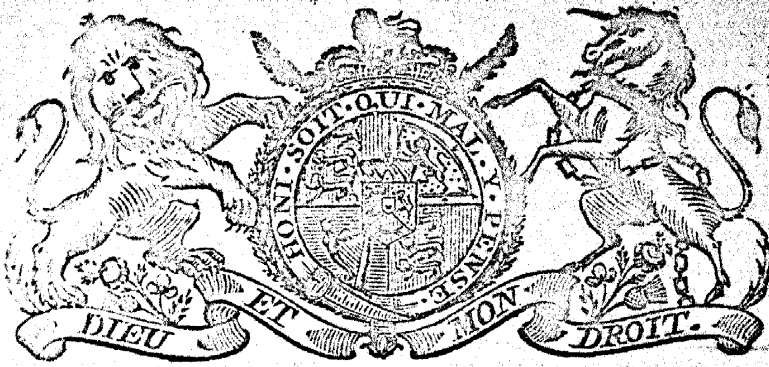


Repealed by Act. 12 1843
Repealed by 5. 1858

12-1843 repealed by 1-1862
without renewal.



ANNO PRIMO

VICTORIÆ REGINÆ.

1838

No. 1.

AN ACT for Regulating the Constitution of Juries.

BE IT ENACTED by His Excellency JOHN HINDMARSH, Knight of the Royal Hanoverian Guelphic Order, Captain in the Royal Navy, Governor and Commander-in-Chief of Her Majesty's Province of South Australia by and with the advice of the Legislative Council—THAT all issues of fact whether in civil or criminal proceedings shall be tried and all damages recoverable in any actions at law after judgment by default or upon demurrer (other than damages usually assessed or computed by the Court or some officer thereof) shall be assessed before the Judge of the Supreme Court by a Jury to consist of twelve persons who shall be subject to such and the like rules and manner of proceeding as are observed upon the trial of any issue of fact joined in Her Majesty's Courts of Record at Westminster so far as the same may not be specially provided for in this Act.

Constitution of Juries.

II. That every man (except as hereinafter excepted) between the ages of twenty-one years and sixty years residing within the said Province and who shall have within the said Province in his own name or in trust for him real estate of the value of fifty pounds clear of all incumbrances or a clear personal estate of the value of at least one hundred pounds sterling shall be qualified and liable to serve on Juries for the trial of any such issues joined in the said Court as aforesaid.

Qualification of common Jurors.

III. That the Clerk to the Magistrates or (during a vacancy in that office and not otherwise) some other person or persons to be appointed for that purpose by the Governor for the time being to act during such vacancy shall immediately after the passing of this Act and on or before the twentieth day of November in this present year and on or before the first day of January in every succeeding year prepare or cause to be prepared lists of all men liable to serve on the Juries setting forth their Christian names and surnames residences titles additions and qualifications according to the form

Lists to be prepared on or before 1st January.

form annexed to this Act and the said Clerk to the Magistrates or other person or persons to be appointed during and on account of such vacancy as aforesaid shall subscribe the said list with a declaration that each such list contains to the best of his knowledge and belief the names of all persons liable to serve on Juries and qualified according to the provisions of this Act.

Lists to be affixed within three days and to be open to the public for fourteen days.

IV. That the Jury lists so to be prepared as aforesaid shall within three days after the same shall be prepared be affixed to such conspicuous places in the Province as the Sheriff for the time being shall for that purpose from time to time appoint together with a notice signed by the Clerk of the Magistrates or (during such vacancy as aforesaid) by such other person or persons so to be appointed as aforesaid stating that the Justices of the Peace of the Province will hear at a special sessions directed to be held for that purpose as hereinafter mentioned all objections to the said lists: Provided always that the said Clerk of the Magistrates or (during such vacancy as aforesaid) such other person or persons so to be appointed as aforesaid shall keep the original lists and copies of the same to which the inhabitants of the said Province shall have access at any reasonable time within fourteen days after the days of such notice without fee in order that due notice may be given of names improperly omitted or inserted.

