

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1786. Saint John, NB: J. Ryan, 1786.

26 George III – Chapter 6

An Act for regulating juries and declaring the Qualifications of Jurors

I. Be it enacted by the Governor, 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 a 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 ten pounds in personal estate. 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.

II. Be it further enacted, That no sheriff or bailiff shall return any person to have been summoned 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, notice of such summons shall be given by leaving a note in writing under the hand of such officer at the dwelling house of such juror, with some person there inhabiting.

III. Be it further enacted, That the sheriff in each county shall duly summon twenty-four men qualified as by this law is directed, to serve as grand jurors, and twenty-four other men, also duly qualified to serve as petit jurors, to attend at the supreme court of this province, on their several terms and at the general sessions of the peace, and inferior courts of common-pleas in each county, at such times and places as are by ordinance or law appointed. Which grand and petit jury, so returned, shall be the juries for hearing and determining all causes criminal, to be heard or tried at the said courts during the several terms aforesaid. And in all causes other than criminal causes, the names of each person so summoned, impanelled and returned, in either of the said courts, shall with his addition and place of abode be written in distinct pieces of parchment or paper of equal fee, and shall be delivered to the clerk of each court to be rolled up and put into a box, and when a cause is brought to be tried 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 first drawn and approved, their names being marked in the panel, and they 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.

IV. Be it further enacted, That in all causes criminal and civil where the jury is like to remain untaken for default of jurors, the justices shall have authority to command the sheriff to name so many other able persons of the county then present as shall make up a full jury, which persons shall be added to the former panel.

V. Be it further 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 on to trial) 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.

VI. Be it further enacted, That upon motion made in the supreme court in behalf of his Majesty, or on the 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 proper officer for the trial of any issue in such manner as special juries are usually struck in the said court, upon trials at bar. And 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 party 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.

VII. Be it further enacted, That the several persons who shall be sworn as grand jurors in the courts of general sessions of the peace to be held half yearly in each county, shall be and continue the grand inquest of the county until another grand jury shall be sworn in at the ensuing general sessions of the peace in the said county.

VIII. Provided always, and be it enacted, That the members of his Majesty's council, the members of the assembly, the treasurer of the province, register of deeds, chief Purveyor of the crown lands, secretary of the province, clerks of the council, and of the assembly, officers of his Majesty's customs and naval officer, attorneys at law, officers of his Majesty's courts, physicians, and surgeons, shall be excused from serving as jurors.

IX. And be it further enacted, That every person or persons so summoned as aforesaid 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 or judges 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 or judges. And that every petit juror so summoned as aforesaid to attend at any court of record in this province, and making default on proof so as above let forth, of their being legally summoned, shall forfeit and pay for every such default, the sum of five shillings, unless some reasonable cause by proof as above directed, be assigned to the satisfaction of the judge or judges who sit to try the cause.

Provided always, That the amount of the said fines to be levied on each juryman for the several defaults at one term, shall not exceed the sum of three pounds.