

C A P . C X X .

An Act to amend the Upper Canada Jurors' Act of one thousand eight hundred and fifty, and to repeal certain parts thereof.

[Assented to 23rd May, 1853.]

Preamble.
13 & 14 V. c.
55.

WHEREAS it is necessary to amend some of the provisions of The Upper Canada Jurors' Act of one thousand eight hundred and fifty, as the said Act was originally passed, and as it stands amended by the Upper Canada Jurors' Law Amendment Act of one thousand eight hundred and fifty-one : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the fourth, twelfth, twenty-seventh, thirty-sixth and sixty-ninth clauses of the Upper Canada Jurors' Act of one thousand eight hundred and fifty, and the twenty-third and eighty-first Sections of the said Act as amended by the said Act amending the same, shall be and the same are hereby repealed upon, from and after the day upon which this Act shall come into force.

Certain sections of 13 & 14 V. c. 55, repealed.

Clause substituted for repealed sect. 4 of the said Act.

Property qualification.

II. And be it enacted, That the following clause shall be substituted for the repealed fourth section of the Act first above cited and shall be read as part of the said Act : "And be it enacted, That the amount of property in respect of which every man shall be qualified and liable to serve as such Juror, shall be determined by the relative amount of property for which he shall be assessed on the Assessment Roll of the Township, Village or Ward of which he shall be a resident inhabitant at the time of the annual election of Jurors, by the Selectors for such Township, Village or Ward as hereinafter provided, and that the mode for ascertaining the same shall be as follows, that is to say : The names of one half of the assessed Resident Inhabitants of the Township, Village or Ward, shall be copied from the Assessment Roll of such Township, Village or Ward, commencing with the name of the person rated at the highest amount on such Roll, and proceeding successively towards the name of the person rated at the lowest amount, until the names of one half of the persons assessed upon such Roll shall have been copied from the same ; and the amount for which the last of such persons shall be assessed upon the said Roll, shall be that which shall qualify every Resident Inhabitant of such Township, Village or Ward, and render him liable to serve as such Juror."

III. And be it enacted, That the following clause shall be substituted for the repealed twelfth section of the Act first above cited, and shall be read as part of the said Act : " And be it enacted, That the Selectors of Jurors for each City, Town, Village and Township in Upper Canada, shall annually, on the day mentioned in the next preceding section of this Act, or on the first day thereafter, not being a Sunday or other Statutory Holiday, if such first mentioned day shall be a Sunday or other Statutory Holiday, or if they shall have been unable to complete the duty hereby imposed upon them on such first day, proceed to select such names from such Rolls accordingly : Provided always, nevertheless, firstly, that after striking from the said Roll the names of all persons exempt from serving as Jurors on all of the divisions of Jurors mentioned in the thirteenth section of this Act, and also the names of those who, from not possessing a sufficient amount of property, or from other causes, are disqualified from serving as Jurors, according to this Act, the Selectors shall select, as qualified to serve on Juries, at least two thirds of the persons whose names may then remain on the said Roll : And provided also, secondly, that in case of an equality of votes amongst such Selectors of Jurors as to any one or more of the names to be so selected, or as to the Division of the Report of such Selectors in which any such name should be inserted in the distribution of such names as hereinafter provided, or as to any other incidental question which may arise in the performance of the duty hereby imposed upon such Selectors, the Mayor or Townreeve, or in case of his absence or the vacancy of the office, the City, Town, Village or Township Clerk, or in the absence or vacancy of the offices of both, then the Assessor whose Roll for the year shall have contained the greatest number of assessed names, and in the case of joint Assessors the Assessor first named in the appointment of such Assessors, shall have a casting or double vote in the decision of the same."

Clause substituted for repealed section 12 of the said Act.
Meeting of Selectors.

Proviso.

Proviso.

