



By Authority.

ANNO QUARTO VICTORIÆ REGINÆ.  
CAP. I.

An Act relating to the summoning and attendance of Petit Jurors, at the respective Sittings and Circuit Courts, in this Province.

Passed 19th March 1841.

**I.** BE it enacted by the Lieutenant Governor, Legislative Council and Assembly, That it shall and may be lawful for the Judges of the Supreme Court, or any two of them, and for the Commissioners named in any Commission of Oyer and Terminer and General Gaol Delivery, or any two of them, of whom the Presiding Judge shall be one, when and so often as occasion may require, to issue their precept to the Sheriff of the County of York or to the Sheriff of any County or City and County in which any Court of Oyer and Terminer and General Gaol Delivery, may be appointed to be holden, as the case may be, directing such Sheriff to summon such number of Persons duly qualified to serve as Petit Jurors, for any Sittings for the County of York, or for such Court of Oyer and Terminer and General Gaol Delivery respectively, as such Judges or Commissioners may deem necessary or expedient, as may in such Precept be specified, not less however than twenty four; which Persons so duly summoned shall be bound to give their attendance at the time and place appointed for holding any such Sittings or Court, to serve as Petit Jurors during the Sittings of such Court: Provided always and be it enacted, That the presiding Judge at any such Sittings or Court, shall be and he is hereby authorized and empowered to make any such arrangements or regulations, or give such directions, respecting the daily attendance of any and such of the said Jurors, as to him may seem meet, in case he shall be of opinion, that the constant attendance of the whole of the said Jurors so summoned as aforesaid may not be requisite.

**II.** And be it enacted, That the Jurors so summoned to attend at any Court of Oyer and Terminer, or such and so many of them as the presiding Judge may direct and appoint, shall be the Juries for hearing and determining all causes Criminal, to be heard and tried at such Court; and also for the trial of all causes Civil to be tried at Nisi Prius at any Circuit Court held contemporaneously with such Court of Oyer and Terminer; the Jury for any Civil cause to be drawn and returned in the manner now by Law directed.

**III.** And whereas much delay and obstruction have occurred in the administration of Justice, for the default of Jurors in attendance, in some of the Circuits in this Province; and it is deemed necessary to increase the Fines for such delinquency; Be it enacted, That every Person who may be duly summoned to attend as a Petit Juror at any Court of Oyer and Terminer, and who shall not appear when called upon the trial of any Criminal cause in such Court, or upon the trial of any Civil cause at Nisi Prius, shall on due proof being made by Oath or Affidavit of the Summoning Officer that such Person hath been lawfully summoned, forfeit and pay for the first default any sum not exceeding ten shillings, and for every subsequent default, any sum not exceeding five shillings, as the presiding Judge at such Court shall think reasonable to inflict or assess, unless some sufficient cause of his absence be assigned and proved to the satisfaction of such Judge: Provided always, That the amount of the said fines, to be levied on each Jurymen, for the several defaults, at any one Court, shall not exceed the sum of five pounds; such fines so inflicted as aforesaid to be levied and collected under and by virtue of the Laws now in force for the recovery of fines imposed on Jurors and Officers attending the Courts of Justice in this Province, and subject to the provisions therein contained.

**IV.** And be it enacted, That nothing in this Act contained shall be deemed or taken to repeal the fifth Section of an Act made and passed in the sixth year of the Reign of King William the Fourth, intituled "An Act in addition to an Act for regulating Juries, and declaring the qualification of Jurors," but the provisions in this Act contained in regard to fines to be imposed on delinquent Jurors, shall extend and be construed to apply to Jurors summoned under and by virtue of the said Section of the said recited Act.

**V.** And be it enacted, That all the Provisions of the Act passed in the twenty sixth year of the Reign of His late Majesty King George the Third, intituled "An Act for regulating Juries and declaring the qualifications of Jurors," shall continue and remain in full force and effect, excepting so far as the same may have been altered or repealed by this Act, or by any other Act of Assembly now in force.

**VI.** And be it enacted, That this Act shall commence and take effect on the first day of June one thousand eight hundred and forty one.

