

CAP. XLI.

An Act to amend the Laws relating to Juries.

Passed 14th April 1849.

Repeal of the following Acts and parts of Acts:

26 G. 3, c. 6.

131 G. 3, c. 6.]

45 G. 3, c. 9.

6 G. 4, c. 19.

6 W. 4, c. 47.

7 W. 4, c. 13.

7 W. 4, c. 14, s. 31.

4 V. c. 1.

4 V. c. 2, s. 3.

11 V. c. 15.

Reservations from effect of repeal.

I. **BE** it enacted by the Lieutenant Governor, Legislative Council and Assembly, That an Act made and passed in the twenty sixth year of the Reign of His late Majesty King George the Third, intituled *An Act for regulating Juries, and declaring the qualifications of Jurors*; also an Act made and passed in the same year of the same Reign, intituled *An Act in addition to an Act, intituled "An Act for regulating Juries, and declaring the qualifications of Jurors,"* also another Act made and passed in the forty fifth year of the same Reign, intituled *An Act in addition to an Act, intituled "An Act for regulating Juries, and declaring the qualifications of Jurors*; also another Act made and passed in the sixth year of the Reign of His late Majesty George the Fourth, intituled *An Act to provide for the more effectual recovery of fines imposed upon Jurors and Officers attending the Courts of Justice in this Province*; also another Act made and passed in the sixth year of the Reign of His late Majesty William the Fourth, intituled *An Act in addition to an Act for regulating Juries, and declaring the qualifications of Jurors*; also another Act made and passed in the seventh year of the same Reign, intituled *An Act to amend the Act for the more effectual recovery of fines imposed upon Jurors and Officers attending the Courts of Justice in this Province*; also the thirty first Section of another Act made and passed in the same year of the same Reign, intituled *An Act for the amendment of the Law and the better advancement of Justice*; also another Act made and passed in the fourth year of the Reign of Her present Majesty, intituled *An Act relating to the summoning and attendance of Petit Jurors at the respective Sittings and Circuit Courts in this Province*; also the third Section of another Act made and passed in the same year of the same Reign, intituled *An Act in addition to the Acts relating to Circuit Courts*; also another Act made and passed in the eleventh year of the same Reign, intituled *An Act in addition to the Law relating to Juries*; be and the same are hereby repealed, except so far as the said Acts or any of them may repeal the whole or any part of any other Acts not hereby repealed, and except also that for all acts done or liabilities incurred under and by the authority of the said Acts, or any of them, hereby repealed, proceedings may still be had or continued, if already commenced under and by authority of the said Acts, or any of them, as if the said Acts had not been repealed.

SUMMONING AND SELECTING JURIES BEFORE TRIAL.

Qualification of Grand and Petit Jurors.

II. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That no person shall be qualified to serve as a Grand Juror unless such person shall be possessed of a freehold in the County where he resides of the clear yearly value of ten pounds, or of personal estate of the value of one hundred pounds; and that no person shall be qualified to serve as a Petit Juror unless he hath a freehold estate of the value of twenty shillings a year, or is possessed of real or personal estate of the value of fifty pounds; and if any of a lesser estate be returned it shall be good cause of challenge, and the party returned shall be discharged upon said challenge, or upon his own oath.

Lesser estate to be ground of challenge and discharge.

Jurors to have six days summons or notice.

III. And be it enacted, That no Sheriff or other officer shall return any person to have been summoned (A) unless such person shall have been duly summoned six days before the day of appearance; and in case any Juror be absent from his habitation, a summons shall be given by leaving a note (A) in writing under the hand of such officer, at the dwelling house of such Juror with some person there inhabiting.

IV.

IV. And be it enacted, That it shall be the duty of the Sheriff of each County, upon notice to be given him of the time and place appointed for the holding of any of the Courts herein after specified by the Clerk of the Court at which the trials are to be had, and without any notice where the time is fixed by law for holding any of the said Courts, and also without any venire, distringas, precept, or other process whatever, duly to summon (A) from the body of the County generally, twenty four men qualified as by law required, to serve as Grand Jurors, and twenty four other men also qualified as aforesaid, to serve as Petit Jurors, to attend at and for the Courts of Nisi Prius, Sittings after Term, Oyer and Terminer and General Gaol Delivery, or for any of the said Courts where they may be held together or separately, and also at and for the General Sessions of the Peace and Inferior Courts of Common Pleas in each County, at the time and place hereinbefore mentioned for holding such Courts respectively, provided that nothing herein shall be construed to prevent any distringas or other Jury process being issued for the summoning of any Jury in any case where by law the Sheriff cannot act, or not otherwise provided for by this Act.

