

## CHAPTER 56.

### Of Trial by Jury.

#### SECTION

- 1.—Qualification of Grand Jurors in the Central District.
- 2.—Qualification of Petty Jurors.
- 3.—Qualification of Grand Jurors in Northern and Southern Districts.
- 4.—Qualification of Petty Jurors in Northern and Southern Districts.
- 5.—Jurors to serve in Courts of Quarter Sessions.
- 6.—Magistrates to make lists of Jurors and return same to Sheriff. Revision.
- 7.—Lists to be open to the inspection of the public.
- 8.—Lists of persons removed from Panel to be kept by Sheriff, &c.
- 9.—Persons on revised lists of Jurors liable to serve for current year.
- 10.—Mode of drawing and summoning Grand Jurors.
- 11.—Mode of drawing and summoning Petty Jurors and the time they shall serve.
- 12.—Mode of drawing and summoning Petty Jurors outside St. John's.
- 13.—Power and authority of Courts to prolong attendance of Jurors.
- 14.—Special Juries in criminal cases.
- 15.—Copy of rule to be served on opposite party.
- 16.—17.—Mode of drawing such Jury.
- 18.—In case of insufficiency of Jurors Court may order additional Jurors to be summoned.
- 19.—Mode of selecting Jurors to try cases.
- 20.—Right of challenge on felonies and other criminal cases.
- 21.—In civil cases either party may take a rule for a Special Jury.

#### SECTION

- 22.—Mode of summoning Special and Petty Jurors in civil cases.
- 23.—In criminal cases Jury to be drawn in Court.
- 24.—Right of challenge in civil cases and upon misdemeanours.
- 25.—Parties excepted from serving on Juries.
- 26.—Grand Juror not liable to serve as a Petty Juror—exception.
- 27.—Service of summons on Jurors.
- 28.—Penalties for non-attendance.
- 29.—Special attendance of Jurors on commissions or precept.
- 30.—Juries in civil cases to consist of nine persons.
- 31.—Practice of keeping Jurors without meat, &c., abolished.
- 32.—Juror challenged may be examined.
- 33.—Jurors in criminal cases sworn simultaneously.
- 34.—Persons convicted of treason, &c., not competent to serve as Jurors.
- 35.—Short attendance of Jurors Court may order attendance of additional Jurors.
- 36.—Irregularities in compiling, &c., lists, no cause of challenge.
- 37.—Irregularities in summoning Jury cause of challenge only.
- 38.—Juror not a British subject or under age ground of challenge only.
- 39.—Person to mean male person.
- 40.—Juries *de medietate lingue* abolished.
- 41.—Trial of challenges for cause by Court.
- 42.—Fund for payment of Petty Jurors.

1. Every person not herein, or not otherwise by law exempted, residing within three miles of the Court House in St John's, and being a merchant or the chief accredited agent of any mercantile establishment,

or a gentleman, or being worth or possessed of property of any description, within the said limits, clear of all incumbrances, of the value of two thousand dollars, or any person owning or occupying a house, land, or tenement, within the said limits, of the annual rent or value of two hundred and forty dollars, shall respectively be qualified and liable to serve as a grand juror in any Court within the Central District of this island.

2. Every person not herein or otherwise by law exempted, residing within three miles of the Court House in St. John's, who shall have resided twelve months within this colony, and who shall, within the limits of the Central District, own, occupy, or possess a house, or tenement, or land, of the annual rent or value of fifty dollars, shall be qualified and liable to serve as a petty juror for the said district.

3. Every person not herein or otherwise by law exempted, residing within at least seven miles from any place where the Supreme Court on circuit shall be holden in the Northern or Southern District of this island, and being a merchant or the chief accredited agent of any mercantile establishment, or a gentleman, or being the owner of property within the said limits, clear of all incumbrances, of the value of eight hundred dollars, or owning or occupying a house, land, or tenement, if at Harbor Grace, of the annual rent or value of fifty dollars, shall be qualified and liable to serve as a grand juror within the limits of the said districts.