CAP. II.

An Act in addition to the Acts relating to Circuit Courts.

Passed 19th March 1841.

**WHEREAS** in consequence of the great quantity of business at the Circuit Court and Court of Oyer and Terminer and General Gaol Delivery, holden in and for the City and County of Saint John, on the second Tuesday in January, in the present year, it became impossible to finish the same before the Hilary Term of the Supreme Court, then next following and now past; and such Circuit Court and Court of Oyer and Terminer and General Gaol Delivery, were on Saturday the thirtieth day of January last, adjourned to the second Tuesday in April next; and whereas doubts may arise as to the validity of such adjournment: and whereas it is expedient to provide for similar adjournments in future;

**I.** Be it declared and enacted by the Lieutenant Governor, Legislative Council and Assembly, That such adjournment of the said Courts is, and shall be deemed to be good, valid and effectual, notwithstanding a term of the Supreme Court intervenes; and the business of the said Courts shall be proceeded in

and finished upon and after the said second Tuesday in April next in the usual manner.

**II.** And be it declared and enacted, That it is and shall be lawful for the presiding Judge at any Circuit Court or Court of Nisi Prius, as well as any Court of Oyer and Terminer and General Gaol Delivery, to adjourn the same to any future day, whenever such adjournment may seem to him necessary or proper, in order to the finishing of the business before any such Court or Courts; notwithstanding any Term of the Supreme Court may intervene between the time of adjournment, and that to which such adjournment may be made: Provided always, that no such adjourned Court of Oyer and Terminer and General Gaol Delivery shall extend beyond the time to which such Courts are limited in and by the Commission or Letters Patent under which the same are held.

**III.** And be it declared and enacted, That the Grand Jury and Petit Jury in attendance on such Courts respectively, shall re-assemble and attend at any such adjourned Court, if thereto required by the presiding Judge at the time of such adjournment, and shall be liable to the like pains and penalties for non-appearance and non-attendance, and for any misdemeanor or default as such Jurors are by Law liable to in any Circuit Court or Court of Oyer and Terminer and General Gaol Delivery.

**IV.** And be it enacted, That it shall be lawful for any two Justices of the Supreme Court to issue their precept to the Sheriff of any County or City and County wherein any such adjourned Court is to be held for the Summoning of a new Grand Jury or a new Petit Jury, which new Petit Jury may consist of any number authorized by Law to be summoned for any Circuit Court or Court of Oyer and Terminer and General Gaol Delivery; and every such Sheriff shall obey such precept and render due return thereto, and the Petit Jurors so summoned shall form the Juries for the trial of causes both Criminal and Civil at such adjourned Court, and shall be subject to the arrangements and regulations respecting the number required to be in daily attendance, authorized by Law in any such Circuit Court or Court of Oyer and Terminer and General Gaol Delivery; and the presiding Judge at any such adjourned Court may also, if need be, issue a precept for a second Jury according to the provisions of an Act made and passed in the Sixth year of the Reign of His late Majesty King William the Fourth, intituled "An Act in addition to an Act for regulating Juries and declaring the qualification of Jurors;" the day for the appearance of such second Jury, not to be earlier than the sixth day after the day on which such adjourned Court may be opened.

**V.** And be it enacted, That all Jurors duly summoned, and the respective Sheriffs, Coroners, Bailiffs, Constables and Officers and Ministers of the Law in the City and County of Saint John, or any other County where any such adjourned Court may be held, and also all parties and witnesses, both in Criminal and Civil cases, shall give their attendance at such adjourned Court, and shall be charged and bound in the like manner, and upon like pains and penalties for non-appearance and non-attendance, or for any misdemeanor or default at such adjourned Court, as at any Circuit Court or Court of Oyer and Terminer and General Gaol Delivery: Provided always, that no witness in any Civil cause for trial at any such adjourned Court shall be liable to be proceeded against in any manner for non attendance, unless duly served with a Subpoena to attend at such adjourned Court, and his expenses thereupon are duly paid or tendered in the usual manner.

