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No. 95.

1st Session, 5th Parliament, 18 Victoria, 1854.

BILL.

An Act to repeal the Acts regulating the summoning of Jurors in Lower Canada, and to provide for the Election of Jurors by the Municipal Councils.

Received and Read First time, Monday, 2nd
October, 1854.

Second Reading, Monday, 9th October, 1854.

MR. FELTON.

QUEBEC:

(405)

1854]

BILL.

[No. 95.]

An Act to repeal the Acts regulating the summoning of Jurors in Lower Canada, and to provide for the Election of Jurors by the Municipal Councils.

WHEREAS the Acts regulating the summoning of Jurors in Lower Canada have been found to operate unfavorably, and it is desirable to apply the principle of Election by the Municipal Councils to the appointment of Jurors : Be it therefore enacted, &c., as follows :

Preamble.

I. The Act of the 10th and 11th year of Her Majesty's Reign, chap. 13, and the Act of the 14th and 15th year of Her Majesty's Reign, chap. 89, shall be and are hereby repealed from and after the first day of July next, on which day this Act shall go into effect.

Former Acts repealed.

II. It shall be the duty of the Council of each City, County, or Incorporated Town Municipality throughout Lower Canada, in the month of July next, to prepare two lists of such inhabitants of each parish, township, or ward within their jurisdiction as they shall think well qualified to serve as Grand and Petty Jurors and Jurors in Civil Cases, being persons of good moral character and sound judgment, and free from all legal exceptions.

Municipal Councils to make Lists of Jurors.

III. The Grand Jury List shall contain the names of every member or ex-member of either of the Legislative Bodies, Field Officer of Militia, Justice of the Peace, Physician or Surgeon, Notary Public, Mayor, Councillor and Secretary Treasurer of every City, incorporated Town, or County Council, which the Council making such list may think fit and proper to inscribe thereon, and of such other persons as the said Council shall select to serve as Grand Jurors ; and the said names contained in the said list shall be numerically as near as may be not less than _____ nor more than _____ for every hundred inhabitants of each Parish, Township, or Ward.

Grand Jury List.

Number of names on it.

IV. The Petty Jury List shall contain the names of all such persons as the Councils may think fit and proper to select to serve as Petty Jurymen, but none of the official or professional persons indicated in the next preceding section shall be inscribed thereon ; and the names contained in the said list shall be numerically as near as may be not less than _____ nor more than _____ for every hundred inhabitants of each Parish, Township, or Ward.

Petty Jury List.

Number of names on it.

V. In the month of July of every second year the said list shall be revised by the Councils and such additions made thereto as may be necessary to fill up vacancies therein, and the Councils may remove or add any names to the same : Provided always, that the same numerical proportion of the names thereon to the then population of each Parish, Township, or Ward shall be maintained.

Biennial Revision of Lists.

Names and additions of Jurors to be given.

Transmission to Sheriff.

Mayor, &c, to make the Lists of the Council fail.

And shall be responsible to the Court of Q. B.

Duty of Sheriff if the Lists be not transmitted to him in due time.

Who shall not be Jurors.

Who may be exempted from serving.

Rolls to be made from Lists.

Until the Lists are ready Sheriff to act under repealed Acts.

Order in which Grand Jurors shall be summoned.

VI. In making and revising the said lists, the Councils shall cause the christian and Surname, and Addition of each Juryman to be inserted at full length, with the name of the Parish, Township, or Ward in which he resides, and shall cause the said lists, duly certified by the Mayor and Secretary Treasurer, to be immediately transmitted to the Sheriff of the District within which the Parish, Township, or Ward from which the Jurymen have been selected is situate. 5

VII. If any Council shall neglect to fulfil the duties imposed upon them by the foregoing sections of this Act within the time hereinbefore limited, it shall then become the duty of the Mayor and Secretary Treasurer forthwith to prepare or revise the said lists and to transmit the same to the Sheriff without loss of time; and the said Mayor and Secretary Treasurer shall, in reference to the duties hereby imposed on them, be held to be officers of and responsible to the Court of Queen's Bench, and liable to the same compulsion or punishment for neglect, omission or misfeasance as any 15 other officer of the said Court would be.

