



PROCEEDINGS

OF THE

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**Legislative Council of Upper Canada,**

ON THE

*BILL SENT UP FROM THE HOUSE OF ASSEMBLY,*

ENTITLED,

AN ACT TO AMEND THE JURY LAWS OF THIS PROVINCE.

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PRINTED BY ORDER OF THE HONORABLE THE LEGISLATIVE COUNCIL.

R. STANTON, Printer to the KING'S MOST EXCELLENT MAJESTY.

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## PROCEEDINGS, & c.

THURSDAY, 25TH FEBRUARY, 1836.

A Deputation from the Commons House of Assembly brought up a Bill, to which they requested the concurrence of this House, and then withdrew.

The Honorable the Speaker reported to the House, that a Deputation from the Commons House of Assembly had brought up a Bill, entitled "An Act to amend the Jury Laws of this Province."

The said Bill was then read, and it was—

Ordered, That it be read a second time to-morrow.

FRIDAY, 26TH FEBRUARY, 1836.

Pursuant to the order of the day, the Bill entitled "An Act to amend the Jury Laws of this Province," was read a second time, and it was—

Ordered, That the House be put into a Committee of the whole on Monday next, to take the same into consideration.

MONDAY, 29TH FEBRUARY, 1836.

Pursuant to the order of the day, the House was put into a Committee of the whole, upon the Bill entitled "An Act to amend the Jury Laws of this Province."

The Honorable Mr. Elmsley took the Chair.

After some time the House resumed.

The Chairman reported that the Committee had taken the said Bill into consideration, and recom-

mended that it be referred to a Select Committee to report thereon by amendment or otherwise.

Ordered, That the Report be received, and

Ordered, That the said Bill be referred to a Select Committee to report thereon by amendment or otherwise, and

Ordered, That the Honorable Messieurs Jones, Gordon, Morris, and Macaulay do compose the same for that purpose.

TUESDAY, 29TH MARCH, 1836.

The Honorable Mr. Gordon, from the Select Committee to whom was referred the Bill entitled "An Act to amend the Jury Laws of this Province," presented their Report.

Ordered, That it be received, and

The same was then read by the Clerk as follows :

THE SELECT COMMITTEE to whom was referred the Bill sent up from the House of Assembly, entitled "An Act to amend the Jury Laws of this Province," beg leave to

#### REPORT :

THAT they have examined the Bill, and find that it is intended to introduce a great and somewhat extraordinary change in the administration of justice.

It is proposed, by this Bill, to alter the mode by which Grand and Petit Jurors, and Special Jurors are now selected or returned, as well in the

Criminal as in the Civil Courts ; and instead of it, to have recourse to a system which being, as your Committee believes, without precedent in the British Dominions, is in their opinion unsound in principle, and would be unsatisfactory in practice.

But as there is perhaps none of our institutions with respect to which any proposed change should be more deliberately and cautiously weighed, your Committee think it important that they should not content themselves with expressing, in general terms, their unfavourable opinion of this proposition, but that they should bring the subject under the notice of your Honorable House in such a manner as may enable you to judge of the grounds upon which this opinion is founded.

For this purpose it will be necessary first to state in what manner the Laws of this Province now provide for the return of Grand Jurors, Petit Jurors, and Special Jurors. Your Committee will then assign their reasons for the opinion that the changes proposed by this Bill, instead of being improvements, would be injurious and inconvenient ; and while this important subject is under consideration, your Committee may venture upon the ulterior enquiry, whether it would be desirable to introduce any alterations in the existing Laws.

1st—Grand Juries in this Province are returned precisely as in England ; we have no local law on the subject ; their qualifications, their powers, the mode in which they are summoned, their duties and manner of performing them, are all taken from the Law of England.



Nor has the usage here varied in any one respect from the Law and practice prevailing in the Mother Country.

The Sheriff selects twenty-four from among the persons of the greatest intelligence, most considerable property and established character in his District. The greater number usually, (perhaps always,) are Justices of the Peace; Merchants and respectable Farmers are also returned, though not in the Commission of the Peace, when their estimation in society makes them eligible for the duty.

The selection ought to be made, and we believe it to be made, in fact, with a regard not to any single qualification, so much as to the general standing and repute of the several gentlemen in the community, which depends upon a combined consideration of their property, character, intelligence and occupation in life. Of course, no person to whom a selection upon such principles might be committed, could hope to exercise the power in such a manner as to convince all men that he has made the best possible choice; but we believe the Grand Juries in this country to be in general highly respectable, and as well selected as circumstances will admit; and we have never perceived that the Law and usage in that respect have failed to give general satisfaction.

2ndly—Petit Jurors, or Jurors returned for the trial of civil and criminal cases are selected and impannelled according to the provisions of an early Statute of this Province.

It seems to have been thought (and apparently with reason,) that the Jury *to try* formed so very important a part of the system of administering justice, that it was necessary for the Legislature to apply their particular attention to the framing regulations adapted to the circumstances of the Province.

Accordingly in the year 1794, when the foundations were laid of our present system of Jurisprudence, and in the same Session of the Legislature in which the Court of King's Bench was erected, an Act was passed "*for the regulation of Juries,*" 34th Geo. III. chap. 1st, which was framed by the late Mr. Osgoode, then Chief Justice of the Province, and a learned member of the English Bar. The system which was then established, has remained to this time unaltered in its principal features. It is simple, and so far as your Committee have had an opportunity of observing, has been generally regarded as satisfactory.

This is said with reference to the impressions which appear to prevail throughout the country, in respect to its practical operation, without adverting to the repeated attempts made in the Legislature to pass such an Act as that which is now referred to us.

This Statute of 1794 provides for the return of Petit Jurors in the following manner:—

By a Provincial Statute which had before been passed, certain rates or taxes were directed to be imposed upon the inhabitant householders of every Township in the Province, to defray the charge within each District of erecting and maintaining gaols, and many other public expences of a local nature. These

taxes are assessed according to a roll, which is made out in each year by Township Assessors, and compiled from an actual inspection and visitation made by such Assessors.

They return to the Clerk of the Peace the roll which they have thus compiled, in which is stated in separate columns the name of each inhabitant householder; the number of the lot of land on which he resides; and his property, real and personal, liable to assessment.

The Clerk of the Peace has these rolls delivered to him, in order that he may be enabled from them to instruct the Collectors of Townships what sums they are to raise by assessment from each inhabitant.

The direction of the Jury Act is, that every Clerk of the Peace shall also, in each year, furnish the Sheriff of his District with a list of the inhabitant householders transcribed from the Assessor's rolls. A penalty is imposed upon the Clerk of the Peace if he shall neglect this duty.

All persons returned on these lists, and consequently all inhabitant householders, are to be held and taken as qualified to serve on Juries, and it is expressly provided that no others shall be held to be qualified. Persons more than sixty years old are exempt.

With respect to the mode of selecting the Juries the Statute says merely "that the Sheriff, or his under Sheriff, shall return Juries out of these lists from time to time, as he shall be commanded; and that no Sheriff or Coroner shall return any person to serve on any Jury whose name shall not appear in the said lists."

No persons are to be returned as Jurors more frequently than for one Court in each year, on pain of fine to be imposed on the Sheriff.

The Statute then contains various other provisions for guarding against abuse in summoning the same persons too frequently, or in excusing any one for reward, for punishing those who being summoned fail to attend, and for remunerating Jurors who serve in civil cases.

The number of Jurors to be summoned to attend at each Court of Assize and Nisi Prius is prescribed, as well as the mode of summoning them, and of making return to the Jury process.

The Act next provides for the manner of selecting from the whole pannel the twelve who are to try the case, which is by the Clerk of the Court drawing by lot twelve names from a box or glass, which contains the name of every Juror written upon a separate piece of paper.

