

Jury Trials.

No. XII.

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. [28th August, 1833.]

JURY TRIALS.

WHEREAS by an Act of Parliament passed in the ninth year of Preamble.
 the reign of His late Majesty King George the Fourth intituled
 “*An Act to provide for the Administration of Justice in New South*” 9 Geo. IV. c. 83.
 “*Wales and Van Diemen’s Land and for the more effectual Govern-*
 “*ment thereof and for other purposes relating thereto*” it is enacted
 that it shall and may be lawful for His Majesty His Heirs and Suc-
 cessors by an Order to be by him or them issued with the advice of his
 or their Privy Council at any time or times hereafter to authorize the
 Governors of New South Wales and Van Diemen’s Land respectively
 or either of them with the advice of the Legislative Councils of the
 said Colonies respectively or either of them further to extend and
 apply the form and manner of proceeding by grand or petit juries
 or either of them in the presentment and trial of all crimes
 misdemeanors issues matters and things properly cognizable by
 juries in such parts of the said Colonies and their Dependencies
 respectively at such times and with under and subject to such limita-
 tions modifications and rules in respect thereof as to the said Governors
 and Councils respectively shall seem meet and as shall from time to
 time be specified by any Law or Ordinance to be by them made in
 such behalf And whereas by an Order in Council bearing date the Order in Council of
 twenty-eighth day of June one thousand eight hundred and thirty his 28th June 1830.
 said late Majesty was pleased by and with the advice of his Council to
 authorize the Governor of New South Wales with the advice of the
 Legislative Council to extend and apply the form and manner of pro-
 ceeding by grand and petit juries or either of them at such times and
 with under and subject to such limitations modifications and rules in
 respect thereof as to the said Governor and Council should seem meet
 and as should from time to time be specified in any Law or Ordinance
 to be by them made in such behalf And whereas an Act of the 2 Gul. IV. No. 2.
 Governor with the advice of the Legislative Council of the said Colony
 was passed in the second year of the reign of His present Majesty
 intituled “*An Act for regulating the constitution of Juries and for*
 “*for the Trial of Issues in certain cases in the Supreme Court of New*
 “*South Wales*” which Act will expire on the first day of March one
 thousand eight hundred and thirty-four and it is expedient to continue
 the said Act (except so much thereof as is hereafter repealed) for a
 limited time and to make further provision for extending trial by jury
 to all criminal cases in the said Colony Be it therefore enacted by Continued until the
 His Excellency the Governor with the advice of the Legislative Council 30th day of June
 thereof that the said recited Act of the Governor and Council (except 1835.
 so much thereof as is hereafter repealed) shall be and the same is con-
 tinued in force from the said first day of March until the thirtieth
 day of June one thousand eight hundred and thirty-five.

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The trial of criminal issues in the Supreme Court to be by a jury of twelve inhabitants if desired by the accused.

2. And be it further enacted That all and every issues and issue of fact joined on any information which shall be exhibited in the Supreme Court against any person or persons for any crime misdemeanor or offence shall be tried by a jury of twelve of the inhabitants of the said Colony provided any such person or persons shall be desirous of having any such issues or issue of fact so tried and shall declare such his her or their desire upon being arraigned upon any such information in the said Court and every such jury shall be subject to such and the like rules regulations and provisions as to their qualifications and exemptions as in and by the said recited Act of the Governor and Council are made and provided respecting juries for the trial of issues joined in actions at law in the said Court.

Disqualifications of jurors.

3. And be it further enacted That so much of the said recited Act of the Governor and Council as relates to the disqualifications of persons to serve on juries shall be and the same is hereby repealed and that from and after the passing of this Act no man not being a natural born subject of the King 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 received for such crime a free pardon or shall be within the benefit and protection of some Act of Parliament having the force and effect of a pardon under the Great Seal for such crime) shall be qualified to serve on any jury for the trial of any issue joined in any case either civil or criminal in the said Colony.

Proviso. Persons twice convicted to be disqualified.

4. Provided always and be it further enacted That nothing herein contained shall be deemed or taken to extend to qualifying any person to serve on any such jury who either while serving under any sentence passed upon him in any part of the British dominions or after the expiration or remission of such sentence shall have been convicted of any treason felony or other infamous offence.

All matters relating to preparing of jury lists to be done in conformity with provisions of this Act.

5. And be it further enacted That all acts matters and things remaining to be done or which shall hereafter be done touching the preparing and certifying of jury lists under the provisions of the said recited Act of the Governor and Council and having reference to the disqualifications of persons to serve on juries for the trial of issues joined in actions at law as therein mentioned shall be done in conformity with the provisions of this Act in such and the like manner and subject to the like laws and regulations as if the clauses matters and provisions herein made with respect to the disqualifications of persons to serve on juries had been enacted in and formed a part of the said recited Act of the Governor and Council.