IV. And be it enacted, That the following clause shall be substituted for the repealed twenty-third section of the Act first above cited as amended, and shall be read as part of the said Act : " And be it enacted, That the Clerk of the Peace shall, on or before the thirty-first day of December thereafter, cause a correct copy of such Jurors' Book to be made and deposited in the Office of the Clerk of the Crown and Pleas of Her Majesty's Court of Queen's Bench at Toronto, which shall be certified by him to be a true copy of the original, and from it, in the event of the loss or destruction of the original by fire or other accident, a duplicate original of such Jurors' Book may be made, and being certified by the said Clerk of the Crown and Pleas, to be truly copied from the copy deposited in his Office, shall, upon such loss or destruction being established upon oath or affirmation before two or more Justices of the Peace of such County or Union of Counties, be received

Clause substituted for repealed sect. 23 of the said Act.

Deposit of certified copy of Jurors' Book at Toronto.

Its effect and use.

received and used on all occasions and for all purposes, as the original which shall have been so lost or destroyed as aforesaid: Provided always, nevertheless, that in every such case of the destruction of any original Jurors' Book, it shall be the duty of the Clerk of the Peace for such County or Union of Counties, to procure, as soon as reasonably may be, such duplicate original of such book so certified as aforesaid, and to deposit the same in his Office as above provided, and that in every such case it shall be the duty of the Sheriff or other Officer or Minister of such County or Union of Counties to whom the return of Jury Process shall belong, upon a notice to him by the Clerk of the Peace of such destruction, and of the procurement and deposit of such duplicate original in lieu thereof, which notice every such Clerk of the Peace is hereby required to give as soon as may be thereafter, to furnish to such Clerk of the Peace copies of all Panels of Jurors drafted by such Sheriff or other Minister from the Jury Lists in such book; and it shall thereupon be the duty of such Clerk of the Peace to enter such Panels in such duplicate Original Jurors' Book accordingly, as the same were entered in the said Original Jurors' Book."

Clause substituted for repealed sect. 27 of the said Act.

Mode of drafting.

Panel of Jurors.

V. And be it enacted, That the following clause shall be substituted for the repealed twenty-seventh section of the Act first above cited, and shall be read as part of the said Act: "And be it enacted, That the manner of drafting such panel shall be as follows, that is to say: the Sheriff or other Officer to whom the return of such panel shall belong, shall place the Ballots promiscuously in a Box or Urn to be procured by him for that purpose, and shall cause such Box or Urn to be shaken so as sufficiently to mix the ballots, and he shall then openly draw from the said Box or Urn indiscriminately, one of the said ballots, and declare openly the number of such ballot, whereupon the Clerk of the Peace, or one of the Justices of the Peace present at such drawing as aforesaid, shall immediately declare aloud the name to which such number is appended in the Jury List from which the Panel is to be drafted; and thereupon, if such person shall be exempt from being drafted or serving upon such panel, under the provisions of the sixth section of this Act, or if upon the face of such Jury List it shall appear that the person whose number has been so drafted has been already drafted to serve on any other panel drafted from such Jury List, in obedience to any precept for the return of any general panel, for any sessions or sittings of Assize, *Nisi Prius*, Oyer and Terminer, Gaol Delivery, General Quarter Sessions of the Peace, or County Court, and that such person has actually attended and served upon such Panel as aforesaid, and there shall remain a sufficient number of names on such Jury List to complete the panel then in course of being drafted, without taking any of those who have been previously drafted upon any such former panel from the same list, the same shall be publicly announced, and that the name of every such person so drafted

