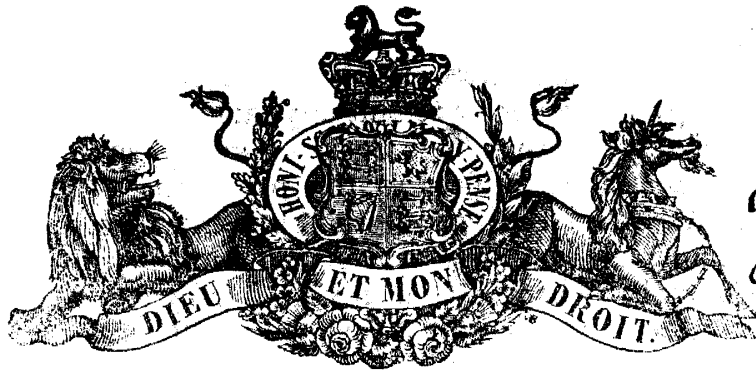


Amended by No. 7 of 1865 - 6
359 of '85
379 of '86
386 of '86, S. 3



No. 56 of 193 inserted here with S. 2
No 601 of '94, S. 4
No 781 of '02
No. 878 of '05
No. 923 of '07

ANNO VICESIMO QUINTO ET VICESIMO SEXTO

VICTORIÆ REGINÆ.

A.D. 1862.

No. 1.

An Act to regulate Trials by Jury in South Australia.

[Assented to, 29th August, 1862.]

WHEREAS it is expedient to consolidate and amend the laws relating to Trials by Jury—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. This Act may, for all purposes, be cited as “The Jury Act, 1862.” Short title.

2. The Ordinance and Acts specified in Schedule A to this Act, to the extent expressed in such Schedule, are hereby repealed, except as to anything lawfully done thereunder, and except as to the recovery and appropriation of penalties for offences against the same heretofore committed: Provided that this enactment shall not operate to revive any Acts or Ordinances, or parts of Acts or Ordinances, repealed by the Ordinance or Acts hereby wholly or in part repealed, or either of them. Repeal.
~~Does this refer to last 3 words of No 150 of '62~~
 sec 37.

3. The words “Civil Sittings of the Supreme Court” shall be held to include the Sittings at *Nisi Prius* of any Court held under the provisions of the “Third Judge and District Courts Act;” and the words “Criminal Sittings of the Supreme Court” shall be held to include the Sittings of any Court of *Oyer and Terminer* and *Gaol Delivery* under that Act. Interpretation Clause.

4. Every man (except as is hereinafter excepted) between the ages of Qualification of common jurymen.

of twenty-one and sixty years, residing within the said Province, who shall occupy as owner or tenant any lands or tenements of the yearly value of not less than Ten Pounds sterling, shall be qualified as a juryman, and liable, subject to the provisions of this Act, to serve at any Criminal Sittings of the Supreme Court; and every man so qualified and residing within the jury district annexed to any Local Court, by Schedule C to this Act, or by any Proclamation of the Governor as hereinafter provided, shall also be liable to serve as a juryman at any sittings of Full Jurisdiction of such Local Court. And every man (except as hereinafter excepted), between the ages of twenty-one and sixty years, residing within the said Province, who shall occupy as owner or tenant any lands or tenements of the yearly value of not less than Thirty Pounds sterling, shall be qualified and liable to serve as a Juryman at any Civil Sittings of the Supreme Court.

Qualification for special jurymen, Supreme Court.

5. Every man who shall in the jurors' lists hereinafter mentioned, be described as a Justice of the Peace, lessee of the Crown, banker, bank director or manager, merchant, accountant, engineer, or architect, or who shall occupy as owner or tenant any lands or tenements of the yearly value of One Hundred Pounds and upwards, shall be qualified and liable to serve as aforesaid, and also as a special juror at the sittings of the Supreme Court.

Disqualifications.

6. No man who shall not be a natural born or naturalized subject of the Queen (unless the jury shall be *de medietate lingue*), and no man who shall have been attainted of any treason or felony, or convicted of any crime that is infamous (unless he shall have obtained a free pardon thereof), or who shall be an uncertificated insolvent debtor, or under outlawry, or who is of bad fame, or repute shall be qualified to serve on any jury in the said Province.

Justices disqualified for Local Courts.

7. No Justice of the Peace shall be summoned to serve as a juryman at any Local Court.

Exemptions.

8. All officers and persons in the Civil Service of the Queen, and all Judges and officers of all Courts, whether of record or otherwise, all Members of the Executive Council; all Members of the Parliament of the said Province; all officiating ministers of religion within the meaning of Act No. 12 of 1842; all medical practitioners holding the licence of the Medical Board; all officers on full pay in the Queen's Army or Navy; all persons who, at the time of the passing hereof, are actually enrolled as Members of the Volunteer Military Force, and who shall give notice thereof to the Sheriff before being summoned to serve as jurymen, so long as they shall *bonâ fide* continue Members of the said Force by virtue of their present enrolment, or under any fresh enrolment; all masters of vessels actually trading; all licensed pilots; all Sheriff's officers; telegraph clerks, station masters, engine-drivers and railway guards; also, all District Council Clerks, rangers, and constables; and all household officers and servants of the Governor are hereby exempted from serving on juries.

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9. For

9. For the purpose of forming a Roll of Jurors, liable to serve at the sittings of the Supreme Court, the Sheriff shall, on or before the first Monday in September in every year, issue a precept according to the form in Schedule B to this Act, addressed to each respective Clerk of a Corporate City, Town, or place, or District Council in the said Province, calling upon each such Clerk on or before the first Monday in October then next, to make out a list in the form set forth in Schedule B to this Act, of all men qualified and liable to serve as jurymen at the sittings of the Supreme Court, resident within the boundaries of the Corporate City, Town, or place, or District Council District of such Clerk, and appearing on the rate books as being assessed as owners or occupiers of real estate, at an annual value of Ten Pounds sterling and upwards, setting forth their Christian and surnames, residences, additions, calling, or business, and qualification, and every Clerk shall obey such precept, and shall subscribe such list with a declaration to be made before a Justice of the Peace of the said Province, that to the best of the knowledge and belief of such Clerk the same contains the names of all persons, as aforesaid, liable to serve on juries, and qualified according to the provisions of this Act.

