

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1934.

# A BILL

To amend in certain respects the law relating to juries; to amend the Jury Act, 1912, and certain other Acts; and for purposes connected therewith.

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**1.** (1) This Act may be cited as the "Jury (Amendment) Act, 1934." Short title.

(2) The Jury Act, 1912, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Jury Act, 1912-1934.

Jury (Amendment).

2. The Principal Act is amended as follows:—

Amendment of Act No. 31, 1912.

- (a) (i) by omitting from section three the word "thirty" and by inserting in lieu thereof the word "fifty"; Sec. 3. (Qualification of jurors.)
- (ii) by omitting from the same section the words "three hundred" and by inserting in lieu thereof the words "five hundred";
- (b) by omitting from paragraph (c) of section four the word "twice"; Sec. 4. (Disqualification.)
- (c) (i) by inserting at the end of paragraph (d) of section five the words "the mayor or town clerk and engineer of any municipality and the president, shire clerk or engineer of any shire"; Sec. 5. (Exemptions.)
- (ii) by inserting at the end of paragraph (i) of the same section the words "and any person holding an office as a deputy sheriff";
- (iii) by omitting paragraph (pi) from the same section and by inserting in lieu thereof the following new paragraph:—
  - (pi) commercial travellers whose business in that capacity is carried on outside the jurors' district in which they usually reside;
- (iv) by omitting paragraph (pii) from the same section and by inserting in lieu thereof the following new paragraph:—
  - (pii) mining managers, undermanagers and deputies of mines;
- (v) by inserting next after paragraph (piv) of the same section the following new paragraphs:—
  - (pv) editors, publishers and reporters of newspapers;
  - (pvi) optometrists in actual practice;
  - (pvii) registered veterinary surgeons;
- (d) by inserting in section nine after the words "according to this Act" the words "or a list comprising such number of such men as has been"; Sec. 9. (Notice to chief constable.)

been previously certified to such clerk by the sheriff as being reasonably sufficient for the estimated requirements of the district”;

- (e) by inserting at the end of section ten the following new subsection:—
  - (3) The foregoing provisions of this section shall be regarded as sufficiently complied with if the list contains such number of such men as is specified in the notice referred to in section nine.
- (f) by inserting in section twelve after the words “in every year” the words “by notice published in a newspaper circulating in the district or by notice served by post”;
- (g) (i) by inserting in subsection three of section thirteen after the words “infirmity of body” the words “and also the names of all men who in the opinion of the justices are, from the nature of their calling, liable to suffer undue hardship from being called to serve as jurors or whose call to so serve would occasion undue public inconvenience”;
- (ii) by inserting at the end of the same section the following new subsection:—
  - (6) The special petty sessions may be held by and before a stipendiary or police magistrate sitting alone or by and before two or more justices.
- (h) (i) by omitting from subsection one of section fifteen the words “the Supreme Court or a circuit court or” and by inserting in lieu thereof the words “a sitting of the Supreme Court or a district court or a ”;
- (ii) by inserting in paragraph (a) of subsection (1A) of the same section after the words “Supreme Court ” the words “ or a district court ”;
- (iii) by omitting from paragraph (b) of the same subsection the words “ and a number in red ink prefixed to the name of every such person ”;

Sec. 10.  
(Lists to be prepared by chief constable.)

Sec. 12.  
(Special petty sessions to be summoned.)

Sec. 13.  
(Correction and allowance of lists.)

Sec. 15.  
(Lists to be transmitted to sheriff, etc.)

(iv)

- (iv) by omitting paragraph (c) of the same subsection;
- (v) by omitting from subsection two of the same section the words " or circuit court " and by inserting in lieu thereof the words " or district court ";
- (i) (i) by omitting from subsection one of section seventeen the words " Except in the case of the jurors' district of the city of Sydney "; Sec. 17.  
(Jurors' book.)
- (ii) by omitting subsection two of the same section;
- (j) by omitting section nineteen; Sec. 19.  
(District court jurors' book.)
- (k) by omitting section twenty and by inserting in lieu thereof the following new section:— Substituted s. 20.

20. The sheriff shall, upon receipt of the jurors' book for the jurors' district of Sydney, mark in red ink the names of all special jurors contained therein in the manner prescribed in subsection (1A) of section fifteen of this Act, and the names so marked shall constitute the " Sydney Special Jurors' Book ":
- (l) by omitting from section twenty-two the words "circuit court or" and by inserting in lieu thereof the words "sitting of the Supreme Court or a"; Sec. 22.  
(New courts.)  
(Revision.)
- (m) (i) by inserting at the end of subsection one of section twenty-three the words " or a list comprising such number of such men as has been previously certified to such bench by the sheriff as being reasonably sufficient for the estimated requirements of the district "; Sec. 23.  
(Preparation of lists for new courts.)
- (ii) by inserting in subsection two of the same section after the word " justices " the words " or the stipendiary or police magistrate or the two or more justices constituting the special petty sessions as provided by section thirteen ";
- (n) by omitting section twenty-five; Sec. 25.  
(District court judge to prepare jurors' book.)

