



MONTSERRAT

CHAPTER 2.07

JURY ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

JURY ACT

Act 19 of 1982 .. in force 17 December 1982

Amended by Act 22 of 1985 .. in force 6 December 1985

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

JURORS' (ALLOWANCES) RULES – Section 43

S.R.O. 61/1999 .. in force 11 November 1998

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CHAPTER 2.07

JURY ACT

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CHAPTER 2.07

JURY ACT

(Acts 19 of 1982, 22 of 1985 and 9 of 2011)

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO JURIES.

Commencement

[17 December 1982]

PRELIMINARY

Short title

1. This Act may be cited as the Jury Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—
“**alphabetical order**” means alphabetical order of surnames;
“**arrestable offence**” means an offence for which, under any law for the time being in force, a person may be arrested without a warrant;
“**business**” includes the cultivation of land: Provided that, where two or more parcels of land are cultivated as distinct units, the cultivation of each such parcel shall be deemed to be a distinct business;
“**civil proceeding**” means any proceeding other than a criminal proceeding;
“**counters**” means slips, disks or pieces of wood, metal, paper, parchment, bone, ivory or other similar substance;
“**juror**” means a person whose name is included in a jurors’ register for the time being in force;
“**jurors’ register**”, when not qualified by the addition of a year, means the jurors’ register for the time being in force;
“**prescribed particulars**” means the place of abode and the title, quality, calling or business, and the property qualification;
“**proceeding**” includes any cause, matter or issue in the High Court;
“**Registrar**” means the Registrar of the High Court;
“**special jurors’ list**” when not qualified by the addition of a year, means the special jurors’ list for the time being in force.
(2) “**The prescribed manner**” of distinguishing as a special juror, in any list made under the provisions of section 8 and in any jurors’ register, a

person whose name is therein included, is by writing the letters “**S.J.**” in the column headed “**Remarks**”, opposite to the name of such person.

(3) “**The prescribed manner**” of entering names in a panel of array is by entering the names in alphabetical order; writing opposite to each name the place of abode of the person named; and prefixing the number “**1**” to the first name, the number “**2**” to the second name, and so on, in respect of each name, in an arithmetical series.

Books, ballot box and counters

3. (1) The Registrar shall, if and when necessary, at the expense of Montserrat, provide himself with a jurors’ book, a special jurors’ book, a preliminary panel book, a ballot box and a sufficient number of counters for carrying out the provisions of this Act.

(2) The counters so provided shall be numbered, respectively, in an arithmetical series, from one upwards, and shall be, as far as possible, exactly similar each to the other, except as regards the numbers, so as not to be distinguishable to the touch.

PART 1

QUALIFICATION OF JURORS

Qualification of common jurors

4. Every person between the ages of twenty one and sixty five years who—

- (a) has, in his own name or in trust for him, any lands or tenements in Montserrat, of the value of \$2,000 or upwards; or
- (b) rents any lands or tenements in Montserrat, of the annual value of \$400, or upwards; or
- (c) holds any office or situation in Montserrat at a salary amounting, with allowances, to the sum of \$2,000 per annum, or upwards; or
- (d) is in receipt of an income, from whatever source derived, of \$1,500 per annum, or upwards,

shall, unless exempted or disqualified under the provisions of sections 6 and 7, be liable to serve as a common juror.

Qualification of special jurors

5. Every person between the ages of twenty one and sixty five years who—

- (a) has, in his own name or in trust for him, any lands or tenements in Montserrat, of the value of \$20,000, or upwards; or
- (b) has, in his own name or in trust for him, any lands within Montserrat of not less than twenty five acres in extent; or
- (c) holds any office or situation in Montserrat at a salary amounting, with allowances, to the sum of \$8,000 per annum, or upwards; or
- (d) is in receipt of any income, from whatever source derived, of \$6,000 per annum, or upwards; or
- (e) is the attorney of any tenant or trustee, absent from Montserrat, of land within Montserrat of not less than twenty five acres in extent,

shall, unless exempted or disqualified under the provisions of sections 6 and 7 be liable to serve as a special juror:

Provided that, every person liable, for the time being, to serve as a special juror shall also be liable to serve as a common juror.

Exemption

6. Each of the persons described in the First Schedule shall be exempt from serving either as a common juror or a special juror.

Disqualification

7. Each of the following persons shall be disqualified from serving either as a common juror or a special juror—

- (a) aliens who are not domiciled in Montserrat and have not been so for at least ten years;
- (b) persons disabled by unsoundness of mind, or by deafness, blindness or other permanent infirmity of body;
- (c) persons who have been previously convicted of any arrestable offence and have not received a free pardon; and
- (d) persons who cannot read and write the English language and understand the same when spoken.

PART 2

JURORS' REGISTER AND SPECIAL JURORS' LIST

Jurors' List

8. Between 1 and 7 December of every year, the Registrar—

- (a) shall make out, in the form in the Second Schedule, a list for the ensuing calendar year, in alphabetical order, of all persons resident in Montserrat who, in his opinion, are liable to serve as common jurors, with the full forename and surname and the prescribed particulars of each such person set forth, to the best of his knowledge and belief, in the proper columns of the list, and shall also distinguish in the list in the prescribed manner such of the said persons as are, in his opinion, also liable to serve as special jurors; and
- (b) when the list is complete, shall write at the end thereof a notice, in the form in the Second Schedule, stating the day on which the list will be revised by the Magistrate as hereinafter provided; which day shall be the day of the first sitting of the Magistrate's Court after the expiration of fourteen days from the day of the publication of the list and notice as hereinafter provided.