4. Every person not herein or otherwise by law exempted, residing within the limits mentioned in the third section, and owning real property to any amount within the said limits, or occupying or possessing a house, land, or tenement within the said limits, of the annual rent or value of sixteen dollars, shall be qualified and liable to serve on petty juries within the said limits in the said district.

5. All persons liable to serve on the said respective juries in the said Courts, except Justices of the Peace, shall be also liable to attend and serve as such jurors as aforesaid in the several Courts of Sessions in this island, when duly drawn and summoned in the manner hereinbefore prescribed, as far as the same can be made applicable, and subject to the like penalties for non-attendance: Provided that no jurors residing further than two miles from Harbor Grace, or an equal distance from Carbonear, shall be summoned to attend at the Court of Sessions held in either of the said respective places.

6. Where lists have not already been made, the Stipendiary Magistrate, or any other Magistrate appointed by the Governor for the purpose, where there is no Stipendiary Magistrate resident in any of the places where any Court may be held, shall superintend and direct the making out of separate lists of all persons qualified to serve on grand and petty juries respectively, in such districts or places, and shall arrange the same in the respective panels in alphabetical order, with the occupation and

place of abode of each person stated, and after revision shall deliver the same to the Sheriff of the district in which the same shall be taken. Such lists of jurors shall be made and taken annually during the first three weeks of January, and the said Magistrates shall revise the lists of grand and petty jurors. Such revision shall take place within ten days, commencing on the first Tuesday in February, on alternate days during the said period. Sufficient public notice of the place at which, and the days and the hours in every day during which such revision shall be held, shall be given either by publication in one or more newspapers, or by posting the same on the doors of the Court Houses or other public buildings. The Magistrates shall within two weeks after every revision return the said lists duly revised to the Sheriff, and a list of all jurors who, upon such revision, shall be exempted or cease to be qualified, and of all others who shall have become qualified to be placed on such lists. For every such return there shall be paid from the public treasury to the Stipendiary Magistrate, for every one hundred names so returned, the sum of eight dollars, one-half thereof to be paid to the officers employed by him.

7. The said lists shall be open to the inspection of the public in the respective offices of the said Sheriffs and of the Magistrates engaged in revision, and in case the name of any person qualified to serve as a grand or petty juror shall not appear on any of the said lists, or the name of any person exempt or not qualified shall appear thereon, the Magistrate having charge of such lists shall correct any such error or supply any such omission by inserting or omitting the name, as the case may require.

8. When members of the panel are for any cause permanently removed from it, lists of those thus exempted from further service shall be kept by the Sheriffs, and return made to the revising Magistrates, according as the exemptions occur in the Supreme Court; and in the Court of Sessions such lists of exemptions shall be kept by the Magistrates.

9. All persons, other than persons not qualified to be jurors, or hereinafter exempted, whose names shall appear on the revised lists of jurors exhibited for public inspection after any annual revision shall be liable to serve for the then current year. This section shall not prevent the transfer, by the Court, of any person, duly qualified, from the petty to the grand jury panel, nor prevent challenge for cause.

10. All the names of persons qualified to serve as grand jurors, together with their respective occupations and places of abode, shall be written or printed on separate cards, and at least fourteen days before the commencement of each term to be holden at St. John's, and at least six days before the first day of each term to be holden at Harbor Grace, and at least a day before such grand jurors shall be required to attend Court in any other place in this island, the respective Sheriffs shall attend with the said cards before the respective Clerks of the said Courts, or their respective deputies, who shall compare the same with the lists of the

grand jurors furnished as aforesaid; and the said cards containing the names of the whole of the said jurors shall be put into a box in presence of the said respective Clerks, and the first twenty-three persons whose names shall be first drawn by the Sheriff, shall be summoned at least four days before the commencement of each term of the said Courts to be holden at St. John's and Harbor Grace, and at least the day before they shall be required to attend any Court to be holden in any other place in this island, and serve as grand jurors for and during such term.

