



## ANALYSIS

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1968, No. 3

An Act to make provision for the adoption of a system of trial by Jury instead of trial with assessors in certain criminal cases (4 October 1968)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same as follows:



1. Short Title and commencement - (1) This Act may be cited as the Juries Act 1968.

(2) This Act shall come into force in the Island of Rarotonga on the first day of January 1969.

(3) This Act shall come into force with regard to any other island on the date to be appointed by the High Commissioner by Order in Executive Council and different dates may be so appointed in respect of different islands.

2. Interpretation - In this Act, unless the context otherwise requires, -

"Registrar" means Registrar of the High Court and includes any Deputy Registrar.

3. Preparation of jury list - (1) Upon the coming into force of this Act in any island a list of persons resident in that island between the ages of 21 years and 60 years suitable by reason of their character, education, ability, or reputation to act as jurors and who are not disqualified or exempt from acting as jurors shall be prepared by a Committee consisting of the Superintendent of Police, the Registrar of the High Court, and the Chairman of the Island Council, and such list shall be published in the Cook Islands Gazette.

(2) Such list may be amended from time to time by the addition or deletion of names.

(3) Any woman shall be exempt from serving on any jury if she notifies the Registrar of the High Court by writing that she does not wish to serve and on her so doing her name shall be struck off the list.

4. Disqualification - The following persons are not qualified to serve on any jury in any Court or on any occasion:-

- (a) Any one who is not a British subject:
- (b) Any one who has been convicted of any offence punishable by death or by imprisonment for a term of three years or more.

5. Exemption from jury service - (1) A person shall be exempt from serving on any jury if he or she is one of the following:-

- (a) A member of the Executive Council:
- (b) A member of the Legislative Assembly:
- (c) A Judge or Commissioner of the High Court, or a Judge or Commissioner of the Land Court, or a Justice of the Peace:
- (d) The Speaker, or the Clerk of the Legislative Assembly:
- (e) A Member, or the Clerk of the House of Arikis:
- (f) A clergyman in holy orders or a person who preaches or touches in any religious congregation but who does not follow any secular occupation except that of teaching:



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- (e) A Member, or the Clerk of the House of Arikis:
- (f) A clergyman in holy orders or a person who preaches or touches in any religious congregation but who does not follow any secular occupation except that of teaching:

- (g) A woman who is a vowed member of a religious order living in a convent or other religious community:
- (h) A barrister or solicitor of the Supreme Court of New Zealand holding an annual certificate for the time being in force under the Law Practitioners Act 1955 of the New Zealand Parliament:
- (i) A medical officer, or nurse, or dental officer:
- (j) A member of the Police:
- (k) An officer of the Public Service who is employed in the Department of Justice:
- (1) Without prejudice to the foregoing provisions of this section, a person of such class or description as the High Commissioner by Order in Executive Council exempts from serving on any jury.

(2) The name of any person who is exempt from serving on any jury under subsection (1) of this section shall not be inserted on any jury list, nor shall he or she be summoned as a juror.

6. Certain criminal cases to be tried by jury - Subject to the provisions of this Act, criminal cases which have before the coming into force of this Act been tried by a judge of the High Court and assessors shall be tried by a judge of the High Court and a jury of twelve persons whose names appear on such list.

7. Drawing names of jurors to be summoned - Whenever a jury is required for the trial of any criminal case, the Registrar of the High Court shall, from the names of jurors appearing on the published list of jurors, ascertain by ballot the names of so many as it may be expedient to call for such purpose, not being less than thirty-six, the list of names so ascertained to be known as a jury panel, and shall issue a summons to each of them to attend and serve by a summons in the form set out in the First Schedule to this Act.

8. Service of summons to juror - (1) The said summons shall be delivered to every such juror at least three clear days before the attendance of the juror is required, either by delivering it to him personally, or by leaving it at his usual or last known place of abode, or by posting it by registered letter addressed to him at that place.

(2) Where a summons is posted in accordance with this section the production of a receipt for the letter given to an officer of the Post Office and signed or purporting to be signed by the juror or some other person at the juror's place of residence shall, until the contrary is shown, be proof of the delivery of the summons, and the date of that receipt shall, until the contrary is shown, be proof of the day on which the summons was delivered.