**VI.** And be it enacted, That in all causes which may stand for trial at any such adjourned Court, the Nisi Prius Record, Jury Process and Postea shall be deemed, taken and dealt with in all respects as if the same were expressed to be returnable at the Term of the Supreme Court next following such adjourned Court: Provided always, that no new notice of trial shall be necessary in any such cause, and that no new cause shall be entered for trial at any such adjourned Court.

CAP. III.

An Act relating to the Parish Church of the Parish of Portland, in the County of Saint John, and to the Church Corporation of the said Parish.

Passed 19th March 1841.

**WHEREAS** in and by an Act made and passed in the Sixth year of the Reign of His Majesty King William the Fourth, intituled "An Act to regulate the election of Church Wardens and Vestrymen in the Parish of Portland, in the County of Saint John; and to extend such regulations to other Parishes where the sittings in the Church may be free and open," it was enacted, "That the Church Wardens and Vestry of the said Church so soon as they might be duly elected and chosen, pursuant to the provisions of the said Act, together with the Rector of the said Church for the time being, and their respective Successors for ever, should be a body Politic and Corporate in deed and name, and should have succession for ever, by the name of the Rector, Church Wardens and Vestry of Grace Church in the Parish of Portland," and it was also further enacted, "That Grace Church should be deemed and taken to be the Parish Church of the said Parish of Portland, until the said Rector, Church Wardens and Vestry should have erected another Church instead thereof, and the same should be duly consecrated to that purpose, and opened for Public Worship, according to the Rites and Ceremonies of the Church of England, and in case of the erection of such other Church, all the provisions of the said Act should extend and be construed to extend to the said new Church, in as full and ample a manner as if the same were particularly re-enacted and applied to such new Church." And whereas since the passing of the said Act, another large and commodious Church has been erected within the said Parish, and has been recently consecrated, and is now used for Public Worship by the name of "Saint Luke's Church," the expense of which erection has been partly defrayed by private subscription, but it was found necessary, in order to raise sufficient funds for completing the same, and for making a regular provision for the support of the Minister or Rector of the said Parish to dispose of Pews in the said Church, subject to the payment of Annual Rents, as is done in the Parish of Saint John, and in the other Parishes of the Province, reserving, however, free seats for the accommodation of poor persons to the number of two hundred and fifty at least, in consequence whereof the Provisions of the said recited Act have become inapplicable to the said Parish of Portland, and it is expedient that the Parish of Portland and Church Corporation therein be placed on the same footing, and elected

in like manner as those in other Parishes; and whereas the Rector, Church Wardens and Vestry of Grace Church, together with many other Parishioners of the said Parish have, by their Petition to the General Assembly prayed, that an Act may pass for the purpose above mentioned, which Petition has received the sanction of the Lord Bishop of the Diocese, and of the Archdeacon of the said Province: and whereas it is expedient that the said recited Act should be repealed.

**I.** Be it therefore enacted, by the Lieutenant Governor, Legislative Council and Assembly, That the said Act, intituled "An Act to regulate the election of Church Wardens and Vestrymen in the Parish of Portland, in the County of Saint John and to extend such regulations to other Parishes, where the sittings in the Church may be free and open," shall be and the same is hereby repealed.

**II.** And it is further enacted, That the said Church, called Saint Luke's Church, shall and is hereby declared to be the Parish Church of the said Parish, and that the Rector of the said Parish duly constituted and appointed together with the Church Wardens and Vestry of the said Church, so soon as they may be duly elected and chosen pursuant to the Acts in force relative to the election of Church Wardens and Vestrymen, and their respective Successors for ever, shall be a body Politic and Corporate in deed and name, and shall have succession for ever by the name of the "Rector, Church Wardens and Vestry of Saint Luke's Church in the Parish of Portland."

**III.** And be it further enacted, That all debts due and owing to the Rector, Church Wardens and Vestry of Grace Church, in the said Parish of Portland, shall be paid to and may be recoverable by, and in the name of the Rector, Church Wardens and Vestry of Saint Luke's Church aforesaid, in the same manner as if the said debts had been contracted with them; and all Property, Real and Personal of the said Corporation of Grace Church, shall become Vested in the said new Corporation, and shall be holden henceforth by them in the same manner as the former Corporation could have held the same; and that the said new Corporation shall be liable to the debts, contracts and engagements of the old Corporation, and the said new Corporation shall be deemed the lawful Successors of the said old Corporation.

