
CHAPTER XXIII.

OF JURIES AND ASSESSORS.

Local Government by order to specify in what places trials to be by Jury.

322. The local Government may order that the trial of all offences or of any particular class of offences by any Court of Session shall be by Jury in any District, and such local Government may from time to time revoke or alter such order. Orders passed under this Section shall be published in the *Government Gazette*, and in such other manner as the local Government shall direct.

How the Jury is to be constituted for the trial of persons belonging to certain specified races.

323. Criminal trials before the Court of Sessions in which a European (not being a British subject) or an American is the accused person or one of the accused persons, shall be by Jury; and in such case the Jury, if such European or American desire it, shall consist of at least one-half of Europeans (whether British subjects or not) or Americans,

if such a Jury can be procured. Provided that in any District in which the local Government shall not have ordered that all trials or trials for all offences of the class within which the trial about to take place falls, shall be by Jury, such European or American may elect to be tried without Jury.

Proviso.

324. In a trial before the Court of Session not by Jury, the trial shall be conducted with the aid of two or more Assessors as Members of the Court. The opinion of each Assessor shall be given orally and shall be recorded in writing by the Court, but the decision is vested exclusively in the Judge.

Trials before the Session Court with Assessors.

325. In a trial by Jury before the Court of Session in which a person not belonging to the races specified in Section 323 shall be tried, at least one-half of the Jury, if the accused person desire it, shall consist of persons not belonging to either of such races.

How the Jury is to be constituted for the trial of other persons.

326. In any case before the Court of Session in which a person not belonging to the races mentioned in Section 323 is charged jointly with a person belonging to one of those races, and such last mentioned person claims to be tried by a Jury consisting of at least one-half of Europeans or Americans, the person not belonging to either of such races shall, if he desire it, be tried separately.

How the Jury is to be constituted when persons of both descriptions are jointly charged.

327. In trials by Jury before the Court of Session the Jury shall consist of five persons, or of such number, being an uneven number, and not being less than five or more than nine, as the local Government by any general order applicable to any particular District, or to any particular classes of offences in that District shall direct.

Number of which the Jury is to consist.

328. If the Jury are unanimous in a verdict of guilty, the accused person shall be convicted. If the Jury shall consist of five persons and a majority of four find the accused person guilty, or if the Jury shall consist of seven persons and a majority of five find the accused person guilty, or if the Jury shall consist of nine persons and a majority of six find the accused person guilty, the accused person

Number of voices necessary to a verdict.

shall be convicted. If the Jury are unanimous in a verdict of not guilty, the accused shall be acquitted. If the Jury shall consist of five persons and a majority of four find the accused person not guilty, or if the Jury shall consist of seven persons and a majority of five find the accused person not guilty, or if the Jury shall consist of nine persons and a majority of six find the accused person not guilty, the accused person shall be acquitted, and the Judge shall not receive a verdict of acquittal unless it be unanimous or found by such majority as last aforesaid.

**List of Jurors
and Assessors.**

329. The Collector of the District or other Officer exercising the powers of a Collector of a District shall, from time to time, prepare and make out in alphabetical order, a list of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the local Government may think fit to direct, who are in the judgment of the Collector or other Officer as aforesaid qualified from their education and character to serve as Jurors or as Assessors respectively. The list shall contain the name, place of abode, and quality or business of every such person; and if the person belongs to either of the races specified in Section 323, the list shall mention the race to which he belongs.

**Publication of
list.**

330. Copies of such list shall be stuck up in the Office of the Collector or other Officer as aforesaid and in the Court-houses of the Magistrate of the District and of the Chief Civil Court, and in some conspicuous place in the town or towns near or in the vicinity of which the persons named in the list reside, and every such copy shall have subjoined to it a notice, stating that objections to the list will be heard and determined by the Collector or other Officer as aforesaid at a time and place to be mentioned in the notice.

Revision of list.

331. The Collector or other Officer as aforesaid shall at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not qualified in his judgment to serve as a Juror or

as an Assessor, and insert the name of any person omitted therefrom, whom he deems qualified for such service. A copy of the revised list shall be signed by the Collector or other Officer as aforesaid and transmitted to the Court of Session. Any order of the Collector or other Officer as aforesaid in preparing and revising the list shall be final.

332. The list so prepared and revised shall be again revised at least once in every year, and the list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Further revision of list.

333. Except as hereinafter provided, all male persons between the ages of twenty-one and sixty, resident within the limits of the jurisdiction of the Court of Session, shall be deemed capable of serving as Jurors and Assessors, and shall be liable to be summoned accordingly.

Jurors.

334. The following persons are incapable of serving as Jurors or as Assessors in trials before the Court of Session, namely :—

Disqualifications.

