

*John, and for other purposes*, and all Acts continuing the same, be and the same are hereby repealed, except as to any rates, assessments or taxes made or imposed, or penalties incurred under the said Acts; all which rates, assessments, taxes or penalties may be recovered in the same manner as if this Act had not been passed.

XXV. And be it enacted, That this Act shall continue and be in force until the first day of May which will be in the year of our Lord one thousand eight hundred and fifty three. Limitation.

## CAP. XIV.

An Act in further amendment of the Law.

Passed 30th March 1848.

**W**HEREAS the practice of requiring a Rule of Court to be taken out for pleading several matters in any cause brought in any Court of Record in this Province is found inconvenient, and may be abolished, leaving to the Court or any Judge the power to set aside any improper or inconsistent pleas as heretofore accustomed; Preamble.

Be it therefore enacted, by the Lieutenant Governor, Legislative Council and Assembly, That in all cases where by the law or practice of the Courts a party may be authorized or required to take out a rule to plead several matters, such party may plead such several matters without actually obtaining such rule, and the leave of the Court to plead such several matters, agreeably to the directions of the Statute in such case made and provided, shall always be presumed to have been given; provided, that any pleas may be set aside by the Court or Judge, either on the ground of inconsistency or any other grounds, (except for not taking out such rule,) where by law or the practice of the Court, pleas can now be set aside. Several matters may be pleaded without actually obtaining a Rule of Court in the cases heretofore accustomed. Proviso.

## CAP. XV.

An Act in addition to the Law relating to Juries.

Passed 30th March 1848.

**W**HEREAS in and by an Act made and passed in the thirty first year of the Reign of His Majesty King George the Third, intituled *An Act in addition to an Act, intituled 'An Act for regulating Juries and declaring the qualification of Jurors,'* it is among other things provided, that no Sheriff shall empanel or return any person or persons to try any issue joined in any Court of Record in this Province, that shall not be named and mentioned in the List of Jurors referred to in and by the said recited Act: And whereas doubts have arisen whether the neglect to return such List, or enter the same in a Book as provided for in and by the said recited Act, or the omission or insertion of the name of any person qualified or not qualified by Law to serve as a Juror, may not be a ground of challenge or excuse for non-appearance, by reason whereof a failure of Justice may frequently happen, and it is therefore considered proper to amend the Law in this respect; Preamble. 31 G. 3, c. 6.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the neglect of any Sheriff to return such List pursuant to the directions of the said recited Act, or of this Act, or of the Clerk of the Peace to enter such List in a Book, or the omission or insertion of the name of any person in such List who may be qualified or not qualified to serve as a Juror, or any error in the description of such Juror, or any other defect in the same, shall not be deemed or allowed as any ground of excuse or objection to any person (otherwise qualified,) The neglect of a Sheriff to return the Jury List required by Act 31 G. 3, c. 6, or the Clerk of the Peace to enter the same, or any error therein, shall not be a ground of excuse, objection, or challenge.

qualified,) being summoned, sworn or serving as a Juror for the trial of any issue joined in any Court of Record in this Province, or of any ground of challenge either to the array or to the poll, any thing in the said recited Act to the contrary in any wise notwithstanding.

Time for filing the Jury List.

II. And be it enacted, That from and after the first day of January, one thousand eight hundred and forty nine, the time for returning such List by the Sheriff shall be between the first day of January and the fourteenth day of February in each year, instead of the time mentioned in the said recited Act.

A peremptory challenge of three Jurors, without assigning cause, may be made.

III. 'And whereas it is considered desirable to allow either party to challenge peremptorily a limited number of Jurors, without assigning any cause ;' Be it therefore enacted, That when any Jury, other than a special Jury, may be empannelled for the trial of any issue joined or any inquisition to be taken in any action or prosecution in any Court of Record in this Province, except in cases where by Law a peremptory challenge is now allowed, the party plaintiff or plaintiffs, prosecutor or prosecutors, defendant or defendants, prisoner or prisoners, may as the Jurors come to the Book to be sworn, peremptorily challenge not exceeding three of the Jurors, which challenge shall be allowed by the Court or Judge or Officer presiding before whom such issue or inquisition may be tried or taken ; provided that this Act shall not be construed to authorize either party to challenge peremptorily more than three Jurors, notwithstanding such party may consist of several persons ; and provided also, that nothing herein contained shall be construed to impair or abridge the right to any challenge for cause, as heretofore practised.

Not to abridge the right of challenge for cause, as heretofore practised.

An order to be made on motion in the Supreme Court, for the striking of Special Juries, before the Clerk of the Peace of the County in which the venue is laid.

