

and sold as aforesaid, higher, including the roof, than forty feet above the surface of the water aforesaid, nor shall any building whatever be erected on the north side of Water street aforesaid.

Approved March 29, 1805. Recorded in L. B. No. 10, p. 141.

CHAPTER MMDLXXXIX.

AN ACT DIRECTING THE MODE OF SELECTING AND RETURNING JURORS.

Section I. (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That, in each county of this commonwealth, the sheriff and county commissioners, or any two of the said commissioners with the sheriff, shall meet at the seat of justice at least thirty days previously to the first court of common pleas to be holden in each and every year, and shall then and there select, from the list of taxable citizens, the names of a sufficient number of sober and judicious persons, to serve as jurors at the several courts hereinafter mentioned, to be holden in that year, and shall write the name of each person so selected on a small piece of paper, which papers shall be as nearly alike, in size and shape, as may be, and shall be so folded that the name doth not appear; two wheels shall be provided, which shall be numbered 1, 2; in No. 1 the names of those intended for grand jurors shall be put; in No. 2 those intended for petit jurors shall be put; upon which they shall turn the wheel sufficiently to intermix the papers deposited therein, and having first drawn from the proper wheel or wheels a number of names sufficient for the then next court, the wheels respectively shall then be locked up and sealed; the county commissioners shall take charge of the wheels, and the sheriff of the keys; and thirty days previously to each succeeding court, the same proceedings shall be had by the sheriff and county commissioners aforesaid; a list of the names

so drawn shall then be fixed up by the sheriff in his office, and a copy shall be delivered by him to the prothonotary, who shall fix up the same in his office, for the inspection of all concerned, whereupon the usual venire shall be made out by the prothonotary, containing the names of the persons mentioned in said list, so delivered and drawn, and within two days thereafter be delivered by him to the sheriff, who shall thereupon summon the persons named, at least ten days before the first day of the court: Provided always, that the sheriff and county commissioners aforesaid shall always select and deposit a number of names sufficient in each and every wheel, so that at the last drawing, in every year, the number requisite for one jury, at least, shall remain in each wheel, and on every drawing, the wheels shall again be locked and sealed up in manner before directed.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That, for the city and county of Philadelphia, there shall be provided an additional wheel, to be numbered No. 3, for which a sufficient number of names shall be selected and deposited therein for special jurors, which names shall be selected, deposited, drawn, and the persons summoned and returned in like manner, and under the same provisions and regulations as is directed by the preceding section of this act, and for the trial of causes in the Mayor's Court of the city of Philadelphia, one wheel shall be provided for grand jurors, and another for petit jurors, and the like proceedings shall be had, by the aforesaid officers, in the selecting, depositing, drawing, summoning and returning jurors, as is provided in all cases for the county courts: Provided, that the selection for the aforesaid court be made from citizens residing within the bounds of the said city.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That every person whose name shall be so drawn, and who shall have been summoned as aforesaid, but shall not appear before the respective board to which he may have been summoned, after being openly called three times, due proof

being made by the oath or affirmation of the sheriff, or other credible person, that each person so making default had been lawfully summoned, shall forfeit and pay for every such default, in not appearing upon call as aforesaid, (unless some reasonable cause of such person's absence be made appear to the satisfaction of the same court, or to the next succeeding court) such fine, not exceeding twenty dollars, as the court shall think proper to inflict, which fine the sheriff of the proper county shall, within twenty days after the court aforesaid, levy by virtue of a writ to be issued by the court, and shall pay the same to the county treasurer of the proper county, to be appropriated towards defraying the expense of paying jurors; and every person whose name shall be drawn as aforesaid, and not appearing, shall be returned by the sheriff at the next succeeding drawing of jurors, and his name shall then again be put in the wheel from which such name was drawn for the court preceding, provided such person is residing within the county, and so, as often as such person shall refuse or neglect to attend, the like proceedings shall be had; but the name of any person duly summoned and attending, or serving at any court for which his services are required, shall not be put into the wheel a second time in the same year; and any sheriff, coroner, or county commissioner having transgressed therein, shall, on conviction before the court to which such person shall have been summoned contrary to this act, for every such offense, pay a fine not exceeding thirty nor less than ten dollars, payable to the treasurer of the proper county towards defraying the expense of compensating jurors; which fine or fines shall be recovered as sums of equal amount are or may be by law recoverable.

