



WESTERN AUSTRALIA.

ANNO TRICESIMO QUINTO

VICTORIÆ REGINÆ.

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No. VIII.

AN ACT to amend the Laws relative to Juries.  
[Assented to, 8th August, 1871.]

**W**HEREAS, for the better and more effective administration of justice, it is expedient to amend the laws regulating the qualifications, summoning, attendance, and remuneration of Special and Common Juries, and otherwise to amend the laws as to trials by Jury; Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

**1** THIS Act may be cited for all purposes as "The Jury Act, 1871," and shall not come into force till the thirtieth day of November, 1871.

Title.  
Act to come into force on 30th November.

**2** THE word "Juror" shall mean male persons only.

**3** WHEREVER, by the provisions of any Act or Ordinance now in force anything is required to be done agreeably to the provisions or as prescribed by the "The Jury Ordinance, 1858," all such

Reference by any Ordinance to "The Jury Ordinance, 1858," to be read as referring to this Act.

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such matters and things shall henceforth be done as prescribed by this Act.

Repeal of Ordinances.

4 THE Ordinances mentioned in the First Schedule are hereby repealed, except as to any proceeding had or now pending under the said Ordinances, or any of them.

Every Jury to consist of twelve persons, Coroners' Juries excepted.

5 EVERY Jury shall consist of twelve persons: Provided, nevertheless, that nothing herein shall be construed to affect or in any way to alter the provisions of the Ordinance 27th Vict., No. 1, respecting Coroners' Juries, or to include writs of Inquiry before the Sheriff, when the Jury shall consist of six persons.

When issue of fact to be tried, or damages assessed, writ to issue to Sheriff to summon Jury seven clear days before day of attendance.

6 WHENEVER an issue of fact is to be tried, or damages assessed by a jury before a Court, or by virtue of a writ of inquiry before the Sheriff himself, the writ or precept may be issued, tested in the name of the Judge, directing the Sheriff to summon a Jury under the provisions of this Act for the trial of such issue or the assessing of such damages: Provided that application be made and such writ or precept be issued at least seven clear days before the attendance of such Jury shall be required.

Qualifications and liability to serve as Jurors.

7 EVERY man (except as hereinafter excepted) between the ages of twenty-one years and sixty years residing within the said Colony, and who shall have within the Colony either in his own name or in trust for him real estate of the value of fifty pounds sterling clear of all incumbrances, or a clear personal estate of the value of one hundred and fifty pounds sterling or upwards, shall be qualified and liable to serve on Juries in all civil and criminal proceedings in the said Colony: Provided, nevertheless, that no person residing beyond a radius of twenty-five miles of the place of attendance shall be summoned to serve on any Jury or inquisition.

Disqualifications of certain persons.

8 NO man not being a natural born subject or a naturalized subject of Her Majesty, and no man who in any part of the British dominions hath been or shall be convicted of any treason or felony, or of any crime that is infamous, unless he shall have obtained a free pardon thereof or shall be within the benefit and protection of some Act of Parliament giving the force and effect of a free pardon under the Great Seal, is or shall be qualified to serve on any Jury under this Act.

Exemptions.

9 THE following persons shall be exempted from serving on Juries, and shall not be inserted in the lists to be prepared by virtue of this Act, or if inserted may claim exemption, that is to say:  
Members

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Members of the Executive and Legislative Councils, the officers of the Civil and Criminal Courts, persons holding office under the Imperial or Colonial Government, all ministers of religion, barristers, attorneys, solicitors admitted and in actual practice, and their managing clerks, “duly qualified medical practitioners,” naval and military officers on full pay, pilots, mariners actually employed, sheriff’s officers and peace officers.

**10** THE Resident or Police Magistrate of each district of the Colony, or (during a vacancy in that office) some other person to be appointed for that purpose by the Governor for the time being shall, on or as soon as may be after the first day of January in every year after the passing of this Act, prepare or cause to be prepared a suitable number of lists of all persons qualified and liable to serve on Juries pursuant to the provisions hereof, and shall set forth in such lists the christian names and surnames, residences, titles, additions, and qualifications of such persons, respectively, according to the form in the Second Schedule, and shall subscribe each of the said lists with his own name, address, and description, accompanied by a declaration in writing signed in like manner, and averring that such list contains to the best of his knowledge, information, and belief the names of all persons within such district who are qualified and liable to serve on Juries according to the provisions of this Act.

