

*Laws of Her Majesty's Province of United Canada*, passed in the year 1851. York: Stewart Derbishire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 89

**An Act to amend the Act intituled, *An Act to regulate the summoning of Jurors in Lower Canada*.  
30th August, 1851.**

Whereas it is expedient to make further and more equitable provision for selecting and summoning Jurors, and for regulating the trial by Jury in civil cases in Lower Canada: 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 seventh section of the Act passed in the session of the Provincial Parliament, held in the tenth and eleventh years of Her Majesty's Reign, chaptered thirteen, and intituled, *An Act to regulate the summoning of Jurors in Lower Canada*, and so much of the nineteenth section of the same Act as provides that no more than thirty-six Petit Jurors shall be summoned at any General Quarter Sessions of the Peace, shall be and the same are hereby repealed.

II. And be it enacted, That in addition to the persons and classes of persons by law exempted from serving as Jurors, the Members of the Legislative Assembly, all persons in the civil service of Her Majesty's Government, under either Imperial or Provincial appointment, masters of and persons engaged in navigating steamboats, engineers and other conductors of Rail-way trains, and all persons employed in the working of any grist-mill, shall also be exempt from service as Jurors.

Juries in Criminal Cases.

III. And be it enacted, That no person shall be summoned or be liable to serve as a Petit Juror, before any Court held at a distance of more than ten leagues from his place of residence, nor shall any Sheriff include in any list of Petit Jurors hereafter to be made, the name of any person hereby exonerated from serving as such Petit Juror.

Secondly. That there shall be summoned to serve at each Court of General and of Quarter Sessions of the Peace, not less than forty-eight Petit Jurors.

Thirdly. That of the Grand Jurors and Petit Jurors, hereafter to be summoned to serve before any Court holding criminal jurisdiction at the Cities of Quebec and Montreal, one-half shall be composed of persons speaking the English language, and the other half of persons speaking the French language, to be selected by the Sheriff from the list of Grand Jurors and Petit Jurors in the order in which the names of each class, respectively, are inscribed therein.

Fourthly. That in the Districts of Quebec and Montreal, the Sheriff shall, in addition to the number of persons to be summoned as Petit Jurors for the Courts of Criminal Jurisdiction, to appear on the first day of the Session thereof, summon a second set of Petit Jurors for each of the said Courts in the same manner, at the same time, and to the same number as those summoned for the first day of the Session, and such second set of Petit Jurors shall for the Court of Queen's Bench and Court of Oyer and Terminer, be summoned to attend on the eighth juridical day of the Term thereof, and for the Court of General Quarter Sessions, on the sixth juridical day of the Session thereof; and every such second set of Petit Jurors shall attend and serve for the residue of every such Session or Term.

Fifthly. That except as hereinafter provided, no Sheriff shall be required to return a Special Panel of Petit Jurors for the trial of any criminal case; any law, usage or custom to the contrary notwithstanding.

Sixthly. That unless the prosecuting officer, and the party prosecuted consent that the trial Jury be composed exclusively of persons speaking the English language or of persons speaking the French language, or unless the party prosecuted demand, in the manner and at the time hereinafter provided, a jury composed, for the one-half, at least, of persons skilled in the language of his defence, (if such language be either the English or the French language,) the said jury shall be composed of the first twelve persons, who, being called from the General Panel shall appear, and shall not be lawfully challenged.

Seventhly. That so much of the Ordinance, passed in the twenty-seventh year of the Reign of His late Majesty, King George the Third, chaptered one, and intituled, *An Ordinance to regulate the proceedings in certain cases, in the Court of King's Bench, and to give the subject the benefit of Appeal from large Fines*, as provides that upon any trial by jury in Criminal cases, the defect of the panel in Petit Jurors, skilled in the language of the defence, may be supplied by a tales, shall be, and the same is hereby repealed; and in lieu thereof, Be it enacted—

Eighthly. That whenever any prosecuted party, upon being arraigned, demands a Jury composed for the one-half at least, of persons skilled in the language of his defence, if such language be either English or French, he shall be tried by a Jury composed, for the one half, at least, of the persons whose names stand first in succession upon the General Panel, and who, on appearing, and not being lawfully challenged, are found in the judgment of the Court to be skilled in the language of the defence.

Ninthly. And whenever from the number of challenges, or from any other cause, there is, in any such case, a deficiency of persons skilled in the language of the defence, the Court shall fix another day for the trial of such case, and the Sheriff shall supply the deficiency by summoning, for the day so fixed, such additional number of jurors skilled in the language of the defence as the Court may order, and as shall be found inscribed next in succession on the list of Petit Jurors.

