

## A N N O U N D E C I M O ,

Georgii IV Regis.

No. 5.

*AN ACT to regulate the constitution of Juries.*

**Whereas** by an Act of Parliament passed in the ninth year of the Reign of His Majesty, 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 provided, that if either of the parties Plaintiff and Defendant, in any action at law, brought in the Supreme Court of Van Diemen's Land, shall be desirous of having any issue or issues joined on any matter of fact tried by a Jury, and shall apply for that purpose to the said Court, then it shall be lawful for the said Court to award or refuse a Trial by Jury, as the Justice of each particular case may seem to such Court to require; the qualifications, numbers and summonses of which Juries, and all other rules for their constitution and proceeding, shall be fixed within the Colony by some general Law or Ordinance to be passed by the Governor thereof with the advice of the Legislative Council.

PREAMBLE.

9 G. 4 c. 83 s. 8

**Be it therefore Enacted** By His Excellency Colonel GEORGE ARTHUR Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that whenever any such Trial by Jury shall be awarded, every such Jury shall consist of twelve persons; and that in every case not otherwise hereinafter specially provided for, such Jurors and Jury, and every trial by them, shall as far as may be practicable, be subject to such and the same rules and manner of proceeding, as are in force and observed upon the trial of an issue or issues of fact in any action at Law in the Court of King's Bench in England.

Number of Jurors.

General rule

II. AND be it enacted, that every man (except as hereinafter excepted) above the age of twenty one years, who shall have within this Island or its Dependencies in his own name or in trust for him, in land or other real estate to the value of forty pounds by the year, or in real estate and personal estate to the value of sixty pounds by the year, or in personal estate alone to the value of eighty pounds, by the year, or shall be the occupier of any house if in Hobart Town to the value of seventy-five pounds by the year, or if in any other part of the colony to the value of fifty pounds by the year, shall be qualified and shall be liable to serve on every such Jury.

Age and qualification

III. PROVIDED always and be it enacted, that no Judge of the Supreme Court, Commissioner of any Court of Requests, Chairman of any Court of General or Quarter Sessions, or Ministerial Officer of either of

General exemp-  
tions.

those Courts, no member, of the Executive or Legislative Councils, no Clergyman in Holy Orders, Priest of the Roman Catholic Faith, Dissenting Minister, or Officer in the Navy or Army on full Pay, no person above the age of sixty years, no Officer of Customs, Sheriff's Officer, Coroner, or Gaoler, and no practising Barrister, Attorney, Physician, Surgeon, or Apothecary, shall be liable to serve on any such Jury except by his own consent.

Special exemp-  
tions.

IV. PROVIDED also and be it enacted, that no man shall be liable to serve on any such Jury, whose usual place of residence shall be distant more than ten miles from the appointed place of trial:—And provided also, that it shall be lawful for the Governor or Lieutenant Governor for the time being, by any order or orders in writing under his hand, from time to time for that purpose made, (the same to be respectively directed and delivered to the Sheriff for the time being) to exempt either generally or for a limited period, from liability to serve on such Juries, any public officer or officers of the Government, whose attendance on such Juries shall appear to him to be incompatible with the performance of the other public duties of such officer or officers, as to such Governor or Lieutenant Governor may seem expedient; and every such public officer shall be exempted from service as a Juror accordingly.

Disqualifications

V. PROVIDED also and be it enacted, that no man not being a natural born subject of the King, nor any man who hath been or shall be attainted of treason, or convicted of any felony or infamous crime (unless he shall either have obtained a pardon for the same, or shall by virtue of the provisions of some Act of Parliament, be as to such felony or crime in the situation of a person having obtained a pardon under the Great Seal for the same) nor any man who hath been or shall be a second time convicted of any felony or infamous crime, shall be qualified to serve on any such Jury.

Form and return  
of *Venire facias*.

VI. And be it enacted, that a general form for writs of *Venire facias Juratores* for the trial of issues so joined as aforesaid, shall or lawfully may from time to time be settled by the said Supreme Court, and the Sheriff shall upon the return of every such writ, annex a panel thereto containing the names, places of abode and additions of a competent number of Jurors, not less than twenty-four nor more than forty-eight, the names of which same Jurors shall be inserted in the panel annexed to every other writ of *Venire facias Juratores* issued during the same Term.

Summons to  
Jurors.