Jury Lists to be made out, how, and by whom.

**11** THE Jury Lists shall within three days after the same shall be so prepared be affixed to such conspicuous places in the said Colony as the Sheriff, or in his absence from the district the Resident Magistrate, shall for that purpose appoint, together with a notice signed by the said Resident or Police Magistrate, or other appointee as aforesaid, stating that the Justices of the Peace of such district will hear, at a Special Sessions directed to be held for that purpose as hereinafter mentioned, all objections that may be urged to the said lists: And such Magistrate or appointee shall keep duplicates of the said lists, and exhibit the same gratuitously for the information of the inhabitants of the Colony to any person on application for that purpose at any reasonable time within fourteen days after the posting of such notice.

Posting of Lists, with notice.

**12** A SPECIAL Sessions shall be held in each district of the Colony on the Tuesday of the third week in the month of January in every year, to which all Magistrates within the district shall be duly summoned by the Resident or Police Magistrate of such district or appointee as aforesaid, and such Magistrate or appointee shall then and there produce the lists so prepared and verified as aforesaid or true copies

Special Sessions to revise and settle Lists.

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copies thereof, and the Justices so assembled shall proceed to elect their chairman, and shall examine such lists seriatim, and shall strike thereout the names of all persons not liable to serve or disqualified from serving as Jurors under the provisions hereof, and also of all persons who may be shown on evidence to be disqualified from doing so by deafness, blindness, mental infirmity, or any other cause which in the opinion of the said Justices shall amount to a disqualification, and the said Justices shall on the other hand insert in the said lists, either upon their own motion or upon the application of any one in the behalf the names of all persons whom they shall consider to have been improperly omitted from such lists: and they shall correct all errors and mistakes that may be found therein and finally settle the same, and the said lists when so settled shall be conclusive and shall continue in force for the current year and until a new list shall be settled as aforesaid and transcribed as hereinafter provided, and if any question shall arise respecting the striking out or adding of a name or otherwise respecting the settlement of such lists the same shall be decided by ballot.

Correctness of Lists to be certified.

**13** AFTER the said lists have been finally settled as aforesaid, a certificate shall be subjoined thereto and subscribed by the chairman of the said Magistrates or by the said Resident or Police Magistrate or appointee, stating that the same have been carefully examined and corrected at such sessions according to the best of the knowledge, information, and belief of the major part of the Magistrates, and that all the persons then named in such lists are qualified and liable to serve on Juries according to the provisions of this Act.

Transmission of Lists to Sheriff, who is to transcribe them into the “Jurors’ Book.”

**14** AS soon as the said lists shall be settled and certified as aforesaid they shall be immediately transmitted by the said chairman to the Sheriff for the time being, who upon receiving the same shall forthwith cause to be transcribed fairly in a book to be kept in his office for such purpose, and to be styled the “Jurors’ Book,” the names of all persons contained in such several lists respectively, with the additions of their respective residences, titles, and qualifications, and such Jurors’ Book shall thereupon be and continue in force for the current year and until the jury lists for the year next ensuing shall be transcribed by the Sheriff into the Jurors’ Book.

In the Court of general sessions.

**15** ALL jurors for the trial of any issue at such meetings of general sessions of the Peace as shall from time to time be convened under the authority of Her Majesty’s commission of the Peace shall be summoned by virtue of a precept under the hands of two Justices, directed to the Sheriff, Bailiff, or other officer of the Court.