Provision is also made for affording the Jury a view in cases where it may be proper.

The very few alterations which have been made in this Statute to the present time, so far as it respects Petit Jurors, do not affect their qualifications, or the mode of returning, summoning or selecting them; but merely dispense with the necessity of a separate Jury process in each case, and provide for an adequate pannel being returned, at the times prescribed, for the trial of all issues at the several Courts, without any distinct writ for that purpose.

Upon this footing, therefore, the law now stands in this Province, so far as it concerns the return of common Juries for the trial of causes; that is to say:

1st—All *Housholders* are eligible, whose names are on the assessment lists, and none others are.

2nd—Out of these lists, which include all householders, the Sheriff, (or where that is proper, the Coroner) is to return a general pannel of Jurors, to serve at each Court of Assize and Nisi Prius. Persons over sixty years of age being exempt.

At the time this Statute was passed, the British Statute 3rd Geo. II. chap. 25, was still in force in England; and it continued to be the Law, in respect to the returning and summoning of Petit Jurors, until the passing of Mr. Peel's new Jury Act 6th Geo. IV. chap. 50.

As the Law stood in England before this new Jury Act (4th and 5th William and Mary, chap. 24, sec. 15, and 3rd Geo. II. chap. 28, sec. 18.) the qualification for Petit Jurors was freehold property in land or rents within the county, to the value of £10 by the year, or property of the yearly value of £20 or upwards held by lease for five hundred years certain; or for ninety-nine years or any other term determinable on one or more life or lives; provision being made for supplying the Sheriff with lists of all persons possessing either of these qualifications; and from the names on those lists, and no others, he was to take his Jurors.

The mode of selection, namely, by the Sheriff, and the form of summoning, returning, and impanelling Juries by the Law of England, as it then stood, were taken as the guide by the Legislature of this Province when they passed our Jury Act, the only substantial difference being in the qualification, and the effect of that difference being to open to the Sheriffs here a much wider field for selection, than was permitted to them in England. In other respects, our Statute follows very closely the 3rd Geo. II. chap. 25; and most of its clauses, indeed, are copied from it, with very trifling variations.

In England they seem to have been content to retain this system, with which our own so closely agreed, for more than thirty years after our Legislature had taken it as their guide: and when (in 1825) Mr. Peel introduced his Act, (6th Geo. IV. chap. 50,) for consolidating and amending the laws relative to Jurors and Juries, it was no part of his plan to make any change in the mode of selecting the Jurors from among those qualified, nor has any change in that respect been ever made, or so far as we know proposed. On the contrary, the power of selection is still left with the Sheriff.

The objects of that Statute so far as it concerns Juries were—

1st.—To repeal all former laws and embody all the provisions on the subject in one Act.

2nd.—To increase the number of persons qualified to serve on Juries.

3rd.—To ensure all persons qualified being returned to the Sheriff, and the omission of all such as may be disqualified or exempt.

The qualification as to *Freeholders* is retained as it stood before; namely—land or rents of the annual value of £10. As to *Leasholders*, this important change is made, that all those are embraced who hold for twenty-out years or more, at an annual rent of £20. And moreover, *Householders*, (merely) are qualified, provided they are rated or assessed to the poor on a value of not less than £20, or occupy a house containing not less than fifteen windows.

After providing by many enactments for the furnishing to the Sheriff accurate returns of all persons coming within the above classes, the 14th section of the new British Jury Act directs “that every Sheriff or Coroner, upon the receipt of every writ of *venire facias*, and precept for the return of Jurors, shall return the names of men contained in the Jurors’ book for the current year, and no others”—just as our existing law provides that the Sheriff shall return the names of persons contained in the lists of assessed householders furnished by the Clerks of the Peace, and no others: so that in England, as in this Province, it is the case to this day, that to the Sheriff is committed the trust and duty of returning a sufficient number of good and lawful men for the trial of causes, with this restriction however, that he must take them from among the class of persons qualified by law; and the most remarkable difference between the English Jury Law and ours, is, that the qualification

in England is higher, and does not embrace all householders.

3rdly.—Special Jurors are in this Province returned according to the provisions of our Statute 48th Geo. III. chap. 13, which has remained without alteration since it was passed.

That Act gives to His Majesty, or to any prosecutor or defendant, in any case of misdemeanour, and also to the plaintiff or defendant in any action whatever, the right to have a Special Jury struck for the trial, without any motion in Court.

The persons qualified to be Special Jurors, are those who are rated on the assessment lists for property of the value of £200. The Sheriff is furnished by the Clerk of the Peace with lists of the persons so qualified, and on the day appointed for striking the Special Jury, the parties or their Attornies attend at his office. Out of the whole number of persons qualified the names of *forty* are drawn by lot; this number is reduced to *sixteen*, by each party striking off twelve alternately. The sixteen are summoned, and from them the twelve first called are taken for the Jury.

The costs are to be borne by the party requiring the Special Jury; unless the Judge shall certify at the trial that it was a cause proper to be tried by such Jury.

In England the persons qualified to be on Special Juries, are such as are described in the list of Jurors as an Esquire, or person of higher degree, or as a Banker or Merchant.



From these classes forty-eight names are to be drawn by lot, and the number is reduced to twenty-four, by each party striking off twelve alternately.

The twenty-four that remain are summoned, and twelve of these are impannelled for the trial.

From this review it will be seen that our Law, as it regards Grand Juries, Petit Juries, and Special Juries, very closely resembles the Law of England in its present improved state; the only substantial differences being in the respective qualifications of Petit Jurors, and Special Jurors, which in England are expressly higher as to common or Petit Jurors, and virtually higher as to Special Jurors.

It is not the object, however, of the Bill sent up from the Assembly to raise the standard of qualification in any case, and thereby to make our Law more perfectly resemble the Jury Law of England.

Its object is to introduce a principle wholly new in this country, and entirely without precedent in England, or as we believe in any of the British Dominions.

We proceed now to state in substance the provisions of this Bill which has been referred to us, and for what reasons we consider them highly inexpedient.

It is proposed that the Commissioners of Townships for superintending the highways, the two Assessors, the Collector of Taxes, and the Town Clerk, all of them Officers annually elected at Township Meetings, for local purposes wholly distinct from the administration of Justice, shall choose from among all the male inhabitants of the Township, between the

ages of twenty-one and sixty, a certain number prescribed in the Act, being in proportion to the whole population in each Township; and from the persons so selected by these officers, and no others, all Grand Jurors, Petit Jurors, and Special Jurors, are to be taken for that year. No other qualification than their being male inhabitants of the Townships, is to be required, for Jurors of any description; and all who are returned on the lists as selected, are to be held and taken as qualified. They need not be either freeholders, leaseholders, or even householders.

Whenever it may become necessary to summon Jurymen to attend a Civil or Criminal Court, the requisite number is to be drawn by lot from among these selected inhabitants of the several Townships. The same course is to be resorted to for returning Grand Juries; and with respect to Special Juries, each party is to choose twelve from among the selected inhabitants of the several Townships, and from these, eight are to be struck off by the parties alternately: But there are to be no Special Juries allowed, except in certain *civil actions between subject and subject*, where knowledge of commercial transactions, or skill in some art or science, is required.

These are the outlines of the Bill; and it will be perceived that by passing such a measure, the constitution of Juries would be placed upon a footing altogether new.

The inducement to the change, is to obviate this apparent objection to the existing law—that it places it within the power of an individual, (namely, the

Sheriff) to exercise a direct influence over the administration of Justice, by returning upon Juries such persons only as he approves of. This power, it may be said, may be exercised in a corrupt manner, to serve political purposes in which the Sheriff may be engaged from interest, or inclination, or to advance the private ends of others.