VIII. It shall be the duty of the Sheriff of each District to report to any Judge of the Court Queen's Bench at the expiration of the time by this Act prescribed for preparing, revising, or forwarding the said lists, either in term or vacation, the Councils that may have failed to perform the 20 duty assigned to them by this Act, and to pray that the Mayor and Secretary thereof may be ordered to appear and shew cause in vacation or in term why he or they have not fulfilled the same, and if such cause be not shewn to the satisfaction of such Judge, he shall condemn the said Mayor or Secretary Treasurer, or both, to such fine and costs as he may deem expedient 25 and proper, or shall make such other order or orders as in his opinion may conduce to the completion of the said lists.

IX. The following persons shall be incapable of being selected as Jurors, 1st—Practising Lawyers. 2nd—Clergymen of any denomination. 3rd—Judges, Prothonotaries, Clerks, Bailiffs, Constables, Criers, and Tipstuffs. 30 4th—Aliens. 5th—Persons convicted of felony, or condemned to any disgraceful punishment. 6th—Persons over sixty years of age.

X. The following shall be exempt from serving as Jurors without their own consent, but must apply either to the Council naming them or to any Judge, to have their names excluded or removed from the list: 1st. Physi- 35 cians or Surgeons engaged in practice. 2nd. Members of the Legislature during the session thereof. 3rd. Masters of Steamboats, Engineers and Conductors of Railroad Trains. 4th. School Masters engaged in teaching.

XI. It shall be the duty of the Sheriff on receiving the said list from the Councils within his District, to arrange all the names contained in the 40 lists of Grand Jurors in order of surnames on the Grand Jury Roll, and in like manner those on the list of Petty Jurors on the Roll of Petty Jurors, and after having had the same duly certified as the correct original Roll of Grand or Petty Jurors by a Judge of the Court of Queen's Bench, to file the same in his office; and until the Jury Rolls to be prepared under this 45 Act shall be so filed, in any District the Sheriff thereof shall continue to summon the Jurie under the Acts hereby repealed.

XII. In summoning a Grand Jury for any term of the Court of Queen's Bench, or any Superior Criminal Court, the Sheriff shall take the first 50 twenty-four names from the Grand Jury Roll and shall then mark the name of the last summoned person with his initials, and commence with the

name next succeeding in summoning the next Grand Jury, and so on until the whole Roll shall have been gone through, when he shall again begin at the head of the Roll.

XIII. The Petty Jury Roll shall be used for the summoning of Petty Jurors for all the Criminal Courts and of Grand and Petty Jurors for the Quarter Sessions indiscriminately; and in summoning Grand and Petty Jurors for the Sessions, or Petty Jurors for the other Criminal Courts, the Sheriff shall take the requisite number of names from the head of the Petty Jury Roll, marking the name of the last summoned person, and for the next Grand or Petty Jury he shall begin with the next in succession on the Petty Jury Roll, and thus shall go through the same and again begin at the head thereof in the manner above provided respecting the Grand Jury Roll: Provided that in the Districts of Quebec and Montreal half the Jurors summoned shall be persons speaking the English, and half persons speaking the French language, to be selected by the Sheriff in the order they stand in the Rolls.

For what purposes the Petty Jurors List shall be used.

Order of Summoning.

Proviso.

XIV. The Sheriffs shall summon sixty Jurors to serve as Petty Jurors for each term of each Superior Criminal Court, and seventy-two Jurors for each Quarter Sessions, of whom the first twenty-four in their order on the Roll shall serve as the Grand Jury of such Sessions. Provided that any Judge of the Court of Queen's Bench may, by an order in writing, at any time require the Sheriff to summon the same, or any greater or lesser number of Petty Jurors for the first or for any subsequent day of any Criminal Court or Courts in general in any District; and any Chairman of any Court of Quarter Sessions may make a like order or orders respecting the Court over which he presides.

Number to be summoned, &c.

Proviso.

Judges may order what number shall be summoned for the first day, &c.

XV. The Councils of the several Cities, Counties, and incorporated Towns, may and shall make such By-Laws and Rules for the payment of all Grand and Petty Jurors, whose names shall have been returned by them respectively to the Sheriff, and may lay, assess and levy such sums of money, rates, or taxes, upon the inhabitants in their respective jurisdictions as they may think proper and sufficient for that purpose: Provided always, that such rate or assessment shall be wholly distinct from and in addition to any other rates or assessment now authorized by Law: and provided also that no greater allowance to each Juror shall be made than per mile going and returning from and to his residence, and for each day of necessary absence from home in attending Court.