drafted is on such account, respectively, not inserted in such panel. But if upon examination of such Jury List, no such cause shall appear for omitting the name of such person from the said panel then being drafted, the name and addition of the person whose name shall have been so drafted, shall be thereupon written down on a sheet of paper to be provided for that purpose, and such name shall, by the said Sheriff or other Officer, be thereupon marked on the said Jury List, with a reference to the number which will belong to such panel in the Jurors' Book. Which being done, the Sheriff shall proceed in like manner to draft and dispose of other numbers from the said Box or Urn, until the necessary number for the panel to be so drafted shall be completed. After which, the names so drafted, with the places of residence and additions of the parties, arranged alphabetically, shall, by such Sheriff or other Officer, be transcribed on another sheet of paper, with a reference to the number of such name on the Jury List, and such name shall, by the said Sheriff or other Officer, or his Deputy, be thereupon marked in the said Jury List, with a reference to the number which will belong to such panel in the Jurors' Book. Whereupon, such panel so alphabetically arranged and numbered, with a short statement of the Writ or Precept in obedience to which it was drafted, the date and place of such drafting, and the names of the Sheriff or other Officer or Minister, or his Deputy, and of the Clerk of the Peace and Justices of the Peace, present at such drafting, or at least of two of them, shall be fairly entered in the said Jurors' Book, and attested by the signatures of such Sheriff or other Officer or Minister, or his Deputy, and of the said Clerk of the Peace and the said Justices, or at least two of them, and the said Sheriff shall, upon his return of the Writ of *venire facias*, or Precept under authority of which such panel was drafted, annex a panel to the said Writ or Precept containing the names, together with the places of abode and additions of the persons so drafted upon such panel, and shall transmit one copy thereof to the office of the Clerk of the Peace, and another to the Clerk of the Crown and Pleas of Her Majesty's Court of Queen's Bench at Toronto, each of which copies, as well as the Jurors' Book, shall at all reasonable times be open to inspection by litigants or their professional Agents, without fee or reward."

VI. And be it enacted, That the following Clause shall be substituted for the repealed thirty-sixth section of the Act first above cited, and shall be read as part of the said Act: "And be it enacted, That the name of each man who shall be summoned and empannelled as a Petit Juror upon the general Precept for any Sittings or Sessions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, Sessions of the Peace or County Court, with his place of abode and addition, shall be written distinctly on a piece of Parchment, Card or Paper, such pieces of Parchment, Card or Paper being all

Clause substituted for repealed sect. 36 of the said Act.

Ballots for drafting Petit Jurors how to be made.

as

as nearly as reasonably may be of the form and size following, viz :

DAVID BOOTHE,
of Lot No. 11, in the 7 Con. of Albion,
MERCHANT.

To be placed in an Urn or Box of a certain description.

Mode of drawing the same.

and shall be delivered to the Clerk of Assize, Marshal or other Clerk of such Court by the Sheriff, and shall by the direction and care of such Sheriff, be put together in a Box or Urn to be provided for that purpose, and when any issue shall be brought on to be tried by the Jurors returned upon such general Precept, such Clerk of Assize, Marshal or other Clerk of such Court, shall, in open Court, cause such Box or Urn to be shaken so as sufficiently to mix such pieces of Parchment, Card or Paper, and then draw out twelve of the said Parchments, Cards or Papers one after another, (causing the said Box or Urn to be shaken after the drawing of each name) and if any of the men whose names shall be so drawn shall not appear or shall be challenged and set aside, then such further number until twelve men be drawn, who shall appear, and after all just causes of challenge allowed, shall remain as fair and indifferent, and the said twelve men so first drawn and appearing and approved as indifferent, their names being noted in the Minute Book of such Clerk of Assize, Marshal or other Clerk of such Court, and they being sworn, shall be the Jury to try the issue, and the names of the men so drawn and sworn shall be kept apart by themselves until such Jury shall have given in their verdict, and the same shall be recorded, or until such Jury shall by consent of the parties, or by leave of the Court, be discharged, and then the same names shall be returned to the Box or Urn, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried."

Clause substituted for repealed sect. 69 of the said Act.

VII. And be it enacted, That the following Clause shall be substituted for the repealed sixty-ninth Section of the Act first above cited, and shall be read as a part of the said Act: And be it enacted, That in all inquests to be taken before any of the Courts in Upper Canada wherein the Queen is a party, howsoever it be, notwithstanding it be alleged by them that sue for the Queen, that the Jurors of those inquests, or some of them, be not indifferent for the Queen, yet such inquests shall not remain untaken for that cause; but if they that sue for the Queen will challenge any of those Jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the Court; and

Cause to be assigned for challenges on behalf of the Crown.

and it shall be proceeded to the taking of the same inquisitions as it shall be found if the challenges be true or not, after the discretion of the Court; Provided always, that nothing herein contained shall affect or be construed to affect the power of any Court in Upper Canada, to order any Juror to stand by until the panel shall be gone through, at the prayer of them that prosecute for the Queen, as has been heretofore accustomed." Proviso.