Sheriff on notice from the Clerk of herein specified Courts to summon 24 Grand and 24 Petit Jurors.

Distringas or Jury process may issue where by law Sheriff cannot act, &c.

V. And be it enacted, That it shall be the duty of the Clerk of the Circuits on receiving any Commission of Oyer and Terminer and General Gaol Delivery, to give notice (B) to the Sheriff of the County where the said trials are to be had, of the time and place appointed for holding the said Courts respectively, requiring him to summon twenty four men qualified by law to serve as Grand Jurors at such Court, and twenty four other men qualified in like manner to serve as Petit Jurors at the said Court; and the said Clerks and Sheriffs respectively shall be liable to the penalties for any disobedience of the provisions of this Act as herein-after provided; provided always, that where such Court of Oyer and Terminer and General Gaol Delivery is appointed to be held at the same time and for the same County as the Court of Nisi Prius, (the time for holding which is fixed by law,) the Sheriff shall not be required to summon more than one Petit Jury in the first instance, which shall serve for both Courts.

Clerk of the Circuits to give notice to Sheriff on receiving Commission of Oyer and Terminer, &c.

When the Court is held simultaneously with Court of Nisi Prius, one Petit Jury to serve for both Courts.

VI. And be it enacted, That the Sheriff of each County shall between the first day of January and the fourteenth day of February in each year, make out a list of all persons qualified to serve upon Juries, who have resided within the said County for three months preceding, with their titles and additions, between the age of twenty one years and the age of sixty years, and return the same into the office of the Clerk of the Peace in their respective Counties, which Clerks respectively shall cause the same to be fairly entered in a Book to be by them provided and kept for that purpose, among the Records of the Sessions of the said County; and 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 such list.

Sheriff annually to make a list of persons qualified to serve as Jurors, and file it with the Clerk of the Peace.

Clerk to record the lists.

VII. ' 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 the 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

Mode of obtaining and striking special Juries.

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:—

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 struck 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 struck out, and certify the same to be 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, Coroner, or Returning Officer, as the case may require, who shall proceed to summon the said Jurors pursuant to the directions of this Act, without any writ of distringas or other process whatever.

If Clerk of the Peace be interested Court may appoint two persons to strike the Jury.

VIII. And be it 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 powers and shall conduct the striking of the said Jury in the same manner as is herein pointed out for the said Clerk.

CHALLENGES AND OTHER MATTERS ON TRIAL.

Grand and Petit Juries to be the Juries for trial of all civil and criminal cases.

How empanelled for causes not criminal.

IX. And be it enacted, That the Grand and Petit Juries respectively so returned, shall be the Juries for hearing and determining all causes, criminal and civil, to be heard or tried at the said Courts, or any of them, during the several sittings thereof, pursuant to the respective jurisdiction and authority given to such Juries by law; and in all causes other than criminal causes, the name of each Petit Juror summoned, empanelled and returned as hereinbefore mentioned, in either of the said Courts, shall be written on distinct pieces of paper of equal size, as near as may be, and shall be delivered to the Clerk of such Courts respectively, to be rolled up and put into a box; and when a case is brought on to be tried, the said Clerk, or some indifferent person, shall, in open Court, draw out twelve of the papers; and if any of the persons drawn shall not appear, or be challenged, or set aside, then a further number, till twelve be drawn who shall appear; and the said twelve persons so drawn and approved, their names being marked in the panel, and being sworn, shall be the Jury to try the cause; and the names of the persons sworn shall be kept apart in some other box till the Jury have given in their verdict, and the same is recorded, or till the Jury be discharged; and then the same names shall be rolled up again and returned to the former box, and so toties quoties; and if a cause shall be brought on to be tried, before the Jury in any other cause shall have brought in their verdict, or be discharged, the Court may order twelve of the residue to be drawn as before for trial of the cause.