Special Session of Justices to be held third week of January to revise lists.

V. That a special sessions shall be held on the twelfth day of December in this present year and in the third week in the month of January in every succeeding year at which the said Clerk to the Magistrates shall attend and produce the lists so prepared and verified as aforesaid and thereupon the Justices so assembled shall examine such lists *seriatim* and shall strike out of such lists the names of all persons not liable to serve or disqualified from serving as Jurors as also of such as are disqualified by deafness blindness or mental infirmity and shall insert all names improperly omitted and correct all errors and mistakes in such lists and finally settle the same and the said lists when so settled shall be final and shall continue in force for the current year: Provided always that if any question should arise respecting the striking out or adding of a name the same shall be decided by ballot.

Certificate of lists.

VI. That after the said lists have been finally settled and approved in special sessions in the manner directed in this Act as aforesaid a certificate shall be subjoined to each such list and subscribed by the Clerk of the Magistrates or (during such vacancy in that office as aforesaid) by the person or persons so to be appointed as aforesaid and the Magistrates then present stating that the same has been carefully examined and corrected according to the best of their knowledge and belief of the major part of them and that all the persons then named in such lists are qualified to serve on Juries according to the provisions of this Act.

Justices to be summoned.

VII. That the Clerk of the Magistrates or (during such vacancy as aforesaid) such other person or persons so to be specially appointed as aforesaid shall cause all the Magistrates of the Province residing within the space of thirty miles of Adelaide to be specially summoned to attend the said special sessions and the said Magistrates shall sit from day to day until the Jury lists shall be settled as hereinbefore directed and if any Magistrate after having been so summoned shall neglect or fail to attend to any such special sessions or if attending shall refuse or fail to vote accordingly upon any question that shall be put every such Magistrate so refusing or failing to vote or so neglecting or failing to attend unless he can show reasonable cause shall forfeit and pay for every such offence the sum of ten pounds to be sued for in the name of the Advocate-General and to be appropriated in the same manner as all fines and forfeitures levied under this Act and the

Clerk

Clerk of the said Magistrates or (during such vacancy as aforesaid) such other person or persons so to be appointed as aforesaid for that purpose during such vacancy shall note the names of all such Magistrates as shall attend the said special sessions and as shall be absent from the same from day to day and at the close of the said sessions shall transmit a certified list thereof to the Advocate-General.

VIII. That as soon as the said lists shall be settled as aforesaid the same shall be immediately transmitted by the said Justices to the Sheriff and the Sheriff upon receiving such lists shall within three days after the receipt thereof in each and every year cause to be transcribed fairly in a book to be kept in his office for such purpose and to be styled the "Jurors' Book" the names of all persons contained in such lists respectively with the addition of their respective residences titles and qualifications in alphabetical order beginning under each letter of the alphabet with the surname of each person and such Jurors' Book shall thereupon be and continue in force for the current year and until the Jury lists for the year next ensuing shall be transcribed by the Sheriff into the Jurors' Book.

Lists to be transmitted to the Sheriff to be transcribed in "Jurors' Book."

IX. And to the end that all persons liable to serve on any such Juries as aforesaid may bear an equal share of the public duty imposed on them:—Be it further enacted that as often as a writ of *venire facias* shall be delivered to the Sheriff requiring him to summon Jurors for the trial of any such issues as aforesaid the Sheriff shall and he is hereby required to summon all persons not being on the Special Jury list as hereinafter provided whose names shall be transcribed in such Jurors' Book according to the order in which such names shall successively be placed until every such person shall have been summoned in his turn: And in case any such person shall make default every such defaulter shall be summoned a second time or oftener until he shall have served for such default or defaults and such order shall be observed every succeeding year the Sheriff beginning with the names of the persons in the last book who were last summoned to attend to such Juries as aforesaid.

Writ of *venire facias*. Jurors to be summoned in turn.