Right of challenge declared.

6. 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 in the said 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 established and used and practised in like cases in His Majesty's Courts of Record at Westminster.

Court to issue a general *venire facias* for the trial of criminal issues.

7. And be it further enacted That it shall and may be lawful for the said Supreme Court from time to time and as often as occasion shall require to issue a general *venire facias* for the trial of such issues as aforesaid 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 as the said Court shall appoint Provided however that the names of not more than forty-eight nor less than thirty-six jurors duly qualified as hereinbefore provided shall be required to attend at any one time and that every such *venire facias* shall be issued eight clear days before the attendance of such jurors shall be required.

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8. And be it further enacted That the said Sheriff upon receiving every such general *venire facias* as aforesaid shall forthwith summon such and so many persons as shall be therein required to attend the said Court from the book called the "Jurors' Book" according to the like order of succession in such and the like form and manner and within such and the like time as in and by the said recited Act of the Governor and Council is directed and provided with respect to the summoning of common jurors for the trial of any action at law Provided always that no person shall be exempted from serving upon any common juries for the trial of criminal issues by reason of being qualified as special jurors any thing in the said Act to the contrary notwithstanding.

Sheriff to summon from the "Jurors' Book."

9. And be it further enacted That as often as any application shall be made by His Majesty's Attorney General or any other prosecutor or by or on behalf of any defendant to the said Court for a special jury to try any issue joined on any such information as aforesaid except for treason or felony the said Court shall forthwith issue directions for summoning a special jury for the trial of such issue and every such special jury shall be taken from the list called the "Special Jurors' List" and shall be struck and summoned in like manner as in and by the said recited Act is directed and provided for striking and summoning special juries for the trial of actions at law Provided however that the defendant who shall intend to make such application for a special jury shall serve a notice in writing of his or her intention upon His Majesty's Attorney General or other prosecutor at least four clear days before the time of his or her making such application to the said Court.

Supreme Court if required shall direct a special jury except for treason or felony.

Proviso as to notice to the Attorney General.

10. And be it further enacted That all persons who shall be summoned to attend the said Supreme Court as common or special jurors shall be subject and liable to such and the like rules forms course and manner of impannelling and proceeding in all respects in the trial of any issue joined on any such information as aforesaid and shall be entitled to receive such and the like respective rates of allowance for attendance upon the said Court respectively and in default of such attendance shall be subject and liable to such and the like forfeitures respectively to be recovered in like manner as in and by the said recited Act of the Governor and Council is directed and provided with respect to juries for the trial of issues joined in actions at law.

Juries in criminal cases to be liable to the same rules as in civil cases.

11. And be it further enacted That as often as there shall not be a sufficient number of jurors in attendance for the trial of any issue joined upon any information as aforesaid it shall be lawful for the Court to direct a *tales de circumstantibus* under such and the like rules limitations and provisions as in and by the said recited Act of the Governor and Council is directed and provided for the granting of a *tales* for the trial of any issue joined in any action at law.

Talesmen.

12. And whereas by the said recited Act of Parliament passed in the ninth year of the reign of His late Majesty it is further enacted That it shall and may be lawful for the Governor of New South Wales with the advice of the Legislative 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