Formation of lists.

10. The Commissioner of Police, or such other person as the Governor may appoint, shall cause to be made out, on or before the first Monday in October in every year, lists of all men qualified and liable to serve as jurymen, residing in those parts of the said Province without the limits of any Corporate City, Town, or place, or District established under the District Councils Acts, or any of them, and such lists shall be made out alphabetically and as follows, that is to say:—

Commissioner of Police to cause certain lists to be made.

- i. Lists of men qualified and liable to serve as jurymen, residing within the jury district annexed to any Local Court according to Schedule C to this Act, or any Proclamation of the Governor as hereinafter provided, or within such part of any such jury district as shall be without the limits aforesaid.
- ii. A list of men qualified and liable to serve as jurymen residing in any other part of the said Province without the aforesaid limits.

And the requirements contained in Schedule B to this Act, with reference to the formation of lists, the times of making out the same, the form of return, declaration thereto, times and mode of exhibit, and revision shall be applicable to all lists made out under this clause: Provided that the list of men qualified and liable to serve as jurymen residing in any part of the said Province, outside the limits of any Corporate City, Town, or place, or District as aforesaid, and also outside the jury district annexed to any Local Court, shall be exhibited at the Local Court House, Adelaide, and revised there at the first Local Court of Full Jurisdiction, held in the Month of November in every year.

11. During the last week in September in every year, the Sheriff shall

Notice of lists having been made out, to be given.

shall give public notification by advertisement in the *Government Gazette*, and in two newspapers published in Adelaide, of the times and places where the said lists so prepared, may be inspected, and of the days as hereinafter provided for hearing all objections to the said lists: Provided always that every original list, or a true copy thereof, to which the public shall have access at any reasonable time without fee, shall be kept open for public inspection at the office of the Town Clerk, Clerk to District Council, or Police Station as aforesaid, during the first three weeks after the first Monday in October, in every year in order that due notice may be had of names improperly omitted or inserted.

Local Courts to revise lists.

12. At the first sittings of the Local Courts of Full Jurisdiction, held throughout the said Province during the month of November in every year, the persons herein required to make out jury lists, shall attend and produce the lists so prepared and verified, and also all rate books from which such lists may have been formed, to the Local Court, at which the men named therein are liable to serve, or to the Local Court of Adelaide, as the case may be, and thereupon the Justices assembled shall examine such lists *seriatim*, and shall strike out of such lists the names of all persons not liable to serve, or disqualified from serving as jurors, and also of such as are disqualified by deafness, blindness, or mental infirmity, and shall insert all names improperly omitted, and correct all errors and mistakes in such lists: Provided always, that no name, if omitted, shall be inserted, nor shall any name inserted be struck out by the Justices, unless upon the application of the men who may respectively be affected thereby, or unless such men shall have had notice thereof, or unless two of the said Justices shall cause notice to be given to such men respectively, requiring them to show cause at some adjournment of such sittings, to be holden at the next Local Court thereafter, why their names should not be inserted or struck out, as the case may be; and when every such list shall be duly corrected at such sittings, or at any adjournment thereof, it shall be allowed by the Justices present, or two of them, who shall sign the same with their allowance thereof; and every such allowance shall be final and binding on all men; and no exemption for any of the grounds hereinbefore stated shall be allowed, which shall not have been brought to the notice of the said Justices before their allowance of such lists: Provided, that if a sufficient number of Justices to form a Local Court of Full Jurisdiction shall not attend, then such lists shall be revised by the Justices or sole Justice attending at the time and place for holding such Court.

Persons may claim to be entered as Special Jurors.

13. Any man whose name may be inserted on any such jury lists, and who may be possessed of lands or tenements within the said Province sufficient to qualify him as a special juror at the Supreme Court, may make application to such Court, Justices, or Justice to have his name entered therein as a special juror; and the said Court, Justices, or Justice being satisfied on oath that the person applying

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applying is duly qualified, shall write the words "Special juror" against his name on such list, and duly initial and allow the same.

14. When any list shall have been duly corrected and allowed by the Justices present at any such Local Court as aforesaid, it shall be the duty of the person producing such list forthwith to transmit the same to the Sheriff, who shall keep the lists so forwarded among the records of his office, and shall cause the same to be fairly and truly copied into a book to be provided for that purpose, and to be called the "Jurors' Book" setting forth in alphabetical order the names of all men contained in such lists respectively, with their respective residences, titles, additions, and qualifications, and according to the form of return given in Schedule B to this Act.

Revised lists to be forwarded to Sheriff, Jurors' book.

15. The jurors' book shall be brought into use on the first day of January after it shall have been so made out, and shall remain in force until the first day of January following, and thereafter until a new jurors' book shall be made out as aforesaid.

Jurors' book to be in force for a year.

16. For the purpose of forming jurors' rolls for use at every Local Court mentioned in Schedule C to this Act or hereafter established, the Sheriff of the said Province from the lists delivered to him shall cause to be fairly and truly copied into a book to be called the Jurors' Roll of such Local Court in alphabetical order, the Christian and surnames of all men qualified and liable to serve, with the addition of their respective residences, titles, additions, and qualifications, appearing on the lists so forwarded as aforesaid for the Jury District annexed to such Local Court in Schedule C to this Act, or by any Proclamation as hereinafter mentioned, and shall subscribe each such jurors' roll with a declaration that, to the best of his knowledge and belief, such roll contains the names of all persons liable to serve on juries at such Local Court.

