions it shall be allowed by the Justices present or two of them who shall sign the original list and two fair copies thereof with their allowance thereof and the Clerk of the Bench at each such Court of

Lists to corrected  
by Justices.

6 Wil. IV. No. 15  
s. 2.

2 Wil. IV. No. 3

s. 12.

Lists to be forwarded  
by the Clerks of the  
Bench to the Sheriff.

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Petty Sessions shall receive every list so allowed and forthwith transmit one of such duplicate fair copies to the Sheriff of the Colony and shall keep the said original corrected list amongst the records of his office and have the other fair copy thereof ready to be produced in the Supreme Court or Circuit Court or in any Court of Quarter Sessions when the same shall be required therein.

Lists to be recorded by Sheriff.

Jurors' book to be made from lists by Sheriff.

9. And be it enacted That the said Sheriff shall keep the lists so transmitted to him by the Clerks of the Benches among the records of his office and shall within ten days from the receipt of the said lists cause to be fairly and truly made out therefrom a book for each such jurors' district as aforesaid to be called the "jurors' book" for the district of (*naming the district*) and shall in the said book cause to be transcribed the names of all persons contained in the said lists for each jurors' district together with the addition of the respective residences degree calling or business and qualifications of the said persons in alphabetical order beginning under each letter of the alphabet with the surname of each person and such "jurors' book" shall be kept by the said 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 shall have been duly prepared corrected and allowed in and for another year.

Sheriff to make out special jury list. Sec. 13 of 4 Vic. No. 28.

10. And be it enacted That immediately after making out the said "jurors' books" respectively the Sheriff shall make out from each of the said books a list of the names of every man therein described as an Esquire or person of a 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 or as a Member of the Council of the City of Sydney or Town of Melbourne and shall in such list insert the said names in alphabetical order together with the respective places of abode and additions of the said persons 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 and every such list shall be called "the special jurors' list" for the same district as the said "jurors' book" from which it has been so made out and shall be by the said Sheriff annexed thereto to be kept and produced therewith and the said Sheriff shall forthwith transmit a copy of each of such special jury lists to the Clerks of the Petty Sessions from whence he shall have received the general list from which the same shall have 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.

Jury lists for newly created Courts.

11. And be it enacted That in case the Governor of the Colony of New South Wales shall by any proclamation or proclamations issued and published as by law is required direct a Circuit Court or Circuit Courts or any Court of General or Quarter Sessions of the Peace to be holden at any town or place where provision shall not have been theretofore made for the preparing and settling of the jury lists for such town or place it shall be lawful for the said Governor to direct the 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 thereupon the said Bench of Magistrates shall in pursuance of such direction and they are hereby authorized and required to prepare and cause to be prepared within three months after the receipt of any such direction lists of all jurors within the jurors' district for such town or place and thereupon the Clerks of Petty Sessions Chief Constables Justices and Sheriff shall do and perform within the said period of three months all such acts matters and things in and towards preparing correcting

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correcting and allowing the jury lists and making out the jurors' book and special jury list for every such jurors' district as are hereinbefore required to be ordinarily done in the months of August September and October in each and every year and all such jury lists when settled shall come into force and the persons whose names shall be therein set down shall be liable to serve as jurors immediately after the jurors' book for such newly appointed town or place shall have been made out by the said Sheriff and each of the said lists shall respectively continue in force until new lists shall have been allowed and a new jurors' book shall have been made out under the provisions hereinbefore contained.

12. And be it enacted That it shall be lawful for the Chief Justice of the Supreme Court of New South Wales the Resident Judge for the District of Port Phillip and any Chairman of the Courts of General and Quarter Sessions of the Peace and they are hereby respectively required from time to time and as often as occasion shall demand to issue a precept or precepts under their hands and seals according to the form set forth in the Schedule hereto annexed marked C to be called a "general jury precept" and to be directed to the Sheriff of the Colony requiring him to summon jurors for the trial of issues and assessment of damages in the said Supreme and Circuit Courts and in the said Courts of General and Quarter Sessions Provided always that the said "general jury precept" shall not at any one time require the said Sheriff to summon more than forty-eight nor less than thirty-six names of jurors and shall specify the time when and the place where the attendance of such jurors is required and shall be issued and delivered to the said Sheriff eight clear days before the time so specified for such attendance if the same be required in the City of Sydney or Town of Melbourne and in all other cases fourteen clear days before the time of such attendance.