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**16** AS often as a writ of *Venire Facias* or precept shall be addressed and delivered to the Sheriff, requiring him to empanel and summon Jurors for the trial of any issue or issues, information or informations, such Sheriff shall empanel and summon all persons whomsoever, inclusive of persons being on the Special Jury List, whose names shall be transcribed in the “Jurors’ Book” according to the order in which they shall successively appear therein, until every such person shall have been empanelled and summoned in his turn; and in case any such person shall make default in appearing to such summons, and in serving as a Juror at the time and place therein specified, he shall be empanelled and summoned a second time on the then next common or petty Jury, or oftener until he shall have served for such default or defaults: And all and every person and persons whose name or names appear on the Special Jurors’ List shall be liable to and be empanelled and compellable to serve as common and petty Jurors, and shall be subject to all fines, forfeitures, and penalties, laws, ordinances, regulations, provisions, objections, challenges, rules, orders, and practice, relating to or concerning common or petty Jurors; Provided, nevertheless, that no person residing beyond a radius of twenty-five miles of the place of attendance shall be summoned to serve.

Summoning of commission or Petty Jurors.

**17** THE names of no less than twenty nor more than forty persons shall be included in any such *Venire Facias* or precept, and such Jurors shall be summoned accordingly; And every *Venire Facias* or precept shall be issued at least seven clear days before the attendance of such Jurors shall be required, and the said Jurors shall be severally summoned by the Sheriff, or other proper Officer, five clear days before their attendance shall be required, and every such summons shall be in the form contained in the Third Schedule. And the summons shall be delivered to the respective persons personally, or left with some adult member of their families or households at the residence of the person so summoned; And the Sheriff or other Officer shall return to the Court, on the day appointed for that purpose, the said *Venire*, with the panel of Jurors, and shall cause a copy of such panel to be kept in his office for seven days at the least before the sitting of the Court, and the parties in all cases, Civil and Criminal, at such sitting shall have full liberty to inspect such list without fee.

Number of Jurors to be summoned. Time of issuing precepts for, and of summoning common Jurors.

Form of summons  
Service of summons.

Return of precept with panel of Common Jurors.

**18** IN order to secure the fair and impartial trial of issues, upon any criminal trial for felony, the prosecutor or the prisoner may challenge twelve Jurors and no more, without cause assigned; Provided that nothing herein contained shall interfere with the right of challenge for cause shown as established by law or usage.

Objections to Common Jurors, how regulated.

Challenge for cause.

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Fine on Common Jurors not attending as required by summons.

**19** IF any person duly summoned as a Common Juror in pursuance of this Act shall make default, or fail to attend as required by the summons, then (unless some sufficient cause for such default shall be shown) upon proof being made to the satisfaction of the Court or Judge, of such person having been duly summoned as aforesaid, he shall incur a fine and forfeit a sum not exceeding twenty pounds, at the discretion of the Court or Judge to whom or before which the panel was returnable, and such fine or sum shall be levied and appropriated in like manner as all other fines and forfeitures.

Challenges to the array, &c.

**20** CHALLENGES to the array and to the polls of Jurors may be made and shall be allowed in every Court in the said Colony, for such and the like cause, in such and the like form and manner, and under and subject to the like laws, rules, and regulations in every respect as by law established and used and practised in like cases in Her Majesty's Court of Record at Westminster.

Drawing names of Common Jurors at the trials.

**21** AT the sitting of any Court for the trial of any issue, the name of each Juror summoned as aforesaid shall be written or produced on a separate piece of paper or parchment, and put into a box, and when such issue is called on to be tried the ministerial officer of the Court shall in open Court draw therefrom until the names of a full Jury appear who are not open to a challenge, and after the trial such names shall be returned to the box to be kept with the other undrawn names, and *toties quoties*, as long as any issue shall remain to be tried.

Praying a tales.  
Common Jury.

**22** WHEN a cause appointed to be tried by Common or Special Jury shall be called on, and a sufficient number of Jurors summoned to attend such court shall not be in attendance, it shall be competent for either party to the cause to pray a tales, and the Court or Judge may then command the Sheriff or his deputy forthwith to summon as many good and lawful men of the bystanders (being duly qualified and liable to serve as Jurors) as shall be sufficient to make up a full Jury for the trial of such cause.