#### Jury Trials in Civil Suits.

IV. And be it enacted, That the Judges of the Superior Court in Lower Canada, at their weekly sittings, shall have and exercise the same and like power and authority in all matters and proceedings connected with, preceding or consequent upon trials by Jury in civil suits, as fully to all intents and purposes as the Superior Court in term: Provided that no motion in arrest of judgment, or for a new trial or to set aside a verdict, shall be heard or determined by any number of Judges less than three.

Secondly. That in every case in which a Jury shall be demanded to try the issue or issues in any civil suit or action, such issue or issues shall be tried by a Special Jury, and no person but those whose names are found inscribed on the lists of Special Jurors shall serve or be summoned to serve on any such trial; any law, custom or usage to the contrary notwithstanding.

Thirdly. That the trial of the issue in any such suit or action shall not be fixed until, upon the motion and suggestion of the party applying for the same, the Court or two Judges thereof, shall have determined upon and defined the fact or facts to be enquired into by the Jury, who shall in every case be required to return a Special Verdict in relation to such fact or facts.

Fourthly. That no person shall be summoned or be liable to serve as a Special Juror in any civil suit, before any Court to be held in the Districts of Quebec and Montreal, at a distance of more than three leagues from his place of residence, or before any Court to be held in any other District at a distance of more than five leagues from his place of residence, nor shall any Sheriff include in any list of Special Jurors hereafter to be made, the name of any person hereby exonerated from serving as such Special Juror.

Fifthly. That in every list of Special Jurors hereafter to be made or renewed, in any other Districts than those of Montreal and Quebec, the Sheriff shall, in addition to the persons by law now qualified to serve as Special Jurors, also inscribe the names of every person resident within five leagues of the Court House of any such District, occupying any house or farm, and paying for the same a yearly rent of or above Twenty Pounds currency.

Sixthly. That so much of the twentieth section of the Act hereinbefore first cited, as fixes the delay between the summoning of Jurors in civil matters and the day appointed for their attendance, shall be and the same is hereby repealed; and in lieu thereof, Be it enacted, That persons required to serve as Special Jurors in civil matters, shall be summoned at least four days before the day on which they shall be enjoined to attend.

Seventhly. That upon the unopposed demand of any party to any civil suit or action in which a trial by Jury may now be legally had, it shall be lawful for the Court or any two Judges thereof, to order that the Jurors to be summoned to try the issue or issues in such suit or action, shall be composed exclusively of persons speaking the English language or of persons speaking the French language, and if any such demand be opposed by any other party to any such suit or action, the said Court or Judges shall order that the Jurors to be summoned for such trial shall be composed in equal numbers of persons speaking the English language and of persons speaking the French language; and when a Jury *de medietate linguæ* shall have been so ordered to be summoned, it shall not be

lawful for either of the parties to strike from the list of Jurors prepared by the Prothonotary or Clerk, in any such case, the names of more than six persons speaking the English language and of six persons speaking the French language.

Eighthly. That in all civil suits or actions of a mercantile nature between merchants' traders, and trading corporations, or between merchants, traders, or trading corporations and persons not engaged in trade, it shall be lawful for the said Court, or Judges upon the unopposed of a mercantile nature, between merchant and merchant, and trader and trader, it shall be lawful for the Court, on the demand of either the parties, to order that the Jurors to be summoned for the trial of the issue or issues raised in any such suit or action, shall be taken and selected from those persons who are designated in the list of Special Jurors as merchants and traders, in the order in which their names shall successively stand on the said list; And if such demand be opposed by any other party to any such suit or action, the Court or Judges shall order that the Jurors to be summoned for such trial be composed in equal numbers of those persons who are designated in the list of Special Jurors as merchants and traders, and of those who are not designated in the said list as such; and in no such case shall it be lawful for either of the parties to strike from the list of Jurors, prepared by the Prothonotary or Clerk, the names of more than six persons therein designated as merchants or traders and of six persons not therein designated as such.

Ninthly. That no Bill of Exceptions shall hereafter be filed at or in relation to any trial by Jury, but the Judge presiding at any such trial, shall make or cause to be made under his supervision, full notes of the verbal testimony adduced at such trial, and of all exceptions or objections made or taken at such trial; and such notes shall be read by the Judge, or by the Prothonotary or Clerk of the Court, at the oral request of any party to any such suit, preferred at any time during such trial, or immediately after the close thereof, in order that any error or omission found therein may be corrected or supplied.