VII. AND be it enacted, that every such writ of *Venire facias* shall be issued to the Sheriff at least eight days, and every Juror shall be summoned at least four days, before the appointed day of trial; and every summons to any such Juror shall be in the form contained in the Schedule to this Act annexed marked A, and be signed by such Sheriff, or his Deputy, and be delivered to every such Juror or left at his usual place of abode.

Appointment of  
Viewers

VIII. AND be it enacted that in every case in which it shall appear to be expedient, it shall be lawful for the said Court or any judge thereof to grant a rule that the Jury shall have a view of any particular place, and



in every such case such and so many Jurors (not less than two) as shall be for that purpose nominated by the Sheriff, and be mutually agreed upon between the parties, shall be shewn the place by two persons to be appointed by the Court or Judge for that purpose; and such Court or Judge may order such sum as may appear to be reasonable for defraying the expenses of such view, to be deposited in the hands of the Sheriff by the party applying for the same view, which sum shall be allowed on taxation as costs in the cause, and shall be paid over to such of the viewers as shall attend the trial. Provided that the name of every viewer so nominated shall be inserted in the panel annexed to the writ of *Venire facias*, and that such viewers as shall attend the trial shall be the first sworn of the Jury.

IX. AND be it enacted, that at the commencement of the sittings of the Supreme Court for the trial of such issues as aforesaid, the name place of abode and addition of every Juror so summoned as aforesaid, shall by the Sheriff or his Deputy be written upon a separate piece of card or parchment, each piece being as near as may be of equal size, and be delivered to the Clerk of the said Court, by whom such pieces of card or parchment, shall be put together in a box provided for that purpose, and upon any such issue being called on to be tried, such Clerk shall in open Court draw out twelve or more of the said cards or parchments, one after another until twelve Jurors shall appear, and (after all causes of challenge allowed) shall remain indifferent, and approved of; which twelve shall be the Jury to try the issue; and after such trial, the cards or parchments so drawn shall be returned to the box to be kept with the others remaining un-drawn, and so toties quoties as long as any issue shall remain to be tried.

Calling the Jury.

X. AND be it enacted, that if in any case a sufficient number of Jurors named in the panel and duly summoned as aforesaid, shall not be in attendance in Court at the appointed time of trial, it shall be lawful for either party, Plaintiff or Defendant, to pray a *tales de circumstantibus*; and thereupon the Sheriff shall immediately by order of the Court name and appoint to serve upon the Jury, such and so many of the by-standers (being respectively duly qualified as Jurors, and indifferent between the parties) as shall be sufficient to make up the full number of the Jury for the trial of the cause; and the names of such by-standers shall thereupon be added and annexed to the former panel.

Tales de circumstantibus.

XI. AND be it enacted, that upon any such issue as aforesaid being called on to be tried, it shall be lawful for the Court or presiding Judge upon the application of either party where a trial by Jury shall have been awarded to permit a special Jury to be struck for the trial of such issue;—and in such case the Clerk of the Court shall in manner aforesaid continue to draw out the said cards or parchments, until twenty four Jurors named thereon shall appear and be approved of, or until the whole of such cards or parchments shall be exhausted; and in case of a sufficient number of the Jurors named on such cards or parchments not being in attendance, then the full number of twenty-four Jurors shall be completed by appointment of the Sheriff from amongst the by-standers, (being persons duly qualified as aforesaid); and upon such number of twenty-four Jurors being completed, a list of their names shall be delivered by the Sheriff to the Plaintiff or his

Provision for special Juries.

Attorney, by whom six names at his discretion shall be struck therefrom, and the list so reduced shall then be in like manner delivered to the Defendant or his Attorney, by whom six names shall also be struck therefrom, and the twelve Jurors whose names shall then remain upon such list shall be the Jurors for the trial of the issue between the parties, and shall be called and sworn accordingly.

Want of qualification.

XII. AND be it enacted, that the want of qualification according to this Act, shall in every case be a good cause of challenge; and upon any such challenge being made, the Court or presiding Judge shall or may immediately proceed in a summary way to inquire into the truth of the fact, and shall allow or reject such challenge as shall seem just, and the party so challenged shall thereupon be sworn of the Jury or be discharged accordingly. Provided always, that no such objection shall be allowed, or the want of qualification of any Juror be inquired into, after Verdict.

Jurors making default.