X. That it shall be lawful for the said Court from time to time as and when the sittings of the said Court shall be holden to issue a general *venire facias* for the trial of all and every issue and issues of fact joined as aforesaid and set down for trial by Jury in the said Court: And the form of such *venire facias* shall be settled by the said Court and at such time or times as the said Court shall direct and appoint: Provided always that the names of no more than thirty-six nor less than twenty-four persons duly qualified to serve as Jurors as aforesaid shall be included in any such *venire facias* and that every such *venire facias* shall be issued to the Sheriff eight clear days before the attendance of such Jurors shall be required and that the said Jurors shall be severally summoned by the said Sheriff or his proper officer three clear days before their attendance shall be required and every such summons shall be in writing and signed by the Sheriff or his deputy to the following effect:—

Venire facias to include not fewer than twenty-four nor more than thirty-six names.

Mr. A. B. [naming the Juror] you are hereby required to appear as a Juror at the Supreme Court in _____ to be held on the _____ day of _____ next and there to attend from day to day until you shall be discharged by the said Court.

(Signed) C. D. Sheriff.

and the summons shall be left at the respective places of abode of the said Jurors.

XI. That

Penalty on default

XI. That if any person duly summoned as a Juror as aforesaid shall make default or fail to attend the said Court (upon proof on oath of such person being duly summoned as aforesaid) every such person shall forfeit a sum not exceeding fifty pounds at the discretion of any Judge or Judges of the said Court to be levied and appropriated in like manner as all other fines and forfeitures under this Act unless some just cause for such defaulter's absence shall be made to appear by oath or affidavit to the satisfaction of the said Court.

Juries to be drawn by ballot.

XII. That at the sitting of the said Court for the trial of any such issue as aforesaid the name addition and place of abode of each Juror summoned as aforesaid shall be written on a separate piece of paper or card and put into a box and when such issue is called on to be tried the Chief Clerk or other ministerial officer of the Court shall in open Court draw therefrom until twelve men appear who are not objected to or challenged and after the trial such names shall be returned to the box to be kept with the other undrawn names and *toties quoties* as long as any issue shall remain to be tried.

A *tales* may be prayed.

XIII. That when a cause appointed to be tried by a common Jury shall be called on and a sufficient number of Jurors summoned to attend such Court shall not be in attendance it shall be competent to either party to the cause to pray a *tales* and the Court or Judge may then command the Sheriff or his deputy forthwith to summon as many good and lawful men of the bystanders (being qualified and liable as Jurors as aforesaid) as shall be sufficient to make up a full Jury for the trial of such cause as aforesaid.

Jurors to be paid for attendance in civil causes.

XIV. That every Juror who shall attend the said Court to try civil issues in pursuance of such summons as aforesaid shall be entitled to receive for every day during his attendance upon the said Court a compensation for his expences at and after the following rates (that is to say) for every Jury upon which such Juror shall actually be called and set the sum of one shilling.

Account of attendance to be kept and Jurors paid by the Sheriff.

XV. That the Chief Clerk of the Court or other proper officer shall keep an account of the number of days each Juror shall be called and answer to such call and duly attend the said Court and after the expiration of the time appointed by the Court for the attendance of such Jurors respectively the said Clerk or other proper officer shall deliver to every such Juror a short account or memorandum in writing setting forth the number of causes upon which such Juror may have been called and the sum of money to which such Juror may be entitled and the said memorandum shall be taken by such Juror to the Sheriff and the Sheriff shall thereupon pay to such Juror the sum of money to which he may be entitled as aforesaid: And in order the more readily to meet the expences incident to the payment of Jurors and the general expences attaching to the holding of the Supreme Court and the payment of its officers and other charges incident thereto:—Be it further enacted that there shall be paid by the party or parties who shall obtain a verdict in any cause tried by a common Jury aforesaid into the hands of the Chief Clerk or other proper officer of the said Court the scale of fees mentioned and set out in the Schedule to this Act marked A. and such and the like sum shall be allowed to such party or parties in the taxation of costs and all sums of money so received by the said clerk or other officer of the said Court shall be paid over to the Sheriff and the same together with all fines and forfeitures levied under this Act shall form and be a fund for the liquidation of the payments and expences aforesaid and shall be paid by the Sheriff to the Colonial Treasurer half-yearly.