General jury precepts  
how issued.

2 Wil. IV. No. 3 s.  
15.  
4 Wil. IV. No. 12  
s. 7.  
4 Vic. No. 28 s. 2.

13. And be it enacted That whenever a jury or juries of twelve or of four special jurymen shall be required in the Supreme Court or in any Circuit Court of this Colony for the trial of any issues as hereinafter is provided it shall be lawful for the Chief Justice of the Supreme Court and the Resident Judge for the District of Port Phillip (as the case may require) and they are hereby respectively directed from time to time and as often as occasion shall demand to issue one or more general "special jury precepts" under his hand and seal according to the form set forth in the Schedule hereto annexed marked C to be called "special jury precepts" and whenever a jury or juries of twelve common jurors shall be required it shall in like manner be lawful for the said Chief Justice or Resident Judge and he is hereby directed to issue a general common jury precept under his hand and seal according to the said form to be called a "common jury precept" and such precepts respectively shall be directed to the Sheriff of the Colony requiring him to summon a competent number of special jurors or of common jurors (as the case may be) not less than twice nor more than three times the number of the jurors to be impannelled and every such precept shall be issued and delivered to the Sheriff eight clear days before the time so specified for the attendance of the jurors if the same be required in the City of Sydney or Town of Melbourne and in all other cases fourteen clear days before the time of such attendance.

Special jury precepts  
how issued.

14. And be it enacted That as often as a "general jury precept" as hereinbefore provided shall be delivered to the Sheriff he shall and is hereby required to summon the persons whose names shall appear on the said "jurors' book" for the district within which the attendance of the said jurors is by the said "general jury precept" required according to the order in which the said names so appear in said

Names of jury how  
chosen in pursuance  
of general precept.

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said "jurors' book" from the first name down to the last until every such person shall have been summoned in succession and the same order shall be observed in each succeeding year the Sheriff beginning every year with the names in the "jurors' book" for that year next after the names of the persons appearing by the "jurors' book" for the year preceding to have been last summoned for such year and if through any casualty there shall be no "jurors' book" for any particular district in existence for the current year it shall be lawful to summon jurors for such district from the "jurors' book" for that district of the year preceding and as often as a "special jury precept" shall be delivered to the Sheriff he shall and is hereby required to summon the persons whose names shall appear in the special jury list for the jurors' district within which the attendance of the said special jurors shall be required in the same order and subject to the same provisions in all respects *mutatis mutandis* as are above prescribed with respect to the summoning of jurors under a general jury precept Provided always that no Justice of the Peace shall be summoned or impannelled as a juror to serve at any General or Quarter Sessions of the Peace Provided also that the names of all persons so summoned in pursuance of each such "general jury precept" whether issued by the said Chief Justice Resident Judge or Chairman shall be chosen in the manner and succession hereinbefore required without any further distinction whatsoever priority being given by the said Sheriff to every such "general jury precept" according to the time of its receipt at his office.

Jury how summoned  
in pursuance of  
general precept.

15. And be it enacted That upon the receipt of any such "general jury precept" or "special jury precept" the Sheriff shall forthwith issue a summons in writing to the several jurors so required to be summoned signed by himself or his deputy to the effect as in the Schedule D to this Act annexed and the said summons shall be delivered to every such juror or shall be left at his usual place of abode at least four clear days before the attendance of such juror is required in the City of Sydney or Town of Melbourne and in all other cases at least eight clear days before the time specified for such attendance.

Sheriff's return to  
general precept.

16. And be it enacted That upon the day and at the place named in every such "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 Provided that 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 shall in other respects be according to law.

