

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1855.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1855.

18 Victoria – Chapter 24

**An Act relating to Jurors. Passed April 12th 1855.**

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Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. Every male inhabitant between the age of twenty one and sixty years, being a British subject, and possessed in the County where he resides of real or personal estate, or both together, of the value of one hundred pounds, shall be qualified to serve as a Grand or Petit Juror; the want of such qualification shall be a good cause of challenge, or he may be excused on his own oath.

2. Members of the Executive Council, of the Legislature, and their respective Clerks, Justices of the Supreme Court and of the Peace, the Treasurer and his Deputies, Registrars of Deeds, Officers of the Customs and Revenue, Naval Officers, Ministers of the Gospel, Physicians and Surgeons, Attorneys at Law and Officers of the Courts, Professors, Preceptors, Teachers of Schools or Colleges, and Firemen, shall be exempt from serving on Juries.
3. The Sheriff of every County not incorporated shall annually in the month of January enter in a book which he shall provide for that purpose, an alphabetical list of all persons qualified, with their additions and residence, and return the same to the Clerk of the Peace, to be kept among the Records of the County; in every incorporated County the Secretary Treasurer shall prepare such list, and file the same in his office; and in all cases it shall be compiled from the assessment lists.
4. When the Sheriff prepares the Jury list, he shall receive such remuneration therefor as the Sessions shall deem adequate, which shall be paid by the Treasurer out of the County funds.
5. No person shall be empanelled to try any issue joined in any Court of Record, whose name is not upon the said list.
6. The Sheriff shall, before the time appointed for holding any Court, duly summon from the body of the County twenty four Grand Jurors and twenty one Petit Jurors, all duly qualified, which Summons (A) shall be served on the Juror, or left at his dwelling house with some person inhabiting therein, six days at least before the day of appearance.
7. The Clerk of the Circuits on receiving any Commission of Oyer and Terminer and General Gaol Delivery, shall immediately give Notice (B) to the Sheriff of the County where the Court is to be holden, of the time and place of holding such Court; or if the presiding Judge shall direct the summoning of a new Grand or Petit Jury for any adjourned Court, he shall in like manner give Notice (B) to the Sheriff.
8. Whenever the Sheriff is of kin to either party, or inte-rested in the cause, a venire may be issued by either party to the Coroner, or if he be interested or of kin, to Elisors appointed by a Judge, and the Coroner or Elisors shall summon in the usual manner twenty one Jurors for the trial of such cause, who shall be summoned and sworn in the same manner, subject to the same liability and penalties in all respects as other Petit Jurors.
9. If a Grand Jury shall be discharged from some legal objection, the Court may order a new Grand Jury to be summoned in the manner prescribed for summoning Petit Jurors during the sitting of the Court.
10. Immediately after the Grand Jury are called they shall, under the direction of the Judge, retire to their room with the Sheriff or his Deputy, and elect their foreman, who shall be openly notified to the Court by the Sheriff or his Deputy, and sworn in accordingly; if the Jury divide equally upon the nomination, the Sheriff shall give the casting vote; if no election be made within one hour, the Court shall appoint a foreman.