11. All the names of persons qualified to serve as petty jurors in St. John's, together with their respective occupations and places of abode, shall be written or printed on separate cards; and at least fourteen days before the commencement of each term, to be holden in St. John's the Sheriff of the Central District, or his deputy shall attend with the said cards before the Clerk of the Supreme Court, or his deputy, who shall compare the same with the lists furnished, as aforesaid, and the said cards, containing the names of the whole of the said jurors, shall be put into a box, in the presence of the said Clerk, and the first forty-eight persons whose names shall be first drawn by the Sheriff shall be summoned at least four days before the commencement of such term of the said Court, to be holden in St. John's, to be and serve as petty jurors, for and during the first ten days of the said term, and the next forty-eight persons whose names shall be drawn therefrom shall be summoned at least four days before the tenth day of said term, and the said persons so summoned shall in like manner attend and serve as petty jurors for the next ten days of the said term and *toties quoties* for the remainder of the said term.

12. All the names of persons qualified to serve as petty jurors in any place elsewhere than in St. John's, together with their respective occupations and places of abode, shall be written or printed on separate cards, and at least the day before the jurors shall be required to attend Court, the Sheriff of the district in which such Court shall be holden, or his deputy, shall attend with the said cards, before the Clerk of the said Court, or his deputy, who shall compare the same with the lists furnished, as aforesaid, and the same course shall be pursued, as nearly as may be, in drawing and summoning petty jurors for the said Courts, as above provided for St. John's; but it shall not be necessary to summon more than twenty-four jurors to attend such Courts at any one time in any one district during any one term, or sittings of such Court therein; which jurors shall attend during the whole of such term or sitting, except when any criminal causes are to be tried, when thirty-five jurors shall be summoned on each panel.

13. The said Courts shall have power and authority to prolong the attendance of the said jurors if necessary, beyond the time hereinbefore limited for their attendance; and no grand or petty jurors shall be drawn oftener than one term in any year, unless in case of deficiency in the numbers of jurors, when the names of such as have been summoned on

previous juries shall be returned to the box to be drawn in like manner: Provided that no person drawn as a grand or petty juror shall be again drawn as such until the list containing the name of such juror shall have been exhausted.

14. The Supreme Court in St. John's or on circuit may, within forty-eight hours after the cause is at issue, and after hearing the parties, grant to either party to any indictment, or information, whether for felony or misdemeanor, pending in the said Court, a rule for a special jury for the trial of such indictment or information: Provided that the Court may, for sufficient cause, grant such rule at any time after the said forty-eight hours.

15. A copy of the rule or order for such special jury shall be served upon the opposite party or his solicitor, on the day of issuing the same, with an appointment from the Sheriff or his deputy to draw the Jury on the following lawful day, at a time and place to be therein named.

16. At the time and place so appointed, either party or his solicitor or counsel, may be and continue present during the drawing of the jury as hereinafter provided; but the presence or absence of either party shall not prejudice his right of objection or exception to such drawing, or the mode thereof, or any part thereof.

17. At the time and place so appointed, or so soon thereafter as the Sheriff may, without undue or unreasonable inconvenience to either party appoint, the Sheriff or his deputy shall, in the presence of the parties or their solicitors or counsel, or such of them as shall attend, or if none of them shall attend, then in their absence draw forty-eight names from the box containing the names of the grand jurors, for that term (setting aside such as are then summoned to attend upon the grand jury, except in cases where a deficiency would thereby arise,) and make a list of them as they are drawn. The said forty-eight jurors shall form the special panel for the trial of the cause, to be summoned by the Sheriff at least the day before their attendance shall be required for the trial of the cause.

18. Whenever it shall appear to the Court that from any cause, the number of such special jurors in attendance may not be sufficient to furnish a full jury for the trial of the cause, the Court may at any time before the jury are sworn, order that an additional number of jurors, to be determined by the Court, be forthwith drawn and summoned. The said additional jurors shall be drawn from the box containing the names of the grand jurors, in the same manner as hereinbefore provided for the drawing of the said forty-eight jurors.