Publication of jurors' list

9. (1) As soon as practicable after the Registrar has completed any such list and notice, he shall publish the same by causing a copy of the list and notice to be posted in a conspicuous place at or near the door, or one of the doors, of the Court House and in such other place or places as the Governor acting on the advice of Cabinet may direct. (*Amended by Act 9 of 2011*)

(2) When the list and notice are published by copies being posted as aforesaid, the copies shall be kept posted until after the list has been revised as hereinafter provided.

Revision of jurors' list

10. (1) When any such list and notices have been made out and published by the Registrar as aforesaid, then at the first sitting of the Magistrate's Court held after the expiration of fourteen days from the day of such publication—

- (a) the Registrar shall produce to the Magistrate the original list and notice, satisfy the Magistrate as to the day on which the same were published as aforesaid, and answer such questions as may be put to him by the Magistrate touching the list; and
- (b) the Magistrate shall revise the said list and shall upon any evidence which may be adduced before him, or of his knowledge, information and belief—

- (i) strike out from the list the name of any person therein included who, in the opinion of the Magistrate, is not liable to serve as a common juror;
- (ii) add to the list the name of any person who, in the opinion of the Magistrate, is liable to serve as a common juror:

Provided that, where the name of any person is so added, the full forename and surname and the prescribed particulars of each such person shall be set forth in the proper columns of the list, to the best of the Magistrate's knowledge, information and belief;

- (iii) decide which of the persons whose names were originally included in, or have been added by him to the list, are also liable to serve as special jurors, and see that the name of each of the persons who, in his opinion, is so liable, is distinguished in the list in the prescribed manner, and that the name of no other person included in the list is so distinguished; and
- (iv) correct any error or omission which appears to him to have been made in respect of the prescribed particulars of any person included in the list:

Provided that, before making any alterations in the list, the Magistrate shall hear any objection which the Registrar may make thereto.

(2) Any person may appear at the revision, either personally, or by his counsel or solicitor and claim and adduce evidence to show that he is or is not liable to serve as a common juror or as a special juror, as the case may be, or may, instead of appearing at the revision, give the Magistrate notice in writing of the particulars of his claim, supporting the same by such evidence as he may think fit and, in this latter case, the Magistrate shall, as far as he reasonably can, inquire into the claim notwithstanding that the claimant does not appear before him:

Provided that, in any case where any claim is made under this subsection, the burden of proof shall lie on the person making it.

(3) The Magistrate may call any evidence which he may think fit with respect to any matter touching the revision.

(4) As soon as the list has been revised by the Magistrate as aforesaid, he shall write a certificate thereon in the form in the Third Schedule and shall return the list to the Registrar.

Jurors' register

11. (1) On the receipt of any such list so revised and certified as aforesaid, the Registrar shall cause the list, but not the notice and certificate at the end thereof, to be copied into the jurors' book:

Provided that—

(a) in the heading, the word “**Register**” shall be substituted for the word “**List**”;

(b) the names of the persons included in the list, as revised by the Magistrate, shall be copied in the jurors’ book in alphabetical order.

(2) The copy of the jurors’ list so made in the jurors’ book shall be the jurors’ register for the calendar year stated in the heading.

(3) Every jurors’ register shall continue in force during the calendar year stated in the heading.

(4) Every person whose name is included in the jurors’ register shall, while the register is in force, be liable to be summoned, and to serve as a common juror, as hereinafter provided.

Special jurors’ list

12. (1) As soon as any jurors’ register has been completed under the provisions of section 11, the Registrar shall cause a list to be made, in the special jurors’ book, of the names of the persons included in the register and therein distinguished, in the prescribed manner, as special jurors. In such list the names shall be copied in alphabetical order and, opposite to each name, shall be written the prescribed particulars, copied from the jurors’ register, and the number “1” shall be prefixed to the first name, the number “2” to the second name and so on, in an arithmetical series until the last name is numbered. The list so made in the special jurors’ book shall be headed “**Special Jurors’ List for the year**” (filling in the year stated in the heading of the jurors’ register) and shall be known as the special jurors’ list for that year, and shall continue in force during that year.

(2) Every person whose name is included in the special jurors’ list shall, while the list is in force, be liable to be summoned to serve as a special juror as hereinafter provided.

PART 3

AMENDMENT OF JURORS’ REGISTER

Amendment of jurors’ register

13. (1) At any time while a jurors’ register is in force—

(a) the Registrar, if he has cause to believe that any person whose name is included in the register is dead, or has permanently ceased to reside in Montserrat, or is permanently disabled from serving as a juror by unsoundness of mind or by blindness, deafness or other bodily infirmity, shall bring the matter to the notice of the Magistrate, at the same time producing the register; and

(b) the Magistrate shall thereupon inquire into the matter and if, either upon evidence adduced or of his own knowledge, information and belief, he is of the opinion that the person is dead or has permanently ceased to reside in Montserrat, or is permanently disabled from serving as a juror by unsoundness of mind or bodily infirmity as aforesaid may cancel the entry in the jurors' register relating to such person, by ruling lines through the entry and writing in the column of the register headed "**Remarks**", opposite to the entry, the word "**cancelled**", together with his signature and the date.