It must certainly be admitted, that a system would approach nearer to perfection, in theory at least, in which all ground for an objection of this nature might be avoided. But it happens in most arrangements of this kind, that absolute perfection is not to be attained; and we must be content with that system which combines the greatest advantages, while it admits the fewest evils.

Either resort must be had to chance alone, in the selecting Jurors from the mass of a population; or a discretion must be reposed in some one or more persons, in order that the qualifications of good character, and intelligence, may be in some measure secured.

It will be recollected by the House, that in former Sessions the Legislative Council has been requested to concur in a bill sent from the Assembly, which was framed upon the first of these principles, and which provided that the required number of Jurors, for the several Courts, should be *drawn by lot*, from the whole number of persons qualified residing within the District.

The objection to such a system were obvious upon a moment's reflection.

When a person is put upon his trial for an offence which may affect his life or liberty, or when he is concerned in a civil action upon which his character or fortune may depend, the law contemplates, and the security of life, liberty and property, demands, that the facts at issue should be pronounced upon by men of at least ordinary intelligence, and decent character. In the old and expressive language of the law, the Jury should be composed of "*good and lawful men.*"

By attending merely to the legal qualifications, such as property and age, "*lawful men,*" that is, persons who are in point of law eligible, may with certainty be returned; but to ensure the other requisite of the law, namely, that they shall be "*good men,*" that is, men of reputable habits and honest characters, and possessing a reasonable degree of intelligence to direct their judgment, some guide more satisfactory than chance must be resorted to for making the selection. There must be a discretion exercised: without it the Trial by Jury would soon fall into disrepute.

Men of grossly immoral and intemperate habits, reprobates in their lives and conversations, notorious gamblers or swindlers, grossly offensive in their demeanour, persons whom none of their respectable neighbours would willingly associate with, or would trust in any particular, or even admit into their service, would find their way into the Jury box promiscuously with others, and so would men of the weakest intellect, and most perverted understandings—open scoffers at religion—men whom no one that respected

his own character could think of selecting as fit to decide upon the lives and fortunes of others.

Further consideration indeed seems to have convinced the House of Assembly, that such a system would form any thing but a desirable substitute for that which is at present in use, and under which we are in the constant habit of seeing honest, intelligent, respectable yeomen, and intelligent and upright merchants and tradesmen impannelled, to decide upon the interests of their fellow-subjects.

Abandoning the idea of such an alteration in our Jury law, the Assembly now propose, (as they have done before in several recent Sessions,) the system of selecting Jurors by the choice of certain subordinate officers unconnected with the administration of justice, who are themselves annually elected at Township meetings, by the voice of the people at large.

The scheme as it appears to us is liable to these decisive objections :

1st—It is introducing the principle of popular election into the constitution of Juries, which is an innovation of a kind dangerous to the peace and welfare of the community, and not sanctioned, so far as we know, by any experiment in a country governed by English law. The local officers who are to make the choice are themselves to be annually chosen by the mass of the people :—admitting that no stipulation should be made with those officers beforehand, as to the manner in which the pannels of Juries should be composed for the year ; still there can be little doubt that active means would in many cases be used to

influence the choice afterwards; but it is clear that nothing would be easier or more likely to happen than the framing before the election of officers, such a list of Jurors as the majority of people in a Township, or a few busy persons who might sway the majority, would approve of and desire.

This list might, and in many cases, would be advanced as a test; and no persons would be chosen officers who had not first pledged themselves to support a certain Jury ticket. In all free countries party politics occasionally create much excitement; at other times religious differences, or questions of purely local interest, and even the contests and pretensions of individuals, will divide a community into parties; and the condition of a country would be miserable indeed, in which the majority (whatever be the ground of division,) could exclude the minority from all share in administering the laws.

To say nothing of occurrences which might be adverted to in the shorter history of our own country, we have seen society in a neighbouring State so divided into parties, as for instance into *Masons* and *Anti-Masons*, *Abolitionists* and *Anti-Abolitionists*, that the ground of difference discovers itself in every public movement, influences elections and appointments, and pervades the whole social system. In such a state of the public mind, a trial of strength is eagerly sought upon every occasion which can afford the opportunity, and there can be no assurance that, in the desire to make the ascendancy of their party as triumphant as possible, the majority would not enforce their exclu-

sive test as rigorously in the selection of Jurors as in the choice of the officers who are to nominate them. They would have it in their power to do so, and no one could be certain that the power would not be exerted.

In a country having a free Constitution, no abuse could be practised by the Executive departments, so oppressive and injurious, and at the same time so difficult to resist, as that to which a great portion of the community might be subjected under such a system. No public officer responsible to his Sovereign and to the laws, and retaining a respect for his own character, dare commit the injustice which an irresponsible majority of a large popular meeting might be found willing to lend themselves to, under excited feelings, or at the persuasion of artful and unprincipled leaders.

In short, upon the plan proposed, the administration of justice, both in the civil and criminal departments, would be made to depend upon a popular election, in which political excitement and the artifices of vindictive or designing men would have their influence, as in other cases, and in other countries.

The party numerically strongest would, in times of excitement, elect Township Officers who would adopt prescribed Jury lists; and whatever prosecutions, public or private, might spring out of the contests of the time, such as indictments for riots, or even murder, batteries, libels, &c. must be submitted to Juries elected by the partizans of one side, to the total exclusion of others.

This might become in practice a tyranny beyond the utmost effort of any single despot. The safety and happiness of the people is best protected against such evils, by a firm and constant adherence to the ancient principle of our law, which bids us look to the King as the fountain of justice, and to receive its administration through his officers ; and we are persuaded that a more unwise departure from the genius of our Constitution cannot be admitted, than the introduction of the elective principle into the institution of Trial by Jury.

The single consideration that upon the plan which this Bill proposes, it would be publicly known what men alone of all the inhabitants of a District, must throughout the year dispose of every cause, criminal or civil, is sufficient in the view of your Committee, to shew the danger of such a system ; since it is manifest what an opportunity and what temptations would be thereby afforded to suitors and their friends, to infuse into these chosen individuals the opinions which they would desire them to entertain.

It would not be very surprising indeed to see public meetings called, in each Township, of this selected portion of the inhabitants, in order to instruct them in their duty, before they could hear the evidence, and the objections which might in consequence be fairly urged to individual Jurymen, on the ground of prejudice, and expression of previous opinions, (though they might afford some security to the suitors,) might be found very embarrassing to the business of the Courts.



Your Committee might enforce this opinion which they have formed respecting this Bill by many additional arguments ; but as the House have on former occasions manifested no inclination in favour of this measure which appears to them so exceptionable, they do not believe that it can be necessary to discuss the principle farther, nor to do more than notice shortly the other objections to the Bill, which follow :

2nd—It is proposed that the officers who are to select Jurors of every description shall be the Commissioners of Townships, whose chief duty is to superintend the making of roads, the two Assessors, the Collector of Taxes, and the Town Clerk. With respect to the Commissioners, who are to be three in number, the office which they hold has only been created by a very recent Statute, which will expire unless it be renewed within four years ; and the wisdom of the provisions respecting them, seem to be so very generally questioned, that there is, (to say the least,) no certainty that these officers will be continued.

The Assessors, Collector, and Town Clerk are all very subordinate officers, annually elected at Township meetings for purposes wholly foreign to the administration of justice. The only one of the four likely to be above the most ordinary level for intelligence and respectability, is the Town Clerk, who is commonly much below the rank that Grand Jurors usually occupy in society. He may be over-ruled in his choice of Jurors, and then, if there shall be no such officers as Commissioners, the Assessors and Collectors, being the majority, will appoint. It is just certain that these

persons will be able to read and write, and nothing more ; for they are in fact of the ordinary description of Petit Jurymen, and yet it is proposed to vest in them the selection not only of Petit Jurors, but of Grand Jurors and Special Jurors.