VIII. And be it enacted, That after the passing of this Act, it shall not be a good ground of challenge against any person, who may be called upon to serve as a Juror, that he belongs to any Religious persuasion or denomination allowed by Law to affirm in civil cases instead of taking an Oath, but every such person shall be as eligible and liable to serve on all Juries and inquests on his being affirmed, as if he had been sworn in the usual way. Certain matters not to be a cause of challenge.

IX. And be it enacted, That the following Clauses shall be substituted for the repealed eighty-first Section of the Act first above cited as amended, and shall be read as part of the said Act: 1. "And be it enacted, That the Selectors of Jurors, for every selection and distribution of Jurors, and the Report thereof made by them under this Act, shall be entitled to such sum of money as shall be authorized to be awarded them by the Municipality of which they shall respectively be Officers; and that such sums of money shall be paid to them respectively by the Treasurers (or Chamberlains, as the case may be,) of their respective Townships, Villages, Towns and Cities, in such manner as such Municipalities may severally direct, and which money shall be paid by such Treasurers (or Chamberlains) to every such Selector of Jurors upon receipt of a Certificate from the Clerk of the Peace for such County or Union of Counties, that such Report had been duly made to him within the time for that purpose prescribed by this Act." Clauses substituted for repealed Sect. 81 of the said Act.
Allowance to Selectors, and how payable.

2. "And be it enacted, That the Clerk of the Peace of every such County or Union of Counties, and the Clerk of the Recorder's Court of every City, in which a Recorder's Court shall have been established, shall be entitled to the following sums of money for the respective services performed by them under this Act, that is to say: Fees to Clerks of the Peace and of Recorder's Courts.

"For receiving and examining the Report of Selectors for each City, Town, Village and Township, causing any deficiency which may be found therein to be supplied, and filing the same in his Office, Two Shillings and Six Pence.

"For giving Certificate to Selectors of Jurors of report having been made, Two Shillings and Six Pence.

"For Blank Jurors' Book, the actual amount of the Stationers' charge.

"For

“ For arranging alphabetically and in order, the names contained in Selectors' Report, per one hundred names, Ten Shillings.

“ For making up Jurors' Book, entering all the names and numbers, and all other matters required to be entered therein, per one hundred names, Five Shillings.

“ For each copy of the Jurors' Book required by this Act, per one hundred names, Five Shillings.

“ For preparing on cards the ballots for Jurors, to correspond with numbers in Jurors' Book, per one hundred names, Two Shillings and Six Pence.

“ For each certificate required to be entered on Jurors' Book to verify the same, Five Shillings.

“ For balloting and entering each Jury List, per one hundred names, Thirty Shillings.

“ For Copy of Jury List required to be entered, per one hundred names, Ten Shillings.

“ For each Panel of Jurors drafted from the Jury List, per one hundred names on such Jury List, Ten Shillings.

“ For entering each Panel in the Jurors' Book, with the numbers corresponding to the Jury List, Ten Shillings.

“ For making up aggregate Return in detail of Jurors, Twenty Shillings.

“ For Copy thereof and transmitting the same to Provincial Secretary, when required, and for Office Copy of the same, each, Ten Shillings.

Fees to Sheriffs, High Bailiffs, &c.

“ That the Sheriff, High Bailiff or other Officer of every such County, Union of Counties or City, shall, exclusive of such Fees as he may be entitled to from the parties in any suit, be entitled to the following sums of money for the respective services performed by them under this Act, that is to say :

“ For each Panel of Jurors, whether Grand or Petit, returned and summoned by him in obedience to any general precept for the return of Grand or Petit Jurors for any Sittings or Sessions of Assize and Nisi Prius, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County or Recorder's Court, respectively, under this Act, Twenty Shillings.