XVI. That

XVI. That the Judge of the said Supreme Court may grant a rule where it appears expedient that the Jury should have a view of any place in dispute and that any Judge or Judges of the said Court may order such sum as such Judge or Judges may think reasonable for defraying the expences of such view to be deposited in the hands of the Sheriff by the party applying for such view and shall be taxed and allowed by the master or other proper officer of the Court in like manner as the other costs of the same and that two or more Jurors as shall be mutually agreed upon between the parties to the suit or in case the parties cannot agree as shall be nominated by the Sheriff shall be shown the place by two persons to be appointed by the Court or Judge who shall set for the trial of issues for the time provided that the names of the viewers shall be returned by the Sheriff and provided also that such viewers shall be the first of the Jury who shall be called and sworn of the Jury to try the issue.

Supreme Court may grant a rule for a view.

XVII. That in every case wherein a Jury shall have been granted as aforesaid for the trial of any issue or issues if either of the parties plaintiff or defendant shall make application to the Court stating his desire to have the said issue or issues tried by a Special Jury constituted as is hereinafter more particularly described for the trial of such issue or issues between the said plaintiff and defendant.

Application for Special Juries.

XVIII. That every man described in the said Juror's Book as an Esquire or person of higher degree or as a Justice of the Peace or as a merchant (such merchant not keeping a general retail shop) or as a Bank director or possessing real estate of the value of five hundred pounds or personal estate of the value of one thousand pounds shall be qualified to serve on Special Juries for the trial of issues in the Supreme Court as aforesaid.

Qualification of Special Juries.

XIX. That the Sheriff shall within ten days after he shall have received the lists of Juries from the Magistrates extract from the said lists the names of all persons who shall be qualified and liable to serve on Special Juries and shall cause the names so extracted to be fairly and truly copied out in alphabetical order together with their respective places of abode and additions which list shall be called the "Special Juror's List" and be subjoined to the Juror's Book and the said Sheriff shall prefix to every name in such list its proper number beginning the numbers from the first name and continuing them in a regular arithmetical series down to the last name and shall cause the said several numbers to be written upon distinct pieces of parchment or card being all as nearly as may be of equal size and after all the said numbers shall have been so written shall put the same together in a separate drawer or box and shall there safely keep the same to be used for the purpose hereinafter mentioned.

Sheriff to prepare Special Jury lists

XX. That whenever the said Supreme Court shall have awarded a Jury for the trial of any issue and either party plaintiff or defendant shall require a Special Jury the Chief Clerk or other officer of the Supreme Court shall appoint a time and place for the striking of such Special Jury and the said officer at the time and place being attended by the Sheriff or his officer who is hereby required to bring with him the Special Juror's list and all the numbers so written on distinct pieces of parchment card or paper as aforesaid shall in the presence of all the parties to the issues to be tried and of their attornies (if they respectively choose to attend or if the parties or their attornies or all or any of them do not attend then in their absence) put all the said numbers into a box to be by him provided for that purpose and after having shaken them together shall draw out of the said box twenty of the said numbers one after the other and shall as each number is drawn refer to the corresponding number

Special Juries to be struck.

number in the Special Juror's list and read aloud the name designated by such number and when such twenty numbers shall have been drawn the said Sheriff shall prepare two lists of the men's names with the numbers as they are written in the Special Juror's list and shall deliver one list to the plaintiff or his attorney and another list to the defendant or his attorney and the twenty names contained in the lists so delivered shall be reduced to sixteen by the plaintiff or his attorney and the defendant or his attorney each of them striking out at his discretion two different names from each of the said lists.

Special Jury to be
balloted for.

