

Laws of His Majesty's Province of Upper Canada in North America, passed in the year 1808.
York: John Cameron, 1808.

48 George III – Chapter 13

An Act for the better regulation of Special Juries. Passed 16th March, 1808.

Whereas the existing laws of this Province are found insufficient to give special juries in the Court of King's Bench; Be it therefore 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 the virtue of, and under the authority of an Act passed in the Parliament of Great Britain, intituled, "*an Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, "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 tenth, eleventh, twelfth and thirteenth clauses of an act passed in the thirty-fourth year of his present Majesty's reign, entitled, "*an act for the regulation of juries,"* and the whole of an act passed in the fortieth year of his present Majesty's reign, entitled "*an act for the regulation of special juries,"* shall be and the same are hereby repealed.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful for his Majesty, by his attorney general, or by any other person duly authorized in that behalf, or for any prosecutor or defendant in any indictment or information for any misdemeanor now pending or hereafter to be brought or prosecuted in his Majesty's court of King's Bench in this Province, or for any plaintiff or plaintiffs, defendant or defendants in any action, suit or cause whatsoever, now pending or hereafter to be brought and carried on in the said court, to have and obtain a special jury for the trial of such indictment, information, action, suit or cause, without any motion in court.

III. And be it further enacted by the authority aforesaid, That the clerk of the peace of each and every district shall annually on and before the fifteenth day of July, deliver or cause to be delivered to the Sheriff of the district, a list of such men throughout the district as shall be assessed on the several assessment rolls, for the sum of two hundred pounds and upwards, for which services the said clerks of the peace respectively shall be entitled to receive the sum of five shillings, by an order from the justices in quarter sessions assembled, upon the district treasurer.

IV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for his said Majesty, his heirs and successors, as aforesaid, or for any prosecutor or defendant in any such indictment or information, or for any plaintiff or plaintiffs, defendant or defendants in any action, suit or cause now pending or hereafter to be brought and carried on in the said court of King's Bench, for the purpose of having and obtaining a special jury for the trial of such indictment, information, action, suit or cause by themselves or their attorneys respectively, to serve or cause to be served on the opposite party or parties, his her or their attorney or attorneys, a written notice, for him, he or them, to appear by themselves or their respective attorney or attorneys, at the officer of the Sheriff of the district in which the said indictment, information, action, suit or cause is

to be tried, on some certain day, which shall not be less than four days from the actual service of such notice, and such actual service shall be made either personally upon the opposite party or parties, his, her or their attorney, or by a copy of such notice, to be left at the usual place of abode of the opposite party or parties, or at the usual place of abode of his, her or their attorney.

V. And be it further enacted by the authority aforesaid, That the name of each and every man assessed as aforesaid, shall be written on separate and distinct pieces of paper, being all near as may be of equal size, and shall be put together in a box or glass to be provided for that purpose, from which the sheriff, his deputy, or any indifferent person appointed by the court, may draw out forty of the said papers, and the said sheriff or his deputy shall forthwith make a list of the names written upon the said forty papers, from which list each party, his, her or their attorney or attorneys, shall and may alternately strike out the twelve names, and the sheriff shall summon or cause to be summoned the sixteen persons whose names shall remain on such list, to appear on the first day of the next ensuing assizes, from whom a special jury shall be taken for the trial of the respective indictment, information, action, suit or cause.

VI. And be it further enacted by the authority aforesaid, That if any party or parties who shall be served with such written notice, or his, her or their attorney, shall neglect to appear at the Sheriff's office at the said day appointed, it shall and may be lawful for the Sheriff or his deputy, in behalf of such party, to strike out of the said list, twelve names in manner aforesaid.

VII. And be it further enacted by the authority aforesaid, That every person who shall serve on a special jury as aforesaid, shall be entitled to receive the sum of five shillings.

VIII. And be it further enacted by the Authority aforesaid, 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.