Local Court jurors' rolls.

No. 781 d '02

17. Every jurors' roll, made out as aforesaid, shall be forwarded by the Sheriff prior to the thirty-first day of December in the year in which the same shall have been so made up, to the Clerk of the Local Court to which the same refers, and shall be brought into use on the first day of January next thereafter, and shall remain in force until the first day of January following, and thereafter until a new jurors' roll shall be delivered.

Jurors' roll to be in force for a year.

18. In order to the trial of jury cases in Local Courts during the year 1862, the Sheriff shall, on the application of any Clerk of a Local Court having jurisdiction to try such causes, send, with all dispatch to such clerk, an extract from the jurors' roll for that year, prepared under the repealed Ordinance No. 12 of 1843 containing a list of the names, residences, additions, and qualifications of at least fifty men liable to serve, who, in the judgment of the Sheriff shall be resident within twenty miles of the Local Court in question, and such extracted list shall be revised by the Magistrates attending at the first Local Court of Full Jurisdiction

Provisional jury lists for Local Courts.

Jurisdiction after the receipt thereof, and when allowed by them shall, to all intents and purposes be deemed to be the jurors' roll for the said Court for the year; and the Sheriff shall, in the event of having to send such lists to different Courts, send, so far as possible, the names of different men; and whenever any new Local Court shall be established, a similar course shall be followed, in order to the trial of jury causes during the current year.

Provisional jurors' book for Supreme Court.

19. In order to the trial of issues and assessment of damages in the Supreme Court, the jurors' book and special jurors' list for the present year prepared under the said Ordinance No. 12 of 1843, shall remain in force until the first jurors' book and special jurors' list under this Act shall have been made out.

Sheriff to prepare special jury lists.

20. Prior to the first day of January in every year, the Sheriff shall extract from the lists so forwarded to him the names of all persons who shall thereby appear to be qualified and liable to serve as special jurymen at any sittings of the Supreme Court or a Court held under the said Third Judge and District Courts Act, and shall cause the names so extracted to be fairly and truly copied out in alphabetical order, together with their respective places of abode and additions, which list shall be called the "Special Jurors' List," and be subjoined to the jurors' book, and the said Sheriff shall prefix to every name in such list its proper number, beginning 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 parchment, paper, or card, 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 purposes hereinafter mentioned.

Jury district may be proclaimed for Courts hereafter to be established.

21. Whenever any Local Court with full jurisdiction shall be hereafter proclaimed, the Governor, with the advice of the Executive Council, may at the same time, or at any time thereafter, by Proclamation in the *South Australian Government Gazette*, appoint a jury district, from which jurors for the trial of any jury cases in the Court so proclaimed shall be summoned.

Jury districts may be altered.

22. It shall be lawful for the Governor by Proclamation in the *South Australian Government Gazette*, from time to time to alter the jury district of any Local Court in such manner as to him may seem fit, and after any such alteration the jury lists and rolls shall be made out in accordance therewith, and all the provisions of this Act shall apply to such altered jury district in the same manner as if such altered description had been set out in Schedule C to this Act.

Jurors to be summoned in rotation.

23. To the end that all persons liable to serve on any such juries as aforesaid, may bear an equal share of duty, the Sheriff and every Clerk of

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of a Local Court shall, as occasion may require, summon all persons whose names may appear in such jurors' book or roll and special jurors' list respectively (and who, in the case of Local Courts, may be liable to serve at the particular Court), according to the order, as nearly as may be, in which such names shall successively be placed until every such person shall have been summoned in his turn, and in case any such person shall make default, every such defaulter shall be summoned a second time or oftener until he shall have served for such default, and such order shall be observed every succeeding year, the Sheriff or Clerk beginning from the names of the persons in the last book who were last summoned to attend on such juries: Provided that no person shall be summoned to attend the Criminal or Civil Sittings of the Supreme Court, who shall reside more than fifty miles from the place where such Sittings are to be held.

24. At the end of every sitting of any Court, for the trial of issues, whether civil or criminal, the Sheriff or his deputy, or in case of a Local Court, the Clerk shall write in the jurors' book opposite the name of every juror who shall have served at such sitting, the time of his so serving, and such juror shall be exempt from serving at the same Court in a less time than a year from the time of his so serving, unless all the jurors named in the jurors' book or roll and liable to serve shall have been previously summoned; and the Sheriff or Clerk of the Court shall, as far as is practicable, summon such persons as jurors who have been the longest time without serving, and shall for that purpose preserve the yearly book or roll of jurors with the several times of service marked as aforesaid for at least three years after the same is made out: Provided that such service at the Civil shall not be a ground of exemption under this section from service at the Criminal Sittings of the Supreme Court, nor service at the Criminal from service at the Civil Sittings thereof.

Sheriff shall write opposite the names of jurors the time of their serving.

25. Trials by Jury of causes brought in the Supreme Court, whether in civil or criminal proceedings, shall, so far as is not hereby provided for, be subject to the like incidents and rules of proceeding as are attendant and are observed on trials by jury before Judges of Her Majesty's Superior Courts of Record in England.

Proceedings on trial in Supreme Court.

26. The trial of issues joined in the Supreme Court upon any indictment, presentment, or information, and the trial of issues joined, and the inquiry of damages in all civil actions in the Supreme Court, shall (except where tried without a jury) be had by a jury of twelve men taken from the jurors' book, and qualified as mentioned in sections 4 and 5.

Cases to be tried by jurors qualified under sections 4 and 5.

