



ANNO QUARTO

VICTORIÆ REGINÆ,

No. 33.

By His Excellency SIR JOHN FRANKLIN, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT to regulate Trial by Jury and the Constitution of Juries in Criminal Cases.

WHEREAS by the Statute passed in England in the Ninth Year of the Reign of His late Majesty King George the Fourth intituled *An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land and for the more effectual Government thereof and for other Purposes relating thereto* it is amongst other things provided that until further provision should be made as hereinafter directed for proceeding by Juries all issues of fact joined on any information prosecuted for any crime misdemeanor and offence cognizable in the Supreme Court of New South Wales or Van Diemen's Land in the name of the Attorney-General or other officer duly appointed for such purpose by the Officer administering the Government thereof should be tried by one or more of the Judges of the said Court and Seven Commissioned Officers of His Majesty's Sea or Land Forces whether on full or half pay to be nominated from time to time for such purpose by the said Governor subject to such regulation as is therein specified—

PREAMBLE.
Statute 9 G. 4,
c. 83, sect. 8.

AND WHEREAS by the said Statute of the Ninth Year of His late Majesty King George the Fourth it is also enacted that it should be lawful for His said Majesty his heirs and successors by any Order by him or them issued with the advice of his or their Privy Council at any time or times hereafter to authorize the Officer administering the Government of Van Diemen's Land with the advice of the Legislative Council of the Colony further to extend and apply the form and manner of proceeding by Grand and Petty Juries or either of them at

Statute 9 G. 4,
c. 83, sect. 10.

such times and with under and subject to such limitations modifications and rules as to the said Officer and Legislative Council should seem meet and as should be specified in any law made in such behalf and that so far as such manner of proceeding by Jury should be extended and applied as aforesaid then the form and manner of proceeding thereinbefore directed as well in the prosecution of offences as in the trial of Issues should determine—

Order in Council
28th June 1830.

AND WHEREAS by an Order in Council issued by His late Majesty King George the Fourth with the advice of his Privy Council bearing date the Twentieth day of June One thousand eight hundred and thirty His said Majesty was pleased in pursuance of the authority so in him vested as aforesaid to authorize the Governors of New South Wales and Van Diemen's Land respectively or either of them with the advice of the Legislative Council of the said Colonies respectively or either of them further to extend and apply the form and manner of proceeding by Grand or Petty Juries or either of them in the presentment and trial of all causes and misdemeanors issues matters and things properly cognizable by Juries in such parts of the said Colonies and their Dependencies respectively at such time and with under and subject to such limitations modifications and rules in respect thereof as to the said Governors and Councils respectively should seem meet and as should from time to time be specified by any law or ordinance to be by them made in such behalf—

Statute 9 G. 4,
c. 83, sect. 17.

AND WHEREAS by the said recited Act of Parliament it was further enacted that it should be lawful for the said Lieutenant-Governor and Council to institute Courts of General and Quarter Sessions within the said Colony by Ordinances to be from time to time for that purpose made and enacted as thereafter mentioned and to give and grant to such Courts power and authority to take cognizance in a summary way of all crimes misdemeanors and other offences or misconduct not punishable by death which had been or should be committed by any felons or other offenders who had been or should be transported to the said Colony and whose sentences had not expired or had not been remitted and also to give and grant to such Courts power and authority to take cognizance of all matters and things cognizable in Courts of General and Quarter Sessions in England so far as the circumstances and condition of the said Colony should require and admit—PROVIDED ALWAYS that all crimes misdemeanors and offences not committed by such felons and other offenders as aforesaid should be prosecuted and tried before the said Courts of General and Quarter Sessions in such and the same manner and subject to all such and the same rules and regulations in every respect as were thereinbefore made and prescribed with respect to trials before the Supreme Court—AND WHEREAS in pursuance of the said Act of Parliament Courts of General and Quarter Sessions have been instituted in and for certain districts and places in this Island in which crimes misdemeanors and offences have been prosecuted under the same rules and regulations as were made and prescribed with respect to trials before the Supreme Court—

AND WHEREAS in consequence of the great increase of persons in this Island qualified to act as Jurors it is expedient that the trial of offences by a Jury of Seven Commissioned Officers as aforesaid should in future be dispensed with in this Island and that all crimes misdemeanors and offences cognizable in the Courts of this Island and prosecuted by information in the name of Her Majesty's Attorney-General or other officer duly appointed for such purpose by the Lieutenant-Governor of this Island and all issues of fact joined on every such information should be tried by a Jury of twelve of the inhabitants of such Island only—

Preamble that all crimes misdemeanors and offences should in future be tried by a Jury of twelve inhabitants of this Island only.