XXI. That as soon as any Special Jury shall be struck as aforesaid the same shall be severally summoned by the Sheriff or his officer to attend the Supreme Court on the time appointed for the trial of such cause according to the form and manner hereinbefore directed for the summoning of common Juries and the Sheriff shall on the day appointed for the trial deliver to the Chief Clerk or other proper officer of the Supreme Court the two aforesaid reduced lists of Jurors together with the box from which the numbers were drawn and shall put therein all the numbers corresponding with the names remaining on the said two reduced lists and the said officer shall in open Court draw from the box one number at a time and shall repeat aloud the corresponding name from the said lists until twelve men shall answer which said twelve men being duly sworn shall be deemed and taken to be the Special Jury.

A *tales* may be
prayed.

XXII. That when the cause appointed to be tried by a Special Jury as aforesaid shall be called on and a sufficient number of Jurors summoned to attend such Court shall not be in attendance it shall be competent to either party to pray a *tales* and the Court may then command the Sheriff or his deputy forthwith to summon as many good and lawful men of the bystanders as shall be sufficient to make up a Jury for the trial of such cause as aforesaid: Provided however that such Court shall in no case allow such *tales* unless at least nine of the Jurors summoned for the trial of the cause should be then in attendance at the Court.

Same Special Jury
may try any number
of cases on
consent of parties.

XXIII. That the same Special Jury may try any number of cases in which a trial by Special Jury shall have been awarded upon the parties plaintiff and defendant consenting thereto in writing any thing in this Act contained to the contrary notwithstanding.

Applicant for a
Special Jury to
pay the fees and
expences.

XXIV. That the person or party who shall apply for a Special Jury for the trial of any civil issue shall pay the fees for striking such Jury and all the expences 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 or person would be entitled to in case the cause had been tried by a common Jury as hereinbefore directed unless the Judge before whom the cause is tried shall immediately after the verdict certify under his hand that the same was a cause proper to be tried by a Special Jury.

Payment of Special
Juries.

XXV. That every Special Juror for the trial of every civil issue as aforesaid shall be allowed the sum of one guinea and in cases where a view shall be directed such further sum shall be taxed or allowed by the Court or Judge as hereinbefore provided with respect to common Juries.

Special Jurors to
be fined for non-
attendance when
duly summoned.

XXVI. That if any Special Juror shall not attend on being duly summoned or otherwise make default in not appearing in pursuance of such summons as aforesaid every such Juror shall be fined in a sum not exceeding ten pounds at the discretion of the Judge of the said Court to be levied and appropriated in like manner as all other fines and forfeitures under this Act
unless

unless some just cause for such defaulter's absence shall be made to appear by oath or affidavit to the satisfaction of the said Court.

XXVII. That if any Sheriff or other minister or other officer shall wilfully insert or omit in the Jurors' list as aforesaid or shall fail to deliver a correct copy thereof to the Clerk of the Supreme Court or shall otherwise fail well and faithfully to do and perform all and every the acts matters and things hereby required to be by him performed such Sheriff or other minister or officer shall be fined at the discretion of the Court.

Failure by Sheriff or other officer in performance of duties to be punished by fine.

XXVIII. That any Clerk of the Magistrates or other ministerial officer who shall wilfully neglect or refuse to execute any of the duties in the manner herein prescribed shall forfeit for every such offence the sum of fifty pounds one half to the person suing in the Supreme Court for the same the other to be appropriated in like manner as all other fines and forfeitures under this Act.

Clerk of the Magistrates for neglect or refusal to execute duties to be fined.

XXIX. That any person guilty of the offence of corruptly influencing or attempting to influence any such Juror as aforesaid or Jurors consenting thereto may be punished with fine and imprisonment on conviction before the said Supreme Court.

Persons corruptly influencing Jurors to be punished by fine and imprisonment.

XXX. That all fines imposed under this Act by the Supreme Court shall be recovered if the said Court so order but not otherwise in the same manner as any other fines imposed by the said Court but otherwise shall be recoverable as hereinafter mentioned and shall in either case be appropriated as all other fines or forfeitures under this Act are directed to be.

Fines how to be recovered and appropriated.