27. The several writs of *distringas juratores*, and *habeas corpora juratorum*, and the entry *jurata ponitur in respectu* shall not be necessary or used; but it shall be lawful for the Supreme Court, whenever

Jury process.

whenever any issues are to be tried, or damages to be assessed in that Court, from time, to time as and when the sittings of the said Court shall be holden, to issue a general *venire facias* for the trial of all issues to be tried, or damages to be assessed, and the form of such *venire facias* shall be settled by the Court: Provided always that the names of no more than eighty nor less than twenty-four persons, duly qualified to serve as jurors as aforesaid, shall be included in any such *venire facias*, but it shall be lawful for the Court to direct by such writ, that the jury so to be summoned may be divided into two sets, one whereof may be summoned to attend on the first day of the sittings, and the other on a certain other day therein mentioned, and such jurors shall be summoned and returned in two separate panels, of equal numbers each accordingly: And every *venire facias* shall be issued to the Sheriff at least twenty clear days before the attendance of such jurors shall be required, and the said jurors shall be severally summoned by the Sheriff, or his proper officer, seven clear days before their attendance shall be required, and every such summons shall be in writing, and signed by the Sheriff or his Deputy, to the following effect:

Mr. A. B. [naming the juror] you are hereby required to appear as a juror at the [naming the Court] to be held on the
 day of _____ and there to attend from day to
 day until you shall be discharged by the said Court.

(Signed)

C. D.

Sheriff.

And the summons shall be delivered to the respective persons personally, or in case any juror shall be absent from his usual place of abode, shall be left with some person there dwelling, and the Sheriff shall return to the Court on the day appointed for that purpose the said writ of *venire*, with the panel or panels of jurors summoned by him, and the Sheriff shall cause a copy of every panel of jurors so summoned by him to be kept in his office for seven days at the least before the sitting of the Court, to attend which the said jurors are summoned, and the parties in all cases, civil and criminal, to be tried at such sitting and their respective attorneys, shall have full liberty to inspect such list without any fee or reward to be paid for inspection, and the Sheriff shall also cause a copy of every panel of jurors summoned, to try issues in criminal cases, to be suspended in some conspicuous part of the Common Gaol nearest to the place where the Criminal Sittings of the Court shall be held for at least seven days before the first day of the sittings of the Court for which the jurors are summoned.

Jury to be sworn
 once, and not re-
 sworn.

28. The proper officer of the Supreme Court, on delivery to him of such panel as aforesaid, shall, in open Court, call aloud the names of the jurors on the said panel, and such of the said jurors as shall then or at any time answer to their names may be sworn in open Court in such one of the forms contained in Schedule D to this Act as may be applicable to the case, and being once sworn,
 shall

shall not need to be resworn in each trial or inquiry, unless they that sue for the Queen, or any other of the parties or the Court so require; but no person shall, by means of the premises, be deprived of his right of challenge, but may exercise the same at any time before the commencement of the trial or inquiry.

29. The name, addition, and place of abode of each juror summoned as aforesaid, shall be written on a separate piece of parchment, paper, or card, such pieces being all as nearly as may be of equal size, and shall be delivered unto the Chief Clerk or other ministerial officer of the Court, and shall, under his direction and care, be put into a box, and when any issue is called on to be tried, the Chief Clerk or other ministerial officer of the Court, shall, in open Court, draw therefrom until twelve men appear, who, after all just causes of challenge allowed, shall be approved of as fair and indifferent, which same being marked in the pannel and sworn, shall be the jury to try the issue, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury shall have given in their verdict and the same shall be recorded, or until such jury shall, by consent of the parties, or by leave of the Court, be discharged, and then the same names shall be returned to the box to be kept with the other undrawn names, and so *toties quoties* as long as any issue shall remain to be tried: Provided always that if any issue shall be brought on to be tried in any Court, before the jury in any other issue shall have brought in their verdict, or been discharged, it shall be lawful for the Court to order twelve of the residue of the said parchments, paper, or cards not containing the names of any of the said jury, to be drawn in such manner as aforesaid, for the trial of the issue which shall be so brought on to be tried: Provided also that where no objection shall be made on behalf of any party it shall be lawful for the Court to try any issue with the same jury that shall have previously tried or been drawn to try any other issue without their names being returned to the box and redrawn, or to order the names of any men on such jury whom both parties may consent to withdraw or who may be justly challenged, objected to, or excused by the Court, to be set aside, and other names to be drawn from the box, and to try the issue with the residue of such original jury, and with such men whose names shall be so drawn, and who shall appear and be approved as indifferent, and so *toties quoties* as long as any issue remains to be tried; and the same form and manner of proceeding may be adopted in every inquiry of damages in civil actions.

Juries to be drawn
by ballot. j

30. Whenever, upon any trial or inquiry of damages in the Supreme Court, either party, whether plaintiff or prosecutor, defendant or prisoner, as the case may be, shall object to any of the jurors named in the panel returned by the Sheriff for the trial of such issues, it shall be lawful for him to object to any number of such jurors not exceeding six by giving the Chief Clerk or other ministerial officer of the said Court a note of the names of the jurors objected to, and, notwithstanding anything hereinbefore contained,

Parties may object to
jurors.

contained, the said clerk shall thereupon put aside all the pieces of parchment, paper, or card having thereon the names of the jurors so objected to by either party, and shall put the residue only of the pieces of parchment, paper, or card into the balloting box, and shall draw therefrom the names of the jurors to try such issue: Provided always, that nothing herein contained shall take away the right of challenge for good cause, according to the laws of England.

Sheriff shall, upon demand, give a copy of the panel returned by him.

31. For the purpose of enabling parties to make their objections in manner aforesaid, the Sheriff shall, upon the demand of every person, being either plaintiff or prosecutor, defendant or prisoner, or of his attorney or agent, give to such person, or his attorney or agent, a copy of the panel of jurors returned by him for the trial of any such issue, on payment to him of a sum not exceeding One Shilling.

Clerk of Local Court to summon jury.

