

CHAP. 138. twenty jurors, without assigning cause; and if any person so indicted shall peremptorily challenge above the number of twenty persons of the jury, the court, in such case, shall notwithstanding proceed to the trial of the person so challenging, as if he or she had pleaded not guilty, and put himself or herself upon the country, and render judgment thereon accordingly.

By 1816, ch. 45, in every case of felony the right to challenge to be the same as before this act.

The benefit of struck juries extended to all cases wherein a jury is necessary, except those in which peremptory challenges are allowed.

14. AND BE IT ENACTED, That in all criminal causes that may be brought to trial in the several courts of this state, in which a jury shall be necessary according to the constitution and the laws, except in the cases herein before mentioned wherein peremptory challenges are allowed, twenty persons from the pannel of petit jurors shall be drawn, by ballot, by the clerk, under the discretion of the respective courts, and the names of the twenty persons shall be written upon two lists, and one of said lists shall be forthwith delivered to the party indicted, or his or her counsel, and the other to the attorney prosecuting in behalf of the state, and it shall and may be lawful for the party indicted, or his or her counsel, and for the attorney prosecuting in behalf of the state, to strike out four persons from each respective list, and the remaining twelve persons shall thereupon be immediately empannelled and sworn as the petit jury in such prosecution; and if the party indicted, or his or her counsel, or the attorney prosecuting in behalf of the state, shall decline or refuse to strike out from such respective lists the number of persons hereby allowed, it shall and may be lawful for the several courts aforesaid to direct their clerks to strike out from the list of the party or the attorney, so declining or refusing, the number of persons herein before mentioned, and the remaining twelve persons shall be empannelled and sworn as aforesaid; *Provided nevertheless,* that nothing herein contained shall be deemed or construed to take away the right of any person or persons to challenge the array or polls of any pannel returned, or any particular juror, for just cause, in the manner always allowed by the law of this state; *And provided also,* that by mutual consent the drawing of a pannel of twenty jurors may be dispensed with in any prosecution, and the trial thereof may be had by a petit jury drawn as heretofore; and if by reason of lawful challenges, or the absence of jurors, the number of twenty shall not remain to be drawn, the several courts aforesaid shall direct so many of the bystanders to be summoned by the respective sheriffs as shall be necessary to complete the lists herein before directed to be written and delivered as aforesaid.

Provision.

See a similar provision 1802, ch. 69.

Foreigners to be tried by a jury of the county, in the same manner as citizens.

15. AND BE IT ENACTED, That any alien, denizen or foreigner, who may be indicted for any offence committed within this state, shall be tried by a jury of the county, in the same manner as the citizens thereof, and there shall be no challenge either to the array or the polls for want of foreigners on the pannel or jury that may be returned.

Offenders sentenced to die, to be hanged.

16. AND BE IT ENACTED, That in case any offender, on conviction, may be sentenced to suffer death, the court before whom such offender shall be tried and convicted, shall sentence him or her to suffer death, by hanging by the neck, and may decide upon, ascer-