

## No. 4.

An Act to amend the laws regulating trial by Jury in New South Wales, in so far as they relate to the trial of civil causes. [2nd August, 1844.]

Preamble.

Jury of four  
substituted  
for assessors.

**W**HEREAS it is expedient to amend the laws now in force in this Colony, with respect to trial by assessors and juries, in so far as they relate to the trial of civil issues, and the assessment of damages in actions at law: Be it enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That after the 31st day of August, one thousand eight hundred and forty-four, in all actions at law in the Supreme Court of New South Wales, trial by assessors shall be abolished, and that, except in such cases as are next hereinafter mentioned, all issues of fact shall be tried, and all damages and sums of money recoverable in any such action, after judgment by default or upon demurrer, other than such damages as are usually assessed or computed by the court or some officer thereof, shall be assessed before one or more of the judges of the said court, whether the trial or assessment shall be had in the said court, or in any circuit court in this Colony by a jury consisting of four persons, duly qualified according to law as special jurors, and returned and chosen as hereinafter mentioned: Provided that nothing herein contained, shall be construed to repeal or affect the provisions in the Acts of the Governor and Council, passed respectively in the fourth and fifth years of the reign of Her Majesty, relating to the issue in certain cases, of writs of trial or inquiry.

Jury of twelve  
if required by  
either party.

II. Provided always, and be it enacted, That if either of the parties, plaintiff or defendant, in any action at any time after issue joined, shall apply to the said court for that purpose, in the same manner as he would now have to apply for a trial by jury, it shall be lawful for the said Court to order, that the trial shall be had by a jury consisting of twelve persons, who shall be returned, under the provisions of this Act, either from amongst the class of special jurors or of common jurors, or in cases to be tried on circuit, partly from each class, as the court shall think fit to order.

Subject to  
same rules as  
in England.

III. And be it enacted, That in every such case of trial or assessment as aforesaid, and in every other case whatsoever of trial by a jury, under the provisions of this Act, where no other mode of proceeding is by this Act specially provided, the jurors and jury, and every assessment or trial by them shall, as far as may be practicable, be subject to the same rules and manner of proceeding as would, in England, be observed in an action at law in the Court of Queen's Bench, or on a trial *à nisi prius*.

Cases of dif-  
ference of opi-  
nion in the  
jury provided  
for.

IV. And be it enacted, That in every trial or assessment under this Act, where the jury shall have remained six hours or upwards in deliberation, if all of them shall not agree as to the verdict to be given, or amount of damages to be assessed, the decision of three-fourths in number of them shall be taken, and entered as the verdict or assessment of all; and if after having remained in the whole twelve hours or upwards in deliberation, three-fourths in number of the jurors shall not concur in any such verdict or assessment, then such jury shall be discharged, and the cause shall or may, without any new process for that purpose, be again set down for trial or assessment, (as the case may be,) either at the same or any subsequent sittings, as the court or presiding judge may think fit to order.

Form & issue  
of writs to  
summon ju-  
rors.

V. And be it enacted, That the form of writs, and precepts, for the return of jurors under this Act may, from time to time, be settled by the said Supreme Court; and the sheriff shall, upon the return of every such writ, or precept, annex a panel thereto, containing the names, places of abode, and additions, of a competent number of jurors, not less than twice, nor more than four times the number of the jurors to be impaneled, and every such writ, or precept, shall be issued to the sheriff, at the least six days, or in cases to be tried on circuit, at the least twelve days

days before the appointed day of trial : Provided always, that for the return of jurors, for the trial of issues, or assessment of damages under the provisions of the first section of this Act, general writs, or precepts only, shall be necessary, which shall be made out and delivered to the sheriff, as the court shall, from time to time, think fit to order : Provided also, that no juror shall be compelled to attend at any sittings for more than three days in succession, unless the presiding judge shall otherwise order.

VI. And be it enacted, That every juror returned under the provisions of this Act, shall be summoned at the least three days, or if his usual place of residence be above ten miles distance from the place of trial, then at the least four days before the appointed day of trial, such days to be reckoned exclusive of the day of service, but inclusive of such day of trial ; and every summons to any such juror, shall be in the form contained in schedule to this Act annexed, marked A, and be signed by such sheriff or his deputy, and be delivered to every such juror, or left at his usual place of abode. <sup>Summoning of jurors.</sup>

VII. Provided always, and be it enacted, That no person shall be summoned as a juror under this Act, whose usual place of residence, shall be above forty miles distance, from the place of trial ; and that every special juror, and every member of the City Council of the City of Sydney, and the Town Council of the Town of Melbourne, and the Treasurer and Town Clerk of the said City of Sydney, and Town of Melbourne, shall be exempted from service upon any common jury other than by his own consent. <sup>Exemption from service.</sup>

VIII. And be it enacted, That at the opening of the court upon any sitting for the trial of any issue under the provisions of this Act, the name, place of abode, and addition of every juror returned for the trial of such issue or issues, written upon a separate piece of card, each piece being as nearly as may be, of equal size, shall, by the sheriff or his deputy, be delivered to the clerk or other ministerial officer of the said court, by whom such pieces of card shall be put together in a box provided for that purpose ; and upon any such issue being called on to be tried, such clerk or officer shall, in open court, draw out the said cards one after another, until twice the number of jurors required to be impaneled shall appear ; and after all causes of challenge allowed shall remain indifferent and approved of, or until the whole of such cards shall be exhausted ; and in case of a sufficient number of the jurors named on such cards not being in attendance, the full number of jurors so directed to be drawn shall be completed by appointment of the sheriff or his deputy, from amongst the bye-standers, being persons returned in the sheriff's book as jurors, either special or common. <sup>Striking jury.</sup>