Moreover, there is no security that these subordinate local officers may not be men of rather inferior character ; and not being officers of any Court, they would not, as your Committee apprehend, be subject, like the Sheriff or his deputies, to the summary punishment and controul of any Court, if they should corruptly abuse this most delicate and important trust.

It seems to your Committee a very improvident arrangement, which would require no qualification whatever even for Grand or Special Jurors, except the mere will of three or four men in no responsible station, very possibly illiterate, and probably unfit themselves for the duties which they alone are to select others to discharge ; and which would give these men living in the Township, among the inhabitants, connected with or friendly to some, and opposed to others, the unrestrained power to exempt whom they please, and to send whom they please.

3rd—It appears to your Committee decidedly objectionable that not even the qualification of being a householder is required by this Bill, for according to the 7th clause, all inhabitants returned on the selected lists shall be held and taken as qualified ; and though by the 10th clause parties are to be allowed their challenges or objections, that must be taken to mean challenges for some particular cause, arising

from relation to the parties or to the suit, and not for any general disqualification, because all are expressly to be held legally qualified, whom the Assessors, &c. may select.

A Grand Juror or Special Juror, therefore, might be a day labourer, without education and without property, and so far as this Bill is concerned he might be subject to various other objections which according to the law of England, ought to disqualify him from serving even upon common Juries.

4th—Special Juries by this Bill are not to be allowed, except in certain civil actions, so that the King prosecuting in informations for debts, or penalties, or by indictment for misdemeanours, is not to have the privilege which his subjects have, but must abide by the verdicts of Jurors returned through a popular election. The effect of this when the revenue laws are to be enforced, public tumults to be suppressed, or combinations put down which may embrace numerous classes of individuals, might not be found consistent with the stability of Government, the peace of society, or the pure administration of justice.

Moreover, Special Jurymen are not to be taken, as they are now taken in this Province, by lot from among all persons in the District possessing the superior qualification required by the Statute of 1803; but according to this Bill they need have no qualification: they are only to be taken from such persons as the Assessors, &c. shall choose to inscribe on their lists of Jurors, and the 14th clause of the Bill is so framed that when a person finds it necessary to bring an action

for punishing a libeller or slanderer, or trespasser, or when he is driven to defend himself against such an action, however vindictive it may be, he cannot have a Special Jury in any such case. There would, consequently, be no protection under such a law against a partial or indiscreet nomination of Jurymen.

As the law is now in this Province, either party prosecuting or defending may have a Special Jury, to be chosen by lot from among persons assessed to the value of £200. If he should be led by any cause to apprehend that the common Jury would be partial or incompetent, he can at present have such a Special Jury of right.

The mode also of striking a Special Jury, according to this Bill, (in the few cases in which it is allowed,) seems to your Committee to be singular; and liable to very obvious objections, since the plaintiff or defendant in naming out of the whole list such twelve Jurymen as he prefers, may choose persons of whose opinions in regard to the merits of his cause he may have a previous knowledge, while his opponent may be ignorant of this unfairness.

Moreover, the party desiring a Special Jury is in all cases to pay the costs, a provision which in some cases would not be reasonable.

5th—The inconvenience of a law like the present would be great in this respect, viz:—

That the forty-eight common or Petit Jurors to be summoned for each Assize must be taken by lot out of the inhabitants of perhaps twenty Townships,

and in some Districts of many more. The expense and trouble of summoning them individually from such remote and detached situations, would be great ; but it is, nevertheless, made the duty of the Sheriff to do this, though he receives no salary, and is apparently to have no additional remuneration.

Your Committee will not pursue further their examination into the details of the Bill. For the reasons which they have stated, and for others which it is unnecessary to enumerate, they do not recommend its adoption. If they had approved in any degree of the principal feature of the Bill, they would have suggested such alterations in some of the provisions as might have obviated several objections, which they have noticed ;

But they have not considered it useful to attempt any amendment.

In regard to the law as it now stands, it is simple, and confined chiefly to one Statute, which is carefully framed, and not difficult to be understood or carried into effect.

It is unquestionably an apparent objection to the present Jury law of this Province, as it is to that of England, that it is in the power of an individual to select the Jurors, but it is for the public good and for the interest of suitors that a confidence should in this respect be reposed somewhere.

Your Committee think it can be no where so properly and consistently reposed, as in the High Sheriff of the District. The King is the fountain of justice : he can only act through his proper officers. The

Sheriff is for this purpose his proper officer, and when discharging his duty he performs part of the executive functions of the Sovereign, whom in this public act he represents.

It is not the spirit of our law to entertain suspicions of corruption in such cases upon mere surmise.

All public officers, and all private trustees may abuse the confidence reposed in them ; all power may possibly be perverted to bad ends, and all trusts may be betrayed—but still it is necessary to confer power, and to repose confidence, or the business of life could not be carried on.

The presumption of the law is that the King, as he can intend no wrong, will appoint those to the office of Sheriff who will honestly use the authority committed to them for the good of the public. The Sheriff, when appointed, is more responsible in this Province than in England ; because, instead of being an annual officer, he commonly retains his situation for life, and is therefore more amenable to public opinion and censure, and has stronger motives for acting correctly.

He is liable to the control and punishment of the Court of which he is an officer ; he is less accessible to parties litigating ; and there is less danger of a bias being admitted through him individually, than through four or five electors of Juries resident in each Township, whose connexions and acquaintance and transactions would, from their number, embrace a larger circle, and be therefore likely to interfere in a greater number of instances.

It is indeed difficult to understand why these Township Officers should be thought more worthy of confidence than the Sheriff. They are not likely to be so well educated, or so respectable in character; in station they cannot be otherwise than inferior, because the Sheriff holds the highest rank in his District. Whenever the Sheriff is a party, or concerned in interest in a cause depending, or whenever he is related to either of the parties, he cannot now return the Jury, unless the objection is expressly waived.—The Coroner is in such cases the officer employed. It is true there are cases in which the Crown may be concerned, and the Sheriff is an officer of the Crown; but the same objection might be urged against the Judges—they are all appointed by the King, and there is no more justice in suspecting the one, than the other.

The Constitution confides to the Sovereign a power even over life in many cases, by the discretion of granting or withholding pardon. He remits any punishment as he pleases, or leaves it to be inflicted; he acts for the people; his officers represent him, and act in his name. The principle of the Constitution is that the King is intrusted with power for the good of his people—and the Sheriff as one of his officers, to whom he is obliged to delegate a portion of his power, is not to be suspected merely because he serves the King. But besides the fear of exposure and punishment, which is inseparable from any violation of duty in matters so openly transacted, the law provides these further securities against any evil practice on the part of the Sheriff. In all cases of felony, the defendant

has a right to challenge twenty Jurors, or nearly half of the pannel, without assigning any reason, and in treason a much greater number. In cases of misdemeanor, and in all civil actions, no person need accept the ordinary Jury. If the Sheriff is suspected, or if for any cause a Jury of more than ordinary intelligence is desired, either party may now of right have a Special Jury, in the selection of which no individual can by possibility exercise the slightest influence.

This privilege, according to the proposed law, would be open to the parties in very few cases, and in effect indeed, they could have it in none ; for where a Special Jury might be allowed, it would consist of persons originally selected by the choice of certain individuals, and possessing no other qualification than other Jurors. Then when the Sheriff is interested, or is related to either of the parties, he does not now return the Jury, but that duty is committed to the Coroner, as we have mentioned before.