Municipal Councils to provide for payment of Jurors, and lay on taxes for that purpose.

Proviso: such taxes to be imposed separately from others. Pay limited.

XVI. Jurors in criminal matters shall be served at least ten days before that on which they are enjoined to attend, by leaving a copy of the summons, certified by the Sheriff or Deputy Sheriff, with them personally, or at their domicile with some grown person belonging thereto.

Summoning Jurors in Criminal matters.

XVII. The first twelve Petty Jurors who, being summoned and called in the order they stand on the Petty Jury Roll, shall answer to their names, and not be legally challenged, shall form the first trial Jury; and the next twelve Jurors, summoned and called in the same order, and answering, and not being legally challenged, shall form the next Jury, and so on through the whole number summoned; and then beginning again at the first Juror in his order on the Roll and then summoned; those who may be then engaged in trying any case being omitted: Provided always, that if the prosecuting officer and party accused, both consent, all the Jurors speaking only the English, or all the Jurors speaking only the French language may, in any trial, be passed over as if their names were not on the Roll.

Formation of Trial Juries.

Proviso: as to language.

Provision
if party ar-
raigned de-
mands half
French or half
English
speaking
Jurors.

XVIII. Any party who, on arraignment, demands a Jury composed for the one half of persons skilled in the language of his defence, (if either English or French) shall be entitled to take as part of the trial Jury the first six of the Jurors summoned, who appearing and not being lawfully challenged, are found by the Court to be so skilled: and if such skilled persons cannot be found among those summoned, another day shall be fixed for trial, and the Sheriff shall summon such additional number of Jurors so skilled as the Court may order taken from those next in succession on the Roll of Petty Jurors. 5

Peremptory
challenges.

XIX. In all cases for treason or capital felony the Crown and the accused may each challenge twenty Jurors peremptorily; and in trials for felonies not capital, the Crown and the accused shall be limited to ten peremptory challenges each; and in all challenges for cause, the Court on legal proof of the facts, shall decide upon the sufficiency of the cause or ground of challenge without the intervention of Triers or Jurors. 10 15

Challenges for
cause, now to
be decided.

Juries in Civil Cases.

Drawing
Jurors.

XX. The names of all Juries in civil matters shall be drawn from the Grand and Petty Jury Rolls in the following manner:—Upon service on the Sheriff of any order of any Civil Court within his jurisdiction ordering him to summon a Jury, the Sheriff shall, in the presence of any Judge of any Civil Court, and in the presence of the Attorneys, or of the parties Plaintiff and Defendant, or of their Agents, or in their absence after due notice, place in a box prepared for the purpose, pieces of card of the same size and shape, on each of which shall be inscribed the name of each one of the several Grand and Petty Jurors, who appear by the said Rolls to reside in the Circuit within the limits whereof the said Jury trial is ordered to be had, and shall then draw therefrom forty-eight names, and inscribe them in the order of drawing on a list, from which each of the parties shall then strike twelve names; the remaining twenty-four persons shall be summoned by the Sheriff at least four days before the trial and the first twelve thereof who answer to their names shall be the Jury sworn to hear and determine the matter at issue. 20 25 30

Jurors
summoned.
Jurors
serving.

Jurors in
Commercial
cases.

XXI. In suits respecting commercial matters between merchants, traders, or trading corporations, or in which merchants, traders, or trading corporations are a party, the Court may order, on the demand of either party, that one half, or by consent of both parties, that the whole of the Jury, sworn be composed of merchants and traders: and in any civil suit, the Court may order on demand of either party, that one half of the Jurors sworn shall be persons speaking the English, and one half persons speaking the French language, or by the consent of both parties, that the whole of the Jury sworn be composed exclusively of persons speaking the English or of persons speaking the French language. 35 40

Juries, &c.,
medietate.

What Jurors
shall be sum-
moned in such
cases.