Mode of trial by  
jury appointed for  
crimes and misde-  
meanors.

17. And be it enacted That all crimes and misdemeanors prosecuted in the Supreme Court the Circuit Courts or Courts of General and Quarter Sessions shall be tried by a jury consisting of twelve men chosen and returned according to the provisions of this Act and every such jury shall be subject to the same rules regulations and manner of proceeding as are observed upon any criminal trial in the Court of Queen's Bench in England as nearly as may be and so far as the same may not be specially provided for in this Act.

Criminal special  
jury.

18. And be it enacted That as often as any application shall be made to the Supreme Court by Her Majesty's Attorney General or other prosecutor or by or on behalf of any defendant in any criminal cause

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cause depending in the said Supreme Court or in any Circuit Court for a special jury to try the issue in such cause (except in cases of treason or felony) it shall be lawful for the said Court to order a special jury to be summoned for the trial of such issue and 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 is hereinafter directed and provided for summoning striking and swearing special juries for the trial of civil issues and shall be liable to the same fines and forfeitures and entitled to the same exemptions as are hereinbefore authorized with respect to such juries Provided however that any defendant making application for a special jury shall serve a notice in writing of such application upon the Attorney General or other prosecutor at least four clear days before the time of his making the same.

19. Provided always and be it enacted That the Supreme Court and Circuit Courts and all Courts of Oyer and Terminer and Gaol Delivery and Courts of General and Quarter Sessions of the Peace 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 and the return to every such writ precept award or order shall be made in the manner heretofore used and accustomed in such Courts respectively in England save and except that the jurors shall be qualified according to this Act.

Power reserved to Courts of issuing precepts and making orders &c. as heretofore.

20. And be it enacted That (except in such cases as are hereinafter mentioned) all actions at law and all 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 shall be had in the said Court or in any Circuit Court in this Colony by a jury consisting of four persons duly qualified according to law as special jurors and returned and chosen as hereinafter mentioned.

Mode of trial in civil issues.

21. Provided always and be it enacted That if either of the parties plaintiff or defendant in any action at any time after issue joined shall apply to the said Court for that purpose in the same manner as he would now have to apply for a trial by jury it shall be lawful for the said Court to order that the trial shall be had by a jury consisting of twelve persons who shall be returned under the provisions of this 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 shall think fit to order.

But if plaintiff or defendant apply to the Court for such purpose the trial may be had before a jury of twelve persons.

22. And be it enacted That 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 be observed in an action at law in the Courts of Westminster or on a trial at *Nisi Prius*.

Trial by jury in unprovided cases to be governed by English rules.

23. And be it enacted That upon calling on for trial by a jury of twelve persons any criminal issue joined in the said Supreme Court or Circuit Courts or in the said Courts of General and Quarter Sessions the Clerk of the Court shall in open Court put the pieces of card furnished by the Sheriff as before mentioned into a box provided for that purpose and shall draw out therefrom the said pieces of card

Common jury how sworn in criminal trials.

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one after the other until twelve men shall appear without just cause of challenge which said men being duly sworn shall be the jury to try such issue and in case the whole number of the said cards shall be exhausted by challenge or otherwise before twelve men are duly sworn it shall be lawful for either the Crown or the prisoner to 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 such district of the Colony) as may be sufficient to make up twelve men for the trial of the said issue Provided however that 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 shall have given in their verdict and the same shall have been recorded or until such jury shall by consent of the parties or by leave of the Court be discharged and then the said pieces of card shall be returned to the box there to be kept with the other names remaining undrawn and so *toties quoties* as long as any issue remains to be tried Provided also that where no objection shall be made on behalf of the Queen or any other party it shall be lawful for the Court to try any such criminal issue with the same jury that shall have previously tried or been drawn to try any other such issue without their names being returned to the box and redrawn or to order the name or names of any man or men on such jury whom both parties may consent to withdraw or who may be justly challenged or excused by the Court to be set aside and another or other names to be drawn from the box and to try such issue with the residue of such original jury and with such man or men whose name or names shall be so drawn and who shall appear and be approved as indifferent and so *toties quoties* as long as any such issue remains to be tried by such jurors.