Persons who hold any Office in or under the said Court.

Persons executing any duties of Police or entrusted with any Police functions.

Persons who have been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Collector, renders them unfit to serve on the Jury.

Persons who are afflicted with any infirmity of body or mind, sufficient to incapacitate them from serving.

Persons who, by habit or religious vows, have relinquished all care of worldly affairs.

335. The following persons are exempt from the liability to serve as Jurors or as Assessors, namely :—

Exemptions.

Judges and other Judicial Officers.

Commissioners and Collectors of Revenue or Customs.

All persons engaged in the Preventive Service in the Customs Department.

All persons engaged in the collection of the Revenue whom the Collector may think fit to exempt on the ground of official duty.

Chaplains and others employed in Religious Offices.

All persons in the Military service.

Surgeons and others who openly and constantly practise in the profession of Physic.

Persons employed in the Post Office and Electric Telegraph Departments. Persons actually officiating as priests in their respective religions.

Persons exempted by Government from personal appearance in Court under the provisions of Section 22 of Act. VIII of 1859 (*for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.*)

The exemption from service given by this Section is a right of which each person exempted may avail himself or not. Nothing herein contained shall be construed to disqualify any such person if he shall be willing to serve as a Juror or as an Assessor.

Court to summons Jurors.

336. The Court of Session shall ordinarily three days at the least before the time fixed for the holding of Sessions, cause the Magistrate to summon as many persons named in the said revised list as seem to the Court to be needed for trials by Jury and trials with the aid of Assessors at the said Sessions, the number to be summoned not being less than double the number required for any case about to be tried at such Sessions. The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them, and shall be specified in the precept to the Magistrate.

Form and service of summons.

337. Every summons to a Juror or Assessor shall be in writing, and shall require his attendance as a Juror or Assessor at a time and place to be therein specified. The summons or a copy thereof shall be served on every Juror or Assessor personally. If the Juror or Assessor summoned be absent from his usual place of abode, the summons may

be left for him there with some adult male member of his family residing with him.

338. The Court of Session may direct Jurors or Assessors to be summoned at other periods than the period specified in Section 336 when the number of trials before the Court renders the attendance of one set of Jurors or Assessors for a whole Session oppressive, or whenever it may be found to be necessary.

Power of Court to summon another set of Jurors or Assessors.

339. If any person summoned to serve as a Juror or Assessor, be an Officer of Government, the summons shall be transmitted to such person through the Head Officer of the Office in which he is employed, and the Court may excuse the attendance of such person if it shall appear on the representation of such Head Officer that such person cannot serve as a Juror or Assessor without inconvenience to the public service.

Service of summons to serve as Juror or Assessor, on an Officer of Government.

340. The Court of Session may excuse any Juror or Assessor from attendance for reasonable cause.

Court may excuse attendance of a Juror or Assessor.

341. At each Session the Court shall cause to be made a list of the names of those who serve as Jurors or Assessors at such Session. The list shall be kept with the revised list of the Jurors and Assessors prepared under Section 331. A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this Section.

List of names of Jurors or Assessors attending at each Session.

342. Whenever a trial by Jury is to be held, the persons who are to constitute the Jury shall be chosen by lot immediately before the commencement of the trial from the Jurors who attend in obedience to the summons. If the trial is to be held with the aid of Assessors, the Judge shall select from the persons summoned to act as Assessors, two or more persons to assist him in such trial.

Jurors to be chosen by lot.

Assessors to be selected by Judge.

343. Before the commencement of a trial by Jury the names of the Jurors shall be called aloud, and upon the appearance of each Juror, the accused person shall be asked if he objects to be tried by such Juror. Any objection may then

Names of Jurors to be called.

Objections.

be made to such Juror by the accused person or by the Government Pleader or other person appointed to conduct the prosecution, and the grounds of objection shall be stated. Any objection made to a Juror shall be decided by the Court and the decision of the Court shall be final. If an objection be allowed, the place of such Juror shall be supplied by any other Juror in attendance in obedience to a summons, or if there be no such Juror present, then by any other person present in the Court whose name is on the list of Jurors, or whom the Court shall consider a proper person to serve on the Jury, provided no objection to such Juror or other person be made and allowed.

Grounds of objection.

344. Any objection taken to a Juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed :—

(1.) Any ground of disqualification within Section 334.

(2.) Standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused; being in the employment on wages of either of such persons; being plaintiff or defendant against either of such persons in any Civil suit, or having complained against or having been accused by either of such persons in any Criminal prosecution.

(3.) Any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favor to, either of such persons.

Juror to understand the language in which evidence is given or interpreted.