(o)

- (o) by omitting from subsection one of section twenty-six the words "made out by the sheriff or the district court judge, as the case may be" and by inserting in lieu thereof the words "transmitted to the sheriff"; Sec. 26.  
(Coming into force of juror's books and lists.)
- (p) by omitting from subsection one of section twenty-seven the words "the circuit courts"; Sec. 27.  
(Trial by jury in criminal cases.)  
(Revision.)
- (q) by omitting from subsection one of section twenty-eight the words "or in any circuit court"; Sec. 28.  
(Criminal special jury.)
- (r) by omitting from section twenty-nine the words "whether the trial or assessment is had in the said court or in any circuit court" and by inserting in lieu thereof the words "by one or more judge or judges, or if a judge of the said court, upon application made as prescribed by rules of court by either plaintiff or the defendant in the action or proceeding at any time after issue joined, shall so order"; Sec. 29.  
(Trial and assessment in civil cases.)
- (s) (i) by inserting in section thirty after the word "action" the words "which is to be tried with a jury"; Sec. 30.  
(Juries of twelve.)
- (ii) by omitting from the same section the words "on circuit" and by inserting in lieu thereof the words "in a circuit town";
- (t) by inserting next after section thirty the following new section:— New s. 30A.
- 30A. Where in the course of a civil trial any member of a jury dies or is discharged by the court as being through illness incapable of continuing, or for any other reason, the jury shall, nevertheless, subject to assent being given in writing by or on behalf of the parties, and so long as the number of its members is not reduced below three (or in case of a jury of twelve below ten), be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a valid verdict may be given accordingly. Provision for continuance of civil trial when a juror dies or becomes incapable.

(u)

- (u) by inserting in section thirty-one after the words "as aforesaid" the words "by a jury"; Sec. 31.  
(Trial by jury in unprovided cases to be governed by English rules.)
- (v) (i) by omitting from subsection one of section thirty-two the words "and circuit courts" and by inserting in lieu thereof the word "Court"; Sec. 32.  
(General jury precepts.)
- (ii) by omitting from subsection two of the same section the words "or any circuit court";
- (iii) by inserting at the end of the same section the following new subsection:—
  - (4) Two or more precepts may be issued returnable at any particular court on any one day to ensure the attendance at any trial of a sufficient number of jurors to allow full right of challenge to all parties.
- (w) by omitting from section thirty-three the words "or in any circuit court"; Sec. 33.  
(Special jury precepts.)
- (x) by omitting from section thirty-six the words "or any circuit court"; Sec. 36.  
(Number of jurors to be summoned.)  
(Revision.)
- (y) by omitting from section thirty-seven the words "circuit court" and by inserting in lieu thereof the words "district court"; Sec. 37.  
(Priority of precepts.)
- (z) (i) by omitting from section thirty-nine the words "the next preceding section" and by inserting in lieu thereof the words "section thirty-eight of this Act"; Sec. 39.  
(Enlarged jury panel.)  
(Revision.)
- (ii) by omitting from the same section the words "or in a circuit court";
- (aa) (i) by omitting from subsection one of section forty the words "and circuit courts"; Sec. 40.  
(Power reserved to courts, etc.)
- (ii) by inserting in subsection two of the same section after the word "except" the words "where otherwise provided in this Act and"; (Revision.)
- (bb) (i) by omitting from paragraph (a) of subsection one of section forty-three the words "rotating ballot-box" and by inserting in lieu thereof the words "ballot-box of a type"; Sec. 43.  
(Jurors to be chosen by lot.)
- (ii)

- (ii) by inserting at the end of the same paragraph the words "cards which during any year have already been drawn in a lot pursuant to this section being excluded";
- (iii) by omitting from paragraph (b) of the same subsection the words "Such box first having been made to rotate for one minute at least" and by inserting in lieu thereof the words "The cards in the box having been thoroughly mixed";
- (cc) by omitting section forty-seven and by inserting in lieu thereof the following new section:—
 

47. Where the sheriff has summoned any jurors for the trial of issues in the Supreme Court or court of quarter sessions at Darlinghurst, or the Supreme Court in King-street, Sydney, or the Metropolitan District Court, on any particular day or days, he shall not summon the same juror to attend at any other such court on the same day or days.
- (dd) (i) by omitting from section fifty the words " in alphabetical order";
 

(ii) by omitting from the same section the words "the names of the said persons, with" and by inserting in lieu thereof the words "in the case of a precept for a jury for the trial of criminal issues or of any issue in the matrimonial jurisdiction of the Supreme Court the names of the said persons only and in the case of a precept for a jury for the trial of other civil issues the names of the said persons, also";

(iii) by inserting in the same section after the word "abode" the words "and in each such case";

(iv) by inserting at the end of the same section the following new subsection:—

(2) No person shall, prior to or during the trial, be allowed to inspect or to obtain a copy of any such panel annexed to a precept

Substituted s. 47.