Allowances to Common Jurors in the Civil Court—by whom payable &c.

**23** EVERY Common Juror who shall attend the Supreme Court or the Court for Divorce and Matrimonial Causes, or any other legally constituted Court, to try civil issues in pursuance of any summons. shall be entitled to receive compensation for his loss of time and expenses at and after the following rate (that is to say): for every Jury upon which such Juror shall be summoned the sum of ten shillings per day, and the sum of eight pence per mile of distance between the place of residence of such Juror and the said Court

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Court. And such remuneration shall be paid by the parties to the causes to be tried, and for that purpose the party demanding the Jury shall deposit such sum of money as may be determined by any rule of Court or order of the Judge, and such deposit shall be made in such manner, at such time, and with such officer as the Court or Judge may prescribe: and on the taxation of the costs all such sums shall be taxed and allowed by the Registrar or other proper officer of the Court in like manner as other sums paid or chargeable in the action.

**24** ALL Jurors attending Criminal Sessions of the Supreme Court at Perth or Courts of General Quarter Sessions in the Colony shall be entitled to receive payment at the rate of five shillings a day for each day of attendance and the sum of eight pence per mile of distance between the place of residence of such Juror and the said Supreme Court or Courts of Sessions.

Payment to Jurors attending Criminal Sittings of Supreme Court.

**25** IF in any case wherein the trial of any issue or issues is to be had before a Jury either of the parties, plaintiff or defendant, shall make application to the Chief Justice or any Judge of the Court stating his desire to have the said issue or issues tried by a Special Jury constituted as hereinafter more particularly described, it shall be lawful for the Chief Justice or Judge to allow such application and direct a Special Jury accordingly.

Special Juries.

**26** EVERY man described in the Jurors' Book to be transcribed and kept under this Act as an esquire or person of higher degree, or as a Justice of the Peace, or as a merchant (such merchant not keeping a general retail shop), or as a bank director, or possessing real or personal estate of the value of Five hundred pounds, shall be qualified and liable to serve on Special Juries for the trial of issues.

Their qualification.

**27** THE Sheriff shall, immediately after the making up of the said Jurors' Book as prescribed herein, extract from the said book the names of all persons who shall be qualified and liable to serve on Special Juries under this Act, and shall cause those names to be fairly and truly copied out, together with their respective places of abode and additions, in a list to be called the “Special Jurors” List, which shall be written beneath the names in the general list in and form a portion of the Jurors' Book, and the said Sheriff shall prefix to every name in such special list its proper number, beginning with the numbers from the first name and continuing them in a regular arithmetical series down to the last name, and shall cause the said several numbers to be written upon distinct pieces of paper or parchment  
being

Special Jurors' List—how made up.

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being all as nearly as may be of equal size, and after all the said numbers shall have been so written shall put the same together in a separate drawer or box, and shall there safely keep the same, to be used for the purpose hereinafter mentioned.

Striking of Special Jurors.

28 WHENEVER the said Chief Justice or Judge shall have awarded a Special Jury for the trial of any issue, the Master or other proper officer of the Court shall appoint a time and place for the striking of such Special Jury, and the said officer at the time and place, being attended by the Sheriff, who is hereby required to bring with him the Special Jurors' Lists as contained in the said book and all the numbers so written out as aforesaid, shall, in the presence of the parties to the issue and of their attorney (if they choose to attend, and if not, then in their absence), put all the said numbers into a box to be by him provided for that purpose, and after they shall have been shaken together each party or his attorney shall draw alternately out of the box twenty of the said numbers one after the other, and the Master or other officer shall as each number is drawn refer to the corresponding number in the Special Jurors' List and read aloud the name designated by such number, and when such twenty numbers have been so drawn and announced the said Sheriff shall prepare two lists of those names with the numbers as they are written in the Special Jurors' List, and shall deliver one list to the plaintiff and another to the defendant or their respective attorneys, and the twenty names contained in the lists so delivered shall be thereupon reduced to sixteen by the plaintiff or his attorney, and the defendant or his attorney, each of them in the presence of the Sheriff striking out at his discretion two names from the said lists, and then returning the same respectively to the Sheriff.