(2) When any entry in a register is cancelled under this section, the Registrar shall thereupon cancel the corresponding entry (if any) in the special jurors' list, and shall also, if the name of the person to whom the entry relates is included in the last preliminary panel, cancel the name where it occurs in the said panel.

PART 4

ARRAYS OF COMMON JURORS

Time of impanelling and number to be impanelled

14. (1) Whenever the date approaches for a sitting of the High Court, the Registrar shall, on such a day as will leave sufficient time for the person impanelled to be duly summoned as hereinafter provided, impanel in the manner hereinafter prescribed an array of common jurors to serve at the said Court.

(2) Subject to the provisions of section 16(4), every array of common jurors shall consist of thirty persons, but any Judge may, by an order in writing under his hand, direct a greater number to be impanelled and, when any such order has been made, the number directed in the order shall be impanelled accordingly.

Certain jurors not to be impanelled

15. (1) Subject to the provisions of section 16(4), the Registrar shall not impanel in an array of common jurors any juror who is known, or believed by him, to be temporarily absent from Montserrat and not likely to return in time to be summoned to attend a sitting of the High Court, and shall not impanel in the same array of common jurors more than one of the jurors who, to the best of his knowledge, information and belief, are employed at the time in the same business:

Provided that, where the number of jurors employed in the same business exceeds eight, the Registrar may impanel in the same array of common jurors 1/3 of the number of jurors so employed at the time:

Provided further, that, the Registrar shall not impanel both husband and wife in the same array of jurors, whether common or special.

(2) Where two or more distinct businesses are carried on by, or on behalf, or for the benefit of, the same person or persons, the fact that a juror, employed in one of such businesses, has been impanelled to serve on an array, shall not excuse another juror, employed in another of such businesses, from being impanelled in the same array.

(3) Any person carrying on, or for the time being in charge of, any business in Montserrat may, from time to time, give to the Registrar a list of jurors employed in the business and the Registrar, upon receiving the said list, shall, when he next proceeds to impanel a jury, make such inquiries as he may think fit and act accordingly.

(4) The decision of the Registrar as to whether two or more jurors are or are not employed in the same business shall, for the purposes of this section, be final.

Mode of impanelling

16. (1) When the Registrar is impanelling an array of common jurors he shall, subject to the provisions of subsection (4), make in the preliminary panel book a preliminary panel, in the form in the Fourth Schedule, in which he shall, after any names, which under the provisions of section 17, are to be inserted therein, insert as many more names as may be required, taken alternately from the first and the last parts of the jurors' register, as follows, namely—

- (a) he shall ascertain which of the persons whose names are included in the first part of the jurors' register was impanelled last, at the last impanelling of an array of common jurors, whether in the same or the preceding year, and shall insert in the preliminary panel, as the next name, the name which, in the register, immediately succeeds the name of such person;
- (b) he shall next ascertain which of the persons whose names are included in the last part of the register was impanelled last, at the last impanelling aforesaid, and shall insert in the preliminary panel, as the next name, the name which, in the register, immediately precedes the name of such person;
- (c) he shall insert in the preliminary panel, as the next name, the name which, in the register, is the second name below the name of the person first ascertained, as above provided, and as the next name, the name which, in the register, is the second name above the name of the person last ascertained, as above provided, and so on, until as many names as may be required are inserted in the preliminary panel:

Provided that, if and whenever this is no longer possible, he shall insert in the preliminary panel the first name in the register and next, the last name in the register and next, the second name in the register and next, the last name but one in

the register and so on, until as many names as may be required are inserted in the preliminary panel.

(2) As each name is included in the preliminary panel, whether taken from the last preceding preliminary panel, as prescribed in section 17, or from the register, as prescribed in subsection (1), the Registrar shall—

- (a) if there is no objection, under section 15, to the person named being impanelled, write the word “**Impanelled**” opposite the name in the preliminary panel; or
- (b) if the person named is known by the Registrar to be temporarily absent from Montserrat, and not likely to return in time to be duly summoned for a sitting of the High Court, or is known to be employed in any business in which another person, whose name has already been inserted in the preliminary panel and therein marked “**Impanelled**”, is known by the Registrar to be employed, the Registrar shall write in the preliminary panel, opposite the name of the person so absent, or so employed as first mentioned, instead of the word “**Impanelled**”, the words, according to the circumstances, “**Temporarily absent**”, or “**Employed in the same business as**”, (inserting the name previously inserted in the preliminary panel and therein marked “**Impanelled**” of the person known by the Registrar to be employed in the same business.)

(3) When thirty names inserted in the preliminary panel have been marked “**Impanelled**”, as aforesaid, the preliminary panel shall be complete.

(4) Notwithstanding anything hereinbefore contained, if, when the Registrar is impanelling an array of common jurors to serve at the High Court, the number of jurors whose names are included in the jurors’ register does not exceed thirty, the Registrar shall impanel, as the array to serve at the said Court, all the jurors whose names are included in the register, and such array shall be good and valid, although the number impanelled is less than thirty.

Preliminary panel

17. Every preliminary panel shall be made in the preliminary panel book and shall be signed and dated by the Registrar and, whenever the Registrar is making out a preliminary panel under this section, if there are any names included, but not marked “**Impanelled**” in the last preceding preliminary panel, the Registrar shall insert such names, or such of them as have not been cancelled under the provisions of section 13 as the first names in the new preliminary panel, in the same order in which they occur in the last preceding preliminary panel.