BE IT THEREFORE ENACTED by His Excellency SIR JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies by and with the advice of the Legislative Council that from and after the First day of January One thousand eight hundred and forty-one every issue of fact joined upon any information filed in any Court of this Island in the name of Her Majesty's Attorney-General or other officer duly appointed for such purpose by the Lieutenant-Governor of the said Island shall be tried by a Jury of Twelve Inhabitants of the said Island and that from and after the said First day of January One thousand eight hundred and forty-one the trial of offences by Seven Commissioned Officers of Her Majesty's Sea and Land Forces shall cease and determine.

All informations filed in any Court of this Island from and after the 1st of January 1841 to be tried by a Jury of twelve inhabitants of this Island only.

II. AND BE IT ENACTED that it shall and may be lawful for the Supreme Court from time to time and as often as occasion shall require to issue a general *venire facias* for the trial of all such issues as aforesaid as shall be for trial before the said Court according to such form as shall be settled by the said Court to be directed to the Sheriff of the said Colony requiring him to summon so many Jurors to attend the said Court at such time or times place or places as the said Court shall appoint—PROVIDED however that not more than Forty-eight nor less than Thirty-six Jurors duly qualified shall be required to be summoned at any one time and that every such *venire facias* shall be issued Twelve clear Days before the attendance of such Jurors shall be required.

Venire facias for the trial of all such issues how to be settled and directed by the Supreme Court.

III. AND BE IT FURTHER ENACTED that it shall be lawful for the Chairman of the Courts of General Quarter Sessions for the several and respective districts and places within the said Colony and he is hereby required full Fourteen Days before the time appointed for holding such Courts respectively to issue a precept under his hand and seal to the Sheriff of Van Diemen's Land or his deputy requiring him to summon so many Jurors to attend the said Courts respectively at such time and place as shall be therein mentioned and appointed and such precept shall not require more than Thirty-six nor less than Twenty-four persons duly qualified to serve as Jurors to attend the said Courts respectively at any one Session thereof.

How Jurors are to be summoned to attend the Courts of General Quarter Sessions.

In what manner Jurors shall be returned.

Subject to the like regulations as are made and provided by the Act 5 W. 4, and 4 Vict.

Jurors to be summoned 8 days previously to day of trial and no person residing more than 25 miles from place of trial to be summoned.

In all cases in which the Court of Queen's Bench can make an order for the return of a Jury to try any issue pending therein the Supreme Court or the presiding Judge shall have in this Island similar power. And the Courts of Quarter Sessions here shall in that behalf have the same authority as any Court of Session of the Peace in England.

Challenges how to be made and in what cases allowed.

IV. AND BE IT ENACTED that such Jurors shall be returned under the provisions of this Act from the Jurors' Book which shall then be in use for the trial of Civil Issues and shall be taken in rotation as they stand in such book without reference to their respective qualifications as special or common Jurors and every such Juror shall be subject to such and the like regulations and provisions as to the consequences of making default and as to their qualification or exemption as are made and provided in and by an Act of this Island passed in the fifth year of the reign of His late Majesty King William the Fourth intituled *An Act for the Extension of Trial by Jury and to regulate the Constitution of Juries* and an Act of this Island passed in the fourth year of the reign of Her present Majesty intituled *An Act to amend an Act passed in the fifth year of the reign of His late Majesty King William the Fourth intituled An Act for the Extension of Trial by Jury and to regulate the Constitution of Juries* and by this Act.

V. PROVIDED ALWAYS AND BE IT ENACTED that no person shall be summoned as a Juror under this Act whose usual place of residence shall be more than twenty-five miles from the place of the sitting of the Court which the person is to attend and that every Juror returned under this Act shall be summoned at least eight days before the day named for his attendance.

VI. AND BE IT FURTHER ENACTED that in like cases in which it is lawful for Her Majesty's Court of Queen's Bench at Westminster or for any of the Courts of Oyer and Terminer or Gaol Delivery in England to issue any writ or precept or to make any award or order orally or otherwise for the return of a Jury for the trial of any issue before any such Courts respectively it shall be lawful for the said Supreme Court or either of the Judges thereof presiding for the time being at any Session of Oyer and Terminer or Gaol Delivery thereof to issue a similar writ or precept or to make the like award or order for the return of a Jury for the trial of any issue of fact joined upon any such information as aforesaid and that every Court of Quarter Sessions in this Island shall and may use and exercise such and the same power and authority in that behalf in respect of any issue joined in that Court as is or may be lawfully exercised by any Court of Session of the Peace in England in case of any issue joined in such last-mentioned Court.

VII. AND (in order to remove any doubts which may be raised as to the right of challenging Jurors) BE IT FURTHER ENACTED AND DECLARED that challenges to the array and to the polls of Jurors may be made and shall be allowed in every Court within this Island 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 established and used and practised in like cases in Her Majesty's Courts of Oyer and Terminer and Gaol Delivery in England save and except that no challenge shall be allowed because the said Jurors or any of them be not returned from any particular county.