19. The names of the persons returned to serve on such special jury, together with their respective occupations and places of abode having been written or printed on separate cards, the said cards shall be put into a box

in open Court, and the first twelve persons whose names shall be first drawn and then present in Court, shall be the special jury to try the said cause, except where any of the said jurors shall have been set aside for challenge.

20. Upon the trial of an indictment for a capital felony, the accused shall have the right peremptorily to challenge twenty special jurors. In all other cases the accused shall have the right peremptorily to challenge thirteen special jurors. In any case where there are more than one person charged in the same indictment no greater number than twenty peremptory challenges, if the charge be one of capital felony, or thirteen in any other cause, shall be allowed.

21. Any party to a civil cause or issue pending in any of the said Courts may take a rule for a special jury as of course within twenty-four hours from the time of docketing the cause for trial upon filing a motion paper, or the said Courts may grant a rule for a special jury if it think fit after the expiration of such time. A copy of such rule shall be served at the address of the opposite party or of his solicitor on the day of issuing the same, with an appointment from the Sheriff or his deputy to draw the jury on the following lawful day at an hour to be named therein. The course of procedure for the drawing and summoning of such jury shall be as follows:—

The Sheriff or his deputy shall, in the presence of the parties or their Solicitors, or such of them as attend, draw thirty-one names from the box containing the names of the grand jurors, setting aside such as are then summoned to attend upon the grand jury for that term, except in cases where a deficiency would thereby arise, and make a list of them as they are drawn. The plaintiff and defendant, or, in the absence of either, the Sheriff or his deputy for the absent party, shall then alternately strike off a name until each has stricken off seven, and the remaining seventeen shall form the special jury panel, to be summoned by the Sheriff at least the day before their attendance shall be required for the trial of the cause

22. The names of persons returned to serve on special or petty juries, together with their respective occupations and places of abode, being written or printed on separate cards, whenever a jury shall be required to try a civil cause, whether the cause be a petty or special jury cause, the cards containing the names of the special or petty jurors summoned, as the case may be, shall be put into a box in open Court, and the first nine persons whose names shall be first drawn, and then present in Court, shall be the jury to try the said cause, except where any of the said jurors shall have been set aside for challenge; in any case in which a sufficient number of jurors shall not appear or remain unchallenged, or otherwise, to try the cause, then, and in such case, a *tales de circumstantibus*

shall be awarded and immediately returned by the Sheriff from the qualified petty jurors or the by-standers there present; and in any petty jury cause, after the first in each term, the Clerk having returned into the box the names of the petty jurors who have been challenged, or who have not appeared, shall proceed to draw the jury therefrom until all the names have been drawn, when the names of such as have served on previous juries shall be returned to the box to be drawn in like manner.

23. In criminal cases the juries for the trial of the same shall be drawn by the Clerk from the whole panel in attendance on the Court, instead of from those only who have not served on previous juries, the names of all jurors then in attendance being placed in the box for that purpose.

24. On every trial of any civil cause or issue, either party in any jury case, and upon the trial of any information or indictment for a misdemeanour, either party in a petty jury case may peremptorily challenge three jurors or talesmen as they come to the book, and such challenge shall be admitted by the Court, but shall not affect any other right of challenge the party challenging now has or may have, nor if such party consist of several persons, give a right to challenge more than three jurors.

25. The following persons, although they may not have applied to have their names erased from the list, shall be exempt from serving on grand, special and petty juries in the said several Courts, that is to say: the Colonial Secretary, Receiver General, Surveyor General, Chairman of the Board of Works, and Financial Secretary of this island; the members of the Executive Council, and of the Legislature, Stipendiary Magistrates, the officers of the several Courts of Justice, household servants of the Governor, Sheriffs' officers, Postmaster General and officers and servants of the Post Office, officers of the army and navy in actual service, the clerks in the several departments of the army, the officers and clerks belonging to the civil departments of Her Majesty's Government, clergymen, barristers, solicitors, physicians, surgeons, apothecaries; managers, clerks and cashiers of banks, electric telegraph operators, schoolmasters, pilots licensed under any act of the Legislature, masters and engineers of tug-boats belonging to St. John's, persons under twenty-one and over sixty years of age, and organized enginemen and firemen in St. John's and Harbor Grace only, upon their making oath of their due and actual admission and enrolment as members of such companies twelve months preceding the application for exemption, together with a certificate from the superintendent or chief officer of the respective companies of their conformity during that period to the rules thereof.