Summoning Special Jurors,  
and drawing names at Trial.

29 AS soon as any Special Jury shall be struck as aforesaid, the same shall be summoned by the Sheriff or his officer to attend the Court at the time appointed for the trial of such cause, according to such form and manner as is directed for summoning Common Jurors, and the Sheriff shall on the day appointed for the trial deliver to the Master or other proper officer of the Court the said reduced lists, together with the box from which the numbers were drawn, and shall put therein all the numbers corresponding with the names remaining on those lists, and the officer shall in open Court draw from the box one number at a time, and shall repeat aloud the corresponding name from the said lists until twelve men shall answer, and which said twelve being duly sworn shall be deemed and taken to be the Special Jury.



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**30** THE person or party who shall apply for a Special Jury for the trial of any civil issue shall pay to the Sheriff a fee of two guineas on the striking of such Jury, and shall bear all extra expenses occasioned by the trial before the same, and shall not be allowed any further charges upon taxation of costs than such party or person would be entitled to in case the cause had been tried by a Common Jury, unless the Judge before whom the same is tried shall immediately after the verdict certify under his hand that the cause was a proper one to be tried by a Special Jury.

Fees to Sheriff, on striking Special Jury, &c.

**31** EVERY Special Juror who shall attend pursuant to summons for the trial of every such issue as aforesaid shall be allowed the sum of one guinea as compensation for his loss of time and expenses, in addition to the sum for mileage as is provided by section 23, which sums shall in the first instance be paid by the person or persons causing such Jury to be summoned, and such person or persons shall be allowed such sums over by the officer on the taxation of such costs in case of the granting of the certificate last aforesaid.

Allowances to Special Jurors, &c.

**32** IF any Special Juror shall not attend on being duly summoned, or otherwise make default in not appearing in pursuance of such summons as aforesaid, then (unless some sufficient cause for such default shall be shown) upon proof being made to the satisfaction of the Court or Judge of such person having being duly summoned he shall incur a fine and forfeit a sum not exceeding fifty pounds, at the discretion of the Court or Judge before which or to whom the panel was returnable, and such fine or sum shall be levied and applied in like manner as all other fines and forfeitures.

Fine on Special Jurors not attending pursuant to Summons.

**33** IF any Resident or Police Magistrate, or Chairman of Magistrates or any such appointee as aforesaid shall fail, neglect, or refuse to comply with and perform any of the trusts or duties required of or imposed upon them in and by the tenth, eleventh, twelfth, thirteenth, and fourteenth sections hereof, or any of them, or if any Sheriff or other ministerial officer, or any Clerk of Magistrates, shall wilfully or knowingly insert in any Jurors' List or Jurors' Book as aforesaid any name or names that ought not to be returned therein, or shall wilfully or knowingly omit therefrom any name or names that ought to appear therein, or shall otherwise fail well and faithfully to do and perform all and every the acts, matters, and things hereby required to be by him performed, then, upon proof thereof on oath, such Resident or Police Magistrate, or Chairman of Magistrates, or any such Clerk or appointee, Sheriff, or other ministerial officer shall (unless some sufficient cause for such failure, neglect, or

Fine on Magistrates, Sheriff &c., failing to fulfil duties, under the Act, or making out Lists, &c., fraudulently.

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or default be shown) incur a fine and forfeit a sum not exceeding fifty pounds, at the discretion of the Supreme Court.

Penalty on tampering with Jurors, &c.

**34** ANY person guilty of the offence of corruptly influencing or attempting to influence any Juror, or any Juror consenting thereto, shall be deemed to have committed a misdemeanor, and may, on proof thereof before the said Supreme Court, be punished with fine (not exceeding one hundred pounds,) and imprisonment (not exceeding one year).

Disqualification or exemption to be pleaded before revision of list.