X. And be it enacted, That in all causes criminal or civil, where the Jury is like to remain untaken for default of Jurors, the Justices shall have authority to command the Sheriff or other officer of the Court, to name so many other persons of the County qualified by law then present as shall make up a full Jury, the names of which persons shall be added to the former panel.

Court may order
Talesmen.

XI. And be it enacted, That the neglect of any Sheriff to make out and return such list of Jurors pursuant to the directions 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, or the empanelling or returning of any person or persons not named and mentioned in such list, shall not be deemed or allowed as any ground of excuse or objection to any person (otherwise qualified) being summoned, sworn or serving as a Grand Juror or a Petit 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 of the Grand or Petit Jurors.

Default of Sheriff in
making list, or
Clerk in recording,
not to be ground of
challenge, &c.

XII. '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 empanelled 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, prosecutor, defendant, or prisoner, 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.

Three Jurors (not
special) may be
challenged peremp-
torily in any cause.

XIII. And be it enacted, That where a view shall be allowed, six of the Jurors or more (who shall be consented to on both sides, or if they cannot agree, shall be named by the proper officer of the Court, or if need be, by a Judge, or by the Judge before whom the cause shall be brought to be tried,) shall have the view, and shall be first sworn, or such of them as appear on the Jury before any drawing; and so many only shall be drawn to be added to the viewers as shall make up the number of twelve.

Appointment of
Jury of view.

XIV. 'And whereas it may sometimes happen that objection may be taken to the array of the Grand Jury returned by the Sheriff or other officer at the Courts of Oyer and Terminer and General Gaol Delivery for any County, and in consequence thereof, such Grand Jury may be discharged;' Be it therefore enacted, That whenever at any such Court of Oyer and Terminer or General Gaol Delivery, or Sittings after Term, any Grand Jury returned by any Sheriff or other officer, shall be discharged by the Court in consequence of some legal objection being taken to such Jury, or for any other cause satisfactory to the Court, such Court may order a new Grand Jury of twenty four men to be summoned; and the Clerk of the Circuits shall give notice (B) to the Sheriff for the summoning of such Jury; and it shall be the duty of the Sheriff to summon such Jury within such time as the said Court shall order, and as in the said notice shall be mentioned in the like manner as in the case of summoning a second Petit Jury at and for the same Court, as hereinafter mentioned; which said Jury shall be subject to the

Court may on legal
objection to a
Grand Jury, order
a new one.

How effected.

like

like fines and penalties for non-attendance, or for any misdemeanor or default at the Court to which they may be summoned, as if summoned and returned upon the first panel of Grand Jurors.

The Court may, when necessary, order a second Jury during the same sittings.

XV. 'And whereas from the increased business in the Supreme Court, or from other causes, it may sometimes be necessary to require the attendance of a second Jury for the trial of causes at the Circuit Courts, or Sittings, or Courts of Oyer and Terminer and General Gaol Delivery;' Be it enacted, That it shall and may be lawful, whenever the same shall appear to the Court to be necessary, and the said Court shall so order, for the Clerk of the Circuits, or his Deputy, to give notice to the Sheriff of the County where such Court may be holden, requiring such Sheriff to summon twenty four men, duly qualified as by law required, to appear and serve as Jurors for the trial of causes, both civil and criminal, at such Circuit Court, or Sittings, or Court of Oyer and Terminer and General Gaol Delivery, as the case may be, on a day to be named in such notice, which day shall in no case be earlier than the sixth day after the day appointed for the opening and commencement of such Courts respectively; and it shall be the duty of the Sheriff to cause such persons to be duly summoned in like manner as the first Jury, and shall return a panel of such Jurors to the Court on the day named in the notice; and such Jurors, being duly summoned according to this Act, shall give their attendance, and shall be charged and bound in such and the like manner, and upon the like pains and penalties for non-appearance and non-attendance, or for any misdemeanor or default, at the Court to which they may be summoned, as if summoned and returned upon the first panel of Jurors for the trial of causes at such Courts respectively.