XXII. The Sheriff when ordered to summon a Jury composed for the one half of merchants and traders shall draw from the box forty-eight names, and if they do not consist for the one half of merchants and traders, he shall continue drawing therefrom until the names of twenty-four merchants and traders shall have been added to the twenty-four first drawn; of these names of merchants or traders each party shall strike six, and also of the first drawn twenty-four other names each party shall strike six; the remaining twenty-four shall be summoned by the Sheriff, and at the trial the first six Jurors being merchants or traders and the first six other Jurors, called in order and appearing, shall form the trial Jury. 45 50

- XXIII. When the Sheriff is ordered to summon a Jury *de medietate lingue* of French and English, he shall draw from the box the first twenty-four names of persons speaking the English language and twenty-four of persons speaking the French language, and, passing over such as may be supernumerary in either case, he shall inscribe them on the list. Each party shall be allowed to strike six from those speaking French and six from those speaking English, and the Sheriff shall summon the remainder, and at the trial, the first drawn six persons speaking the French and the first drawn six speaking the English language shall form the trial Jury.
- 10 XXIV. When the Sheriff is ordered to summon a whole Jury of merchants or traders, or of persons speaking all the same language, he shall continue to draw, rejecting the unqualified supernumeraries, until the list contains forty-eight names of persons, all being merchants or traders, or all speaking the required language, as the case may be.
- 15 XXV. If the Jurors summoned do not appear at any civil trial in numbers so that twelve fit and qualified Jurors can be sworn in, the Court or presiding Judge may, with the consent of the parties, but not otherwise, order the Sheriff to take from those present as many fit and qualified persons as may be required to complete the number.
- 20 XXVI. Every Juror before giving a verdict shall be entitled to receive shillings for his services as said Juror.
- XXVII. Aliens shall be Jurors only when a Jury *de medietate lingue* other than French and English shall be allowed.
- 25 XXVIII. When the capacity assigned to or assumed by any party to a suit is put in issue, the Court shall determine the same before submitting the issues on the merits to a Jury.
- 30 XXIX. No Jury trial shall be proceeded with until the Court or two Judges thereof shall have defined the questions of fact to be inquired into by the Jury, who shall be required to return a special verdict in relation thereto.
- 35 XXX. No Bill of Exception in relation to any Jury trial shall be admitted; but the presiding Judge shall make or cause to be made under his supervision, full notes of the verbal testimony at the trial, and of all exceptions and objections thereat, which shall be read at the oral request of any party to the suit at any time during or immediately after the trial, in order that any omission soever may be supplied or corrected.
- 40 XXXI. A copy of such notes, made by the Officer of the Court, and signed by the Judge, shall be filed of record in the cause; and, in case of appeal from the final judgment, shall be transmitted to the Court of Appeals as forming a true record of the evidence and objections at the trial.
- XXXII. All civil suits, in which by Law Jury trials can be had and shall be demanded, shall be tried by Juries selected as in this Act provided for civil cases, and such Juries shall be held and considered as special Juries.
- 45 XXXIII. Every Sheriff, Deputy Sheriff, or Sheriff's Officer, Mayor or Acting Mayor, or Secretary Treasurer of any City, County or incorporated Town in Lower Canada, who shall wilfully or negligently offend against
- When a Jury *de medietate* is ordered.
- When the Jury is to be all of one language.
- Talesmen by consent of parties only.
- Fee before Verdict.
- When only Aliens may be Jurors.
- Capacity of party: in issue to be first decided.
- Court to define the questions of fact Jury are to determine.
- Bills of Exception abolished. Judge to make full notes, &c.
- Copy of notes to be filed—and for what purpose to serve.
- All Jurors on Civil trials to be under this Act and deemed Special Jurors. Penalty for neglecting duties assign-

ed by this Act: and how recoverable. any of the provisions of this Act, shall incur a penalty of not less than pounds nor more than pounds, which penalty may be imposed by the Court of which he is or is by this Act declared to be an Officer, or by any Judge to whom complaint of such omission or neglect shall be made by any person, or may be sued for and recovered by any party for his own benefit, before any Court having civil jurisdiction, to the amount of the penalty: and a like penalty for every day any such officer shall continue to neglect performing any duty by this act imposed—such penalty to be recoverable in the same manner. 5

Penalty on Jurors summoned and not serving. XXXIV. Every person summoned to serve as a Juror who shall refuse or neglect so to serve, shall incur a penalty not exceeding *five* pounds, and if upon a rule to shew cause why such penalty should not be levied, no lawful or reasonable excuse be assigned for such neglect or omission, such penalty shall, by an order of Court to the Sheriff, be levied with costs on the goods and chattels of the offending party; who may in default of payment, be imprisoned for not more than fifteen days: which penalty or punishment may be mitigated by the Court on good cause being shewn. 10 15

How levied. Short Title. XXXV. This Act may be cited and referred to in any pleading indictment or other proceeding as "*The Lower Canada Jury Act.*"