9. Power of Registrar to excuse juror from attendance - (1) If the Registrar is satisfied, on written application made to him by or on behalf of any person summoned to attend as a juror on any occasion, that there is good reason for excusing that person from attending on that occasion, the Registrar may excuse that person from so attending:

Provided that nothing in this subsection shall affect the power of the Court or a Judge to excuse any person from attending as a juror.

(2) If so required by the Court or a Judge, the Registrar shall produce to the Court or Judge all applications made under this section by or on behalf of persons summoned for the trial of cases before the Court or Judge, together with any correspondence relating thereto, and shall, where he has allowed any such application, state to the Court or Judge his reasons for doing so.

10. Cards to be put in balloting box in Court - Upon the day and at the place named in the summons for the appearance of the persons required to attend, the Registrar shall in open Court put cards each with the name of a juror summoned to attend together in a balloting box and shall there keep the same to be used in the manner hereinafter mentioned.

11. Swearing jurors - (1) The Registrar shall then in open Court call aloud the names of the jurors in the said panel one after another, and such of the said jurors as then or at any time thereafter answer to their names shall be sworn in open Court in such one of the forms in the Second Schedule to this Act as is applicable.

(2) The jurors shall be sworn in the manner according to the practice of the High Court when swearing assessors.

12. Affirmation in lieu of oath - Section 330 of the Cook Islands Act 1915, relating to affirmations, shall apply to jurors, and every juror who so affirms shall be deemed to be duly sworn within the meaning of this Act.

13. Jury need not be resworn - Being once sworn, such jurors shall not need to be resworn in each trial unless they that sue for the Queen or the person charged so require.

14. Minute of swearing in panel - The Registrar shall as and when each juror is so sworn make a minute thereto in the panel.

15. Balloting at trial - when any criminal case is to be tried by a jury, the Registrar shall in open Court draw out of the appropriate balloting box one after another the number of cards corresponding to the number of jurors required to constitute the jury, and if any of the persons whose names are so drawn does not appear or is challenged and set aside, then such further number shall be drawn until the full number of jurors are drawn and appear after all just causes of challenge are allowed.

16. Peremptory challenge - (1) Every person charged with any crime triable by a jury shall be entitled to challenge peremptorily to the number of six.

(2) Where several persons are charged together, each of such persons may exercise the right of peremptory challenge to such number of six.

(3) There shall be the same right of peremptory challenge on behalf of the prosecutor as is possessed by any person charged.

17. Challenging the array - (1) Either the accused or the prosecutor may challenge the array on the ground of partiality, fraud, or wilful misconduct on the part of the Registrar or his deputies by whom the panel was returned, but on no other ground.

(2) The objection shall be in writing, and shall state that the person returning the panel was partial, or was fraudulent, or wilfully misconducted himself, as the case may be.

(3) If partiality, fraud, or wilful misconduct, as the case may be, is denied, the Court shall decide whether the alleged ground of challenge is true or not.

(4) If it is found, or if the party who has not challenged the array admits, that the ground of challenge is true in fact, the Court shall direct a new panel to be returned.

18. Challenges and directions to stand by - (1) Every prosecutor and every accused person shall be entitled to any number of challenges for cause on any of the following grounds, that is to say:

- (a) That any juror's name does not appear in the jury list:

Provided that no misnomer or misdescription in the jury list shall be a ground of challenge if it appears to the Court that the description given in the jury list sufficiently designates the person referred to:

- (b) That any juror is not indifferent between the Crown and the accused:

- (c) That any juror is disqualified under the law in force for the time being.

(2) No other ground of challenge for cause shall be allowed.

(3) Where any such challenge is made, the Court, may, in its discretion, require the party challenging to put his challenge in writing.

(4) The other party may deny that the ground of challenge is true.

(5) Every challenge for cause shall be determined by the Court on such evidence as the Court thinks fit to receive.

(6) If the Court finds against the challenge the juror shall be sworn; but if it finds for the challenge he shall not be sworn.

(7) The prosecutor may direct any number of jurors not peremptorily challenged by either party to stand by until all the jurors have been called who are available for the purpose of trying that information.

19. The Jury to try - The full number of jurors so first drawn and appearing and not set aside on a challenge shall be the Jury to try the case.

20. Foreman - Before the case is opened or the accused given in charge the Jury shall retire to choose a foreman.

21. Names of common jury kept apart till verdict recorded or jury discharged - The names of the members of the jury shall be kept apart by themselves until such jury has given its verdict and the same has been recorded, or by leave of the Court is discharged.