The Court may, in capital cases, order a larger number of Jurors to be summoned for the trial of such criminals.

XVI. 'And whereas it may occasionally be necessary for the trial of any person or persons indicted for any capital felony, that more than the ordinary number of Jurors should be summoned;' Be it therefore enacted, That it shall and may be lawful, whenever the same shall appear to be necessary, for any Judge of the Supreme Court, or Commissioner who may preside at any Court of Oyer and Terminer or General Gaol Delivery, or Sittings after Term, holden as aforesaid, at which any indictment may be preferred, or shall come on to be tried against any person or persons, for any felony or crime for which the punishment of death is awarded, to direct the Clerk of the Circuits to give notice (B) to the Sheriff of the County in which such Court may be holden, to summon such number of men, qualified as by law required, as by the same Court may be ordered and in the said notice shall be mentioned, to appear and serve as Jurors for the trial of the person or persons so indicted as aforesaid, on a day to be named in the same notice, which day shall in no case be earlier than the third day, inclusive, after the day on which such notice shall be delivered to such Sheriff; and it shall be the duty of such Sheriff to cause such persons to be personally summoned in the same manner as other Jurors, and shall return a panel of such Jurors to the Court on the day named in the notice, and such Jurors, so summoned, shall give their attendance accordingly; and the names of such Jurors so summoned, empanelled, and returned, shall be called from the said panel when the indictment is to be tried; and if any of the persons so called as Jurors shall not appear, or shall be challenged, excused, or set aside, then a further number shall be called, until twelve shall be allowed and sworn, who shall be the Jury for the said trial; provided always, that in case a sufficient number of Jurors named in such panel shall not appear or be allowed, a tales may be awarded to complete the Jury, as is now by law directed; and provided also, that no Juror shall be fined for non-attendance, according to the exigency of such notice, unless proof

be duly made by affidavit, or viva voce in open Court, by the summoning officer, that he was personally summoned at least forty eight hours before the time appointed for his appearance.

XVII. And be it declared and enacted, That the Grand Jury and Petit Jury in attendance on any Court of Nisi Prius, Sittings after Term, or Court of Oyer and Terminer and General Gaol Delivery, shall re-assemble and attend at any adjournment of such Courts respectively made, pursuant to an Act made and passed in the fourth year of the Reign of Her present Majesty, intituled *An Act in addition to the Act relating to Circuit Courts*, if thereto required by the presiding Judge at the time of such adjournment, and shall be liable to the like pains and penalties for non-appearance and non-attendance, and for any misdemeanor or default, as such Jurors are by law liable to in any Circuit Court or Court of Oyer and Terminer and General Gaol Delivery.

The Court may require the same Juries to re-assemble on any adjournment under the Act 4 V. c. 2,

JURIES ON INQUESTS.

XVIII. And be it enacted, That no person shall be liable to be summoned or empanelled to serve as a Juror in any County in this Province, upon any inquest or inquiry to be taken or made by or before any Sheriff or Coroner in any civil suit, by virtue of any writ of inquiry issuing out of any of the Courts of this Province, or by virtue of any other legal authority or power whatsoever, who shall not be duly qualified to serve as a Juror upon any trial in any Court of Law within this Province.

Jurors on Inquests to have the same qualifications as Jurors in Courts of Law.

FINES AND EXPENSES OF JURORS, AND SUMMONING.

XIX. And be it enacted, That every person summoned as hereinbefore mentioned, to serve as a Grand Juror, and who shall not appear after being openly called three times, upon oath made by the summoning officer that such person so making default had been lawfully summoned, shall forfeit and pay for every such default such fine, (not exceeding the sum of three pounds nor less than twenty shillings,) as the Judge presiding in said Court shall think reasonable to inflict or assess, unless some sufficient cause of his absence be proved by oath, affidavit, or affirmation, to the satisfaction of the said Judge.

Fine of Grand Jurors for default in attendance.