32. Whenever a jury shall be required at a Local Court, the Clerk of the Court shall cause so many of the persons named in the jurors' roll as shall be needed in his opinion to be summoned to attend the Court at the time and place to be mentioned in the summons; and every summons shall be in writing, signed by the Clerk of the Court, and shall be to the following effect:—

Form of summons to jurors.

Mr. A.B. [naming the juror], you are hereby required to attend as a juror at the Local Court, to be holden at _____ on the _____ day of _____ next, and there to attend from day to day until you shall be discharged by the said Court.

(Signed) C.D., Clerk.

And the delivery of such summons to the person whose attendance is required, or his wife, servant, or any inmate of his usual place of abode, shall be sufficient service thereof.

Number of jurors.

33. Whenever there are any jury trials at a Local Court, four jurymen shall be impannelled and sworn in such one of the forms in Schedule D to this Act as shall be applicable to the case, to give their verdicts in the causes which shall be brought before them in the said Court, and being once sworn shall not require to be resworn in each trial, and either of the parties in any such cause shall be entitled to his lawful challenge against all and any of the said jurors in like manner as he would be entitled at the Civil Sittings of the Supreme Court, but neither party shall have a right of challenge except for cause against more than three jurymen, and the finding of the jury, or any three of the jurymen, shall be taken as the verdict of the jury. Whenever causes are to be tried at any Civil Sittings of the Supreme Court, or of a Local Court other than the Court in which the cause originated, the jurors summoned for such Sittings shall be liable to serve in all Local Court causes there to be tried.

Affirmations.

34. If any person called as a juror in any Court shall refuse or be

be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his solemn affirmation in the words contained in Schedule E to this Act, which solemn affirmation shall be of the same force and effect as if such person had taken an oath in the usual form; and in any *postea* inquisition, or other legal proceeding, it shall not be necessary to specify that any particular jurors had made affirmation instead of oath, but it shall be sufficient to state that the jurors served and acted in the same manner as if no Act had passed for enabling persons to serve as jurors without oath.

35. The Court in which any issue shall come on to be tried shall have and exercise the same power and authority as the Superior Courts in England have heretofore had and exercised in issuing any writ or precept, or in making any award or order, orally or otherwise, for the return of a jury for the trial of any cause before such Court, or for the amending or enlarging the panel of jurors returned for the trial of any such cause, and the return to every such writ, precept, award, or order shall be made in manner heretofore used and accustomed in Her Majesty's Superior Courts of Record in England.

Provision for oral orders.

36. If any man shall be returned as a juror for the trial of any issue who shall not be qualified according to this Act, the want of such qualification shall be good cause of challenge, and he shall be discharged upon such challenge if the Court shall be satisfied of the fact; and if any man returned as a juror for the trial of any issue shall be qualified in other respects, according to this Act, the want of freehold shall not on such trial, in any case, civil or criminal, be accepted as good cause of challenge, either by the Crown or by the party, nor as cause for discharging the man so returned upon his own application, any law, custom, or usage to the contrary notwithstanding.

Want of qualification cause of challenge.

37. Nothing herein contained shall deprive any alien, indicted or impeached of any felony or misdemeanor, of the right of being tried by a jury *de medietate linguæ*, but on the prayer of every alien so indicted or impeached, the Sheriff, or other proper officer, shall, by command of the Court, return for one half of the jury a competent number of aliens, and no such alien juror shall be liable to be challenged for want of freehold or of any other qualification required by this Act, but every such alien may be challenged for any other cause in like manner as if he were qualified.

Alien's juries.

38. When a sufficient number of jurors summoned to attend the Supreme Court shall not be in attendance, or when by challenge the jury is likely to remain untaken, it shall be competent to either party to pray a *tales*, and the Court may then command the Sheriff or his Deputy forthwith to summon as many good and lawful

A *tales* may be prayed.

lawful men of the bystanders as shall be sufficient to make up a jury for the trial of the cause, such bystanders being persons qualified and liable to serve as common jurors: And when any cause to be tried by a jury at a Local Court shall be called on, and sufficient number of jurors shall not be in attendance, or in case any of those in attendance shall be challenged by the plaintiff or defendant, and such challenge be allowed, and a sufficient number shall not remain to try such case, it shall be lawful either for the plaintiff or defendant to pray a *tales*, and the Judge or Special Magistrate in attendance shall thereupon summon as many good and lawful men of the bystanders as shall be necessary, such persons being qualified and liable to serve as common jurors: Provided, however, that the Supreme Court shall in no case allow such a *tales*, unless at least nine of the jurors summoned for the trial shall attend.

Special jury may be struck.

*Q v. Woodward
11th & 12th Sts
jury to con-
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see manual
reported by*

39. It shall be lawful for the Supreme Court, or a Judge thereof, by rule or order to direct any particular case, civil or criminal, to be tried by a special jury upon such terms as may seem fit, and whenever any such rule or order may be made, the Sheriff shall appoint a time and place for striking such jury, and shall in the presence of the parties and their attorneys, if they choose to attend on reasonable notice, put the numbers of the special jurors' list (written on distinct pieces of parchment, paper, or card as aforesaid) into a box, to be provided by him for that purpose, and after having shaken them together shall draw out of the said box thirty of the said numbers, one after another, and 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 thirty numbers shall have been drawn the said Sheriff shall prepare two lists of the men's names with the numbers as they are written in the special jurors' list, and shall deliver one list to the plaintiff, or prosecutor, or his attorney, and another list to the defendant or his attorney, and the thirty names contained in the lists so delivered shall, at a time to be appointed by the Sheriff, be reduced to eighteen by the plaintiff, or prosecutor, or his attorney, and the defendant or his attorney, each of them striking out at his discretion six different names from each of the said lists in the presence of the said Sheriff or his Deputy, who may, in the absence of either party or his attorney, and on proof being made that such absent party has been duly served with notice of the appointment, strike out the names on his behalf, and the said Sheriff shall sign such reduced lists.