And there is, after all, this final security which though not perfect is not to be lost sight of, that the verdict of the Jury, whoever may return them, is subject to revision, and may be set aside whenever it discovers signs of partiality or prejudice.

Your Committee are persuaded that from the time justice began to be dispensed in this Province to the present moment, the public have been satisfied with the present method of impannelling Juries ; and they infer this to be the fact from the following circumstances :—



- 1.—Although in all felonies a great number of Jurors may be set aside at the trial, at the mere pleasure of the defendant, it is seldom that the right is exercised, except in capital cases, and it is not unfrequently waived there.
- 2.—That although in misdemeanors, and in civil actions of all kinds, a Special Jury may now be had on asking for it, it is very seldom desired. When applied for in criminal cases it has generally been by the Crown, and not by the Defendant, and in the few instances in which Special Juries are struck in civil cases, your Committee do not imagine that a suspicion of the Sheriff's impartiality forms any motive with the parties.
- 3.—In those cases, where from interest, or connection with the parties, the Sheriff is by law precluded from returning the Jury, it is a very common practice in this Province, as well as in England, merely to go through the form of employing the Coroner, because the trial would otherwise be irregular, while in point of fact the parties so little suspect the honour of the Sheriff, that they wish no other Jurors to be summoned, and by their consent, the Coroner returns a list of names taken from the Sheriff's pannel.
- 4.—In cases in which beyond all others the Crown has a direct pecuniary interest, such as inqui-

sitions against the King's debtors, or inquisitions respecting forfeitures and escheats, it is, and always has been, the King's proper officer, the Sheriff, who returns the Jury.

This practice has excited no dissatisfaction here, it is at this moment the law of England, and even by the Bill before us, it is not proposed to make any change in that respect in this Province.

Our law does not regard the King or his officers as liable to any suspicion even in these cases.

It considers the Sovereign as acting for the benefit of his people, through his Courts of Justice and through his known responsible officers.

In conclusion, your Committee will remark that if there is any one part of our social fabric which above all others, it would be injudicious to subject rashly to the chance of experiments, it is the Trial by Jury—the corner stone of freedom—the best security for order—and the distinguishing boast of Englishmen and their descendants.

The main object of the Bill before us is to take the duty of returning Juries from the hands of the King and his responsible officers, and transfer it to others.

It ought in the opinion of your Committee to be a sufficient objection to this measure, that the system now in use was in the first instance deliberately established among us by the authority of our Legislature ; that it has the sanction in this country of a practice coeval with the existence of our Courts of Justice, and

that in the Mother Country it has not only the sanction of law and usage for a period of seven hundred years, through which it can be distinctly traced ; but it has this further most clear and satisfactory mark of public approbation, that in the present more enlightened age, and after so many centuries of experience when the whole law of Juries was undergoing a thorough and deliberate revision, this principle of returning Juries by the King's officers, was not merely left untouched, but it was recognized and established by an express enactment. It does not appear indeed that it was even proposed to change it, although the present is certainly a period, when no backwardness is shewn in venturing upon innovations, provided they seem recommended by any appearance of utility.

Your Committee do not take it for granted that our Jury laws, resting, as we think they do in the main, upon the soundest principles, are not capable of considerable improvements ; on the contrary, it is their opinion that they may be in some respects amended.

The collecting into one Act, properly arranged, whatever is contained in our Statute-book on the subject, would be of itself an improvement.

The qualifications of the several descriptions of Jurors and the disqualifications which the law recognizes might be more certainly set down, and noticed in the Statute. In civil cases, the right of challenge without assigning cause might, as your Committee think, be allowed to a very limited extent, and would be satisfactory to suitors and favourable to the ends of justice, and other minor improvements suggested

by the late English Statute, or by our own experience might be beneficially adopted; but your Committee consider it convenient that any measure of this character should be attempted by a new Bill, rather than by way of amendments to one which is intended to make so entire, and as your Committee thinks, so inexpedient a change in the whole system.

(SIGNED)

JAMES GORDON,  
CHAIRMAN.

*Legislative Council Committee Room,* }  
March 29th, 1836. }

TUESDAY, 29TH MARCH, 1836.

On motion made and seconded, it was—

Ordered, That the House be put into Committee of the whole to-morrow, to take the said Report into consideration.

THURSDAY, 31ST MARCH, 1836.

Pursuant to the order of the day, the House was put into a Committee of the whole upon the Report of the Select Committee to whom was referred the Bill entitled "An Act to amend the Jury Laws of this Province."

The Honorable Mr. Elmsley took the Chair.

After some time the House resumed.

The Chairman reported that the Committee had gone through the said Report of the Select Committee, and recommended the same, without any amendment, to the adoption of the House.

Ordered, That the Report be received ; and—

Ordered, That the said Report of the Select Committee be adopted ; and—

Ordered, That one thousand copies thereof be printed for the use of Members ; and

Ordered, That the said Bill, with the proceedings of this House thereon, and the existing Jury Laws of this Province be printed with the said Report, in pamphlet form.

*An Act to amend the Jury Laws of this Province.*

WHEREAS, the present mode of returning Jurors for the trial of causes in the Court of King's Bench, Assize, Nisi Prius, General Gaol Delivery, Court of General Quarter Sessions of the Peace, and District Court, may be improved: *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 virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled '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 first clause of an Act passed in the thirty-fourth year of the reign of George the Third, entitled "An Act for the regulation of Juries," and also, the whole of an Act passed in the thirty-sixth year of the reign of George the Third, entitled "An Act to amend certain parts of an Act, entitled 'An Act for the regulation of Juries,' and a certain other Act, entitled 'An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal,'" and also the whole of an Act passed in the forty-eighth year of the reign of George the Third, entitled "An Act for the better regulation of Special Juries," be and the same are hereby repealed.

2. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the

Assessor and Collector, and Township Clerk, and the three Commissioners duly appointed for any Township, or a majority of them, and they are hereby authorised and required to meet on the last Saturday in February in that year for which they are chosen or appointed, at the place where the last Township Meeting was held for the Township, or at some adjourned meeting at the same place on or before the first Saturday in March, except in the Bathurst and London Districts, in which the Assessor, Collector, Township Clerk, and Commissioners shall meet, as aforesaid, on the first Saturday in February, or at some adjourned meeting, on or before the third Saturday in the said month, and then and there to name from amongst the inhabitants of such Township, such persons being in their opinion fit and proper persons to be Petit Jurors, to serve as such for the year at the several Courts within the District to which such Township belongs, as may be in the proportion following; that is to say—

When the population of such District shall appear by the last census thereof to be under five thousand souls, the number of Petit Jurors to be returned from its several Townships shall be eighteen for every hundred souls; when over five thousand and under ten thousand, ten such Jurors shall be returned for every hundred; when over ten thousand and under fifteen thousand, six such Jurors shall be returned for every hundred; when over fifteen thousand and under twenty-five thousand, four such Jurors shall be returned for every hundred; and when over twenty-five thousand and under thirty-five thousand, three such Jurors shall be returned for every hundred; and when over thirty-

five thousand, two such Jurors shall be returned for every two hundred respectively.

3. *And be it further enacted by the authority aforesaid;* That it shall and may be lawful for the aforesaid Assessor, Collector, Township Clerk, and Commissioners in manner and form; and at the time and place aforesaid, and they are hereby authorised and required to name such persons from among the inhabitants of the Township as are in their opinion fit and proper persons to be Grand Jurors, to serve as such for the year at the several Courts within the District to which such Township belongs, and in the following proportion; that is to say—When the population of any such District shall, according to the census thereof, be under five thousand souls, six such Grand Jurors shall be returned for every one hundred souls; and when over five thousand and not exceeding ten thousand, four such Grand Jurors shall be returned for every hundred; and when over ten thousand and not exceeding fifteen thousand, two such Grand Jurors shall be returned for every hundred; and when over fifteen thousand and under twenty-five thousand, three such Grand Jurors for every two hundred; and when over twenty-five thousand and not exceeding thirty-five thousand, one such Grand Juror for every hundred souls; and when above thirty-five thousand, then two such Grand Jurors shall be returned for every three hundred souls respectively; and in order to remove doubts with regard to the inhabitants of Towns, be it enacted and declared that the inhabitants of any Town shall be deemed and considered for the purposes of this Act, to be inhabitants of the Township in which such Town shall be situated.