XX. 'And whereas much delay and obstruction have occurred in the administration of justice for the default of Jurors in attendance on some of the Circuit Courts in this Province;' Be it therefore enacted, That every person who may be duly summoned to attend as a Petit Juror at any Court of Oyer and Terminer or Gaol Delivery, or Court of Nisi Prius, or Sittings after Term, and who shall not appear when called, upon the trial of any criminal or civil cause in any such Court, shall, on due proof being made by oath or affidavit of the summoning officer that such person hath been lawfully summoned, forfeit and pay for the first default any sum not exceeding ten shillings, and for every subsequent default any sum not exceeding five shillings, as the presiding Judge at such Court shall think reasonable to inflict or assess, unless some sufficient cause of his absence be assigned and proved to the satisfaction of such Judge; provided always, that the amount of said fines to be levied on each Juryman for the several defaults at any one Court, shall not exceed the sum of five pounds; such fines so inflicted as aforesaid to be levied and collected as hereinafter provided.

Fine of Petit Jurors for default in attendance.

XXI. And be it enacted, That if any person or persons having been duly summoned to serve on a Jury in any County in this Province upon any inquest or inquiry before any Sheriff as aforesaid, or Coroner, shall not, after being openly called three times, appear and serve on such Jury, every such Sheriff, or in his absence,

Fines of Jurors summoned upon Inquests.

absence, the Under-Sheriff, and every such Coroner, is hereby authorized and empowered (unless some reasonable excuse shall be proved on oath or affidavit) to impose such fine upon every person so making default, as they shall respectively think fit, not exceeding ten shillings; and every such Sheriff, Under-Sheriff, and Coroner respectively, shall immediately after taking such inquisition, make out and sign a certificate, containing the christian and surname, the residence and trade or calling of every person so making default, together with the amount of the fine imposed, and the cause of such fine, and shall transmit such certificate to the Clerk of the Court out of which the writ of inquiry in such case shall have issued, within thirty days after imposing such fine; and every such Clerk is hereby required, within such time as aforesaid, to enter the fines so certified on a roll or schedule, in the same manner as all other fines imposed by such Courts respectively on Jurors are entered; and the same shall be levied and applied as herein-after mentioned.

Jurors on Inquests not to be allowed more than 2s. 6d.

XXII. And be it enacted, That no person who shall, after the passing of this Act, serve on any such Jury, in any County of this Province, upon any inquest or inquiry before any Sheriff or Coroner, shall be allowed to take, for serving on such Jury, more than the sum of money which such Sheriff, or in his absence, the Under Sheriff, or such Coroner, shall think just and reasonable, not exceeding the sum of two shillings and six pence.

Costs of special Juries to be paid by party applying for such Jury, unless Court otherwise direct.

XXIII. And be it enacted, That in all cases the party who shall apply for a special Jury shall not only pay the fees for striking such Jury, but shall also pay all the expenses occasioned by the trial of the cause by such special Jury, and shall not have any other allowance for the same, upon taxation of costs, than such as he would be entitled unto in case the cause had been tried by a common Jury, unless the Judge before whom the cause is tried, immediately after the trial, certify in open Court, under his hand, upon the back of the Record, that the same was a cause proper to be tried by a special Jury, and such certificate may be granted as well where the plaintiff may be non-suited as in the case of a verdict against him.

Special Jurors not to receive more than Court allows, limited to 5s. per day.

XXIV. And be it enacted, That any person who shall serve upon any special Jury, appointed or returned by authority of the said Act, shall be allowed to take, for serving on such Jury, no more than the sum of money which the Judge who tries the issue or issues shall think just and reasonable, not exceeding the sum of five shillings per day, and that the Sheriff for summoning and returning such Jury shall be entitled to receive a sum not exceeding thirty shillings, to be taxed at the discretion of the Judge.

Sheriff to be paid out of County Fund for preparing lists of Jurors.

XXV. And be it enacted, That each Sheriff shall have and receive such sum of money for his expenses and trouble in making out and returning the list of Jurors hereinbefore mentioned, as the Justices in their General Sessions shall deem to be an adequate compensation therefor, and they shall thereupon order the same to be paid by the Treasurer of the County, out of the monies in his hands belonging to such County respectively, and such sum so to be allowed to the Sheriff shall be deemed a County charge, and shall be provided for as other County charges are or may be by law.