**IV.** And be it further enacted, That all purchase or preference monies and Rents due or become due for Pews or Sittings in Saint Luke's Church, upon and by virtue of the sales by Auction or Private Bargain to any person or persons, shall be payable to, and may be recoverable by and in the name of the said Rector, Church Wardens and Vestry of Saint Luke's Church, in the same manner as if the Contracts had been made with them; and that in default of such payments, the said Rector, Church Wardens and Vestry may sue for the same or proceed to a forfeiture of the said Pews and Sittings, according to the rules or conditions under which the Sales or Contracts were originally made: Provided always, that at least two hundred and fifty free sittings for poor persons shall always be left in the said Church.

**V.** And whereas in and by a certain Indenture, bearing date the sixteenth day of April, in the year of our Lord one thousand eight hundred and forty, duly executed, acknowledged and registered, James White of the City of Saint John, in the Province of New Brunswick, Esquire, and Elizabeth, his Wife, for certain consideration therein mentioned, did grant, bargain and sell unto the Church Corporation of the said Parish, by the name of the Minister, Church Wardens and Vestry of Grace Church, in the Parish of Portland, in the County of Saint John, in the said Province, their Successors and Assigns, all that certain Lot, piece and parcel of Land, situate, lying and being in the said Parish of Portland, bounded and described as follow: That is to say, beginning at a stake and stones at the intersection of the Northern line of the old Indian Town Road, so called by a prolongation of the line running North fifteen degrees East or thereabouts, dividing the Lands formerly owned and occupied by the late Honorable William Hazen, from the Lands formerly owned and occupied by the late James White, Esquire, thence from the said stake and stones, Northerly by the said prolongation of the said dividing line till it meets the South Westerly side line of the Queen's Land at Fort Howe, thence by the said last mentioned line, North Westerly till it meets the dividing line between the Land of the said James White, Esquire, the grantor in the said deed, and the Land of James Peters, Esquire, thence Southerly by the said last mentioned dividing line, to the Northern line of the said old Indian Town Road, thence by the said line of the said Road, Easterly to the place of beginning, together with all buildings and improvements thereon, and all the rights, members and appurtenances thereto belonging, to have and to hold the same unto the said Minister, Church Wardens and Vestry, their Successors and Assigns, to their only proper use and behoof for ever: Be it further enacted, that the said deed and conveyance, and the Estate thereby granted, bargained and sold shall be deemed good, valid and effectual, notwithstanding the mistake in the name of the Corporation, and to have vested the Title therein and thereto in the Rector, Church Wardens and Vestry of Grace Church; and upon their dissolution by virtue of this Act to be and to become vested in the Rector, Church Wardens and Vestry of Saint Luke's Church, and their Successors in the same manner as any other property of the said Rector, Church Wardens and Vestry of Grace Church.

**VI.** And whereas the object of the Church Corporation in making the purchase of the said lot of Land in the next preceding section mentioned was to erect and build thereon a School House, which has been partially accomplished; and it has been considered advisable that such School should be conducted upon the Madras system, but in order to effect this it may become necessary to assign and convey the same to the Governor and Trustees of the Madras School in New Brunswick: Be it enacted, that the said Rector, Church Wardens and Vestry of Saint Luke's Church, and their Successors, shall be fully authorized and empowered to make sale and conveyance of the said lot of Land and School House thereon to the said Governor and Trustees of the Madras School and their Successors, in trust, nevertheless, for the purpose of a School in the said Parish, to be a Branch of the Provincial Madras School, and for no other use or purpose whatsoever, and upon this condition, that if such School shall not be established and commence within two years from the passing of this Act; or if after being established it shall be discontinued for any time or term together exceeding one year, or shall not be continued and kept in operation for at least six months in every year after the expiration of the said two years, the said Land and School, and all the Estate, right, title and interest