11. The Petit Jury for the trial of all civil causes, inquisitions, and issues, and also informations on the Exchequer side of the Court, shall consist of seven persons, and for criminal cases, twelve.
12. The name of each Petit Juror, whenever summoned in any Court, shall be written on a separate piece of paper, and put into a box, and when a civil cause is to be tried, the Clerk or some indifferent person shall draw out seven of the papers; and if any do not appear, or are set aside, he shall draw until the seven are obtained, who being marked in the panel and sworn, shall try the cause, but their names shall be kept apart until they are discharged, when they shall be returned to the former box, and so on as often as necessary; if before they are discharged a cause is to be tried, the jury shall be drawn in the same manner from the residue.
13. In all cases, criminal or civil, where there is a default of Jurors, the Justice may command the Officer to name other qualified persons of the County present, to complete the number, whose names shall be added to the former panel.
14. In every trial of any issue or inquisition, other than in a Special Jury cause, unless peremptory challenge be allowed, either party may challenge three of the Jurors as they come to the book, which shall be admitted by the Court or Officer presiding; but this shall not affect any other right of challenge the party has, or if such party consists of several persons, give a right to challenge more than three.
15. Every Jury in a civil cause may retire to some comfortable place, under the direction of the Court, to consider their verdict, and if they cannot agree within two hours, any five of their number may return a verdict; but in all criminal cases the Jury shall be unanimous. If the Judge deem it necessary, upon the Jury disagreeing, he may discharge them, and proceed either to a second trial at the same Assizes, or liberate the party charged on bail.
16. The practice of keeping a Jury without meat, drink, or any other comfort, until they agree upon their verdict, is hereby abolished.
17. When a view shall be considered necessary by the Court, the Jury sworn to try the cause shall make the view under charge of the Sheriff, and, if necessary, of Shewers to be appointed by the Court; the trial may be postponed to any other day during the sitting of the same Court, and in the mean time other causes may be disposed of. The writ of view is hereby abolished.
18. Whenever it shall appear necessary to the presiding Judge of any Court to summon a greater number of Jurors than twenty one, to try any person charged with a capital felony, or from the great amount of business or other cause, he shall direct the Clerk to notify the Sheriff, and the Clerk shall add the number required to the Notice (P) to the Sheriff to summon the Jurors, and if he has previously given the Sheriff notice, he shall give him a new Notice (C), and the Sheriff shall summon them in the manner prescribed in Section 6; but a second Jury so summoned shall not be required to attend earlier than the sixth day after the opening of the Court. Jurors required to

attend under this Section shall be liable to the same pains and penalties, and entitled to the same immunities as in other cases.

19. Upon any inquisition before a Sheriff or other officer, not being a Judge of the Supreme Court, except a Coroner's Inquest, he shall select and summon from the Jury list a sufficient number of Jurors to enable him to execute the writ or precept; and if the Jury agree upon a verdict, they shall each receive a sum not exceeding two shillings and six pence, to be determined by the officer presiding, and paid by the successful party, and be costs in the cause.

20. A party in any case may have the issue tried by a Special Jury, for which purpose he shall obtain an Appointment (D) from the Clerk of the Peace in the County where the venue may be laid, or his deputy, of the time and place for the election of twenty eight persons, and shall serve the same on the opposite party, or his Attorney, a reasonable time before the day appointed, at which time and place the Clerk shall attend with the Jury list last filed, and then and there, in the presence of the parties, their Counsel or Attorneys, or such as shall attend, select therefrom twenty eight indifferent persons, and best qualified to try the issue; the Clerk or his deputy shall make out a list of the twenty eight persons selected, and deliver it certified, with an appointment of the time and place of striking, to the party applicant, or his agent, who shall serve a copy thereof on the opposite party, or his Attorney; and the said Clerk or deputy shall attend, and in the presence of such of the parties who may be present, strike the Jury in manner following:—

First—The applicant, his attorney, or agent, shall strike out one of the names, and the opposite party, his attorney, or agent, another, and so on alternately until the list is reduced to fourteen:

Second—If either party fail to attend, or neglect to strike, the Clerk, or his deputy, shall strike for him:

Third—The Clerk, or his deputy, shall forthwith make out a list of the remaining fourteen, and deliver it certified to the Sheriff of the County, who shall summon them in the usual manner.

21. If the Clerk of the Peace be interested in the cause, or related to either party, the Court, or a Judge, may appoint some other fit person to strike the Jury.

22. The duties prescribed for the Clerk of the Peace in this Act shall, in incorporated Counties, be performed by the Secretary Treasurer at his office.

23. On the trial of every Special Jury cause, the Jury shall be drawn as in other cases.

24. The right to peremptory challenge allowed to parties, shall extend to talesmen called on Special Juries.

25. The Jury fees, and expenses of striking and summoning a Special Jury, shall be paid by the applicant, who shall not be allowed on the taxation of costs any more than the fees of a common Jury, unless the presiding Judge shall, after the trial, certify upon the Record that it was a proper cause to be tried by a Special Jury.

26. A Judge of the Supreme Court may, upon sufficient cause shewn by either party, set aside any proceeding connected with the selection or striking of a Special Jury, and direct a new one to be selected or struck, or make such other order as he may deem right.

27. The following fees shall be allowed for striking and summoning a Special Jury:—To the Clerk of the Peace or other officer in his stead, ten shillings; to the Sheriff for summoning, twenty shillings; and to each Juror such sum not exceeding five shillings for each day's attendance on the trial, as the Judge shall allow.