*Tales allowed.*

Right of challenge.

24. And be it declared and enacted That challenge to the array and to the polls of jurors may be made and shall be allowed in every Court in the Colony 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 is or are established used and practised in like cases in Her Majesty's Courts of Record at Westminster Provided also that in all inquests to be taken before any of the Courts hereinbefore mentioned wherein the Queen is a party notwithstanding it be alleged by them that sue for the Queen that the jurors of those inquests or some of them be not indifferent for the Queen yet such inquests shall not remain untaken for that cause but if they that sue for the Queen 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 Provided always that nothing herein contained shall affect or be construed to 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 and that no person arraigned for murder or other felony shall be admitted to any peremptory challenge above the number of twenty.

Striking jury in civil cases.

25. And be it enacted That 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 said Court shall put together in a box provided for that purpose the pieces of card furnished by the Sheriff as hereinbefore directed containing the names places of abode and additions of the jurors returned in the jury panel and upon any such issue being called on to be tried such clerk or officer shall in open Court draw out the said cards one after another until twice the  
number



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number of jurors required to be impannelled shall appear and after all causes of challenge allowed shall remain indifferent and approved of or until the whole of such cards shall be exhausted and in case of a sufficient number of the jurors named on such cards not being 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.

26. And be it enacted That in civil issues upon twice the number of jurors required to be impannelled 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 shall or 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 shall or may be also struck therefrom and the jurors whose names shall then remain upon such list or the first four or twelve jurors whose names shall then be thereon (as the case may require) shall be the jurors for the trial of the issue or issues in question and be sworn and impannelled accordingly and after every such trial the cards so drawn as aforesaid shall be returned to the box to be kept with the others remaining undrawn and so *toties quoties* as long as any issue shall remain to be tried by such jury.

Impannelling jury in civil cases.

27. Provided always and be it enacted That where no objection shall be made on behalf of any plaintiff or defendant it shall be lawful to try any number of different issues with the same jury that shall have been previously drawn for or have tried any other issue or issues without having their names returned to the box or the Court or Judge may order the name of any juror or jurors whom the parties may consent to withdraw or who may be challenged or excused to be set aside and another juror or jurors to be drawn from the box from the names remaining undrawn and who shall be subject to the same mode of striking as the original juror or jurors to try the issue or issues with the residue of such original jury and so *toties quoties* as long as any issue shall remain to be tried.

Trying different issues by the same jury in civil cases.

28. And be it enacted That the provisions contained in the three preceding sections shall be equally in force with respect to all cases in which damages shall be assessed only Provided that in every such case where the defendant shall not appear either 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 and the like course shall be pursued in every case where there shall be an issue or issues for trial and either of the parties plaintiff or defendant shall not so appear.

Where damages assessed only.

29. And be it enacted That in every civil trial or assessment of damages under this Act where the jury shall have remained six hours or upwards in deliberation if all of them shall not agree as to the verdict to be given or 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 and if after having remained in the whole twelve hours or upwards in deliberation three-fourths in number of the jurors shall not concur in any such verdict or assessment then such jurors shall be discharged and the cause shall or 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 think fit to order.

Cases of difference of opinion in jury provided for.

30. And be it enacted That whenever it shall appear 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 it shall be lawful for such Judge to order such view upon

View how granted.

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upon the payment by the party applying for the same of such sum as to the said Judge may seem reasonable and such sum shall be paid over to such jurors as shall have such view and shall attend the trial and shall be taxed and allowed as other costs in the cause and two or more jurors as the Judge shall direct mutually chosen by the parties or in case the parties cannot agree nominated by the Sheriff shall be shewn the place by two persons appointed by the said Judge and 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 shall be 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 shall 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.

Allowance to common jury.