4. *Provided always, and be it further enacted by the authority aforesaid,* That in case the Township Clerk, Assessor, Collector, and Commissioners, or a majority of them, shall not meet at the time and place and name Grand and Petit Jurors, as is hereinbefore provided, it shall and may be lawful for such of them as are present to adjourn the said meeting to some other day, not beyond the second Saturday in March, giving due notice to such as are absent of such adjournment.

5. *And be it further enacted by the authority aforesaid,* That the aforesaid Assessor, Collector, Township Clerk, and Commissioners, or a majority of them, shall, within the space of four days after the meeting and naming Jurors, as aforesaid, return a list of the Grand Jurors and also of the Petit Jurors, stating opposite the several names in such lists the place of residence, and degree or occupation, under their hands, to the Clerk of the Peace for the District to which such Township belongs.

6. *And be it further enacted by the authority aforesaid,* That it shall be the duty of the Clerk of the Peace for the respective Districts, and he is hereby authorised and required forthwith upon the receipt of the lists aforesaid from the respective Townships, or within four days, to transcribe the same into a proper book or books, to be by him kept for that purpose, and he shall also transmit true copies thereof to the Sheriff of the District.

7. *And be it further enacted by the authority aforesaid,* That each and every person whose name shall be returned upon any such lists shall be held and

taken as qualified to serve as a Juror for the year: *Provided*, that it shall not be lawful for the Township Clerk, Assessor, Collector, and Commissioners aforesaid, to name or return upon their lists the following descriptions of persons, neither shall they be liable to serve as Jurors, except by their consent; that is to say—Members of the Legislature, Clergymen or Ministers of the Gospel, Physicians and Surgeons, Millers, Coroners, Collectors of Customs, Post Masters, County Registers, Probate and Surrogate Registers, Barristers and Attornies, Judges of the District and Surrogate Court, and Ferrymen, and also all persons under the age of twenty-one years or over sixty years, School Teachers, and persons belonging to regular Fire Companies.

8. *And be it further enacted by the authority aforesaid*, That when and so often as any Sheriff or Coroner of any District shall receive any precept or order, according to law, requiring the return of any pannel or pannels of Jurors, he shall, without delay after the receipt of such precept or order, affix on the door of the Court House of such District, a public notice that he will by twelve of the clock at noon, of the            day of            being the day next but one succeeding that of his receipt of such precept or order, unless it shall be on Sunday, or in that case, on the following Monday, proceed to the balloting of Jurors required, according to the exigency of such precept or order, and it shall and may be lawful for the Sheriff or Coroner accordingly at his office at the time appointed as aforesaid, with open doors, the Clerk of the Peace and the High Constable then and there attend-

ing, and all other persons willing being admissable, to ballot the Jury in the following manner: he shall cause all the names of the Jurors contained in the list of Petit Jurors returned to him by the Clerk of the Peace for the year, and also the names of Jurors contained in the list of Grand Jurors returned to him by the Clerk of the Peace, who have not before during the year served as such, together with their places of residence, degree, or occupation, to be evenly written on slips of paper of equal size, and folded as nearly alike as may be, and promiscuously put into a hat or box suitable for the purpose, and well shaken or mixed together, and a sufficient number of names indiscriminately or impartially drawn forth, as required, in such precept or order for Grand and Petit Jurors; and the names so drawn shall be noted down by the Sheriff in a list or lists, a duplicate of which list or lists shall be filed in the Office of the Clerk of the Crown or his deputy, in the District, and the Sheriff or Coroner thereof shall accordingly return the Jurors, Grand and Petit, so balloted for, from their respective lists upon the several precepts or orders, according to their respective tenor and the law of the land; and the Jurors so drawn shall be liable to serve accordingly, and when duly summoned by the Sheriff or Coroner, or other officer having the return of Jurors, shall be punishable, according to law, for disobedience or neglect: *Provided always*, that if the name of any Justice of the Peace shall be drawn to serve as a Juror at the Quarter Sessions, such Justice of the Peace shall in that case be exempted from serving, as aforesaid, and another name drawn instead thereof.

9. *And be it further enacted by the authority aforesaid,* That the Clerk of the Peace of the Midland District shall make out and transmit to the Sheriff of the District, the names contained in the Township lists, returned to him from those Townships situate in the Counties of Frontenac and Addington in one list, and those situate in the Counties of Hastings and Lennox in another list; and the Sheriff or Coroner of the District shall ballot the Jurors to serve at the Court of General Quarter Sessions of the Peace and District Court, holden in the months of April and October, from the list taken and returned from the Township lists situated in the Counties of Frontenac and Addington, and for the aforesaid Court holden in January and July, from the Township lists for the Townships situate in the Counties of Hastings and Lennox, anything in this Act contained to the contrary in anywise notwithstanding.

10. *And be it further enacted by the authority aforesaid,* That for the trial of all cases, criminal as well as civil, in the several Courts of Oyer and Terminer, General Gaol Delivery, Nisi Prius, Quarter Sessions of the Peace, District Court, and Courts of Special Commission, the Juries to be impannelled in Court shall be by ballot, as is prescribed in the sixth clause of the said Act for the regulation of Juries, passed in the thirty-fourth year of the reign of George the Third; *Provided, nevertheless,* that such balloting shall not in any manner prevent, obstruct, or diminish the right of parties to claim and have allowed their challenges or objections which they may be entitled

to make and have, as heretofore according to law, and it is hereby enacted and declared that persons so returned upon the Sheriff's Pannels of Petit and Grand Jurors, and attending their duty as such thereon throughout shall not be liable to be nominated or appointed as Jurors till after the lapse of one year after that for which they have so served, unless such Juror consents; and the Sheriff of every District shall, on or before the second Saturday in February, in each and every year, make a return to the Clerk of the Peace of the names of the persons, stating the place of residence, degree, or occupation, who actually served as Grand and Petit Jurors for the preceding year, such year to be computed from the day of their nomination and appointment as Jurors, except in the Bathurst and London Districts, in which the Sheriff shall make the returns, as aforesaid, by the third Saturday in January; and the said Clerk of the Peace shall immediately on the receipt of such list, or before the last Saturday in February, except in the Bathurst and London Districts, which shall be by the first Saturday in February, make out and transmit a like list to the Clerks of the several Townships in the District, and also state to the said Clerks the number of souls in their respective Townships, according to the last census returned for the said Townships severally.

11. *Provided always, and be it further enacted by the authority aforesaid,* That if it shall so happen that the Township Clerk, Assessor, Collector, and Commissioners for any Township shall neglect or refuse to make out and transmit to the Clerk of the Peace lists of Jurors, as by this Act provided, the Clerk of

the Peace shall in that case, in his lists to the Sheriff, transmit the names contained in the last lists received from such Township, and who have not served as Jurors during the preceding year, from which lists the Sheriff or Coroner shall ballot accordingly, and the Jurors so returned shall be as liable to serve as if they had been actually returned by the Township Officers for that year.

12. *And be it further enacted by the authority aforesaid,* That those Townships at present not having one hundred inhabitants shall not be liable to furnish Jury lists, as aforesaid, until they do respectively contain one hundred inhabitants, and thenceforward each of such Townships as soon as they receive or contain the requisite population, as above, shall nominate and furnish Jurors in like manner and proportion as other Townships shall do by virtue of this Act.