28. Every Special Juror not appearing when openly called three times, shall, on the oath of the summoning officer, or proof by affidavit that he was lawfully summoned, pay a fine not exceeding three pounds in the discretion of the Judge, unless a sufficient cause for such absence be proved to his satisfaction.

29. All fines imposed on Jurors or other ministers of the law in any Court shall be recovered in the following manner:— The Clerk shall within twenty days after the adjournment of the Court, enter on a list the names of the persons fined, and their residence respectively, with the amounts of the several fines, and deliver the Writ (E) with the list annexed to the Sheriff, who shall levy the respective fines of the goods and chattels of the several persons mentioned in the said list, together with five shillings from each person for his fee, and also the reasonable expenses of sale of any goods, and pay the amount of the fines when levied to the Treasurer of the County, whose receipt on the list will be a sufficient discharge. If any person shall tender the fine to the Clerk before the delivery of the Writ to the Sheriff, he shall receive and pay it to the County Treasurer, and mark the same on the list "satisfied."

30. The Sheriff shall on receipt of the Writ, endorse thereon the day and year he received it, and within three months file the same with the Clerk, and also a list and return of his proceedings; if the Sheriff neglect to make the return, the Clerk shall report to the Court, and the Sheriff shall be deemed guilty of contempt, and punished accordingly.

31. Every County Treasurer shall keep separate accounts of the Jury fines, fees, and other fines paid over to him, and at the opening of every Court file on' oath a copy thereof, and of his receipts since the last account, with the Clerk, in whose office it shall remain on file; for every neglect of duty of the Treasurer he shall be guilty of a contempt, and punished accordingly.

32. The fine imposed on a Juror may be reduced or remitted by a Judge on sufficient cause shewn by affidavit, and in such case the order of the Judge shall be delivered to the Sheriff and be his discharge, and shall by him be returned to the Clerk with the *levari facias*; but if the fine shall in the mean time be paid to the Clerk, Sheriff, or County Treasurer, it shall be returned to the delinquent.

33. All Jury fines shall be paid by the person receiving the same to the County Treasurer, for the use of the County.

34. 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 in 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 shewn by affidavit, shall order and allow the same to be entered on such trial docket at a subsequent hour or day.

35. 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 the payment of Petit Jurors attending such Court as hereinafter provided, and if the cause is not tried, the money so deposited with the Clerk shall be returned to the party entering the same.

36. Every Petit Juror man actually attending any of the Courts of Record, shall be entitled to receive and be paid in the manner hereinafter mentioned, the sum of five shillings per day for every day he shall attend such Court, and the sum of six pence per mile for every mile he shall necessarily travel from his place of residence to the said Court, and the distance shall be ascertained by the declaration of the Sheriff, or the declaration of the Juror himself; provided always, that any false declaration respecting the distance of such party's residence, shall forfeit the right of every Juror making such false declaration to receive any payment for travelling or attending such Court as Juror.

37. The respective Clerks of such Courts, on the last day of the sitting of such Court, shall prepare a list, duly certified, shewing the names of the Jurors who actually attended such Court, the number of days each attended, the distance each travelled, the amount each shall be entitled to receive, and the amount so received by him as aforesaid, and forthwith deliver the same, together with the moneys so received by him as aforesaid, to the County Treasurer of the County where such Court shall be held, who shall hold and apply such moneys as other County funds.

38. It shall be the duty of the County Treasurer upon receiving such list, forthwith to pay to each Juror the sum to which he shall appear entitled by such list, out of the County funds.

39. It shall be the duty of the County Treasurer within a reasonable time to forward the said list to the Provincial Secretary, whereupon a Warrant may be issued by order of the Governor in Council in favour of the County Treasurer for the amount so paid by him, deducting therefrom the amount so received by him from the Clerk; and the Provincial Treasurer is hereby authorized and required to pay the amount of such Warrant to the County Treasurer, to be held and applied by him as other County funds.

40. Every Grand Juror not appearing when openly called three times, shall upon oath or affidavit of the summoning officer that he had been lawfully summoned, pay a fine not exceeding three pounds, in the discretion of the Court, unless sufficient excuse for his absence be shown by affidavit to the satisfaction of such Court.