Section IV. (Section IV, P. L.) And be it further enacted by the authority aforesaid, That every sheriff now commissioned, or who may hereafter be commissioned, and every county commissioner now in office, or who may hereafter be elected to office, shall, before he enters on the execution of his office, besides the usual oath or affirmation of office, as required by the constitution and laws of this state, take the fol-

lowing oath or affirmation: I A. B. do swear (or affirm) that I will use my utmost endeavors and diligence in making an impartial selection of persons for jurors, and that I will not suffer partiality, favor or affection, hatred, malice or ill-will in any case or point whatever relating to the selection, drawing and returning of jurors to influence me, but that I will, in all respects, confirm to the true intent and meaning of the acts of the general assembly in such case made and provided; and in case of inability (occasioned by death, resignation or otherwise) of any sheriff in discharging the duties enjoined upon him by this act, the coroner of the proper county shall perform such duties; but before he enters upon the discharge thereof, he shall take the oath or affirmation before prescribed.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That every sheriff or coroner(as the case may be) to whom the return of the writ or process for summoning jurors for the trial of causes, before the judges of oyer and terminer, general jail delivery and nisi prius doth belong, shall, upon return thereof by rule of court, annex a panel to the said writ, containing the christian and surnames, additions and places of abode of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every such writ, for the trial of all issues in civil and criminal causes at the said courts in each respective county, which number of jurors in any county shall not be less than forty-eight nor more than sixty, without the direction of the judge or judges appointed to go the circuit and sit as judge or judges of oyer and terminer, general jail delivery or nisi prius in such county, who are hereby empowered and required, if he or they see cause, by order under his hand or their hands, to direct a greater number not to exceed eighty, and then the number so directed shall be the number who shall be summoned and returned to serve on such juries respectively.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the sheriff or coroner (as the case may be) of the county of Philadelphia, or other county, where the supreme court of judicature shall be holden, to

whom the return of the writ or process for summoning jurors, for the trial of causes at bar before the justices of the said supreme court doth belong, shall upon return thereof, by rule of court annex a panel to the said writ, containing the christian and surnames, additions and places of abode of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every such writ, for the trial of all issues to be tried at the bar of said court during the ensuing term, which number of jurors shall not be less than thirty-six, nor more than forty-eight, which shall be the number who shall be summoned and returned to serve on such juries.

Section VII. (Section VII, P. L.) And be it further enacted by the authority aforesaid, That every sheriff or coroner (as the case may be) to whom the return of the writ or process for summoning jurors, for the trial of causes before the justices of the county court of common pleas, and before the justices of the general court of quarter sessions of the peace and jail delivery, in any county, or in the city of Philadelphia, doth belong, shall, upon return thereof, annex a panel to the said writ, containing the christian and surnames, additions and places of abode of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every writ, for the trial of all issues in causes in that court at the next term, which number of jurors shall not be less than twenty-four, nor more than forty-eight, which shall be the number who shall be summoned and returned to serve on such juries.

Section VIII. (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That the sheriff or coroner, as the case may be, to whom the return of the writ or process for summoning jurors, for the trial of causes before the justices of the court of common pleas for the city and county of Philadelphia doth belong, shall, upon return thereof, annex a panel to the said writ, containing the christian and surnames, additions and places of abode of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every such writ, for the trial of all issues in causes in that court at the next term, which number of jurors shall

not be less than twenty-four nor more than thirty-six, which shall be the number who shall be summoned and returned to serve on such juries.

Section IX. (Section IX, P. L.) And be it further enacted by the authority aforesaid, That the name of each and every person so summoned and impanelled shall be written on several and distinct pieces of paper, which shall be as nearly of equal size and similar shape as may be, by the prothonotary or clerk of court, or his agent, who shall, by direction and under the notice of the judge or justice therein presiding, roll the said papers, severally, as nearly similar as may be, and put them in a box to be provided for that purpose by the said prothonotary or clerk, and when any cause shall be ready for trial some disinterested person, by direction of the court, shall, in open court, after having well mixed the papers deposited in said box, draw therefrom twelve of the said papers, one after another, and if any of the persons whose names shall be so drawn shall not appear, or be challenged and set aside, then such further number of said papers shall be drawn until twelve persons of those who appear, and who be not set aside, be had to serve on the jury, and the said twelve persons so first drawn who appear, and shall be approved, their names being marked in the panel, and they being sworn or affirmed, as the law directs, shall be the jury to try the cause so brought on to be tried as aforesaid, and the papers which bear the names of the persons who shall be so drawn and sworn or affirmed, (as the case may be) shall be kept apart by themselves in some other box, to be provided as aforesaid and kept for that purpose, until such jury shall give in their verdict, and the same be recorded, or until the said jury shall, by leave of the court, or consent of the parties in the cause, be discharged, and the same names shall again be rolled up and returned to the box first before mentioned, there to be kept with the other names remaining at that time undrawn and so often and so long as any cause shall remain to be tried during the term, sessions, or holding of the court: Provided always, that if any cause shall be brought on to be tried in any of the courts aforesaid,