MODE OF RECOVERY OF FINES.

All fines on Jurors to be recovered by levari facias.

XXVI. And be it enacted, That all fines which may by law be imposed on Grand Jurors, Petit Jurors, Constables and other officers or ministers of the law whomsoever, for non-attendance on any Court on which by law they are bound to attend, shall and may be recovered and levied by writ of general levari facias, issuing

issuing out of the Courts imposing such fines respectively, together with the costs of levying the same; and such fines shall, when received either by the Clerk of the Court imposing the same, or by the Sheriff or other officer by whom the same may be levied, be paid over and accounted for to the Treasurer of the County in which the Court sits, to be from time to time applied by the respective Courts which shall have imposed such fines, for the payment of expenses of witnesses, Constables attending the respective Courts imposing such fines, and other contingent charges on criminal prosecutions, and for the support of criminals in such respective Counties.

XXVII. And be it enacted, That the Clerk of the Court by which any such fine or fines as are mentioned in the said Act shall have been set or imposed, shall, within twenty days after the adjournment of such Court, enter on a roll or list the names of the persons upon whom any fine or fines shall have been set or imposed at such Courts, and their places of residence, together with the amount of fines set or imposed upon each respectively, and shall within such time as aforesaid, prepare and deliver to the Sheriff of the County wherein such Court shall have been held, a writ of general *levari facias* according to the form in the Schedule to this Act annexed, to which writ the said roll or list shall be annexed; and that it shall be the duty of the Sheriff on receipt of such writ, forthwith to levy or cause to be levied of the goods and chattels of the several persons respectively, the fines mentioned in the said roll or list thereunto annexed, and to pay the amount of the said fines which may be so levied to the Treasurer of the County, whose receipt for the same, endorsed on such roll or list, shall be a sufficient discharge to the said Sheriff; provided always, that if before the issuing of such writ, any person or persons upon whom any such fine may be set or imposed, shall tender the amount thereof to the said Clerk, such Clerk shall, and he is hereby authorized and required to receive and pay the same to the said County Treasurer, and he shall mark the same on the roll or list as so satisfied; and that in such case the Sheriff shall not proceed to levy on such person or persons by virtue of the said writ.

Clerk to prepare lists of fines, and deliver writ of *levari facias* for the same to the Sheriff.

XXVIII. And be it enacted, That every Sheriff to whom any such writ of *levari facias* shall be delivered, shall be entitled to levy, recover and receive, in addition to the fine or sum mentioned in the roll or list, the sum of five shillings from each person named in such roll or list, on whom a levy may be made; such sum of five shillings to be received and retained by such Sheriff in lieu of any poundage fees or other charges to which he would be by any law or ordinance entitled, and in full of all such charges and all other charges attending such levy, the reasonable and necessary expenses attending the sale of any goods or chattels which may be levied alone excepted.

Sheriff's fees for service of such writs.

XXIX. And be it enacted, That it shall be the duty of the Sheriff, immediately on the receipt of such writ, to endorse thereupon the day of the month and year on which the same was so received, and within the space of three calendar months from such day, to make due return of his proceedings thereon, and to file such writ, together with the roll or list thereunto annexed, and his return thereto, with the Clerk by whom the same may have been issued, or his successor in office, to remain on file in the office of such Clerk; and that any Sheriff failing in the performance of the duty required by this Act, shall be considered guilty of a contempt of Court, and may for such offence be proceeded against and punished as for a contempt, or shall be subject to the penalty hereinafter mentioned; and it shall be the duty of such Clerk to report to the Court any omission or failure of the duty required of such Sheriff by this Act.

Sheriff to execute such writ within three calendar months.

One writ may be issued by the Clerk of the several Courts when combined.