Special jury to be balloted for.

*Special
Venire*

40. When a special jury shall be struck as aforesaid, a special *venire* may be issued containing the names of the jurors on the reduced lists, who shall be severally summoned by the Sheriff or his officer to attend the Court at the time appointed for the trial of the cause, according to the form and manner hereinbefore directed for the summoning of common juries, but on a notice of three days, and on the day appointed for the trial the Sheriff shall return the *venire* with a panel of the special jurors summoned by him annexed thereto,
with

with the proper number prefixed to each name, and shall deliver to the clerk or other proper officer of the Court the pieces of paper, parchment, or card, whereon are the numbers of the special jurors on such reduced lists, and the clerk or officer putting the same into the balloting box, shall in open Court draw from the box one number at a time, and shall repeat aloud the corresponding name from the said panel until twelve men shall answer, which said twelve men being duly sworn shall be the special jury.

41. The party applying for a special jury to be struck in any case shall pay the fees for striking, reducing, and summoning the same, and all the extra costs and expenses occasioned by such special striking and reducing, and shall not have any further allowance for the same upon taxation of costs than such party would be entitled to in case the cause had been tried by a common jury, unless the Judge before whom the cause is tried shall, immediately after the verdict, certify under his hand that the same was a cause in which it was proper to have a special jury.

Party applying to
pay costs.

Leach v. Lamb
W. H. C. 437:25 J. H. C.
17

42. A writ of view shall not be necessary or used, but in any cause civil or criminal in the Supreme Court, and in any cause to be tried by a jury in a Local Court, either party may obtain an order commanding the Sheriff, or in case of a Local Court the Bailiff, to have a number (to be specified in such order) of the jurors to be impanelled to try such cause or assess damages therein, who shall be mutually consented to by the parties, or, if they cannot agree, nominated by the Sheriff or Clerk of the Local Court, at some place to be named in such order, and at some convenient time before the trial or inquiry, who then and there shall have the place in question in the cause, or any real or personal property, the view or inspection of which may be material to the proper determination of the question in dispute, shown to them by two persons in such order named, and one of whom shall be appointed by each party (or in case of refusal by either party to name a show the Court may appoint one in his stead); and such order may in all cases be drawn up by the Clerk of the Court or other proper officer on the application of either party without any motion for that purpose, and the party obtaining such order, shall at the time of delivering the same to the Sheriff, or in case of a Local Court at the time of drawing up the order, deposit with the Sheriff or Clerk of the Court a sum, to be fixed by the Sheriff or Bailiff in each particular case, for payment of expenses, and the Sheriff or clerk shall deliver to either party, on request, the names of the viewers or inspectors, and the Sheriff or Bailiff shall certify on the back of the order that the view or inspection has been had, with the names of the viewers or inspectors, and on the day of trial the viewers or inspectors shall be the first of the persons who shall be called on the jury to try the case.

View or inspection.

43. If the sum deposited with the Sheriff or clerk shall be more than sufficient to pay the expenses of the view or inspection, the surplus shall be forthwith returned, or if there shall be a deficiency

Costs of view.

the same shall be forthwith made up by the party who obtained the order, and the Sheriff or clerk shall account for the money deposited, according to the scale in Schedule F to this Act.

Jury fee.

44. The plaintiff in every civil action in the Supreme Court shall, before his cause is called on for trial or assessment of damages, pay to the Sheriff the sum of Five Pounds, or in case of assessment of damages only Two Pounds Ten Shillings, for meeting the jurymen's expenses as hereinafter mentioned, and the Associate before entering the record shall satisfy himself that such sum has been paid.

Payment of Jury.

45. Every jurymen summoned, and who shall attend any Court to try civil issues and assess damages, shall be entitled to receive Ten Shillings per day, as compensation for his expenses, for every day on which such jurymen shall be present, and punctual in his attendance, whether called in any cause or not, and such compensation shall be paid out of the General Revenue, if the sums contributed by suitors shall be insufficient.

Mileage to be paid to jurors on Criminal Trials.

46. There shall be paid to all jurors attending at the Criminal Sittings of the Supreme Court holden at Adelaide, a sum for mileage upon the same scale as for the time being shall be allowed by law to witnesses attending at the Criminal Sittings aforesaid.

Account of attendance to be kept, and jurors paid by the Sheriff.

47. The Sheriff or his deputy, or other proper officer, shall keep an account of the number of days each juror shall be called, and answer to such call, and duly attend the Court; and after the expiration of the time appointed by the Court for the attendance of such jurors respectively, the said Sheriff or other proper officer, shall deliver to every such juror a short account or memorandum in writing, setting forth the number of days upon which such juror may have attended, and the sum of money to which such juror may be entitled, and the said memorandum being taken by such juror to the Sheriff, the Sheriff shall thereupon pay to such juror the sum of money to which he may be entitled, as aforesaid.

Jurors to be fined for non-attendance when duly summoned.

48. If any jurymen duly summoned to attend any Court shall not attend, or shall otherwise make default in not appearing, in pursuance of such summons as aforesaid, every such juror shall be fined in a sum not exceeding Ten Pounds, at the discretion of the Court, Judge, or Special Magistrate presiding, unless some just cause for such defaulter's absence shall be made to appear by oath or affidavit to the satisfaction of the Court; and all such fines for non-attendance at the Supreme Court may be levied by writ issuing out of such Court, directed to the Sheriff, who, at the time appointed by such writ shall duly make a return thereof to the said Court, and shall duly pay into Court all sums levied by him by virtue thereof; and all fines for non-attendance at a Local Court may be enforced upon the order of the Court, Judge, or Special Magistrate, in the same manner as if such fines were imposed under the authority of the "Local Court Act, 1861"; and

all

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Jury 3rd 438

all fines, penalties, and sums of money which shall be levied and paid under this Act shall be accounted for and paid over to the Treasurer, to the use of Her Majesty, Her heirs, and successors, for the public uses of the said Province, and the support of the Government thereof.