41. Every Petit Juror who shall not appear when called upon the trial of any cause, shall on proof by the oath or affidavit of the summoning officer that he Was duly summoned, pay a fine not exceeding five shillings for each default, in the discretion of the Court, unless a sufficient excuse for his absence be shewn by affidavit to the satisfaction of such Court, but the amount of fines imposed upon any Juror shall net at any Court exceed three pounds.

42. Any officer neglecting to perform any duty imposed upon him by this Act, shall pay a fine of twenty pound; one half to the prosecutor, the other half to the County Treasurer for the use of the County.

43. If any person duly summoned to serve as & Juror upon an inquiry before a Sheriff or Coroner, shall not appear when openly called three times, the officer having execution of the writ may impose a fine upon the defaulter not exceeding ten shillings, unless he shew a reasonable excuse on oath, and immediately after taking the inquisition, he shall certify the name, residence, and calling of every defaulter, with the amount of the fine, to the Clerk of the Court out of which the writ issued, who shall enter them on a list, and they shall be levied, paid, and applied in all respects as in other cases.

44. The neglect of the officer to make out the Jury list, or the omission of the name of any qualified person, or the insertion of the name of any unqualified person therein, or any error in description, or other defect therein, shall not be a cause of challenge.

45. Notwithstanding the provisions of this Act as to the qualification of Jurors, or in any other respect, the list filed by the respective Sheriffs shall be the Jury list, till others can be prepared under this Act.

46. The following Acts shall be repealed when this Act comes into operation: An Act made and passed in the eleventh year of the Reign of Her present Majesty, intituled *An Act to provide for the better payment of Petit Jurors attending the several Courts of Record in this Province*; an Act made and passed in the twelfth year of the same Reign, intituled *An Act to amend the Laws relating to Juries*; an Act made and passed in the thirteenth year of the same Reign, intituled *An Act to amend the Laws relating to Juries*; an Act made and passed in the fourteenth year of the same Reign, intituled *An Act relating to Grand Juries in this Province*; and an Act made and passed in the same year of the same Reign, intituled *An Act to revive and continue an Act for the better payment of Petit Jurors attending the several Courts of Record in this Province*.

SCHEDULE

(A)

*Summons to Jurors*

To Mr. A. B. – You are required to attend as a Grand (or Petit, as the case may be) Juror, at the Court to be holden for the County of \_\_\_\_\_ at the Court House in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ instant (or next), on pain of fine. –Dated the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_.

*[The above may be modified to suit an inquiry before Sherriff, &c.]*

(B)

*Notice to Sheriff.Ap*

To B. W., Esquire, Sheriff, (or other Officer, as the case may be). –You are required to draw and summon twenty four Grand and twenty one Petit Jurors, (or \_\_\_\_\_ Petit Jurors, as the case may be), to attend at a Court to be holden in your County, at the Court House in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ instant (or next) –Dated the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_.

J. C. Clerk (or Deputy Clerk)  
of the Circuit (or Sitings)

(C)

*Notice to Sheriff*

To B. W., Sheriff, (or other Officer, as the case may be). –You are required to draw and summon \_\_\_\_\_ Petit Jurors to attend at a Court to be holden in your County in \_\_\_\_\_ on the day of \_\_\_\_\_ next (or instant) –Dated the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_.

J. S. Clerk (or Deputy Clerk)  
of the Circuit (or Sitings.)

(D)

*Appointment*

In the Supreme Court.

A. B. Plaintiff, and C. D. Defendant.



On application of \_\_\_\_\_ I do appoint \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ instant (or next) at \_\_\_\_\_ o'clock, a.m. (or p.m. as the case may be) [insert a reasonable time to notify the opposite party] at my office in \_\_\_\_\_ to strike a Special Jury in the above cause. –Dated the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_ [the day of issue.]

J. S. Clerk.

(E)

*Levari Facias*

Victoria, &c.

[L. S.] The Sheriff of \_\_\_\_\_ is commanded to levy the fines imposed upon the persons named in the annexed list, of the respective goods and chattels, and five shillings from each person for his fee, and forthwith pay the fines to the Treasurer of the County, and make return hereof according to law. –Witness [Presiding Judge] Esquire, at \_\_\_\_\_ in the said County of \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ [the day of issue].

J. S. Clerk.