Panel of array

18. (1) As soon as the Registrar has completed a preliminary panel as aforesaid, he shall cause the names therein marked “**Impanelled**” to be entered in the prescribed manner in a panel of array.

(2) When an array is impanelled under section 16(4) the names of the persons impanelled shall be entered in the prescribed manner in a panel of array.

PART 5

ARRAYS OF SPECIAL JURORS

Special jury in civil cases

19. (1) Any party to any civil proceeding, who is entitled to have the same tried by a Judge and jury may, subject to the provisions of section 44(1), have the proceeding tried by a Judge and special jury, on giving notice in writing to that effect to the other party to the proceeding, and also to the Registrar:

Provided that, such notice is given not less than fourteen days before the day fixed for the holding of the Court at which the proceeding is to be tried.

(2) A Judge may at any time, on the application of any party to any civil proceeding, order, subject to the provisions of section 44(1), that the proceeding be tried by a Judge and special jury upon such terms as he may think fit, and may appoint a special day on which the trial shall commence.

(3) The time specified in subsection (1) may be varied by Rules of Court.

Mode of impanelling special jury

20. (1) Whenever an order has been made for the trial of any proceeding by a Judge and special jury, or whenever notice has been given pursuant to the provisions of section 19(1), the Registrar shall, subject to the provisions of section 21 and section 44(1), appoint a time for impanelling the array of special jurors pursuant to such order or notice, and shall give notice of the time so appointed to every party to the proceeding and, at the time so appointed, shall proceed to impanel the array as follows—

- (a)* he shall put into the ballot box, for every name included in the special jurors’ list, a counter inscribed with a number corresponding to the number prefixed to that name in the said list and, having thoroughly intermixed the counters, shall draw out of the box, one by one, thirty of the said counters and, as each counter is drawn, write down in a list the number inscribed on the counter and the name in the special jurors’ list to which that number is prefixed:

Provided that, if the number of names in the special jurors' list is less than thirty, the Registrar shall first enter in the list all the names included in the special jurors' list and shall then, fairly and indifferently, select out of the persons of the greatest repute, property and intelligence whose names are included in the jurors' register, such a number as, in addition to those whose names are already entered in the list then being prepared, will make up the full number of thirty, and shall enter in the last mentioned list the name of each person so selected:

Provided further, that, the Registrar shall not impanel both husband and wife in the same array of special jurors;

- (b) the persons whose names are included in the list drawn up under paragraph (a) shall be the array of special jurors to be summoned for the trial of the said proceedings;
- (c) the Registrar shall, on demand of any party to the proceeding, supply him with a copy of the said list as soon as possible after the list is complete.

(2) Any party to a proceeding who is dissatisfied with the manner in which the array has been impanelled, or with the conduct of the Registrar in impanelling it, may apply to a Judge who may, if he sees sufficient grounds, set aside the impanelling and order another array to be impanelled, and give such directions in the matter as he may think fit.

Use of same array of special jurors for other case

21. Whenever, in any proceeding, an array of special jurors has been impanelled, the parties to any other proceeding which is to be tried with a special jury at the same court as the first mentioned proceeding, may agree in writing that the array impanelled in the first mentioned proceeding shall be impanelled as the array in the proceeding to which they are parties, and, on the agreement being filed, the Registrar shall, subject to the provisions of section 44(1), impanel the said array accordingly.

PART 6

SUMMONING OF JURORS

Day for which jurors to be summoned

22. As soon as an array, whether of common or special jurors, has been impanelled, the Registrar shall proceed to summon each of the jurors included in the array to attend on the day fixed for the holding of the next sitting of the High Court, unless, in the case of an array of special jurors, another day has been appointed by a Judge, in which case the jurors included in the array shall be summoned to attend on that day.

Service of summons

23. A summons to attend as a juror shall be signed by the Registrar, and may be served either—

- (a) by being delivered to the juror or left at his usual place of abode, at least six days before the day on which the juror is summoned to attend; or
- (b) through the post office in the manner and on the conditions following—
 - (i) the summons and the duplicate thereof shall each be legibly addressed to the juror at his place of abode, as described in the jurors' register, or at such other address as the Registrar shall, after inquiry, believe to be correct, and the summons and the duplicate thereof shall each have the words "**Jury Summons**" legibly written thereon on the same side as the address;
 - (ii) the summons, together with the duplicate thereof, shall be delivered to the postmaster of the principal post office in Montserrat at his office during business hours at least eight days before the day on which the juror is cited to attend;
 - (iii) the postmaster shall compare the address on the duplicate with the address on the summons, and if they both agree, and if the summons and the duplicate both have legibly written thereon the words "**Jury Summons**", shall stamp the duplicate with the stamp of the post office and return it to the person who brought it to him, and shall keep the summons for transmission to its address, treating it in all respects as a registered letter except that it shall be forwarded open and that no fee shall be charged;
 - (iv) if it is reported to the postmaster that any summons so kept by him has not been delivered at its address, the postmaster shall endorse thereon the cause of the non-delivery, and forward it without delay to the Registrar, who shall forthwith endorse on the face of the duplicate the words "**Not delivered**" and sign and date such endorsement;
 - (v) a duplicate purporting to be a summons to a juror, stamped as hereinbefore provided and not endorsed "**Not delivered**", as hereinbefore provided, shall be *prima facie* evidence that the summons was duly served on the juror:

Provided that, no such summons shall be served through the post office in any part of Montserrat in the manner herein provided, unless and until the Governor acting on the advice of Cabinet has, in writing, notified

the postmaster that jury summonses may be served through the post office in Montserrat or in that part thereof, and the Governor acting on the advice of Cabinet may cancel, alter or amend such notification at any time.