XIII. AND be it enacted, that if any man being liable to serve upon any such Jury, shall after having been duly summoned as aforesaid, omit to attend pursuant to such summons, or being thrice called shall not answer to his name, or being present shall not appear and submit himself to be sworn, he shall (proof of service of such summons being first made) forfeit and pay to the use of His Majesty such penalty or sum not exceeding ten pounds as the Court or presiding Judge shall think fit to order.

Allowance to Jurors.

XIV. AND be it enacted, that every Juror who shall serve upon any such Jury as aforesaid, whose place of residence shall be distant one mile or more from the place of trial, shall be allowed for and upon every trial as a compensation for his expenses, at the rate of one shilling for every mile of such distance; which sums shall be paid to such Jurors by the Sheriff or his Deputy immediately after the termination of the trial, and be upon demand repaid to the Sheriff by the prevailing party, whether Plaintiff or Defendant, and the amount thereof shall be allowed upon taxation as costs in the cause.

Lists of Jurors to be made.

XV. AND be it enacted, that the Police Magistrates for the time being at Hobart Town, New Norfolk, Richmond, Bothwell, Oatlands, Swan Port, Campbell Town, Norfolk Plains, and Launceston respectively, shall in the month of August now next and in the month of August in each succeeding year, cause to be prepared and made out in alphabetical order, a list of every man residing within their respective Districts duly qualified as a Juror according to this Act, with his christian and sur name or names at full length, place of abode, quality, calling or business, and particular qualification, according to the form contained in the Schedule to this Act annexed marked B.

Copies of such lists to be exhibited.

XVI. AND be it enacted, that in the first week of the month of September now next and in the first week of the month of September in every succeeding year, every such Police Magistrate shall cause a true copy of the list prepared by him, certified under his hand to be in substance a true copy, to be affixed to the principal door of the Court House or Police Office, and of every public place of religious worship within his District, with a notice



thereunder written, that all objections to the said list will be heard at the then next ensuing Court of General Quarter Sessions, to be holden in or for that District, in the month of October thence next following:—Provided always, that for the purposes of this Act the Court of General Quarter Sessions holden at Oatlands, shall be deemed to be holden for the District of Bothwell, and the Court of General Quarter Sessions holden at Richmond, shall be deemed to be holden for the District of Swan Port.

XVII. AND be it enacted, that the original of ever such list shall during the month of September be retained in the custody of the Magistrate by whom the same shall have been so prepared, and at the foot of such list there shall be written a certificate by such Magistrate under his hand, that the same is a true list of all the Jurors resident within his District duly qualified under this Act according to the best of his belief; and every inhabitant of any such District shall have access at all reasonable times during the said month of September, and opportunity to inspect such original list at the office of such Magistrate, without fee or reward, in order that any errors or omissions in such list may be more readily discovered and rectified.

Original Lists to be kept for inspection.

XVIII. AND be it enacted, that at such General Quarter Sessions, every such Police Magistrate shall attend with the original list so prepared by him, and thereupon the Justices assembled (of whom such Magistrate shall be ~~and continue to be one~~) shall proceed to strike out of such list, the names of all persons who shall appear to them to be not qualified, or disqualified, or incapacitated by any permanent infirmity, and to insert all names improperly omitted in such list, and generally to correct all other errors or mistakes therein:—Provided always, that it shall be lawful for every such Court for the purposes aforesaid, to adjourn its proceedings from time to time if it shall appear to be expedient, but so nevertheless as that every such list shall be finally settled by such Court before the end of the month of November then ensuing.

Quarter Sessions to correct the lists.

XIX. AND be it enacted, that so soon as any such list shall be finally settled at any such Court as aforesaid, the same shall be signed by the Justices then present, and shall forthwith be transmitted by the Chairman or presiding Justice to the Sheriff; and the Sheriff shall within fourteen days after the receipt of all such lists, in every year, cause to be transcribed fairly in regular alphabetical order, in a book to be kept in his Office for that purpose, and to be called the Jurors' book, the christian and sur names of all the persons mentioned in such lists, with the place of abode, quality, calling or business, and qualification of each respectively.

List to be transmitted to Sheriff.

XX. AND be it enacted, that a true copy of every such Jurors' book shall, in the month of December in each year, be made out and delivered upon oath by the Sheriff to the Clerk of the said Supreme Court, in order that the same may be referred to in the said Court, upon the trial of every such issue as aforesaid; and every such Jurors' book shall be brought into use by the Sheriff on the first day of the ensuing month of January, and shall

Jurors' book to continue one year.

continue to be thereafter used during the whole of that year.