49. If any Clerk of any Corporate Town, District Council, or other officer appointed, as aforesaid, shall refuse or neglect to provide or prepare a jurors' list within the time and in manner and form hereinbefore prescribed, or to deliver the same to the Sheriff within the time hereinbefore prescribed, or shall wilfully fail well and faithfully to do and perform all the acts, matters, and things hereby required to be by him performed, or if any Sheriff or Under-Sheriff shall make, or cause to be made, any alteration whatsoever in the list of jurors, or in the jurors' book, or if any Sheriff or Under-Sheriff shall neglect or refuse to provide or prepare a list of special jurors in the manner and within the time hereinbefore prescribed, or shall wilfully write, or cause to be written therein, the name of any person not qualified, or shall wilfully omit thereout the name of any person duly qualified as a special juror, or shall neglect or refuse to write, or cause to be written, the several numbers contained in such list, upon distinct pieces of parchment or card, in the manner and within the time hereinbefore prescribed, or shall subtract or destroy, or by any default or neglect lose any of the said pieces of parchment, paper, or card, or shall neglect or refuse, upon discovery of such loss, to supply the same within five days, or if any Sheriff or Under-Sheriff shall refuse or neglect to prepare or keep for inspection as aforesaid a copy of the panel in the cases hereinbefore provided for, or to register the service of any juror as hereinbefore directed, or to deliver to any man who shall have been summoned and have duly attended or served as a juror at any Court, a certificate of such man's service on his application and payment as aforesaid, or shall refuse or neglect within ten days after the next succeeding Sheriff shall be sworn into or have entered upon office, to deliver over to him as well all the jurors' books and lists that shall be made or prepared, or if any Sheriff or Under-Sheriff, or any clerk or other minister or officer of any Court shall wilfully fail well and faithfully to do and perform all and several the acts, matters, and things hereby required to be by them respectively performed, every such offender shall for every such offence forfeit a sum not exceeding Fifty Pounds, two-thirds whereof shall be paid to the Treasurer on behalf of Her Majesty, Her heirs, and successors, for the public uses of the said Province and support of the Government thereof, and the remaining third with full costs to such person as shall sue for the same by action of debt.

Penalty on clerks, Sheriffs, and other officers neglecting their duty as herein mentioned.

50. All actions, suits, and prosecutions, to be commenced against any person for anything done in pursuance of this Act shall be commenced within six calendar months after the fact committed, and not otherwise.

Actions to be commenced within six months.

51. Any

Persons corruptly influencing jurors to be punished by fine and imprisonment.

51. Any person guilty of the offence of corruptly influencing or attempting to influence any juror, or consenting thereto, may be punished with fine and imprisonment on conviction before the Supreme Court.

Remuneration to persons making out lists and rolls.

52. There shall be payable out of the General Revenue of the said Province to the persons aforesaid, for making out jurors' lists and rolls, on the certificate of the Sheriff that such work has been duly performed, a sum of money according to the scale in Schedule F to this Act; and such payments shall be made by the Treasurer, in pursuance of warrants under the hand of the Governor.

Coroner's Act.

53. Nothing herein contained shall affect a certain Act No. 7 of 1850, intituled "An Ordinance to regulate the Office of Coroner in South Australia," or any of the laws in force in the said Province relating to coroners' inquests.

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

D. DALY, Governor.

Government House, Adelaide,
29th August, 1862.

SCHEDULES REFERRED TO.

A

Date of Act.	Title of Act.	Extent of repeal.
6th & 7th Vict., No. 12, 1843.	An Ordinance to regulate Trials by Jury in South Australia.	The whole.
1854. No. 8.	An Act to amend "An Ordinance to regulate Trials by Jury in South Australia."	The whole.
24th & 25th Vict., No. 15.	An Act to amend the laws relating to the Jurisdiction of Local Courts.	Sections numbered 38, 39, 40, 41, 42, 43, 44, and 45.

B

Precept for returning List of Jurors.

South Australia } To the Clerk of the District Council of the district of
to wit. } *Town Clerk of the Corporation of*]. [or

By virtue of "The Jury Act, 1862," you are hereby required to make out, on or before the first Monday in October next, a true list in writing, in the form hereunto annexed, containing the names of all men being natural born or naturalized subjects of Her Majesty, between the ages of 21 and 60, residing within the boundary of the above named district [or Corporation] qualified and liable to serve on Juries; and you are hereby required to make out the said list in alphabetical order, and to write the Christian and surname of every man at full length; and the place of his abode, his title, quality, calling, or business, the nature of his qualification and the annual value thereof, in the proper columns of, and according to the form hereunto annexed. In making such list you are to omit the names of all Judges, and officers of all Courts, whether of record or otherwise; all barristers-at-law, attorneys, solicitors and proctors, if actually practising, and having taken out their annual certificates; all officers and persons in the Civil Service of Her Majesty; all officiating ministers of religion within the meaning of Act No. 12 of 1842; all medical practitioners holding the licence of the Medical Board; all officers of the Army or Navy on full pay; all masters of vessels actually trading; all licensed pilots; all household officers and servants of the Governor of the said Province; and all sheriff's officers, all District Council clerks, rangers, and constables; telegraph clerks, station-masters, engineers, and guards.