Tenthly. That a fair copy of such notes shall be made out by the Prothonotary or Clerk of the Court, and after being certified by the Judge, shall be filed of record in the cause, and shall, in case of appeal from the final judgment pronounced in any such suit or action, be transmitted to the Court of Appeals, as forming part of such record, and shall be considered for the purposes of such appeal, as forming a true record of the evidence adduced on the trial, and of all other proceedings mentioned therein, and as supplying the place of a Bill of Exceptions, whenever such Bill would have been required, had this Act not been passed.

Eleventhly. That in any civil suit in which the services of a translator shall be necessary, the Court or the presiding Judge shall appoint a person competently skilled in the language to be translated, and shall allow to any such translator a reasonable compensation for his services, and the sum allowed to him shall form part of the costs of trial.

Twelfthly. That in every civil action, each of the trial Jurors shall be allowed Five Shillings for each day's attendance on the trial, which shall be paid to such Jurors by the party requiring such trial before the said Jurors shall be held to render their verdict in any such suit, and shall form part of the costs to be taxed against the unsuccessful party in such suit; and on failure of such payment,

the Jury shall be discharged without verdict; and in such case, the said allowance shall form part of the taxed costs against the party demanding the trial by jury, and when recovered, shall be paid over by the Prothonotary or Clerk of the Court to the said Jurors.

#### Jury Lists and Summoning of Jurors in Districts of Kamouraska and Ottawa.

V. And whereas it is expedient to make provision for selecting and summoning Jurors for the trial of civil and criminal cases in the Districts of Kamouraska and Ottawa, so soon after the erection of such new Districts as such trials can be conveniently had, Be it enacted, That the Sheriff for each of the said new Districts shall make and prepare (in duplicate) the following lists of Jurors, that is to say:

Firstly. A list of all persons qualified to serve as Grand Jurors at any of the Courts of Queen's Bench Term or of Oyer and Terminer, which shall hereafter sit in the said Districts respectively, for the cognizance of criminal offences.

Secondly. A list of all persons qualified to serve as Petit Jurors before the said Courts of Superior Criminal Jurisdiction.

Thirdly. A list of all persons qualified to serve as Grand Jurors at any term of the Court of General Sessions of the Peace hereafter to be held in the said Districts respectively.

Fourthly. A list of all persons qualified to serve as Petit Jurors before the said Court of General Sessions of the Peace.

Fifthly. A list of all persons qualified to serve as Special Jurors upon the trial of civil cases before the Superior Court or any of the Judges thereof, in the said new Districts respectively.

2. The Sheriff of each of the said new Districts, shall make and prepare the said lists of Jurors within three months from the date of his appointment as such Sheriff, and shall renew the same every second year, to be reckoned from the month in which the first lists shall have been completed; and the said Sheriffs shall make, prepare and renew the aforesaid lists of Jurors, and shall summon the Jurors therein named, in the manner provided by the said Act hereinbefore firstly recited, as amended by this Act, and shall keep deposited in his office a duplicate of each of the said lists, and shall deposit the other duplicate of each of the said lists as follows, that is to say:

3. The other duplicate of the list of Grand Jurors, and the other duplicate of the list of Petit Jurors qualified to serve as such, respectively, before the Court of Queen's Bench and the Court of Oyer and Terminer, shall be deposited in the office of the Clerk of the Crown hereafter to be appointed in and for such new District.

4. The other duplicate of the list of Grand Jurors and Petit Jurors qualified to serve as such respectively before the Court of General Sessions of the Peace, shall be deposited in the office of the Clerk of the Peace hereafter to be appointed in and for such new Districts.

5. The other duplicate of the list of Special Jurors, shall be deposited in the office of the Prothonotary of the Superior Court hereafter to be appointed in each of such Districts.

VI. And be it enacted, That the said Act hereinbefore firstly recited, except in so far as the same or any part thereof is repealed or amended by this Act, and this Act, shall apply and extend to the said Districts of Kamouraska and Ottawa, hereafter to be erected, as fully, to all intents and purposes, as if the said Districts had been in existence at the time of the passing of the said Acts respectively, and had been mentioned in the said Act hereinbefore firstly recited.

VII. And be it enacted, That all laws and provisions of law inconsistent with or repugnant to the foregoing provisions, shall be, and are hereby repealed.