31. And be it enacted That every juror summoned in pursuance of any precept as aforesaid who shall attend the Supreme Court or any Circuit Court or any Court of General or Quarter Sessions of the Peace shall for every day during his attendance upon such Court (whether he shall have actually served upon a jury or not) be entitled to receive a compensation for such attendance at the rates mentioned in the Schedule hereto annexed marked E Provided however that in all cases in which there may be 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 shall be 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 Provided also that every talesman serving with such jurors shall be entitled to the same compensation as a juror residing within five miles of the said Court.

Fund for such allowance in civil causes.

32. And be it enacted That in every action at law there shall be paid by the plaintiff into the hands of the Prothonotary (to be by him paid over to the Sheriff) on entering the cause for trial in every case of assessment of damages the sum of one pound and in every case of a trial by a jury of four the sum of two pounds and in every case of a trial by a common jury of twelve men the sum of three pounds and in every case of trial by a special jury of twelve men the sum of six pounds which said several amounts shall be allowed as costs in the cause Provided that when the order for such jury of twelve shall have 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 into the hands of the Prothonotary (to be by him paid over to the Sheriff) or such order shall lapse and not take effect and the said sums together with the amount of all fines on jurors shall form a fund in the hands of the Sheriff for paying the expenses of civil jurors as aforesaid and shall be applied accordingly for that purpose and be accounted for by him in like manner as other public moneys are directed to be accounted for by the Sheriff.

8 Vic. No. 4 s. 14.

Costs of special jury unless Judge certify.

33. And be it enacted That 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 the Judge before whom the cause be tried shall immediately after the verdict certify under his hand that the same was a cause proper to be tried by a jury of twelve special jurors.

Qualification of jurors upon inquests under writs of inquiry and commissions.

34. And be it enacted That no man shall be liable to be summoned or impannelled to serve as a juror upon any inquest or inquiry  
by

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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 of the Colony or the Seal of the Supreme Court who shall not be duly qualified according to this Act to serve as a juror. Provided always <sup>Juries upon Coroners' inquests.</sup> that nothing herein contained shall extend to any inquest before any Coroner by virtue of his office but that Coroners when acting otherwise than under a writ of inquiry may respectively take and make all inquests and inquiries by jurors of the same description as they have been used and accustomed to do before the passing of this Act. Provided however that in thinly populated districts it shall be lawful for any Coroner at his discretion to swear a jury of any number not less than five and the verdict of such jury shall be as valid and effectual in law as if the accustomed number were impanelled and sworn.

35. And be it enacted That every Clerk of Petty Sessions or Chief Constable who shall wilfully neglect or refuse 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 of the said Colony 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 in the said Colony to the extent of the jurisdiction of such Court. <sup>Liabilities of Clerks and Constables.</sup>

36. And be it enacted That every Justice of the Peace who shall have been summoned as hereinbefore directed to attend at any Special Petty Sessions for correcting and allowing any jury list who shall fail or neglect 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 of the Colony upon the motion of the Attorney General and upon the fact of such non-attendance being duly proved on affidavit to the satisfaction of the said Court and the Clerk of the Bench shall at the said Special Petty Sessions make an entry in writing of <sup>2 Wil. IV. No. 3. s. 2.</sup> 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 which certificate shall be taken to be *prima facie* proof of the non-attendance of the Justices therein stated to have been absent from the said Special Petty Sessions. <sup>Liability of Justices.</sup>

37. And be it declared and enacted That the Sheriff shall by himself or his deputy be in attendance upon the said Supreme Courts Circuit Courts and Courts of General and Quarter Sessions of the Peace within the said Colony during every sitting of the said Courts and in every case of non-attendance upon any of the said Courts shall be liable to a fine not exceeding fifty pounds to be summarily imposed at the discretion of the Court for such non-attendance and if he shall neglect or refuse to discharge the duties hereinbefore required of him or shall otherwise fail well and faithfully to do and perform all or 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. <sup>Liability of Sheriff.</sup>

38. And be it enacted That if any juror who shall have had a view of any place in dispute in any cause according to the provisions hereinbefore contained shall make default when the cause in which he was appointed a viewer shall be called on for trial it shall be lawful for

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the Court or Judge unless reasonable cause be shewn to set upon such viewer a fine not exceeding the amount of ten pounds over and above the fine to which he shall be liable under the provisions hereinafter contained for non-attendance as a juror.