XXX. ' And whereas the Clerk of the Circuits in this Province is also Clerk of the Courts of Oyer and Terminer and General Gaol Delivery, and such Courts are usually holden in the several Counties at the same time; and in like manner the Clerks of the General Sessions of the Peace are also Clerks of the Inferior Courts of Common Pleas of the several Counties respectively, and the Sessions are holden at the same time or terms as the said Inferior Courts, and defaults are usually committed by the same persons at both the Courts so holden at the same time, it is therefore deemed unnecessary that more than one writ of levari facias should be issued by the Clerks of the said Courts respectively at the same time; Be it enacted, That it shall and may be lawful for the Clerk of the Circuit Courts, and Courts of Oyer and Terminer and General Gaol Delivery, to include in the same roll or list as well any fines which may be set or imposed by the Circuit Court or Court of Nisi Prius, as the fines set or imposed by the Court of Oyer and Terminer and General Gaol Delivery holden at the same time and place, and to issue one writ of levari facias for the recovery of the same; and in like manner it shall and may be lawful for the Clerks of the General Sessions of the Peace and of the Inferior Courts of Common Pleas for the several Counties respectively, to include in the same roll or list the fines imposed by the said Sessions, and those imposed by the Inferior Courts holden at the same time and place, and to issue one writ for the recovery of the same; provided always, that nothing herein contained shall extend or be construed to authorize the imposition of any fines except by the Judge or Judges of the Courts respectively, at which the defaults or offences for which the same are imposed are committed, or to prevent the issue of several writs, should the said Courts so order and direct.

County Treasurer's duty on receiving fines.

XXXI. And be it enacted, That it shall be the duty of the Treasurers of the several Counties respectively, to whom any such fines may be paid, to keep the statements and accounts of the fines imposed by the Circuit Courts and Courts of Oyer and Terminer and General Gaol Delivery, distinct and separate from those imposed by the General Sessions and Inferior Courts of Common Pleas; and in like manner it shall be the duty of the Treasurer for the County of York to keep the statement of the fines imposed by the Supreme Court, or any of the Judges thereof, at any Sittings for the County, distinct and separate from those imposed by the Sessions and Inferior Court of Common Pleas of the said County; and it shall further be the duty of the said County Treasurers respectively to prepare and exhibit a true and correct statement and account, verified by the oath of the said Treasurer, as well of the amount received by him for fines as the sums paid therefrom by order of the Court imposing the same, and that such account shall be delivered on the first day of the sitting of the several Courts respectively, and remain on the files of such Court; and for the services to be performed by such County Treasurers, they shall be allowed to charge and retain two and one half per cent., or six pence in the pound, on the amount so received for such fines, and that any County Treasurer failing in the performance of the duty required of him by this Act, shall be considered guilty of a contempt of Court, and may for such offence be proceeded against and punished as for contempt.

Subsequent Courts to have the same powers as to fines as the preceding Courts.

XXXII. And be it enacted, That the several successive Circuit Courts and Courts of Oyer and Terminer and General Gaol Delivery sitting in and for the same County, shall, for the purposes of this Act, be vested with the like power and authority, with regard to any fines set or imposed, or orders made for the levying, receiving, paying, accounting for and appropriation thereof, at any previous Circuit Court and Court of Oyer and Terminer and General Gaol Delivery, as if such fines were set or imposed, or orders made at the same Courts, although

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the said Courts may sit by virtue of several commissions or appointments issued or made at different times.

XXXIII. And be it enacted, That if any Clerk of any Court, or any Sheriff of any County, shall neglect or refuse to perform the duties or any of them required of them respectively by this Act, they or either of them so neglecting or refusing shall forfeit and pay the sum of twenty pounds for every such neglect or refusal, to be recovered by any person or persons who will sue for the same, together with full costs of suit, by action of debt or on the case, in any Court of Record; one half to be for the use of the person who shall sue for the same, and the other half to be paid to the County Treasurer, for defraying the expenses of criminal prosecutions and other contingent expenses of the County and of the respective Courts, which recovery shall be over and above any civil remedy to which any party grieved may be entitled.

Clerk and Sheriff to be severally liable to penalties for neglect or refusal of any of their duties.

EXEMPTIONS.

XXXIV. And be it enacted, That the Members of Her Majesty's Executive and Legislative Councils, the Members of the Assembly, Judges of the Supreme and Inferior Courts of Record, the Treasurer of the Province, Deputy Treasurers, Registers of Deeds, Surveyor General of Crown Lands, Secretary of the Province, Clerks of the Council and of the Assembly, Officers of Her Majesty's Customs, and Revenue and Naval Officers, Clergymen and Ministers of the Gospel, Attornies at Law, Officers of Her Majesty's Courts, Justices of the Peace, Physicians and Surgeons duly qualified by Law to practise as such, and licenced Teachers of Schools, shall be excused from serving as Jurors.