9 Geo. IV. c. 83.

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- 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 offences and misdemeanors not committed by such felons and other offenders as aforesaid shall 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 are thereinbefore made and prescribed with respect to trials before the said 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 in the said Colony and it is necessary to provide for the trial of crimes offences and misdemeanors cognizable in the said Courts of Sessions respectively by juries in like manner as hereinbefore is directed with respect to the trial of issues joined on criminal informations in the the Supreme Court Be it therefore further enacted That all crimes offences and misdemeanors which shall be prosecuted in the said Courts of Quarter Sessions respectively shall under the like provision as hereinbefore made respecting the trials of persons arraigned before the Supreme Court be tried by a jury of twelve inhabitants of the said Colony who shall be subject to such and the like rules regulations and provisions as to their qualifications exemptions and disqualifications as are hereinbefore made and provided with respect to juries for the trial of issues joined on informations in the Supreme Court Provided however that nothing herein contained shall restrain or in any manner interfere with the power and authority by law vested in the said Courts of Quarter Sessions to take cognizance in a summary way of crimes misdemeanors and other offences not punishable with death which have been or shall be committed by transported felons or other offenders whose sentences have not expired or been remitted.
13. And be it further enacted That every man who shall reside within the distance of thirty miles from the respective towns of Maitland or Bathurst or from any other place at which Courts of General Quarter Sessions shall be appointed to be holden (such place not being within the county of Cumberland) and who shall be qualified as hereinbefore directed with respect to juries for the trial of issues joined in the Supreme Court shall be liable to serve on juries for the trial of crimes offences and misdemeanors in the said Courts of Quarter Sessions respectively.
14. And be it further enacted That the Justices in their respective Petty Sessions which shall be holden at the said towns of Bathurst and Maitland shall within the first week of the month of October in the present year and in the first week of the month of January in every succeeding year prepare or cause to be prepared lists of all men within their respective townships or districts liable to serve on the said juries setting forth their christian and surnames residences titles additions and qualifications according to the form annexed to this Act and the said Justices or any two or more of them shall respectively subscribe the said lists with a declaration that each such list contains to the best of their knowledge and belief the names of all persons liable to serve on juries in the district for which it is made and qualified according to the provisions of this Act.
15. And be it further enacted That the said Justices respectively shall cause a copy of the lists which shall be made out as aforesaid to be within three days after the same shall be prepared affixed to the principal doors of the Court-houses and also to the principal door of every public place of religious worship within the said towns of Bathurst and Maitland respectively with a notice signed with their names that the Justices of the Peace for the said towns and
- 3 Gul. IV. No. 3.
- Crimes and offences prosecuted in the Courts of Quarter Sessions to be tried by a jury of twelve inhabitants.
- Qualifications &c. of.
- Proviso not to interfere with the summary jurisdiction of the said Courts.
- Persons residing within certain distances of Bathurst and Maitland respectively liable to serve on juries.
- Preparation of lists.
- Lists to be affixed to the doors of the Court-houses and Churches.

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and districts respectively will hear at the then next Petty Sessions directed to be held for that purpose as hereinafter mentioned all objections to the said lists Provided always that the said Justices respectively shall keep the original lists or copies of the same to which the inhabitants of the said towns or districts respectively shall have access at any reasonable time within fourteen days after the date of such notice without fee in order that due notice may be given of names improperly omitted or inserted.

16. And be it further enacted That Special Petty Sessions shall be held in the third week in the month of October in this present year and in the third week of the month of January in every succeeding year in each of the said townships at which the said Justices respectively 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 and also of such as are disabled by lunacy or inability of mind deafness blindness or other permanent 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 until the jury list for the year next ensuing shall be made out and transmitted to the Sheriff as hereinafter directed.

Special Petty Sessions to be held for correcting the lists.

17. And be it further enacted That it shall and may be lawful for the said Justices who shall have prepared and submitted such lists as aforesaid to assist and vote at such Petty Sessions aforesaid upon all questions which may be put respecting the character qualification disqualification or exemption of every person named in any such list or of any person whose name may be proposed to be added thereto Provided always That if any question should arise respecting the striking out or adding of a name the same shall be decided by ballot.

Justices who have prepared lists to vote at such Sessions.

Proviso for voting by ballot.

18. And be it further enacted That after the said lists shall have been finally settled and approved in Petty Sessions in the manner directed by this Act as aforesaid a certificate shall be subjoined to each such list and subscribed by such Justice as may be then present stating that the same has been carefully examined and corrected according to the best of their knowledge and belief or at least according to the best of the 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.

Certificate to be subjoined to lists.

19. And be it further enacted That the Justices aforesaid shall cause all the Magistrates of their respective districts to be specially summoned to attend the said Special Petty Sessions and the said Magistrates shall sit *de die in diem* 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 at any such Special Petty 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 shew reasonable cause shall forfeit and pay for every such offence the sum of twenty pounds to be sued for in the name of the Attorney General and to be appropriated in the same manner as all fines and forfeitures levied under this Act and the Clerks of the said Petty Sessions respectively 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 Attorney General.

Magistrates not attending Petty Sessions when summoned or failing to vote to be fined in the sum of £20.

Clerk of the Bench to report the names of such Magistrates to the Attorney General.

20. And be it further enacted That as soon as the said lists shall be settled as aforesaid the same shall be immediately transmitted by

Lists to be transmitted to the Sheriff to be entered in a book.

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by the said Justices to the Sheriff and the Sheriff upon receiving such lists shall within ten days after the receipt thereof cause to be transcribed fairly in a book to be kept in his office for such purpose and to be styled "The Jurors' Book" for the district or place where the said Courts of Quarter Sessions shall be holden respectively the names of all such persons contained in such lists respectively with the additions 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 until the jury lists for the year next ensuing shall be transcribed by the Sheriff into the jurors' book.

Copies of jurors' book to be delivered to the Clerk of the Peace.

21. And be it further enacted That true and faithful copies of such respective jurors' books shall be made by the said Sheriff as soon as conveniently may be and shall be delivered upon oath by the said Sheriff to the Clerk of the Peace for the said Courts of Quarter Sessions in order that the same may be referred to in the said Courts at the trial of any criminal case.