“ For Copy of such Panel to be returned in the Office of the Clerk of the Crown and Pleas of the Court of Queen's Bench at Toronto, Five Shillings.

“ For

“For every Certificate given to any Juror, when required by such Juror, of his having served, to evidence his exemption from serving again until his time for doing so shall return in its course, the sum of One Shilling and Three Pence, to be paid by such Juror ;

“The sum of Six Pence for every mile that the Sheriff or his Deputy or Bailiffs may necessarily and actually have had to travel from the County Town, for the purpose of serving Summonses on such Jurors.

“And that the Crier of every such Court of Quarter Sessions, Fees to Recorder's Court, shall, for making the Proclamations, calling the names of all those drawn in the course of balloting such Jury Lists, and performing all other duties required of him under the said Act, be entitled to the sum of Fifteen Shillings, for every one hundred names so drawn. criers.

“Which several sums shall be paid by the Treasurer of such County or Union of Counties, or by the Chamberlain of such City, as the case may be, to such Officers severally, out of any moneys in his hands belonging to such County, Union of Counties or City, respectively, not otherwise specially appropriated by Act of Parliament, upon proof by affidavit made before some Commissioner for taking affidavits in some one of Her Majesty's Superior Courts of Common Law at Toronto, for such County, or Union of Counties, of such several services having been executed, and of such travel having been so necessarily performed in the service of such Summonses. For all which moneys so to be paid as aforesaid, every such Treasurer and Chamberlain shall be allowed in his accounts with such County Union of Counties or City, as if the same had been paid under the special authority and direction of the Municipal Corporation of such County, Union of Counties or City, respectively : Provided always, nevertheless, That in all such cases when there shall be more than a hundred or an even number of hundreds of such names, if the broken number beyond such hundred or hundreds shall fall short of fifty names, the same shall not be reckoned, and if such broken number shall amount to fifty names or upwards, the same shall be reckoned as a full hundred, but in all cases of there being altogether less than a single hundred, the same shall be reckoned as a full hundred.” Treasurer or Chamberlain to pay the same and on what authority.

X. And be it enacted, That the word “County” in this Act and the Act hereby amended, shall include Unions of Counties for judicial purposes ; and that in pleading, citing or otherwise referring to this Act, it shall in all cases be sufficient to use the expression, The Upper Canada Jurors' Law Amendment Act of 1853. Interpretation clause.

Commence-
ment of Act.

XI. And be it enacted, That this Act shall have force and effect upon from and after the first day of July, one thousand eight hundred and fifty-three, and not before.

C A P . C X X I .

An Act to amend an Act of the Legislature of Upper Canada, passed in the fourth year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to amend the law respecting Real Property, and to render the proceedings for recovering possession thereof in certain cases, less difficult and expensive.*

[Assented to 23rd May, 1853.]

Preamble.

Act of U. C.,
4 W. 4, c. 1.

Mortgagee
may make
entry or bring
suit, at any
time within
twenty years
from the last
payment.

Proviso: as
to existing
suits, &c.

WHEREAS doubts have been entertained as to the effect of a certain Act of the Parliament of the late Province of Upper Canada, passed in the fourth year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to amend the law respecting Real Property, and to render the proceedings for recovering possession thereof in certain cases, less difficult and expensive*, so far as the same relates to Mortgages, and it is expedient that such doubts should be removed: Be it therefore declared and enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That it shall and may be lawful for any person entitled to or claiming under any Mortgage of Land, being Land within the definition contained in the fifty-ninth Section of the Act cited in the Preamble to this Act, to make an Entry or bring an Action at Law or Suit in Equity to recover such Land, at any time within twenty years next after the last payment of any part of the principal money or interest secured by such Mortgage, although more than twenty years may have elapsed since the time at which the right to make such Entry, or bring such Action or Suit in Equity, shall have first accrued; Provided always, that this Act shall not be held to affect any title, possession, interest or case which may be in litigation at the time of the passing of this Act; any thing in the said Act to the contrary notwithstanding.