

Laws of His Majesty's Province of Upper-Canada; Passed in the Third Session of the Provincial Parliament of Upper Canada, Met at Newark, on the Second day of June, in the Thirty-Fourth Year of the Reign of our Sovereign Lord George the Third (1794). Niagara: Gideon Tiffany, Printer to the King's Most Excellent Majesty, 1795.

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An Act for the Regulation of Juries.

For the regulation of juries, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the parliament of Great-Britain, entitled, an Act to repeal certain parts of an Act passed in the fourteenth year of his majesty's reign, entitled, "An Act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, That the clerk of the peace of each and every district in this province, shall yearly and every year make up from the returns of the several assessors of each parish, township reputed township or place, which shall have been transmitted to him, a true and complete list or transcript of the names of the several inhabitant householders, living in each of the said parishes, townships, reputed townships or places, classed and divided in such manner as by the said returns shall appear, which list or transcript, shall be transmitted or delivered by the clerk of the peace to the Sheriff of each respective district, or his under sheriff, in order for his returning juries out of the said list from time to time as he shall be commanded, and that each and every person whose name shall be returned in either of the said lists, shall be held and taken as qualified to serve on juries, and that no sheriff or coroner shall return any person to serve on any jury, whose name shall not appear in the said list, and that every clerk of the peace neglecting his duty therein, shall forfeit the sum of five pounds to such person or persons as shall inform or prosecute for the same, until the party be thereof convicted, by indictment, before the justices of the peace, at any quarter sessions of the peace, to be holden for the district where such neglect shall have been committed.

II. And for preventing abuses by sheriffs, bailiffs, or other officers concerned in the summoning and returning of jurors, Be it enacted by the authority aforesaid, That no person or persons, shall be returned as a juror or jurors to serve on trials at any assizes or *nisi prius*, quarter sessions or district court who have served thereat within the space of one year before, and if any such sheriff, shall wilfully transgress herein, any judge or justice of assize or *nisi prius*, may and is hereby required on examination and proof of such offence in a summary way, to set a fine or fines, upon every such offender as he shall think meet, not exceeding the sum of ten pounds for any one offence.

III. And be it further enacted, That the sheriff, under sheriff or officer to whom the return of juries shall belong, shall from time to time enter or register in a book to be kept for that purpose, the names of such persons as shall be summoned and shall serve as jurors on trials at any assizes or *nisi prius*, quarter sessions, or district court, with the times of their services, and every person so

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summoned and attending or serving as aforesaid, shall upon application by him made to such sheriff, under sheriff, or officer, have a certificate testifying the same, which certificate the said sheriff, under sheriff, or officer is hereby required to make out without fee or reward.

IV. And be it further enacted by the authority aforesaid, That no sheriff, under sheriff, or officer or any person whatsoever, shall directly or indirectly take or receive any money or other reward to excuse any person from serving or being summoned to serve on juries, and that no bailiff or other officer, appointed by any sheriff or under sheriff to summon juries, shall summon any person to serve thereon, other than such whose name is specified in a mandate signed by such sheriff or under sheriff, and directed to such bailiff or other officer, and if any sheriff, under sheriff bailiff or other officer, shall wilfully transgress in any of the cases aforesaid, any judge or justice of assize or *nisi prius*, may and is hereby required on examination and proof of such offence in a summary way, to set a fine or fines upon any person so offending as he shall think meet, not exceeding three pounds.

V. And be it further enacted by the authority aforesaid, That every sheriff or other officer to whom the return of the *venire facias juratores* or other process for the trial of causes before justices of assize or *nisi prius*, who may be assigned to hold assizes in any district or place within this province, doth or shall belong, shall upon his return of every such writ of *venire facias* (unless in causes to be tried at bar or in cases where a special jury shall be struck by order or rule of court) annex a pannel to the said writ containing the christian and surnames, additions and places of abode, of a competent number of jurors, whose names shall have been returned in the said lists herein before directed to be made out, whose names shall be inserted in the pannel annexed to the *venire facias* for the trial of all issues at the same assizes in each respective district or place, which number of jurors shall not be less than thirty-six in any district or place, nor more than forty-eight, and the persons named in such pannels, shall be summoned to serve on juries at the then next assizes or sessions of *nisi prius*, for the respective districts or places to be named in such writs, and no other.