13. *And be it further enacted by the authority aforesaid,* That the several precepts for the return of Jurors to serve at the several Courts of Assize and Nisi Prius, Oyer and Terminer, and General Gaol Delivery, and at the Court of Quarter Sessions and District Court, or Court of Special Commission, shall in future require the Sheriff or Coroner to return twenty-four Grand Jurors as the Inquest for the District, and forty-eight Petit Jurors, or a greater number of Petit Jurors in those Districts that might be deemed necessary by the Sheriff of the said District, not exceeding sixty, to try the several causes at issue in the several Courts; and the forty-eight Jurors returned upon the precept shall serve as such at the said several Courts, the several Commissions whereof

are opened on the same day and at the same place, and at such Courts as are by law appointed to be holden at the same time and place in the District, such as the Court of General Quarter Sessions of the Peace and District Courts, when and where the said Sheriff is by such precept required to have such Jurors without any additional *venire facias* : *Provided, nevertheless*, that in obedience to a Special Jury at Nisi Prius, in or for the return of a Jury for a trial at Bar in the Court of King's Bench, the Sheriff shall return the number required, according to the exigency of such writ of *venire*.

14. *And be it further enacted by the authority aforesaid*, That a Special Jury shall be had only with the leave of the Court of King's Bench, upon motion first had and obtained in a civil suit, subject and subject being parties alone therein, and such leave shall not be given unless upon a reasonable case made out to the satisfaction of the Court upon such motion, that the case is intricate by reason of mercantile or scientific subjects of consideration likely to arise in the evidence, and requiring persons of particular pursuits in life to hear the same in order to understand the merits and give a satisfactory verdict.

15. *And be it further enacted by the authority aforesaid*, That upon rule or order of the Court of King's Bench made in any cause for the impanelling of such Special Jury for the cause aforesaid, it shall and may be lawful for the party applying, or his attorney, after service of rule on the opposite party, or his attorney, to give an appointment of day and hour by the Sheriff for the striking of such Special Jury, and

after eight days notice given by the party obtaining the rule to the other party of such appointment by the Sheriff, the parties shall attend and each select from the lists of Jurors, as well Grand as Petit, returned or to be returned by him upon the general precepts for the ensuing Assizes, twelve persons; and from the twenty-four thus selected each party shall strike off four, and the sixteen persons remaining shall be returned on the *venire facias* in the cause; the names of the sixteen Special Jurors shall be put into a box or glass, and twelve thereof drawn out by ballot and impannelled as ordinary Juries at Assize and Nisi Prius are drawn, and the twelve so drawn and impannelled shall be sworn accordingly, to try the said cause: *Provided always, nevertheless*, that in case either party or their attorneys omit to attend the appointment of the Sheriff, the Sheriff or his deputy shall select twelve persons and strike off four, leaving eight for the absent party, which eight shall form part of the sixteen to be returned to the *venire*, and be eligible as Special Jurors to try the cause unless upon reasonable cause or on motion in Court, or before a Judge in Chambers, the Court or Judge may think it just, upon payment of costs, to order the striking of such Special Jury anew.

16. *And be it further enacted by the authority aforesaid*, That the party applying for a Special Jury shall, in all cases, pay the expenses thereof.

17. *And be it further enacted by the authority aforesaid*, That the several Township Clerks for making out the lists and preparing the return,



shall receive the sum of ten shillings, and the Clerk of the Peace one pound five shillings annually, for performing all the duties imposed upon him by this Act ; the performance of such duty to be certified by the Sheriff or Coroner of the District, to be paid to each and every such Officer for this service by the Treasurer of the respective Districts, out of the public monies of the District in his hands, and to be allowed him accordingly in his public accounts, the said allowance to be so paid to the respective Township Clerks so soon as the Treasurer may receive a certificate from the Clerk of the Peace that he has received the return of the respective Townships for the year, according to the provisions of this Act.

18. *And be it further enacted by the authority aforesaid,* That any Clerk of the Peace, Sheriff or Coroner, or their respective deputies, contravening this law, or wilfully neglecting his duty herein, shall forfeit the sum of twenty-five pounds to such person as shall inform and prosecute for the same, until the party be thereof convicted by indictment before the Court of Oyer and Terminer, or before the General Quarter Sessions of the Peace, to be holden for the District where such contravention or wilful neglect shall have been committed, and the said Clerk of the Peace, Sheriff, Coroner, or deputy so convicted, shall be deemed *ipso facto* dismissed and out of office.

19. *And be it further enacted by the authority aforesaid,* That the Assessors, Collector, or Township Clerk for any Township, who shall neglect or refuse to perform the duties required of him by this Act, shall be liable for the same penalty that Assessors,

Collectors, and Township Clerks are now by law liable for refusing or neglecting to perform their duties as such officers, and to be collected and applied in like way and manner.



[32nd Geo. III. Chap. 2.]

*An Act to establish Trials by Jury.*

[Passed October 15, 1792.]

WHEREAS the trial by Jury has been long established and approved in our Mother Country, and is one of the chief benefits to be attained by a free constitution : *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 virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled '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 from and after the first day of December, in this present year of our Lord one thousand seven hundred and ninety-two, all and every issue and issues of fact, which shall be joined in any action, real, personal, or mixed, and brought in any of His Majesty's Courts of Justice within the Province aforesaid, shall be tried and determined by the unanimous verdict of twelve Jurors, duly sworn for the trial of such issue or issues,

which Jurors shall be summoned and taken conformably to the law and custom of England.

2. *Provided always, and be it further enacted by the authority aforesaid,* That nothing herein contained shall prevent, or be construed to prevent, the said Jurors, in all cases where they shall be so minded, from bringing in a special verdict.



[34th Geo. III. Chap. 1.]

*An Act for the regulation of Juries.*

[Passed July 9, 1794.]

For the regulation of Juries, *Be it 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 virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, '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 Clerk of the Peace of each and every District in this Province shall yearly and every year make up from the returns of the several Assessors of each Parish, Township, reputed Township or place, which shall have been transmitted to him, a true and complete list or transcript of the names of the several inhabitant house-

holders, living in each of the said Parishes, Townships, reputed Townships, or places, classed and divided in such manner as by the said returns shall appear, which list or transcript shall be transmitted or delivered by the Clerk of the Peace to the Sheriff of each respective District, or his Under Sheriff, in order for his returning Juries out of the said list from time to time, as he shall be commanded, and that each and every person whose name shall be returned in either of the said lists, shall be held and taken as qualified to serve on Juries, and that no Sheriff or Coroner shall return any person to serve on any Jury whose name shall not appear in the said list, and that every Clerk of the Peace neglecting his duty therein, shall forfeit the sum of five pounds to such person or persons as shall inform or prosecute for the same, until the party be thereof convicted, by indictment, before the Justices of the Peace, at any Quarter Sessions of the Peace, to be holden for the District where such neglect shall have been committed.

2. And for preventing abuses by Sheriffs, Bailiffs, or other officers concerned in the summoning and returning of Jurors: *Be it enacted by the authority aforesaid*, That no person or persons shall be returned as a Juror or Jurors, to serve on trials at any Assizes or Nisi Prius, Quarter Sessions or District Court, who have served therat within the space of one year before, and if any such Sheriff shall wilfully transgress herein, any Judge or Justice of Assize or Nisi Prius, may and is hereby required, on examination and proof of such offence in a summary way, to set a fine or fines upon

every such offender, as he shall think meet, not exceeding the sum of ten pounds for any one offence.