And when you have made out such list, you are required, on the three first Sundays in October next, on the principal door of every church, chapel, or other place of religious worship within your corporation or district, to affix a notice to the following effect:—"Take notice that the list of men qualified to serve on Juries resident in the District Council [or Corporate Town] of _____, now lies at my office for inspection; and that all objections to the said list will be heard by the Local Court of _____, on the _____ of _____ next, at the hour of _____, at _____." And you must allow any inhabitant of the above named district [or Corporation] to inspect the same at any reasonable hour during the three first weeks of October next gratis. And you are also further required to produce the said list at such Local Court, bringing with you the rate books of your Corporation or District, and there to answer on oath such questions as shall be put to you by Her Majesty's Justices of the Peace there present, touching the said list. And these several matters you are in no wise to omit, under liability to a penalty of Fifty Pounds.

Given under my hand and seal of office, at Adelaide, on the _____ day of _____ 186 .

E

W. R. B. Sheriff.
Form

*Repd: No. 7
1865-6, S. 4*

Form of Return.

District Council [or Corporation] } The return of the Clerk of the District Council
of to wit. } [or Corporation] of , of men qualified
to serve on Juries.

Christian and Surname at full length.	Residence. [In towns add the name of the street.]	Title, calling, or business.	Qualification. Annual value, assessed or otherwise.

A.B., Clerk of

C

No.	Name of Local Court.	Jury District annexed to such Local Court.
1	Adelaide	City of Adelaide; Towns of Kensington and Norwood, Brighton and Glenelg; Districts of East Torrens, West Torrens, Mitcham, Brighton, Payneham, Burnside, Crafers, and Walkerville.
2	Angaston	District of Angaston and Hundred of North Rhine.
3	Auburn	District of Upper Wakefield, and Hundreds of Hall and Stanley.
4	Clare	District of Clare; Hundreds of Blyth and Milne; and that portion of the Hundred of Clare not included in the District of Clare.
5	Gawler	Town of Gawler; Districts of Barossa West, Munno Para East, Port Gawler, and MudlaWirra.
6	Goolwa	Districts of Port Elliot and Goolwa and Alexandrina.
7	Gumeracka	Districts of Talunga, Para Wirra, and Tungkillo; and Hundred of South Rhine.
8	Kapunda	Hundreds of Kapunda, Light, and Belvidere.
9	Redruth	Hundreds of Koorunga, Apoinga, Hanson, and Kingston.
10	Morphett Vale	Districts of Clarendon, Morphett Vale, and Noarlunga.
11	Mount Barker	Districts of Echunga, Mount Barker, and Nairne.
12	Mount Gambier	Hundreds of Blanche, Hindmarsh, Young, Gambier, and Mac-Donnell.
13	Mount Remarkable	Portion included within a radius of 17 miles from Local Court, Melrose.
14	Narracoorte	Portion of country north of the Hundreds of Comaum and Killanoola, and extending 15 miles north of Local Court House.
15	Penola	Hundreds of Killanoola, Comaum, Monbulla, Penola, and Grey.
16	Port Adelaide	Town of Port Adelaide; Districts of Hindmarsh and Port Land Estate; and that portion of the Hundreds of Port Adelaide and Yatala not included in any District.
17	Port Augusta	Portion included within a radius of 17 miles of Local Court House.
18	Port Elliot	Districts of Port Elliot and Goolwa and Encounter Bay.
19	Port Lincoln	Portion included within a radius of 20 miles of Local Court House.
20	Robe	Hundred of Waterhouse.
21	Salisbury	Districts of Yatala and Munno Para West.
22	Strathalbyn	Districts of Strathalbyn, Macclesfield, Kondoparinga, Bremer, and Onanunga; and that portion of the Hundred of Freeling not included in any District.
23	Tanunda	Districts of Tanunda, Barossa East, and Mount Crawford; Hundred of Nuriootpa; and that portion of the Hundred of Moorooroo not included in any District.
24	Tea-tree Gully	Districts of Tea-tree Gully and Highercombe.
25	Willunga	Districts of Willunga, Aldinga, and Myponga.
26	Woodside	District of Onkaparinga.
27	Yankalilla	Districts of Yankalilla and Rapid Bay.
28	Riverton	Hundreds of Waterloo, Alma, Gilbert, and Saddleworth.
29	Kadina	Portion of country included within a radius of 20 miles around Local Court House.

NOTE.—The districts mentioned in the third column of this Schedule are districts established under the District Councils Acts, or some of them.

D

“You and each of you shall well and truly try, and true deliverance make, between our Sovereign Lady the Queen and all persons whom you or any of you shall have in charge, and a true verdict give according to the evidence, So help you God.”

“You and each of you shall well and truly try the issues, and assess the damages, in all causes that may be brought before you or any of you for trial or inquiry, and a true verdict give according to the evidence, So help you God.”

E

“I, A.B. (name of juror), do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly sincerely and truly affirm and declare [‘that I will well and truly try, and true deliverance make, between our Sovereign Lady the Queen and all persons whom I shall have in charge’ or *as the case may be* ‘that I will well and truly try the issues, and assess the damages in all causes that may be brought before me for trial or inquiry’], and a true verdict give according to the evidence.”

F

		£ s. d.	
Preparing and copying Jury Lists and Rolls, for each folio of 72 words		0 0 6	
Expenses on view.	In Supreme Court.	In a Local Court.	
	£ s. d.	£ s. d.	
For travelling expenses and refreshments to the Sheriff or Bailiff, Shewers and Jurors the expenses actually paid if reasonable	—	—	
Fee to the Sheriff or Bailiff when the distance does not exceed five miles	1 0 0	0 10 0	
Exceeding five miles	1 10 0	0 15 0	
For every day, if necessary, after the first	1 0 0	0 10 0	
Fee to each Shewer the same as to Sheriff or Bailiff	—	—	
Fee to each Juror, per diem	0 10 0	0 10 0	
To Sheriff or Bailiff for summoning each Juror within five miles....	0 5 0	0 5 0	
Mileage for every mile beyond five	0 1 0	0 1 0	