VIII. AND BE IT ENACTED that nothing herein contained shall restrain or in any manner interfere with the power and authority by law vested in the said Courts of General and Quarter Sessions to hear and determine in a summary way such crimes misdemeanors or other offences as by law such Courts are competent so to hear and determine which have been or shall be committed by transported felons or other offenders whose sentences have not expired or been remitted.

Nothing in this Act to affect the jurisdiction of the Courts of Quarter Sessions in cases of crimes committed by convicts which they can at present hear and determine.

JOHN FRANKLIN.

Passed the Legislative Council this fifth day of November, one thousand eight hundred and forty,

RONALD C. GUNN, *Clerk of the Council.*

AUDIT OFFICE.

18th November, 1840.

WARRANTS for Contingent Expenses sent to the Colonial Treasury for Payment between the 11th of the current month and this date:—

No. of Warrant.	In whose Favour.	Description of Expense.
925	William Sharman.....	Flour.
	W. Ladds	Meat.
	F. A. Downing	Tea.
	C. Gerrand	Groceries.
	J. Paterson	Coals.
926	J. Cahill	Supplies.
	W. Goulstone	Forage.
927	James Birchall	Repayment.
	W. T. Parramore	Ditto.
	M. Vicary	Ditto.
928	J. Clarke	Provisions.
	Pell & Crashaw.....	Cartage.
	W. Chambers	Ditto.
932	W. S. Sharland.....	Surveying.
	G. Woodward	Ditto.
	H. Wilkinson	Ditto.
	H. R. Giffney	Ditto.
934	D. Moses	Sundries.
	T. Harbottle	Paint.
935	G. F. Goble	Tubs, &c.
	H. Thomas	Medical attendance.
936	Thomas Jackson	Ironmongery.
	D. Dunkley	Ditto.
	— Bell	Sundries.
939	M. C. Friend.....	For George Town Church.
939	Thomas Tilley	Repairs.
	W. Cleary	Cartage.
	W. Farrell	Charcoal.
	J. Paine	Ditto.
940	F. B. Watson	Firewood.
	Thomas Smith	Repairs.

G. T. W. BOYES, *Auditor.*

POLICE OFFICE.

Hobart, 18th November, 1840.

THE under-mentioned convicts having absconded from their places of residence, all constables and others are hereby required to use their utmost exertions to apprehend and lodge them in safe custody.

JOSIAH SPODE, *Chief Police Magistrate.*

ABSCONDED.

From Public Works, Coal Point, Port Arthur, on the 12th inst.
1034 John Mitford, per Georgiana (2), tried at Warwick (Coventry) Assizes, 9th August 1832, life, stonemason, 5, feet 9, complexion fair, hair reddish brown, eyes hazel grey, age 30, native place Ashton-under-Lyne, anchor dog D. Fox inside left arm, bust of a woman inside right arm. Reward 2l.

941 Benjamin Stephens, per Woodford (2), tried at Launceston Q. S. 21st January 1828, 14 years, and Hobart S. C. 29th April 1840, 7 years, bricklayer's labourer, 5 feet 5, hair dark brown, eyes dark hazel, age 30, native of Salop, ring pricked ring finger left hand, two small scars on forehead, one large scar over left eyebrow, large pockmark left side of chin, lost first joint fore-finger right hand. Reward 2l.

Received a pass at Morven to proceed to Launceston and remain; has not reported himself at Launceston, nor returned to Morven.

2312 Mark Brearly, per Norfolk, holding a Ticket-of-Leave, tried at London G. D. 16th October 1834, 7 years, extended 2 years, clerk 2nd class, 5 feet 9, complexion fresh, hair light brown, eyes hazel, age 24, native place Ponder's Hill, slightly pockpitted.

From the service of Mr. Kirk, Hobart, on the 16th instant.
2490 Titus Blacker, per Lord Lyndoch, tried at York Assizes, 18th July 1835, life, farm labourer and quarryman, 5 feet 7½, complexion fresh, hair dark brown, eyes dark grey, age 23, native place Barnsley, face freckled. Reward 2l.

From the Public Works, Jerusalem, on the 9th instant.
1958 James Currie, per Layton (2), tried at Leeds' Barracks Court Martial, 10th July 1835, 7 years, extended 4 years, groom and colt breaker, a figure resembling a gate on left breast, Highlander S. M. flag sailor holding a sword J. C. anchor cable thistle on right arm, woman J. M. woman M. M. on left arm. Reward 2l.

From the service of Mr. Mawle, Bagdad, on the 9th instant.
771 Francis Marshall, per Mary, tried at Middlesex, 10th September 1829, 14 years, labourer, 5 feet 4, hair light brown,