IX. And be it enacted, That upon twice the number of jurors required to be impaneled being completed, a list of their names shall be delivered by the sheriff or his deputy to the plaintiff, or his attorney, or counsel, by whom one-fourth of the whole number of names contained in such list shall or may be struck therefrom, and the list so reduced shall then be delivered to the defendant, if there present, or his attorney, or counsel, by whom an equal number of names shall or may be also struck therefrom ; and the jurors whose names shall then remain upon such list, or the first four or twelve jurors whose names shall then be thereon, (as the case may be) shall be the jurors for the trial of the issue or issues in question, and be sworn and impaneled accordingly ; and after every such trial, the cards so drawn as aforesaid shall be returned to the box, to be kept with the others remaining undrawn, and so, *toties quoties*, as long as any issue shall remain to be tried. <sup>Impanelling jury.</sup>

X. Provided always, and be it enacted, That where no objection shall be made on behalf of any plaintiff or defendant, it shall be lawful to try any number of different issues with the same jury that shall have been previously drawn for, or have tried any other issue or issues, without having their names returned to the box ; or the court or judge may order the name of any juror or jurors whom the parties may consent to withdraw, or who may be challenged or excused, to be set aside, and another juror or <sup>Trying different issues by the same jury.</sup>

or jurors to be drawn from the box, from the names remaining undrawn, and who shall be subject to the same mode of striking as the original juror or jurors to try the issue or issues with the residue of such original jury, and so, *toties quoties*, as long as any issue shall remain to be tried.

Where damages assessed only.

XI. And be it enacted, That the provisions contained in the three preceding sections, shall be equally in force with respect to all cases in which damages shall be assessed only: Provided that in every such case, where the defendant shall not appear, either in person, or by counsel or attorney, the list of jurors may be reduced on his behalf by the clerk or other officer of the Court.

Allowance to jurors.

XII. And be it enacted, That every juror summoned to attend upon any jury under the provisions of this Act, whose usual place of residence shall be above two miles distance from the place of trial, shall receive from the sheriff or his deputy, as a compensation for his expenses, the sum of five shillings for every day during which he shall be in attendance on the Court in obedience to such summons, whether he shall have actually served upon a jury or not; and if his place of residence be above five miles distance, then an additional sum of fourpence for every mile of such distance coming, and the like sum for returning; and every bye-stander serving upon any jury shall be allowed the sum of five shillings upon each assessment or trial.

Fund for such allowance.

XIII. And in order to form a fund for such payments to jurors, be it enacted, That in every action at law, there shall be paid into the hands of the sheriff, by the plaintiff, on the cause being called on in every, case of assessment of damages, the sum of twenty shillings; and in every case of trial by a jury of four persons, the sum of two pounds; and in every case of trial by a special jury of twelve persons, the sum of six pounds; and in every case of trial by a common jury of twelve persons, the sum of three pounds; which said amounts shall be allowed as costs in the cause; and the same sums, together with the amount of all fines on jurors, shall form a fund in the hands of the sheriff, for paying the expenses of jurors as aforesaid, and be applied to that purpose accordingly.

Special exemption.

XIV. And be it enacted, That it shall be lawful for the Governor, by any order or orders in writing under his hand, or issued through the Colonial Secretary, to be directed and delivered to the sheriff, from time to time, to exempt, either generally or for a limited period, from liability to serve on juries under this Act, public officer or officers whose attendance on such juries shall appear to him to be incompatible with the performance of his or their other public duties, as to such Governor may seem expedient, and every such public officer shall be exempted from service as a juror accordingly; and it shall be lawful at any time for the presiding judge, at any trial or assessment, to exempt from service, either during the sittings, or for any less period, any juror who may shew to him sufficient grounds for such exemption.

Juror not to be challenged for want of qualification. Meaning of certain words in this Act.

XV. And be it enacted, That the want of qualification shall, in no case, be a cause of challenge to any juror.

XVI. And be it enacted, That in all matters and things to be done in the district of Port Phillip, under and by virtue of this Act, the words "Governor," "Supreme Court," "Judge," and "Sheriff," as often as they occur in any of the provisions of this Act, shall be respectively held to mean the "Superintendent," "Supreme Court," "Resident Judge," and "Deputy Sheriff" of the said district of Port Phillip.

ALEX. McLEAY,

Speaker.

*Passed the Legislative Council, this second day of August, one thousand eight hundred and forty-four.* } *In the name, and on the behalf of Her Majesty, I assent to this Act.*

GEORGE GIPPS,

GOVERNOR.

WM. MACPHERSON.

CLERK OF THE COUNCIL.

SCHEDULE

A.D. 1844.

8<sup>o</sup> VICTORIÆ

No. 4.

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SCHEDULE A. REFERRED TO.

To

(naming the juror,)

You are hereby summoned to appear as a Juror in the Supreme Court of New South Wales,  
(or in the Circuit Court as the case may be,) to be holden at \_\_\_\_\_ on \_\_\_\_\_  
the \_\_\_\_\_ day of \_\_\_\_\_ at ten o'clock in the forenoon, and so from day  
to day, until you shall be by the said Court discharged from further attendance, under penalty of  
such fine as by law is in that behalf provided.

Dated this

day of

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Signature of the Sheriff or his Deputy.