(Amended by Act 9 of 2011)

PART 7

TRIALS

Quashing of array

24. Every application made at a sitting of the High Court for the quashing of an array shall be heard and determined by the presiding Judge, and no array shall be quashed on the ground of any formal defect or of any breach of any of the provisions of this Act, unless the presiding Judge is satisfied that it is expedient, on the merits and in the interests of justice, that the array should be quashed.

Impanelling of further jury

25. If, at any sitting of the High Court, a proceeding is brought on for trial before the jury impanelled for the trial of any other proceeding have been discharged, the presiding Judge may order another jury to be impanelled from the jurors who are not then impanelled.

Number of jury

26. Every jury impanelled for the trial of any proceeding shall consist of nine persons and no more.

Peremptory challenges and standing by

27. When a common jury is being impanelled for the trial in the High Court of any person or persons charged with any offence—

- (a) the person charged, or each of the persons charged, may peremptorily and without assigning cause challenge any number of jurors not exceeding three;
- (b) the Crown shall have the same right as, at the commencement of this Act, it has in England, to ask that jurors stand by until the panel has been “**gone through**” and perused.

Challenges for cause

28. (1) When a jury is being impanelled for the trial of any proceeding, any juror, whose name has been drawn as hereinafter provided, may be challenged for cause by any of the parties to the issue and, where any such challenge is made, the same shall be inquired into by the presiding Judge, who, after hearing any evidence which may be adduced, may allow or

disallow such challenge, and the decision of the Judge, as to what is or is not sufficient cause, shall be final.

(2) In this section, “**cause**” means anything which, in the opinion of the presiding Judge, renders it improper or inadvisable that the person challenged should be impanelled for the trial of the proceeding.

Mode of impanelling juries

29. (1) A jury for the trial of a proceeding shall be impanelled as follows—

- (a) the Registrar shall place in the ballot box, for every name included in the panel of the array, whether it be an array of common or special jurors, a counter inscribed with a number corresponding to the number prefixed to the name in the panel, and, having thoroughly intermixed the counters, shall proceed to draw, one by one, out of the box, nine counters and, as each counter is drawn, shall write down the number inscribed on the counter and, opposite to the number, the name in panel to which that number is prefixed, and call out the name. The juror named shall then enter the jurors’ box:

Provided that, if any jurors so drawn and called do not appear and enter the jurors’ box or, in a criminal proceeding, being present, are asked by the Crown to stand by, the Registrar shall proceed in the manner above-mentioned until nine jurors have entered the jurors’ box. If, from any cause, the full number of nine cannot be made up from the jurors included in the array, the presiding Judge may require as many other jurors present to serve on the jury as may be necessary to complete the full number, and every juror so required shall be liable to serve as a juror for the trial of the said proceeding and shall, as soon as his name is called, enter the jurors’ box;

- (b) when nine jurors are in the jurors’ box, if any challenges are made, whether peremptorily or for cause, as each challenge is made, it shall be heard and determined, and if the challenge is allowed, the juror challenged shall leave the box and another juror be selected in the manner above-mentioned and, on his entering the box, the next challenge, if any, shall be made and determined and, if it is allowed, the juror challenged shall leave the box and another juror be selected in his stead, in the manner above-mentioned, and shall enter the box;
- (c) as soon as nine jurors are in the jurors’ box who are not challenged, or have not been successfully challenged, they shall be the jurors impanelled for the trial of the proceeding, and shall then be counted and sworn;

(d) in every criminal proceeding, the person charged shall, before any juror is sworn, be informed of his right and be given a reasonable opportunity to challenge whether peremptorily or for cause, before the Registrar begins to administer the oath to any of the jurors, but no challenge shall be allowed after the Registrar has, with the leave of the presiding Judge, begun to administer the oath to any of the jurors impanelled.

(2) Notwithstanding anything hereinbefore contained where, at any sitting of the High Court, no objection is made by any party to a proceeding, the proceeding may be tried by the Judge with the same jury which, at the same court, has previously tried or been drawn to try, another proceeding, or the Judge may order any of the said jury to whom both parties object or who is, or are, excused by the Judge, or successfully challenged, to withdraw and another juror or other jurors to be drawn instead, and may try the first mentioned proceeding with a jury composed of the residue of the original jury and such additional juror or jurors. The jury, by whom any proceeding is to be tried under this section, shall first be duly sworn for the trial of the proceeding in the same manner as if they had been impanelled under subsection (1).

Swearing jury

30. Jurors impanelled for the trial of any proceeding shall be sworn in the same manner, subject to the provisions of section 50, and with the same form of oath, in and with which jurors, impanelled in England for the trial of a similar proceeding, might, at the commencement of this Act, be sworn.

View

31. Whenever, at the trial of any proceeding, the presiding Judge is of the opinion that it is expedient, in the interests of justice, that the jury impanelled to try the proceeding should have a view of any place or of any real or personal property connected with the proceeding, the Judge may order such view to be made accordingly, under such conditions as to costs and generally as he shall think fit.