**35** NO person whose name shall be in the Jury Book as a Juror shall be entitled to be excused from attendance on the ground of any disqualification or exemption (other than illness) not claimed by him at or before the revision of the list by the Justices of the Peace, and a notice to that effect shall be printed at the bottom of every Jury List.

Sheriff to make regulations as to attendance.

**36** IT shall be lawful for the Sheriff or other officer to whom any precept for summoning Jurors shall be addressed, with the consent of the person or persons by whom such precept shall have been issued, to make regulations as to the attendance of Jurors during the time for which they shall be summoned, and in particular as to the days on which, and the time during which, they are to attend. Such regulations may be sent to any Juror together with the summons requiring him to attend on any Jury or inquisition, and when so sent shall be deemed to be part of such summons.

Jurors to be allowed fire and refreshment.

**37** JURORS, after having been sworn, may in the discretion of the Judge be allowed at any time before giving their verdict the use of a fire when out of Court, and be allowed reasonable refreshment, such refreshment to be procured at their own proper expense.

Chief Justice to make general orders.

**38** THE Chief Justice is hereby empowered by general orders to make rules, not inconsistent with this Act, for the purpose of carrying out the several provisions of this Act.

In the name and on behalf of the Queen I hereby assent to this Act.

FRED. A. WELD, Governor.

SCHEDULES.

“ *The Jury Act, 1871.* ”

SCHEDULES.

First Schedule.

Date of Ordinance.	Title of Ordinance.	Extent of Repeal.
9th Vic., No. 5.	“ <i>An Ordinance to regulate the constitution of Juries for the trial of Criminal Offences in Albany, and other remote Districts of the Colony of Western Australia, and to limit the right of challenge to some extent in certain cases.</i> ”	The whole.
12th Vic., No. 3.	“ <i>An Ordinance to make perpetual an Ordinance intitled ‘ An Ordinance to regulate the constitution of Juries for the trial of Criminal Offences in Albany, and other remote Districts in the Colony of Western Australia, and to limit the right of challenge to some extent in certain cases.’ ”</i>	The whole.
22nd Vic., No. 7.	“ <i>An Ordinance to alter and amend the Law for regulating the constitution of Juries, and for the trial of Issues in certain cases in the Criminal and Civil Courts of Western Australia.</i> ”	The whole.
25th Vic., No. 11.	“ <i>An Ordinance to alter and amend the Law for regulating the constitution of Juries, and for the trial of Issues in certain cases in the Criminal and Civil Courts of Western Australia.</i> ”	The whole.
25th Vic., No. 18.	“ <i>An Ordinance to amend ‘ The Jury Ordinance, 1858.’ ”</i>	The whole.
28th Vic., No. 6.	“ <i>An Ordinance to amend ‘ The Jury Ordinance, 1858.’ ”</i>	The whole.
29th Vic., No. 7.	“ <i>An Ordinance to regulate the payment of Jurors serving in the Court of General Sessions at Albany.</i> ”	The whole.

Second

## 35° VICTORIÆ, No. 8.

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“The Jury Act, 1871.”

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## Second Schedule.

*List of Men qualified and liable to serve on Juries pursuant to  
“The Jury Act, 1871.”*

Christian name and sur- name at full length.	District.	Title, quality, calling, or business.	Nature of Qualification.
			Freehold, £  per annum,  £ of personal  estate.

(Signed) A.B. Chairman of Magistrates.

(Signed) C.D. Resident or Police Magistrate of

I hereby declare and aver that the above List contains, to the best of my knowledge, information, and belief, the Names of all persons within the said District of \_\_\_\_\_ who are qualified and liable to serve on Juries according to the Provisions of the said Ordinance.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ .  
A B.

## Third Schedule.

To

You are hereby summoned as a \_\_\_\_\_ Juror  
at the \_\_\_\_\_ to be held at the Court House,  
\_\_\_\_\_ , on \_\_\_\_\_ , the \_\_\_\_\_ day of  
\_\_\_\_\_ next, at \_\_\_\_\_ in the forenoon ; and therein to  
attend from day to day until you shall be discharged by the Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ .

Signed \_\_\_\_\_ Sheriff or Bailiff.