22. Names returned to boxes - The said names shall then be returned to the box, there to be kept with the other names remaining at that time undrawn, and so as often as occasion shall require as long as any case remains to be tried.

23. Jury retiring to consider verdict - (1) If the jury retire to consider their verdict they shall be kept under the charge of an officer of the Court in some private place provided with sufficient lighting:

Provided that for the purpose of having refreshment the jury may with the consent of the Court be taken under the charge of an officer of the Court or a constable to a place of public refreshment instead of remaining in a private place.

(2) No person other than the officer of the Court who has charge of them shall be permitted to speak or communicate in anyway with any of the jury without the leave of the Court.

(3) Disobedience to the provisions of this section shall not affect the validity of the proceedings:

Provided that, if such disobedience is discovered before the verdict of the jury is returned, the Court, if of opinion that such disobedience has produced substantial mischief, may discharge the jury and direct a new jury to be sworn or empanelled during the sitting of the Court, or postpone the trial on such terms as justice required.

24. Proceeding with new jury when one jury has retired - when a jury has retired to consider its verdict in any case, the Court may proceed to the trial of any other cases, before such jury has returned its verdict or been discharged, with a new jury drawn from the residue of the jurors other than the members of such first-mentioned jury.

25. Verdict of three-fourths in cases - If three-fourths at least of any jury impanelled on any case shall, after the jury has retired to consider its verdict for a period of at least three hours, intimate to the Judge presiding that the jury has considered its verdict, and that there is no probability of such jury being unanimous, the verdict of three-fourths shall be taken and accepted as, and shall have all the consequences of a verdict of the whole of such jury.



26. Discharge of jury unable to agree - (1) Where a jury has remained in deliberation for such period as the Judge thinks reasonable, being not less than four hours, and does not agree as to the verdict to be given, such jury may be discharged by the Court from giving any verdict.

(2) Such proceedings may thereupon be taken anew as if no trial had been commenced before the jury so discharged.

27. Court may order another trial - If at the time of the discharge of a jury unable to agree the Court thinks fit so to order, another trial may forthwith, or at some other time during the same or some future sittings, be commenced and proceeded with as if such first-mentioned trial had not been commenced.

28. Discharge of jury, etc. - (1) Subject to the provisions of this section, the Court may in its discretion, in the case of any emergency or casualty rendering it, in the opinion of the Court, highly expedient for the ends of justice to do so, discharge the jury without their giving a verdict, and direct that a new jury be impanelled during the sitting of the Court, or postpone the trial on such terms as justice requires.

(2) If the presiding Judge becomes incapable of trying the case or directing that the jury be discharged the Registrar shall discharge the jury.

(3) If, before the jury retire to consider their verdict, any juror becomes in the opinion of the Court incapable of continuing to perform his duty, or it becomes known to the Court that he is disqualified or that his wife or a member of his family is ill or has died, the Court may, in its discretion, discharge the jury and direct that a new jury be impanelled during the sitting of the Court, or postpone the trial, or proceed with the remaining jurors and take their verdict:

Provided that the Court shall not proceed with less than eleven jurors unless the prosecutor and the accused both consent.

(4) It shall not be lawful for any Court to review the exercise of any discretion under this section.

(5) Where pursuant to this section the Court proceeds with less than twelve jurors, their verdict shall have the same effect as the verdict of the whole number.

29. Payment of jurors - (1) The High Commissioner of the Cook Islands may, by Order in Executive Council, prescribe rates of payment for jurors.

(2) In addition to any fees to which a juror is so entitled he shall be entitled to an allowance for his expenses of locomotion calculated in accordance with such rate as may be prescribed by the High Commissioner by Order in Executive Council.

30. Refreshment at discretion of Judge - Jurors, after having been sworn, may in the discretion of the Judge, be allowed, at any time before giving their verdict, reasonable refreshment to be provided by the Registrar at the public expense.



31. Fining jurors for non-attendance - If any person, having been duly summoned to attend on any jury does not attend in pursuance of such summons, or, being thrice called, does not answer to his name or if any such person, after being called, is present, but does not appear, or, after his appearance, wilfully withdraws himself from the presence of the Court, the Court shall impose such fine upon every such person so making default as the Court thinks fit:

Provided that no fine shall be so imposed on any person until that person has been advised of his default and given a reasonable opportunity of appearing before the Court and explaining it.