Liability of jurors making default.

39. And be it enacted That if upon calling over the names upon any jury panel returned as hereinbefore required any person appearing thereon shall fail to attend or after appearance shall wilfully withdraw himself from the presence of the above mentioned Courts it shall be lawful for such Courts respectively at their discretion summarily to impose any fine not exceeding twenty pounds upon the party so failing to attend or withdrawing himself unless good cause for such defaulter's absence be made to appear on oath to the satisfaction of the said Courts respectively Provided always that it shall be lawful at any time for the said Courts respectively to exempt from attendance either during the Session or for any less period any person summoned as a juror who may to such Courts respectively shew on oath sufficient grounds for such exemption Provided also that no juror summoned for the trial of civil issues shall be compelled to attend at any sittings for more than three consecutive days unless the presiding Judge shall otherwise order.

Liability of Coroner's jurors.

40. And be it enacted That if any man 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 shall not after being openly called three times appear and serve as a juror every such Sheriff or in his absence the Under Sheriff and such Coroner and Commissioner respectively are hereby authorized and required (unless some reasonable excuse shall be proved on oath affirmation or solemn declaration if required) to impose such fine upon every man so making default as they shall respectively think fit not exceeding five pounds and every such Sheriff Under Sheriff Coroner and Commissioner respectively shall make out and sign a certificate containing the Christian name and surname the residence and trade or calling of every man 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 every such defaulter shall reside on or before the first day of the Quarter Sessions next ensuing and every such Clerk of the Peace is hereby required to copy the fines so certified on the roll on which all fines or forfeiture imposed at such Quarter Sessions shall be 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.

Punishment for embracery.

41. And be it declared and enacted That any person who shall corruptly influence or attempt to influence any juror and every juror consenting thereto shall be guilty of a misdemeanor and shall upon conviction thereof in any Court of competent jurisdiction be liable to fine and imprisonment at the discretion of such Court.

Recovery of fines in Supreme Court.

In Quarter Sessions.

42. And be it enacted That all fines imposed under this Act by the said Supreme Court or Circuit Courts or by any Judge thereof shall be levied in the same manner as any other fines imposed by the Supreme Court or in the manner next hereinafter mentioned and all fines imposed by any Court of General or Quarter Sessions or by any Chairman thereof by virtue of this Act shall be levied and recovered in the manner appointed by the Act of the Governor and Legislative Council passed in the second year of Her Majesty's reign intituled "*An Act for the more effectual recovery of Fines and enforcement of forfeited Recognizances imposed and entered into by and before Justices of the Peace in New South Wales*" and all such fines how-

2 Vic. No. 8.

soever

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soever imposed shall go and be applied to the fund hereinbefore provided for the payment of jurors.

43. And be it enacted That in all matters and things to be done in the District of Port Phillip under and by virtue of this Act which are not specially provided for herein the words "Governor" "Supreme Court" "Judge" "Attorney General" "Prothonotary" and "Sheriff" as often as they occur throughout this Act shall be held respectively to be applicable to the Superintendent Supreme Court Resident Judge Crown Prosecutor Deputy Registrar and Deputy Sheriff of the said District of Port Phillip.