Chairman of Courts of Quarter Sessions to issue

Precept to the Sheriff to summon jurors.

22. 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 New South Wales 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.

Sheriff or his deputy to summon jurors to attend Quarter Sessions.

23. And be it further enacted That the said Sheriff or his deputy shall upon receiving any such precept as aforesaid summon so many persons duly qualified to serve as jurors to attend the said Courts of General Quarter Sessions respectively at such time and place as shall be specified in such precept and as hereinafter provided that is to say all persons duly qualified by law to serve as jurors shall be summoned to attend the respective Courts of General Quarter Sessions which shall be holden at the towns of Sydney Parramatta Campbell-town and Windsor respectively according to the order in which their names shall be transcribed and placed in the jurors' book for the district or county of Cumberland so as that no person shall be summoned or obliged to attend any such Court as a juror who shall reside beyond the distance of five miles from the town of Sydney or ten miles from the town of Parramatta and fifteen miles from the towns of Windsor and Campbell-town respectively and all persons duly qualified as aforesaid who shall reside within the distance of thirty miles from the towns of Bathurst or Maitland respectively shall be summoned to attend the Courts of Sessions which shall be there holden and every such summons shall be in writing and signed by the Sheriff or his deputy to the following effect—

Persons residing within five miles of Sydney ten miles of Parramatta fifteen miles of Windsor and Campbell-town

Or within thirty miles of Bathurst or Maitland to be summoned.

Form of summons.

Mr. A. B. (*naming the juror*) you are hereby required to appear as a juror at the Court of General Quarter Sessions to be held at _____ 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 or Deputy Sheriff.

And the said summons shall be served personally upon or left at the places of abode of the said jurors respectively full four days before their attendance shall be required as aforesaid.

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24. And be it further enacted That if any person being duly summoned as a juror to attend any of the said Courts of Quarter Sessions respectively shall make default and fail to attend the same every such person shall on proof upon oath of being duly summoned forfeit a sum not exceeding ten pounds at the discretion of the Justices sitting in the said Court to be recovered levied and appropriated in such and the like manner as fines and forfeitures under the said recited Act of the Governor and Council are directed to be recovered levied and appropriated unless some just cause for such defaulter's absence shall be made to appear by oath or affidavit to the satisfaction of such Court as aforesaid.

Penalty for jurors not attending Courts of Quarter Sessions.

25. And be it further enacted That all such and the like forms rules regulations and provisions shall be adopted observed and followed in drawing the names of jurors for the trial of issues in the said Courts of General Quarter Sessions respectively and in praying and allowing a tales to make up a full jury and such and the like rates of compensation shall be allowed and paid to jurors attending the said Courts respectively (the same to be computed with reference to the places at which such Courts shall be holden in lieu of Sydney) as in and by the said recited Act of the Governor and Council are made and provided in like cases with respect to the trial of actions at law in the Supreme Court.

The like forms &c. to be observed as in the Supreme Court.

26. And be it further enacted That any Sheriff or Deputy Sheriff Justice of the Peace or Clerk of the Court of Quarter Sessions or Petty Sessions or any other minister or officer who shall refuse neglect or fail to do and perform all and every the acts matters and things hereby required to be by him or them respectively done and performed and if any person shall be guilty of the offence of corruptly influencing or attempting to influence any such juror or any such juror shall consent thereto every such person so offending shall incur and become liable to such and the like fines forfeitures and penalties to be recovered levied enforced and applied in such and the like form and manner as in and by the said recited Act of the Governor and Council are provided and directed in like cases with respect to the trial of actions at law in the Supreme Court.

Fines and penalties for neglect of duty &c.

Or influencing jurors.

27. Provided always and be it further enacted That nothing in this Act contained shall be deemed or held to extend to the trial of any crimes misdemeanors or offences before any Court which shall be holden within any place in New South Wales or any of its Dependencies which is or shall be appointed as a place to which offenders convicted in New South Wales may be sent or transported.

Proviso—not to extend to penal settlements.

28. And be it further enacted That this Act shall commence and take effect from and after the passing thereof save and except as to crimes misdemeanors and offences which shall be prosecuted in the Courts of Quarter Sessions to be holden at the towns of Maitland and Bathurst respectively in the months of October and November next after the passing of this Act which shall be tried in such and the like manner as if the same had never passed.

Commencement of Act.

Sydney Jury Lists.

FORM OF RETURN OR LIST REFERRED TO.

The List of all Men within the District or Town of
liable to serve on Juries.

District or Place in Towns add the name of the Street.	Christian and Surnames at full length.	Title Quality Calling or Business.	Nature of Qualification.
Bathurst Township of	Adams James	Carpenter	Freehold £100 per annum
Maitland Township of	Bowles James	Grocer	Personal Estate £300.