XXXI. And whereas it is expedient to make some allowance to Juries assessing damages for their loss of time in attending the assessment of damages:—Be it therefore further enacted that each and every Juror attending as aforesaid shall for the assessment of damages in each cause upon which he shall serve be allowed the sum of one shilling for every cause on which he shall assess damages as aforesaid and such sum shall immediately be paid by the successful party to each Juror serving as aforesaid and shall be taxed and allowed as hereinbefore directed with respect to common Juries.

Allowance to Jurors for attendance in assessment of damages.

XXXII. That no person shall be put on trial on any indictment at any criminal sessions of the Supreme Court unless the bill of such indictment shall first have been presented to a Grand Jury and shall have been returned by them a true bill reserving always nevertheless all existing rights of filing informations *ex officio* if any.

Indictments to be presented to Grand Jury.

XXXIII. That every such Grand Jury shall consist of not more than twenty-three men or less than thirteen between the ages of twenty-one and sixty years of good fame and condition.

Constitution of Grand Juries.

XXXIV. That all the special sessions to be holden for the final settlement of the Jury lists so to be prepared as aforesaid the Magistrates then present shall mark opposite to all such persons as shall be qualified to serve on a Special Jury the words "Grand Juror" and such persons shall be qualified and liable to serve on such Grand Jury.

Grand Jury list.

XXXV. That no person or persons who shall be put upon his her or their trial or any indictment or criminal information shall have or be entitled to make a peremptory challenge to all or any of the Jury or the Panel of the Petit Jury returned into Court by the Sheriff and impanelled to try the issue

In trials on indictment or criminal information no challenge of Jurors shall be but upon sufficient cause assigned.

issue upon the indictment against such person or persons but that all challenges made shall be made upon sufficient cause assigned.

Fines to be recovered in a summary way.

XXXVI. That all sum or sums of money fines or penalties by this Act incurred by reason of offences against the provisions thereof with the costs and charges arising thereout shall be recovered in a summary way before any one or more Justices of the Peace of the Province or its Dependencies save where otherwise directed in this Act and such Justices are hereby empowered upon an information to be exhibited before them to summon all necessary parties and witnesses and upon the appearance of the defendant or his contempt for non-appearance to proceed to hear and determine the matter in a summary way and to examine upon oath all witnesses produced and to give judgment thereon and to convict and fine the said defendant accordingly and in case of conviction then the said Justices are hereby empowered in case the said defendant shall neglect to pay the same fine or penalty and costs for three days after conviction to cause such fine or penalty costs and charges to be levied by distress and sale of the goods and chattels of the offender the overplus after deducting the charge of distress and sale to be rendered to the offender or such offender may be committed by warrant to one of the gaols of the Province there to remain until payment of such fine penalty and costs.

Fines and penalties to be paid to the Colonial Treasurer.

XXXVII. That all fines penalties and sums of money which shall be levied and paid under this Act save and except when otherwise provided for by such Act shall be accounted for and paid over to the Colonial Treasurer for the purposes aforesaid.

(Signed) J. HINDMARSH.

November 15th, 1837.

Passed in Council,

(Signed) GEO. STEVENSON,
Clerk of Council.

SCHEDULE A.

Scale of Fees to be paid by every party obtaining a verdict.

The party recovering any debt or damage in the Supreme Court shall pay to the Chief Clerk or other proper officer of the Court the sum of two pounds per cent. upon the amount of debt or damage recovered and so on in ratio for any sum more or less than one hundred pounds up to and inclusive of one thousand pounds of debt or damage and for all sums of money whether of debt or damage so to be recovered in amount exceeding the sum of one thousand pounds the sum of twenty pounds.

Form of Return or List referred to.

The List of all Men liable to serve on Juries:

DISTRICT OR PLACE. <i>[In Towns add the name of the street.]</i>	CHRISTIAN AND SUR- NAME AT FULL LENGTH.	TITLE, QUALITY, CALLING, OR BUSINESS.	NATURE OF QUALIFICATION.
street }			Freehold pounds per annum.
street }			pounds of Personal Estate.

Clerk to the Magistrates.