44. And be it enacted That this Act shall commence and take effect on the first day of October next and that from and after that date the Acts passed in the second fourth and fifth years of the reign of King William the Fourth and respectively intituled "*An Act to amend an Act intituled 'An Act for regulating the constitution of Juries for the Trial of Civil Issues in the Supreme Court of New South Wales'*" "*An Act to continue for a limited time an Act of the Governor and Council of New South Wales intituled 'An Act for regulating the constitution of Juries and for the Trial of Issues in certain cases in the Supreme Court of New South Wales'*" and to "*make further provision for Trial by Jury in Criminal Cases in the said Colony*" "*An Act to continue for a limited time an Act of the Governor and Council of New South Wales intituled 'An Act for regulating the constitution of Juries and for the Trial of Issues in certain cases in the Supreme Court of New South Wales'*" and to "*make further provision for Trial by Jury*" and also an Act passed in the second year of Her present Majesty's reign intituled "*An Act to provide for Trial by Jury at the Courts of Quarter Sessions to be held at Melbourne and Port Macquarie*" and also two Acts passed in the third year of Her present Majesty's reign intituled respectively "*An Act to make further regulation with respect to Trial by Jury in Criminal Issues in the Colony of New South Wales and to amend the form of proceeding in Criminal Prosecutions in said Colony*" and "*An Act to provide for Trial by Jury at Courts of Quarter Sessions to be held at Berrima*" and also two other Acts passed in the seventh and eighth years of Her Majesty's reign intituled respectively "*An Act to further amend and continue for a limited time an Act intituled 'An Act for regulating the constitution of Juries and for the Trial of Issues in certain cases in the Supreme Court of New South Wales'*" and "*An Act to amend the Laws regulating Trial by Jury in New South Wales in so far as they relate to the Trial of Civil Causes*" shall be repealed Provided always that no Act repealed by any of the Acts hereinbefore recited shall be revived by the repeal of the said herein recited Acts.

45. And whereas it is expedient and necessary that after the passing of this Act and in the present year one thousand eight hundred and forty-seven the lists of jurors should be prepared published and corrected in different months from those hereinbefore mentioned Be it enacted That the Clerks of Petty Sessions Chief Constables Justices and Sheriffs shall during the present year do and perform all such acts matters and things in and towards preparing publishing correcting and altering the jury lists and making out the jurors' book and special jury list for each jurors' district within the months of October November and December as are hereinbefore required to be ordinarily done in the months of August September and October in each and every year and all such jury lists when settled shall come into force and the persons whose names shall be therein set down shall be liable to serve as jurors immediately after the jurors' book for each district shall have been made out by the Sheriff and each of such lists shall continue in force until

new

District of Port Phillip.

Commencement of Act.

Repeal of—  
 2 Wil. IV. No. 3.  
 4 Wil. IV. No. 12.  
 5 Wil. IV. No. 25.  
 2 Vic. No. 5.  
 3 Vic. No. 11.  
 3 Vic. No. 17.  
 7 Vic. No. 29.  
 8 Vic. No. 1.

Jury lists for 1848 to be prepared published &c. in October November and December

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but present jury lists to continue in force until new lists shall come into effect.

new lists shall have been allowed and a new jurors' book shall have been made out under the provisions hereinbefore contained Provided always that until such jury lists shall come into effect under the provisions of this Act the jury lists which are now and shall be in operation at the time of the passing thereof shall continue in full force and effect.

SCHEDULES REFERRED TO.

A.

District of } To the Chief Constable of the District of

TAKE NOTICE that you are hereby required to make out before the first day of next a true list in writing in the form hereunto annexed containing the names of all persons between the ages of twenty-one and sixty qualified to serve as jurors in your district.

B.

LIST of all persons within the District of 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 .. .. .	£100 of personal estate.

C.

*Form of Precept.*

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

To the Sheriff of or his deputy greeting—

PURSUANT to the Act of the Governor and Council 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 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.

D.

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*Hackney Carriages Sydney.*


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## D.

*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.

## E.

	s.	d.
Common jurors and jurors summoned under a General Jury Precept residing within five miles of the Court per diem ... ..	2	6
The same where residing more than five miles from the Court per diem ... ..	5	0
And for every mile of distance beyond five miles between such juror's residence and the Court ... ..	0	8
	( <i>i.e.</i> 4d. each way.)	
Special jurors summoned under a Special Jury Precept if residing beyond two miles and within five miles of the Court per diem ... ..	5	0
The same where residing more than five miles from the Court per diem ... ..	7	6
And for every mile of distance beyond five miles between such juror's residence and the Court ... ..	1	0
	( <i>i.e.</i> 6d. each way.)	
Every bystander sworn on a trial ... ..	5	0

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