Jurors to be re-  
turned from Ju-  
ror's Book, when  
completed.

XXI. AND be it enacted, that so soon as any such Jurors' book shall have been completed and brought into use, the names of persons as Jurors shall be taken from such book only; and so from year to year from the Jurors' book for the appropriate current year, and no other person shall be summoned or returned as Jurors for the trial of any such issue as aforesaid:—Provided always, that until some such Jurors' book shall have been completed according to this Act as aforesaid, it shall be lawful for the Sheriff to summon in each case such persons as and to be Jurors, as he shall have reasonable cause so deem duly qualified as Jurors; and every such Sheriff for every act done by him in pursuance of this section, shall be protected and indemnified accordingly from and against all actions suits and proceedings whatsoever.

Where the writ is not directed to the Sheriff.

XXII. AND be it enacted, that where any writ of *Venire facias Juratores* shall be directed to any Coroner or other person than the Sheriff, such Coroner or person shall have free access to every such book, and shall in respect of the exigency of such writ, and the several persons summoned or to be summoned as Jurors in pursuance of such writ, and in respect of all matters in relation thereto respectively, be subject to the same regulations and liabilities, and be invested with the same powers, as the Sheriff would have been subject to or invested with by virtue of this Act, or otherwise, in case the same writ had been directed to such Sheriff.

Each Juror to be summoned in turn.

XXIII. AND to the end that all persons liable to serve as Jurors upon the trial of any such issue as aforesaid, may bear an equal share of the duty by this Act imposed upon them, be it enacted, that every person so liable, and whose usual place of residence shall be distant not more than ten miles from the appointed place of trial, shall be summoned according to the order in which his name shall be placed in such Jurors' book, 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 the same order shall be observed in each succeeding year, the Sheriff commencing with the names in the new book, next after the names of the persons in the last book who were last summoned.

Penalties.

XXIV. AND be it enacted, that if any Sheriff shall wilfully insert or knowingly suffer to be inserted as a Juror in any such Juror's book, the name of any man not inserted as a Juror in any of such lists so settled as aforesaid, or shall wilfully omit or knowingly suffer to be omitted as a Juror in any such book, the name of any man inserted as a Juror in any such list, or shall contrary to the provisions of this Act, wilfully neglect or omit to make out or to deliver any such Jurors' book as aforesaid, or shall otherwise offend against any other of the provisions of this Act, he shall forfeit and pay to the use of His Majesty, such fine or penalty as the said Supreme Court shall, in each case, think fit to impose. And, if any such Police Magistrate shall wilfully neglect or omit duly to prepare and make out any such list as aforesaid, or shall knowingly and wilfully insert as a Juror in any such list the

name of any man not duly qualified to serve as aforesaid, or knowingly and wilfully omit to insert as a Juror in any such list the name of any man duly qualified and liable to serve as aforesaid, or shall in any other respect knowingly and wilfully offend against any or either of the provisions of this Act, he shall for every such offence, upon information in that behalf exhibited in the Supreme Court of Van Diemen's Land, by His Majesty's Attorney General, forfeit and pay to the use of His Majesty such penalty not exceeding one hundred pounds, as the Court shall think fit to impose.

GEORGE ARTHUR,

*Passed the Legislative Council  
this 19th day of April 1830.*

W. T. PARRAMORE,  
Clerk of the Council.

## Schedule A.

TO \_\_\_\_\_  
(naming the Juror)

You are hereby summoned to appear as a Juror in the Supreme Court of Van Diemen's Land to be holden at \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the forenoon and so from day to day until you shall be by the said Court discharged from further attendance.

(Signature of Sheriff or his Deputy.)

Dated this \_\_\_\_\_ day }  
of \_\_\_\_\_ 183 }.

## Schedule B.

A LIST of all Men within the Police District of  
duly qualified to serve on Juries.

Christian and Surname	Place of Residence.	Quality, calling or business.	Particular qualification.
(To be written at full length)	(State the particular place, & if in a town add the name of the street.)	(Esq. Merchant Farmer, Grocer Retail Dealer, & as the fact may be.)	Freehold property, personal property, or house occupancy as the case may be.