Refreshment of jury

32. After a jury has been impanelled and sworn for the trial of a proceeding, they may, in the discretion of the presiding Judge, and subject to such conditions as he may think fit, be allowed, at any time before giving their verdict, reasonable refreshment, to be procured in criminal cases at the expense of the Crown, and in civil cases at their own expense.

Death, absence or incapacity of juror

33. If, during the trial of any proceeding, not being the trial of a capital charge, one of the jury shall die or become incapable of serving, or shall absent himself, it shall not be necessary to discharge the jury or to add

thereunto another juror, but the trial shall be proceeded with by the remaining eight jurors notwithstanding such absence or incapacity.

Separation of jury during adjournments

34. (1) Whenever, at any sitting of the High Court, the trial of any person charged with any offence is adjourned, before the jury begin to consider their verdict, either from one day to another day or from one hour to another hour of the same day, the Judge may permit the jury to leave the court and separate until the close of the said adjournment, provided the following oath has been previously administered to them in open court—

“You swear that, during any adjournment of this trial of the issue joined between Our Sovereign Lady the Queen and the prisoner at the bar (or defendant as the case may be) which you have been sworn to try, you will not, whilst separated and until you shall be assembled in court again, speak with, listen to, or hold any communication, verbal, written or otherwise, with any person whomsoever, other than your fellow jurors impanelled and sworn for the trial of the said issue, on any matter whatever relative to the said trial; and that, upon the termination of every adjournment of the said trial, you will again come into this court. So help you God.”

(2) When the said oath has once been taken by a juror in the course of a trial, it shall not be necessary to administer it to him again during the same trial.

(3) If any juror shall refuse to take the said oath, his refusal shall not prevent the separation or departure of so many of the jurors as shall have taken it, but the juror so refusing shall be kept, during such adjournment, by the proper officers sworn, in the usual manner, neither themselves to speak to nor hold any communication with such juror touching any matter relative to the said trial.

Verdict

35. A verdict of a jury shall not, in any proceeding, be accepted within two hours after the conclusion of the Judge’s summing up, unless it is unanimous; but after the expiration of two hours from the conclusion of the summing up, any verdict, in which seven of them agree, may be accepted as the verdict of the whole, unless it is the verdict of guilty or not guilty of a capital charge, which shall not be accepted at any time unless it is unanimous.

Jury not agreeing may, in certain cases, be discharged

36. If, in any proceeding, no verdict is delivered by a jury within four hours after the conclusion of the summing up of the presiding Judge, and the Judge is satisfied that there is no prospect of the jury agreeing, he may discharge them.

New trial in case of abortive trial

37. Whenever, from any cause, the trial of any proceeding shall prove abortive, the presiding Judge may discharge the jury and the proceeding may be tried with a new jury, duly impanelled and sworn, either at the same or, if the Judge so order, at the next sitting of the High Court, in the same manner as if the former abortive trial had not taken place.

PART 8

EXCUSES OF JURORS

Excusing jurors

38. No juror, duly summoned to attend at a sitting of the High Court, shall be entitled to be excused from attendance thereat on the ground of any exemption or disqualification or on any other ground, save and except illness or unavoidable accident, but the Judge presiding at the said court or, before the commencement of the sitting, any Judge or, if no Judge is present in Montserrat, the Registrar, may, upon reasonable and sufficient cause being shown upon oath, or where the cause is the state of the juror's health, on a certificate purporting to be signed by a duly qualified medical practitioner, exempt a juror summoned to attend thereat, from attendance during the whole or any part of the sitting.

PART 9

PUNISHMENT OF DEFAULTING JURORS

Fines

39. (1) As soon as may be convenient after the opening of a sitting of the High Court, the names of the jurors impanelled to serve thereat shall be called and every juror who, having been duly summoned, does not answer to his name, after it has been thrice called, may be fined by the presiding Judge any sum not exceeding \$500.

(2) Whenever at any sitting of the said court a jury is being impanelled and sworn for the trial of any proceeding—

- (a)* every juror duly summoned to attend the Court, who has not been excused, and who is not at the time serving on a jury for the trial of another proceeding; and
- (b)* every juror present in court and required by the Judge to serve on a jury under the provisions of section 29(1),

who fails to answer to his name when called, or refuses to enter the jury box, or leaves the jury box without the permission of the Judge, or refuses to be sworn for the trial of the proceeding, may be fined by the presiding Judge any sum not exceeding \$2,000.

(3) Every juror sworn to try a proceeding at a sitting of the High Court who leaves the jury box without the permission of the presiding Judge, or who, when the jury are allowed to separate during any adjournment of the court, fails to return into court at the termination of the adjournment, may be fined by the presiding Judge any sum not exceeding \$2,000.

Registrar to record fines

40. Whenever a juror is fined under the last preceding section, the Registrar shall record in his minute book the name of the juror and the amount and cause of the fine.

Reduction or remission of fines

41. (1) Whenever a juror is fined under this Act, the presiding Judge may, at any time during or within one week after the closing of the court, upon sufficient cause being shown, reduce or remit the fine.

(2) Whenever a Judge, under this section, reduces or remits any fine, he shall give due notice of such reduction or remission to the Registrar, and the Registrar shall thereupon duly note such remission or reduction accordingly in the margin of his minute book, opposite to the entry therein of the imposing of the fine.