26. No grand juror shall be liable to serve on a petty jury except as a talesman.

**27.** In every case the summons for every grand, special or petty juror shall be served upon him personally, or left at his usual place of business or abode for him

**28.** The Court shall have power to impose upon any persons summoned to attend as jurors who, not being prevented by sickness or other reasonable cause, fail to appear and serve, the following fines:—

- (a.) Upon a grand juror, not exceeding twenty dollars, nor less than four dollars.
- (b.) Upon a special juror, in a criminal case, not exceeding two hundred dollars.
- (c.) Upon a special juror, in any other case, not exceeding twenty dollars, nor less than four dollars.
- (d.) Upon a petty juror, not exceeding four dollars, nor less than one dollar.

For every day's default, which respective penalties having been recovered, if necessary, by distress and sale of the offender's goods and chattels, shall be paid to the Clerk of the Court, and by him handed over to the Receiver General, at the end of the term wherein the same shall have been enforced, for the use of the colony.

**29.** All persons liable to serve on the said respective juries shall be liable to serve as such jurors as aforesaid, under special commission, at every other period than the usual term of the Courts that may be stated in such commission, or at such time as any of the Judges of the Supreme Court or Justices of the Quarter Sessions may direct in any precept to be issued by any of them.

**30.** Every special or petty jury for the trial of civil causes or issues within this colony, shall consist of nine persons, of whom, if the nine cannot agree upon an unanimous verdict after three hours' deliberation, seven may return a verdict.

**31.** The practice of keeping a jury without meat or drink, or other comfort, until they agree upon their verdict, is hereby abolished.

**32.** A juror challenged for want of qualification may be examined as to the ground of challenge by the Court, or by either party in the cause.

**33.** Jurors in criminal cases may be sworn simultaneously, as in civil suits, as soon as a full jury shall appear, after disposal of challenges and exceptions.



34. No person convicted of treason or felony, perjury or subornation of perjury, shall be competent to serve on any jury unless he shall have received a free pardon.

35. The Supreme Court in St. John's or on circuit may, upon any occasion when there shall be a short attendance of petty jurors in the said Court, or when a pressure of business or the exercise or the probability of the exercise of the right of challenge shall seem to the said Court to require such a course, or when the term of attendance of the regular panel has expired, issue one or more precepts for the attendance of additional jurors, who shall be summoned and shall attend forthwith, and who shall be subject to the provisions of this chapter, and shall serve for such time as may be required by the Court.

36. Irregularities in compiling, revising or returning jury lists, shall be no cause of challenge or other exception.

37. Irregularities in drawing, summoning and returning any jury panel shall be subject of exception on challenge only, and not otherwise.

38. The fact that a person, called as a juror, is not a British subject, or is under twenty-one years of age, shall be ground for challenge only.

39. "Persons" in this chapter shall mean male persons.

40. The right of an alien to be tried by a jury *de medietate lingue* is hereby abolished, and he shall be tried in the same manner as if he were a natural born subject of Her Majesty.

41. The trial and determination of the sufficiency of any kind of challenge for cause, shall rest with the Court without jurors or triers.

42. To provide a fund towards the payment of petit jurors in Saint John's who may attend Court without being sworn for the trial of a cause, a fee of one dollar shall be paid into the office of the Chief Clerk and Registrar by the plaintiff upon the issue of all process for all amounts over one hundred dollars, and issued in St. John's, and upon the placing of a cause upon the docket for trial; provided such cause is tried by a jury, a further sum of two dollars. The Judges of the Supreme Court may, by rules, define the amount which such jurors shall receive, and the conditions upon which they shall be entitled to participate in the said fund.