VI. And be it further enacted by the authority aforesaid, That the name of each and every person who shall be summoned and empannelled as aforesaid, with his addition and the place of his abode, shall be written on several and distinct pieces of parchment or paper, being all as near as may be of equal size, and shall be delivered to the marshall of such judge of assize or *nisi prius* who is to try the causes in each respective district, by the sheriff or under sheriff of the said district, or some agent of his, and shall be put together in a box or glass to be provided for that purpose, and when a cause shall be called on to be tried, the marshall or some indifferent person by direction of the court, may and shall in open court draw out twelve of the said parchments or papers successively, and if any of the persons whose names shall be so drawn, shall not appear or be challenged and set a fide, then such further number, until twelve persons be drawn, who shall appear; and after, all causes of challenge shall be allowed to be indifferent; and the said twelve persons, their names being marked in the pannel and they being sworn, shall be the jury to try the cause, and the names of the persons so drawn and sworn, shall be kept apart by themselves till such jury shall have given their verdict and the same is recorded, or until the jury shall by consent of the parties or leave of the court, be discharged; and then the said names shall be rolled up again

and returned to the former box or glass, there to be kept with the other names remaining at the same time undrawn, and so *toties queries* as long as any cause remains to be tried.

VII. And be it further enacted by the authority aforesaid, That every person or persons whose name or names shall have been drawn to serve on the trial of any issue, and who shall not appear after being openly called three times, shall forfeit and pay upon oath made by some credible person, that the party so making default had been lawfully summoned, such fine not exceeding the sum of three pounds, nor less than twenty shillings, as the judge who sits to try the cause shall think reasonable to inflict; unless some reasonable cause of his absence be assigned or proved to the satisfaction of such judge.

VIII. Provided always, and be it enacted, That no person aged sixty years, shall be obliged to attend upon any summons to be directed to him for the purposes aforesaid.

IX. And be it further enacted by the authority aforesaid, That every common juryman who shall have been sworn to give his verdict in any issue brought before the court, shall be entitled to demand and receive the sum of one shilling from the plaintiff or his attorney, for every cause in which such juryman shall be sworn, to be accounted for in costs by the party charged with the payment thereof.

X. And be it further enacted by the authority aforesaid, That it shall and may be lawful for his majesty's court of king's bench in this province, upon motion made on behalf of his majesty, his heirs and successors, or on the motion of any prosecutor or defendant, in any indictment, or information depending or to be brought or prosecuted in the said court, or on the motion of any plaintiff or plaintiffs, defendant or defendants, in any action, cause, or suit whatsoever to be brought in the said court; and the said court is hereby authorized upon motion made as aforesaid, to order and appoint a special jury to be struck before the proper officer, for the trial of any issue joined, in any of the said cases, in such manner as special juries are usually struck upon trials at bar, in England; which jury so struck as aforesaid, shall be the jury returned for the trial of the said issue.

XI. Provided always, and it is hereby enacted, That no person shall be nominated by the sheriff, to serve on a special jury whose name shall not be included in either the fifth, sixth, seventh, eighth, ninth, or tenth classes, or in the upper list of inhabitant householders, as directed to be made out under and by virtue of a certain act of the legislature of this province, entitled, "An act to authorize and direct the laying and collecting of assessments and rates in every district of this province; and to provide for the payment of wages to the members of the house of assembly."

XII. And be it further enacted by the authority aforesaid, That no person who shall serve on any special jury to be appointed or returned under and by virtue of this act, shall be allowed to take for serving on any such jury more than a sum of money not exceeding the sum of five shillings, except in causes where a view hath been or shall be directed.

XIII. And be it further enacted, That the person or party who shall apply for such special jury, shall not only bear and pay the fees for striking such jury, but shall also pay and discharge all expences occasioned by the trial of the cause by such special jury, and shall not have any further or other allowance for the same upon taxation of costs than such person or party would be entitled unto in case the issue had been tried by a common jury, unless the judge before whom the cause is tried shall 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.

XIV. Provided always, and be it further enacted, That where a view shall be allowed in any case, that in such case six of the jurors named in such pannel, or more who shall be mutually consented to by the parties, or their agents on both sides, or if they cannot agree, shall be named by the officer of the court or by the judge before whom the said cause shall be tried, shall have the view and be first sworn or such of them as appear upon the jury to try the said cause before any drawing of jurors as aforesaid, and so many only shall be drawn to be added to the viewers as aforesaid, as shall make up the number of twelve to be sworn for the trial of inch issue. Provided also, that every person attending such view as aforesaid, shall and may demand and receive a sum not exceeding ten shillings for every day on which he shall be so employed.

XV. Provided always, and be it further enacted, That in case no view shall be had, or if a view shall be had by any of the said jurors, no valid objection shall be made on either side, either for want of a view, or that it was not had by any of the twelve jurors first named, or that it was not had by any particular number of jurors named in the said writ, but the trial of the issue shall proceed, any formal objection respecting the view, to the contrary notwithstanding.