Payment and recovery of fines

42. (1) Where any fine has been imposed on a juror under this Act, and the fine has not been remitted, the amount of the fine or, if the fine has been reduced, the amount to which the fine has been reduced, shall be paid to the Registrar before the closing of the session of the court then in progress, and in case of default, the Registrar shall immediately after the closing of the said session issue a warrant, directed to the Bailiff, requiring him to levy by distress and sale of the goods and chattels of the juror, the amount of the fine or, if the fine has been reduced, the amount to which the fine has been reduced, and every such warrant shall be executed in the same manner as a writ of *feri facias* in the High Court.

(2) Where any such levy is made, the amount of the fine or, if the fine has been reduced, the amount to which the fine has been reduced, shall, together with the reasonable expenses of the levy, be paid out of the proceeds thereof, and the surplus, if any, of the proceeds of the levy shall be returned to the juror.

(3) In case any warrant is issued, as in this section provided, and no goods and chattels of the juror can be found on which to levy or, in case any levy is made as in this section provided, and the proceeds of the levy are insufficient to pay the reasonable expenses of the levy and the amount to recover which the levy was made, any Judge, on the application of the Registrar, such application being supported by an affidavit or affidavits verifying the facts, may, by warrant of commitment under his hand, directed to the Bailiff and the keeper of the prison, order the juror to be

imprisoned for any period of one month, unless the amount due in respect of the warrant to levy and the execution thereof, is sooner paid, and may issue such further process as may be necessary to enforce the said order:

Provided that, where any application is made under this section for a warrant of commitment, the Judge may adjourn the application and order notice thereof to be served on the juror.

PART 10

PAYMENT OF JURORS

Payment of jurors in civil cases

43. (1) Every juror who, in obedience to a summons in that behalf, attends at the High Court for the trial of a civil proceeding, shall be entitled to be paid at such rate as may be prescribed by rules made by the Governor acting on the advice of Cabinet. Any such rules may prescribe different rates of payment for common jurors and for special jurors, and may prescribe scales for the payment of expenses incurred in travelling to the court and for accommodation overnight necessarily involved by reason of duty as a juror. *(Amended by Act 9 of 2011)*

(2) Where a juror attends the court as mentioned in subsection (1), but is not sworn for the trial of a proceeding, he shall be entitled to receive expenses incurred for travelling in respect of the first day's attendance only.

Deposit in advance of jury money

44. (1) No array of special jurors shall be impanelled in any civil proceeding, unless the party applying for the impanelling shall first deposit with the Registrar such sum as the Registrar may think fit for the payment, in accordance with section 43, of such of the jurors included in the said array as may afterwards be impanelled as a jury for the trial of the said proceeding.

(2) No common jury shall be impanelled for the trial of any civil proceeding unless the party applying for the impanelling has first deposited with the Registrar such sum as the Registrar may think fit, for the payment of the jury, in accordance with the provisions of section 43.

(3) Where the decision of the Registrar as to the amount of any deposit payable under this section is questioned by the party by whom it is to be paid, then, if or whenever a Judge is present in Montserrat, the Judge shall hear the Registrar and the party, and decide what shall be the amount of the deposit.

Payment of jurors during trial

45. (1) Where any deposit is made, in any civil proceeding, under the provisions of section 44, the Registrar shall, at the close of each day during

which the jury serve on the trial of the proceeding, pay, out of the deposit, to each of the jurors impanelled, the sum to which he is entitled under the provisions of section 43 and if, after the jury have been discharged, the deposit is not yet exhausted, shall pay the surplus to the party by whom the deposit was made, but if and whenever, at the close of any day, the money deposited for the payment of the jurors is exhausted, he shall at once report the fact to the presiding Judge who shall forthwith discharge the jury, unless the party at whose instance the jury was impanelled, or any other party to the proceeding, shall forthwith deposit with the Registrar such further sum as the Judge shall think fit for the payment of the jury as aforesaid.

(2) Whenever a jury is discharged under the provisions of this section, the trial shall proceed before the Judge alone in the same manner as if the jury had not been impanelled.

Costs consequent on trial by jury

46. (1) Whenever any civil proceeding is tried by a common jury, and the costs of the trial are awarded to the party to the proceeding at whose instance the jury was impanelled, such costs shall, unless the presiding Judge otherwise orders, include the money which has been paid to the jury under the provisions of section 45.

(2) Whenever a civil proceeding is tried by a special jury, and the costs of the trial are awarded to the party to the proceeding at whose instance the special jury was impanelled, the costs so awarded shall not include any of the additional costs occasioned by the proceeding being tried by a special jury instead of a common jury, unless the Judge, before whom the proceeding was tried certifies, before the taxation of the costs, in writing that the same was, in his opinion, a proper proceeding to be tried by a special jury:

Provided that, in default of such certificate, the party to whom the costs have been awarded shall, unless the Judge presiding at the trial otherwise orders, be allowed the sums which would, under the provisions of section 45, have been paid to a common jury.

Rules for payment of jurors out of public funds

47. (1) The Governor acting on the advice of Cabinet may make rules authorising the payment out of public funds of such allowances, on such scales and in such cases, as he may think fit, to jurors attending at the High Court in criminal proceedings, in pursuance of summonses under this Act, or impanelled under the provisions of this Act:

Provided that, no juror shall receive any allowance out of public funds in respect of any day on which he has served on a jury impanelled and sworn for the trial of a civil proceeding.