IV. 'And whereas it is necessary to make provision for the more convenient striking of Special Jurors' Be it enacted, That upon motion made in the Supreme Court on behalf of Her Majesty, or on motion of any prosecutor or defendant in an indictment or information for any misdemeanor, or information in the nature of a *quo warranto*, or on motion of any plaintiff or defendant in any cause depending in the said Court, the Justices are required to order a Jury to be struck before the Clerk of the Peace of the County in which the venue is laid ; and the party obtaining such order shall get an appointment from the said Clerk of the time and place for striking said Jury, and shall serve a copy of the said order and appointment on the opposite party or his Attorney, at which time and place the said Clerk of the Peace, or his Deputy, shall attend with the Jury List returned in the office of such Clerk, and shall then and there, in the presence of the parties, or their Counsel or Attornies, proceed to strike a Jury in the manner following :—

Manner of striking the Jury.

First.—He shall select from said Jury List entered in his Office the names of forty eight persons whom he shall deem most indifferent between the parties and best qualified to try such cause, and whose attendance is likely to be procured, and if no such list shall be entered for the current year, the selection shall be made from the list of the preceding year.

Second.—The party on whose application such special Jury was ordered, or his Attorney or Counsel, shall then first strike out one of the said names, and the opposite party, or his Attorney or Counsel, shall strike out another of such names, and so alternately, until each party shall have stricken out twelve names.

Third.—If either party shall fail to attend for striking such Jury, or shall neglect to strike out any names according to the foregoing provisions, the Clerk, or his Deputy, shall strike for such party.

Fourth.—The Clerk or his Deputy shall thereupon make out a list of the names of the twenty four persons not stricken out, and certify the same to be

the

the persons drawn to serve as Jurors, pursuant to the order of the Court, and shall deliver such list, so certified, to the Sheriff of the County, or Coroner, as the case may require, who shall proceed to summon the said Jurors in the usual manner.

V. And be it further enacted, That if it shall be made to appear to the said Court that the said Clerk is interested in the cause, related to either of the parties, or not indifferent between them, the said Court shall nominate and appoint two fit and proper persons to strike said Jury, who shall have the same power, and shall conduct the striking of the said Jury in the same manner as is herein pointed out for the said Clerk.

If the Clerk of the Peace be interested or related to either of the parties, the Court to appoint two fit persons.

VI. And be it enacted, That so much of the sixth section of an Act made and passed in the twenty sixth year of the Reign of His Majesty King George the Third, intituled *An Act for regulating Juries and declaring the qualification of Jurors*, as relates to the manner of striking Special Jurors, shall be and is hereby repealed.

26 G. 3, c. 6, s. 6, in part repealed.

### CAP. XVI.

An Act to provide for the better payment of Petit Jurors attending the several Courts of Record in this Province.

Passed 30th March 1848.

**W**HEREAS by the Laws now in force, no adequate allowance is made for the services of Jurors, and it being deemed just, reasonable and expedient that Petit Jurors should receive compensation for their services in all Civil Actions;

Preamble. 18 1/2 by 11/100 cap 22

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That when any issue joined in any civil action brought in any Court of Record in this Province, shall be for trial before a Jury, the names of the parties therein shall on the first day of the Sittings of the Court at which the trial is to take place, be entered on a Trial Docket, and at such hour as the Court may after the opening thereof direct, unless the Court for some special and reasonable ground of excuse, to be shown by Affidavit, shall order and allow the same to be entered on such Trial Docket at a subsequent hour or day.

Civil actions for trial before a Jury in Courts of Record to be entered on a Trial Docket at the time appointed by the Court.

II. And be it enacted, That on the entry of any such cause as aforesaid, the party entering the same shall deposit in the hands of the Clerk with whom such entry is made, the sum of thirty shillings when the cause is not summary, and the sum of fifteen shillings when the cause is summary, to be applied towards a fund for the payment of Petit Jurors attending such Court, as hereinafter provided, which deposit shall be in lieu of all other fees heretofore allowed to Jurors, and shall be costs in the cause.

A deposit of 30s. in cases not summary, and 15s. in summary cases, to be made, to form a Jury Fee Fund.

III. And be it enacted, That when the Jury summoned for and in attendance at such Court shall have been discharged from further attendance, the Court shall divide such fund among the Jurors who may have attended such Court, having regard to the number of days each Juror has attended, and distance of his travel from place of residence, allowing in such division twenty miles travel to Court as equal to one day's attendance, and so on in like proportion; provided that no greater amount than four shillings shall be allowed to any Juror for any one day's attendance; and provided also, that when the Jury may have been discharged from further attendance before all the causes so entered for trial may have been tried or otherwise disposed of, such Court may divide any portion of such fund as may be thought reasonable among the said Jurors, leaving the residue of the fund to be in like manner afterwards divided among the Jurors who may be summoned

Fund to be divided among the Jurors according to time and distance of travel.

Allowance not to exceed 4s. per day.

If all the causes be not tried, the Court may divide a portion of the fund.