32. Registrar indemnified for returning unqualified juror - The Registrar and every other officer are hereby indemnified for impanelling and returning any person named in the jury list, although he may not be qualified or liable to serve on juries.

33. Fine on Registrar and on officer for wrongful acts - If the Registrar or any other officer wilfully impanels and returns any person to serve on any jury, such person's name not being in the jury list; or if the Registrar, or any Clerk or other officer of the Court wilfully records the appearance of any person so summoned and returned who did not really appear, in every such case -

The Court may, upon examination in a summary way, impose such fine upon such Registrar, Clerk, or other offending officer as the Court thinks fit.

34. No Committee member or officer to take anything for excusing juror from serving - No member of any Committee preparing any jury list and no other office or person whatsoever shall directly or indirectly take or receive any money or other reward, or promise of money or other reward, to excuse any person from serving or from being summoned to serve on any jury, or under any such colour or pretence.

35. No officer to summon person not mentioned in signed summons - No officer appointed by the Registrar or any other person to summon juries shall summon any person to serve other than those whose names are specified in the summons signed by the Registrar or such other person.

36. Offences by Registrar and other officers - If the Registrar or any other officer wilfully transgresses in any of the cases in sections 34 and 35 of this Act, or summonses any juror less than two days before the day on which he is to attend the High Court shall, on examination and proof of such offence, in a summary way, impose such a fine upon every person so offending as the Court thinks fit according to the nature of the offence.

37. Verdicts not affected by informalities - No verdict shall be in any way affected by reason of any error, omission or informality in or with respect to any jury list or jury panel, nor by reason that any person not qualified or not liable to serve on any jury, served on such jury.

38. Regulations - (1) The High Commissioner may from time to time by Order in Executive Council make such regulations as may be deemed necessary or expedient for the purpose of giving full effect to the provisions of this Act and for the due administration thereof.

(2) Regulations made under this section may prescribe for offences against the regulations punishable by a fine not exceeding fifty dollars.

(3) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of making thereof if the Legislative Assembly is then in session and if not in session shall be laid before the Legislative Assembly within twenty-eight days after the date of the next ensuing session.

39. Effect of this Act on existing Law - From the coming into force of this Act in any island:

(a) the provisions of sections 294, 295, 296, 297, 298, 299, 301, 301, 303 and 304 of the Cook Islands Act 1915 shall have no application in that island:

(b) section 293 of the Cook Islands Act 1915 shall have no application in that island, but there shall be substituted for it the following section:-

"293. Right to elect in certain cases - (1) On the trial of any person for any offence punishable by imprisonment for a term exceeding six months the person charged may before the trial elect whether the Judge shall sit with a jury or without a jury.

(2) On the trial of any person for any offence punishable by imprisonment for a term not exceeding six months the Judge shall sit without a jury".

(c) section 290, 291, 292, and 300 of the Cook Islands Act 1915 shall in that island be read as if the reference to assessors or to an assessor wherever it occurs were a reference to a jury or a jury-man as the context requires.

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Section 7F I R S T S C H E D U L EFORM OF SUMMONS

To:

I do hereby require you to appear and serve as a juror at the High Court of the Cook Islands to be held at on the day of at 1'clock in the forenoon of that day; and you are to attend the said Court during the whole of that day and so on from day to day until the end of the week; but if at the end of that week any trial for which you are a juror has commenced and has not been concluded, or if the Judge for any further period than six days, you must remain in attendance until such trial is concluded, or until the expiration of such further period or until discharged in due course of law.

Given under my hand and seal of office at this day of 19

G.H., Registrar

N.B. The fine for disobeying this summons is such sum as the Court thinks fit.

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Section 11S E C O N D   S C H E D U L EJUROR'S OATH

You and each of you shall well and truly try  
and true deliverance make between our Sovereign Lady  
the Queen and all persons whom you or any of you shall  
have in charge, and a true verdict give according to  
the evidence. So help you God.

JUROR'S AFFIRMATION

I, A.B. (or you and each of you, as the case may  
be), do solemnly, sincerely, and truly declare and affirm  
that (Follow the appropriate form as above, with requisite  
modifications, omitting "So help you God").

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