(Amended by Act 9 of 2011)

(2) The said allowances may include compensation for loss of time, and expenses paid or incurred in going to, attending at and returning from, the said court.

(3) All allowances payable under any rules made under this section shall be paid out of the Consolidated Fund on the warrant of the Registrar.

PART 11

GENERAL PROVISIONS

Trial of aliens

48. No alien shall be entitled to be tried by a jury *de medietate linguae*, but every alien shall be triable by a jury impanelled and sworn under this Act, in the same manner as if he were a British subject.

Administration of oaths, etc.

49. Whenever the taking of an oath is required under this Act, the provisions of the Oaths Act shall apply.

Kissing the Book in swearing

50. Whenever a juror is sworn under the provisions of this Act, upon a Book, he shall not be required to kiss the Book, but shall hold it in his right hand while the oath is being administered to him.

FIRST SCHEDULE*(Section 6)***PERSONS DISQUALIFIED OR EXEMPT FROM JURY SERVICE**

Members of the Cabinet and the Cabinet Secretary;

Members of the Legislative Assembly and the Speaker and Clerk;

Members of the Public Service Commission; the Complaints Commission, the Electoral Commission and the Mercy Committee;

The Magistrate and his staff;

Justices of the Peace;

Law officers of the Crown and members of their staff;

Legal practitioners and members of their staff;

Police officers and police clerical staff;

Prison officers and prison clerical staff;

Generally recognised ministers of religion;

Teachers in public and private schools;

Medical officers, registered medical and dental practitioners and druggists in actual practice, and registered nurses;

Permanent secretaries in the public service;

All consular representatives of foreign powers being of foreign nationality and any such representatives being of British nationality as the Governor acting on the advice of Cabinet may, by notice published in the *Gazette*; declare to be exempt from service on juries:

Provided that, any such exemption may be cancelled by the Governor acting on the advice of Cabinet at any time.

(Amended by Acts 22 of 1985 and 9 of 2011)

SECOND SCHEDULE

(Section 8)

Circuit

JURORS' LIST FOR THE YEAR 20..... .

| Forename and surname at length | Place of abode | Calling | Nature of Qualification | Remarks |
|--------------------------------|----------------|---------|-------------------------|---------|
| | | | | |

NOTICE

The above are the persons whom it is proposed should be inserted in the Jurors' Register for the year 20..... . The list will be revised at the sitting of the Magistrate's Court to be held at, on the day of, at o'clock, and the Magistrate may then make such changes therein as he may think fit, either by adding or striking out names, or otherwise. Any person, whether included or not included in the said list, may then appear personally, or by his counsel or solicitor, and claim that he is, or is not, liable to serve as a common or special juror, as the case may be or, if unable to attend personally, may give the Magistrate notice in writing of his claim, supporting it by such evidence as he may think fit, and the Magistrate will then, as far as he reasonably can, inquire into the claim. The Magistrate's decision in revising the said list will be conclusive, and all persons included in the said list, after it has been revised by the Magistrate, will be liable during the year 20..... to be summoned and serve as common or special jurors, as the case may be, notwithstanding any disqualification or exemption other than illness or unavoidable accident.

Dated this day of, 20..... .

REGISTRAR

THIRD SCHEDULE*(Section 10(4))***CERTIFICATION**

I, CERTIFY that this list has been revised by me, and that it is, to the best of my knowledge, information and belief, a true and correct list of the persons who are liable to serve in Montserrat as common jurors, and that such, and such only, of the said persons as are also liable to serve as special jurors, are, in the said list, distinguished as such in the prescribed manner.

Dated this day of, 20..... .

MAGISTRATE

FOURTH SCHEDULE*(Section 16(1))***PRELIMINARY PANEL**

For the sitting of the High Court to be held on the day of, 20..... .

| Name of Juror | Whether taken from last Preliminary Panel or direct from Jurors' Register * | Whether impanelled and if not, why not |
|---------------|---|--|
| | | |

* Put P.P. for last Preliminary Panel and J.R. for Jurors' Register.

JURORS' (ALLOWANCES) RULES – SECTION 43

(S.R.O. 61/1999)

Commencement

[11 November 1998]

Short title

1. These Rules may be cited as the Jurors' (Allowances) Rules.

Interpretation

2. For so long as the Court House shall be situated at the Government Temporary Headquarters in Brades, it shall be the place at which Jurors shall be required to be present and from which distance shall be measured for the purposes of these Rules:

Provided that, the Judge may require the jurors to be present at any other place that he may stipulate.

Allowances

3. (1) Every juror attending the High Court for the trial of criminal causes in pursuance of a summons under the Jury Act shall be entitled to receive as compensation for loss of time an allowance of \$10 a day for each day he is required to attend and does attend a session:

Provided that, where a juror is required to attend any particular criminal case for longer than twenty days he shall be entitled to receive as compensation for the loss of time an allowance of \$20 for each day over twenty days.

(2) Every juror shall also receive (in addition to any allowance he shall be entitled to receive as compensation for loss of time)—

- (i) a subsistence allowance of \$5 a day or part of a day for each day he is required to attend and does attend a session; and
 - (ii) a travelling allowance of \$1 for every mile or part of a mile travelled to and from the Court House exclusive of the first mile to and from the Court House.
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