Summoning of jurors to attend certain courts.

Sec. 50. (Sheriff's return to general precept.)

precept directed to the sheriff requiring him to summon jurors for the trial of any criminal issue in any court or of any issue in the matrimonial jurisdiction of the Supreme Court whether tried in the Supreme Court or in a district court pursuant to Part IV of the District Courts Act, 1912.

- (ee) (i) by omitting from subsection one of section fifty-seven the words "or a circuit court"; Sec. 57. (Impanelling jury in criminal trials.)
- (ii) by inserting in the same subsection after the word "another," the words "and call each by name";
- (iii) by inserting at the end of the same subsection the words "Where more than one precept has been issued returnable on any one day the said clerk shall place into such box all the cards furnished pursuant to all such precepts before drawing any card from such box";
- (ff) by omitting from subsection two of section fifty-nine the words "twice the number of jurors required to be impanelled" and by inserting in lieu thereof the words "the number of jurors required for the impanelling of the jury pursuant to section sixty"; Sec. 59. (Striking jury in civil cases.)
- (gg) (i) by omitting subsection one of section sixty and by inserting in lieu thereof the following new subsection:— Sec. 60. (Impanelling jury in civil cases.)
- (1) In civil issues a sufficient number of pieces of card having been drawn out a list of the names appearing thereon shall be delivered by the sheriff or his deputy to the plaintiff or his attorney or counsel by whom a number of such names equal to one half of the number of the jury to be impanelled may be struck therefrom and the list so reduced shall then be delivered to each defendant who has pleaded separately or his attorney or counsel by each of whom a number

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number of names equal to one half of the number of the jury to be impanelled may be also struck therefrom.

(ii) by omitting subsection three of the same section and by inserting in lieu thereof the following new subsections:—

(3) The cards bearing the names struck out from the list shall be returned to the box as soon as the jury is sworn and impanelled and the cards bearing the names of the jury sworn and impanelled shall also be returned to the box at the conclusion of the trial.

(4) In this section and in section sixty-three “plaintiff” includes petitioner and “defendant” includes respondent and co-respondent.

- (hh) by omitting from section sixty-two the words “the three next preceding sections” and by inserting in lieu thereof the words “sections fifty-nine, sixty and sixty-one”; Sec. 62.  
(When damages assessed only.)
- (ii) by omitting from section sixty-four the word “order” and by inserting in lieu thereof the word “permit”; Sec. 64.  
(Refreshments.)
- (jj) by omitting from section sixty-five the word “twelve” and by inserting in lieu thereof the word “six”; Sec. 65.  
(Disagreement in criminal trial.)
- (kk) (i) by inserting at the end of subsection one of section sixty-six the words “but if three-fourths in number of them do not concur in any such verdict or assessment and it be found after examination on oath of one or more of them that they or three-fourths of them are not likely to so concur then such jurors may be discharged and the cause may without any new process for that purpose be again set down for trial or assessment (as the case may be) either at the same or any subsequent sittings, as the court or presiding judge may order”; Sec. 66.  
(Disagreement in civil cases.)
- (ii)

- (ii) by omitting from subsection two of the same section the words " the whole ";
- (iii) by inserting at the end of the same section the following new subsection:—

(3) In their application to a case where, pursuant to section 30A of this Act, the number of the jury has been reduced to three the provisions of subsection one and of subsection two of this section shall be read as if the word "two" were substituted for the words "three-fourths in number" in each such subsection.

In their application in a case where, pursuant to section 30A of this Act the number of a jury of twelve has been reduced to eleven the provisions of subsection one and of subsection two of this section shall be read as if the word "eight" were substituted for the words "three-fourths in number" in each such subsection.

In their application to a case where, pursuant to section 30A of this Act, the number of a jury of twelve has been reduced to ten the provisions of subsection one and of subsection two of this section shall be read as if the word "seven" were substituted for the words "three-fourths in number" in each such subsection.

- (II) by inserting in Part XIII next after section New s. 69A. sixty-nine the following new short heading and section:—

VIEW BY JUDGE.

69A. Where it appears expedient to any judge of the Supreme Court that in any case depending before him, whether sitting alone or with a jury, in any jurisdiction of the said court that he should have a view of any place referred to in the evidence taken in such case, such judge may view such place and order that the costs and expenses of the view should be paid by one or more of the parties in the case and allowed as other costs in the case.

View by judge—expenses thereof.

(nm)