Exemptions from Jury services.

CONSTRUCTION OF TERMS.

XXXV. And be it enacted, That whenever in this Act words have been or shall be used importing one matter, the singular number, or masculine gender, or the County only, this Act shall be understood to include several matters as well as one matter, several persons as well as one person, females as well as males, and City and County as well as County, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Construction of Terms.

XXXVI. And be it enacted, That the several forms in the Schedule to this Act contained, or forms to the like effect, shall be deemed good, valid and sufficient in law.

Forms in Schedule to be valid.

SCHEDULE.

(A)

Form of Summons to Jurors.

Summons to Jurors.

To Mr. A. B.

You are hereby required to attend as a [Grand or Petit Juror, as the case may be,] at the Court of [Nisi Prius, or Sittings, or Oyer and Terminer and General Gaol Delivery, or Inferior Court of Common Pleas and General Sessions of the Peace, or more than one of them, as the case may be,] to be holden in and for the County of _____ at the Court House in _____ in the same County, on the _____ day of _____ next [or instant]; and in case of default you will be liable to be fined, pursuant to the Act of Assembly made and passed in the twelfth year of the Reign of Queen Victoria, intituled *An Act to consolidate and amend the Laws relating to Juries.*—Dated the _____ day of _____ A. D. 184

(Signed)

SHERIFF. (L.S.)

(B)

(B)

Form of Notice to Sheriff.

Form of notice to Sheriff.

To Esquire, High Sheriff, [*or other Officer, as the case may be.*]

You are hereby required to summon, according to law, twenty four men for Grand Jurors, and twenty four other men for Petit Jurors, [*or either one or the other, as the case may be,*] to give their attendance at the Courts of Oyer and Terminer and General Gaol Delivery, to be holden in for the County of _____ at the Court House in _____ for said County, on _____ the _____ day of _____ next [*or instant*]; and you will, in summoning such Jurors, give particular attention to the requisitions and penalties of an Act of Assembly made and passed in the twelfth year of the Reign of Her Majesty Queen Victoria, intituled *An Act to consolidate and amend the Laws relating to Juries.*—Dated the _____ day of _____ A. D. 184

(Signed)

(L.S.)

Clerk (or Deputy Clerk) of the Circuits.

(C)

Levari Facias.

Levari facias.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith.

To the Sheriff of _____ Greeting:

We command you, that of the respective goods and chattels of all and singular the persons mentioned in the Roll or List hereunto annexed, you do, without delay, levy or cause to be levied all and singular the fines and sums of money upon them respectively imposed and set, and in the said Roll or List mentioned, together with the sum of five shillings from each of them for your service and expense in the execution of this Writ, and that you do forthwith pay to the Treasurer of the said County the fines so levied, and make return hereof as by law directed.—Witness _____ Esquire, at _____ in the said County, the _____ day of _____ in the _____ year of our Reign.

A. B. CLERK.

[To be signed by the Clerk or his Deputy, and tested in the name of the presiding Judge or Justice, on the last day of the Term or Sitting the Court.]

CAP. XLII.

An Act in further amendment of the Law relating to the Registry of Deeds and other Instruments.
Passed 14th April 1849.

Preamble.

‘ WHEREAS it is considered expedient to make more effectual provision for preventing doubts or questions in regard to the priority of Deeds or Instruments produced for Registry, and further to declare that such Deeds or Instruments should only be deemed to be received by any Register for Registry when the same are produced at his office, and that every Deed or Instrument should at the same time, when so produced, be immediately distinguished by its proper consecutive number;’

When Deeds to be deemed received for registry.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That no such Deed or Instrument shall be deemed to have been received for registry, within the provisions of the Act of Assembly made and passed in the tenth year of the Reign of Her present Majesty, intituled *An Act to consolidate and amend the Laws relating to the Registry of Deeds and other Instruments,*