respectively, before that the jury which may be charged in any other cause shall have given in their verdict, or shall be discharged, it shall and may be lawful for the court to order that twelve of the remaining papers aforesaid, (not containing the names of any of the jurors in such other cause) be drawn in manner aforesaid, for the trial of the cause, which shall be so brought on to be tried.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That if a sufficient number of persons so summoned and returned as aforesaid, shall not appear at the court to which they shall be so summoned, or if, by reason of challenges or otherwise, there shall not be a sufficient number of jurors ready for the trial of any cause then brought on to be tried, in such case, upon order of the court for filling the jury from qualified bystanders, who shall be immediately summoned and returned by the sheriff, unless he be liable to some legal exception, and in such case to be returned by the coroner, unless he be also liable to such exception, and then to be returned by two proper and disinterested persons to be appointed by the court for that purpose, and the persons who shall be thereupon summoned and returned, shall attend and serve as jurors at such court accordingly, and in case any of the persons who shall be summoned from amongst bystanders, as aforesaid, shall refuse or neglect to attend as aforesaid, the court shall inflict such fine upon such defaulter as is herein before directed in other cases upon persons, who, being summoned as jurors shall fail to attend, and every such fine shall be levied, collected and paid over by the sheriff as is by this act enjoined.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That when a rule has been entered by either of the parties, in a civil action or cause depending in any court, for striking a special jury, the parties shall strike the same in the prothonotary's office from the list of jurors which may be drawn from the proper wheel, agreeably to the provisions contained in the first section of this act, to serve at the ensuing court, and where a view shall be allowed in any

cause, six of the first twelve of the jurors, or more of them named in the panel, shall be taken by the sheriff or other officer, who shall have the view, and such of the said viewers who appear at calling the jury to try the said cause, shall first be sworn or affirmed to try the same before any drawing as last aforesaid, and so many jurors only shall be drawn as aforesaid, to be added to the said viewers who appear, as shall, after default and allowed challenges, make up the number twelve, to be sworn or affirmed for the trial of such cause.

Section XII. (Section XII, P. L.) And be it further enacted by the authority aforesaid, That the sheriff, or coroner, as the case may be, to whom the return of process for the returning of juries shall belong, from time to time, shall enter, alphabetically, in a book to be kept for that purpose, the surnames of all such persons who shall be summoned, and who shall attend or serve upon juries in the said courts, with their christian names, additions and places of abode, and also the times of their respective services, and every person so summoned and attending, or serving as aforesaid, shall, upon application by him made to such sheriff, (or coroner) have a certificate testifying such his attendance or service; which certificate such sheriff (or coroner) is hereby directed and required to give, without fee or reward, and the said book shall be delivered over by said sheriff, (or coroner) from time to time, to his successor in office.

Section XIII. (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That whenever any verdict, in a civil action or cause, shall be taken, the plaintiff or defendant, for whom the same shall be given, shall forthwith pay to the sheriff the sum of four dollars, which shall be taxed with the costs, and afterwards repaid by the party against whom such verdict shall be given, if the same be a verdict wherein costs be recoverable, for the use of the party so advancing that sum, and the money so to be collected shall be paid into the hands of the county treasurer, to be appropriated towards a fund for defraying the expenses of the juries who shall attend on the said courts respectively, and the prothono-

tary or clerk of the respective court is hereby authorized and required, to certify to the commissioners of the proper county, the number of days each juror shall have served or attended, either as grand or petit juror, and he shall be paid one dollar for every day he may have thus served or attended, by the county treasurer, upon a warrant drawn by the commissioners; which certificates the prothonotary is required to give, without fee or reward: Provided always, that no compensation other than what has heretofore been provided shall be allowed to jurors for their services for the remainder of the present year, and provisions shall accordingly be made in estimating and laying the county rates in the several counties of this commonwealth.

Section XIV. (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That this act shall be of force and effect, so as to authorize the sheriff and county commissioners of the several counties to make the selection of jurors, in the manner required by the first section of this act, thirty days previously to any court to be holden after the twentieth day of August next, and such number only shall be selected as may be required for the courts to be holden in the city of Philadelphia, and respective counties, during the remainder of the present year: Provided, that a number sufficient shall be selected and deposited in the respective wheels, so that the number requisite for one jury, at least, shall remain in each wheel after the last drawing; and the jurors to serve at the several courts, mentioned in this act, shall be selected, summoned and returned in the manner before directed, and not otherwise.

Section XV. (Section XV, P. L.) And be it further enacted by the authority aforesaid, That so much of any act as is by this act altered and supplied, be, and the same is hereby repealed.

Section XVI. (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That this act shall continue in force for the term of three years, and from thence to the end of the next sitting of the general assembly, and no longer.