3. *And be it further enacted*, That the Sheriff, Under Sheriff, or officer to whom the return of Juries shall belong, shall from time to time enter or register in a book to be kept for that purpose, the names of such persons as shall be summoned and shall serve as Jurors on trials at any Assizes or Nisi Prius, Quarter Sessions or District Court, with the times of their services; and every person so summoned and attending or serving as aforesaid, shall upon application by him made to such Sheriff, Under Sheriff, or officer, have a certificate testifying the same, which certificate the said Sheriff, Under Sheriff, or officer, is hereby required to make out without fee or reward.

4. *And be it further enacted by the authority aforesaid*, That no Sheriff, Under Sheriff, or officer, or any person whatsoever, shall directly or indirectly take or receive any money or other reward, to excuse any person from serving or being summoned to serve on Juries, and that no Bailiff or other officer appointed by any Sheriff or Under Sheriff to summon Juries, shall summon any person to serve thereon, other than such whose name is specified in a mandate signed by such Sheriff or Under Sheriff, and directed to such Bailiff or other officer, and if any Sheriff, Under Sheriff, Bailiff, or other officer, shall wilfully transgress in any of the cases aforesaid, any Judge or Justice of Assize or Nisi Prius may, and is hereby required on examination and proof of such offence in a summary way, to set a fine or fines upon any person so offend-

ing, as he shall think meet, not exceeding the sum of three pounds.

5. *And be it further enacted by the authority aforesaid,* That every Sheriff or other officer to whom the return of *venire facias juratores*, or other process for the trial of causes, before Justices of Assize or Nisi Prius, who may be assigned to hold Assizes in any District or place within this Province, doth or shall belong, shall upon his return of every such writ of *venire facias* (unless in causes to be tried at bar, or in cases where a Special Jury shall be struck by order or rule of Court) annex a pannel to the said writ, containing the christian and sir names, additions and places of abode of a competent number of Jurors, whose names shall have been returned in the said lists, hereinbefore directed to be made out, whose names shall be inserted in the pannel annexed to every *venire facias*, for the trial of all issues at the same Assizes in each respective District or place, which number of Jurors shall not be less than thirty-six in any District or place, nor more than forty-eight, and the persons named in such pannels shall be summoned to serve on Juries at the then next Assizes or Sessions of Nisi Prius, for the respective Districts or places to be named in such writs, and no other.

6. *And be it further enacted by the authority aforesaid,* That the name of each and every person who shall be summoned and empannelled as aforesaid, with his addition and the place of his abode, shall be written on several and distinct pieces of parchment or paper, being all as near as may be of equal size, and shall be delivered to the marshal of such Judge of

Assize or Nisi Prius, who is to try the causes in each respective District, by the Sheriff or Under Sheriff of the said District, or some agent of his, and shall be put together in a box or glass to be provided for that purpose, and when a cause shall be called on to be tried, the marshal or some indifferent person by direction of the Court, may and shall in open Court draw out twelve of the said parchments or papers successively, and if any of the persons whose names shall be so drawn shall not appear, or be challenged and set aside, then such further number, until twelve persons be drawn, who shall appear; and after, all causes of challenge shall be allowed to be indifferent; and the said twelve persons, their names being marked in the pannel and they being sworn, shall be the Jury to try the cause, and the names of the persons so drawn and sworn shall be kept apart by themselves till such Jury shall have given in their verdict, and the same is recorded, or until the Jury shall by consent of the parties or leave of the Court, be discharged; and then the said names shall be rolled up again and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any cause remains to be tried.

7. *And be it further enacted by the authority aforesaid,* That every person or persons, whose name or names shall have been drawn to serve on the trial of any issue, and who shall not appear after being openly called three times, shall forfeit and pay, upon oath made by some credible person that the party so making default had been lawfully summoned, such fine, not exceeding the sum of three pounds, nor less

than twenty shillings, as the Judge who sits to try the cause shall think reasonable to inflict; unless some reasonable cause of his absence be assigned or proved to the satisfaction of such Judge.

8. *Provided always, and be it enacted*, That no person aged sixty years shall be obliged to attend upon any summons to be directed to him for the purposes aforesaid.

9. [Repealed by 2nd Geo. IV. chap 1.]

10. [Repealed by 48th Geo. III. chap. 13.]

11. )  
12. } [Repealed by 48th Geo. III. chap. 13.]  
13. }

14. *Provided always, and be it further enacted*, That where a view shall be allowed in any case, that in such case six of the Jurors named in such pannel, or more, who shall be mutually consented to by the parties or their agents on both sides, or if they cannot agree, shall be named by the officer of the Court, or by the Judge before whom the said cause shall be tried, shall have the view and be first sworn, or such of them as appear upon the Jury to try the said cause, before any drawing of Jurors as aforesaid, as shall make up the number of twelve to be sworn for the trial of such issue: *Provided also*, That every person attending such view as aforesaid, shall and may demand and receive a sum not exceeding ten shillings for every day on which he shall be so employed.

15. *Provided always, and be it further enacted*, That in case no view shall be had, or if a view shall be had by any of the said Jurors, no valid objection



shall be made on either side, either for want of a view, or that it was not had by any of the twelve Jurors first named, or that it was not had by any particular number of Jurors named in the said writ, but the trial of the issue shall proceed, any formal objection respecting the view, to the contrary notwithstanding.

[See 32nd Geo. III. chap. 2 ; 36th, chap. 2 ; 48th, chap. 13.]



[36th Geo. III. Chap. 2.]

*An Act to amend certain parts of an Act, entitled "An Act for the regulation of Juries," and a certain other Act, entitled "An Act to establish a superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal."*

[Passed June 3, 1796.]

BE IT 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 virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled '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 from and after the passing of this Act, and before the first day of Trinity Term now next ensuing, and before the first

day of the respective Terms next preceding the time when the issuing of the writs of Assize and Nisi Prius are directed to be issued, according to the form and effect of a certain Act passed in the thirty-fourth year of His Majesty's reign, entitled "An Act to establish a superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal," and in every year thereafter ensuing, the Sheriffs of the Eastern, Midland, and Western Districts, and each respectively shall cause a pannel of the names of the Jurors, not less than thirty-six nor more than forty-eight persons, according to the rules and regulations contained in the said Act, entitled "An Act for the regulation of Juries," to be transmitted into His Majesty's Court of his Bench, that shall be liable to be summoned for the trial of all causes at the then next ensuing Assizes, without a *venire facias* for the purpose.

2. *And be it further enacted*, That the Sheriff of the Home District, on or before the first day of every Term, shall cause a pannel of the names of Jurors, not less than thirty-six nor more than forty-eight, according to the rules and regulations of the said Act for the regulation of Juries, to be transmitted into His Majesty's Court of his Bench, of persons that shall be liable to be summoned for the trial of all causes at the sittings during and ensuing each Term, without a *venire facias* for that purpose.

[48th Geo. III. Chap. 13.]

*An Act for the better regulation of Special Juries.*

[Passed March 16, 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 virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled '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.

2. *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.

3. *And be it further enacted by the authority aforesaid,* That the Clerk of the Peace of each and every District, shall annually, on or 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.

4. *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 attornies, a written notice, for him, her, or them, to appear by themselves or their respective attorney or attornies, at the office 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.

5. *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 as 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 attornies, shall and may alternately strike out 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.

6. *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.

7. *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.

8. *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 expenses 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.

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[2nd Geo. IV. Chap. 1, Sec. 30.]

[Passed January 17, 1822.]

*And be it further enacted by the authority aforesaid,* That every common Juror shall be allowed the

sum of one shilling and threepence, in every cause in which he shall be sworn as a Juror, to be paid by the plaintiff or his attorney, and to be accounted for in costs by the party charged with the payment thereof.