345. The Judge shall not allow any person to serve on the Jury, unless such person understands the language in which the evidence is given or interpreted.

Foreman of Jury.

346. The Jury shall appoint one of their number to be Foreman. It shall be the duty of such Foreman to preside in the debates of the Jury, to deliver the verdict of the Jury, or ask any information from the Court that may be required by the Jury. If a majority do not agree in the appointment of a Foreman, he shall be named by the Court.

347. The same Jury, if not objected to, may try, or the same Assessors may aid in the trial of, as many accused persons successively as to the Court shall seem expedient.

The same Jury or Assessors may try in succession several offenders.

348. Whenever in the opinion of the Court it may be proper and convenient that the Jury or Assessors should have a view of the place in which the offence charged is said to have been committed, or of any other place in which any other transaction material to the enquiry in the trial took place, an order shall be made to that effect, and the Jury or Assessors shall be conducted in a body under the care of an Officer of the Court to the place which shall be shown to them by a person appointed by the Court, and it shall be the duty of the Officer not to suffer any other person to speak to or hold any communication with any of the Jury or Assessors, and they shall, when the view is finished, be immediately conducted back into Court.

View by Jury or Assessors.

349. When a trial is held in which the accused person or one of the accused persons is entitled to be tried by a Jury constituted under the provisions of Section 323 of this Act, the Court of Session shall, three days at the least before the day fixed for holding such trial, cause to be summoned in the manner prescribed in Section 336 such a number of Jurors of the races mentioned in Section 323 as is equal to the total number of Jurymen required for the trial, if so many of such races be on the Jury List of the District. The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons shall have been summoned for Jury trials at that Session. The names of the persons to be summoned shall be drawn by lot, excluding those who have served within six months, unless the number cannot be made up without them. From the whole number of persons returned, the Jurors who are to constitute the Jury shall be taken by lot in the manner prescribed in Section 342, until a Jury, containing the proper number of the races mentioned in Section 323, or a number approaching as nearly thereto as possible, has been

Mode of summoning and empanelling Jurors for a Jury constituted under Section CCCXXIII.

obtained. The Jurors shall be liable to the same objections as any other Jurors. If a Jury containing the requisite number of the races mentioned in Section 323 be not obtained, the accused person may elect to be tried by the Judge with the aid of Assessors; otherwise he shall be tried by the Jury obtained by the means aforesaid.

If prior to finding, any of the Jury be unable to proceed with the trial.

350. If, in the course of a trial by Jury at any time prior to the finding, any Juror shall, from any sufficient cause, be prevented from attending through the trial, or if any Juror shall absent himself, and it shall not be possible to enforce his attendance, a new Juror shall be added, or the Jury shall be discharged, and a new Jury empannelled, and in either case the trial shall commence anew.

X Verdict of guilty by less than the specified majority of Jury.

351. In any trial by Jury if the accused person is found guilty by a majority consisting of a less number of the Jury than is specified in that behalf in Section 328 of this Act, or if the accused person be found not guilty, by a majority consisting of a less number of the Jury than is therein in that behalf specified, the Jury shall be discharged, and in any such case as aforesaid there shall be a new trial before a Jury consisting entirely of other Jurors, and the accused person may be remanded or held to bail for such new trial. If, on any new trial by Jury, the accused person shall not be found guilty by a majority consisting of such a number as aforesaid, he shall be acquitted.

X When and how long Jury may retire for finding.

352. At the close of the trial, and after the Judge has summed up the evidence as hereinafter provided by Section 379 of this Act, the Jury may retire to consider their finding, and it shall be the duty of an Officer of the Court not to suffer any person to speak to or hold any communication with any member of such Jury. In any case in which a Jury shall be prepared to deliver their finding, the Judge shall ask the Jury whether they are unanimous, and if the Foreman or one of the Jury shall declare that they are not unanimous, the Judge may require such Jury to retire for further consideration. If after such a period as the Judge shall consider reasonable,

the Foreman or any one of the Jury shall declare that they are not unanimous, the Jury may deliver their verdict.

353. If, in the course of a trial with the aid of Assessors, at any time prior to the finding, any Assessor shall, from any sufficient cause, be prevented from attending through the trial, the trial shall proceed with the aid of the other Assessor or Assessors. If all the Assessors are prevented from attending through the trial, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh Assessors.

If either of the Assessors be unable to proceed with trial.

354. Any person summoned to attend as a Juror or as an Assessor, who shall without lawful excuse fail to attend as required by the summons, or having attended shall depart without having obtained the permission of the Court, shall be liable by order of the Court of Session to a fine not exceeding One Hundred Rupees, to be levied by the Magistrate of the District by attachment and sale of any moveable property belonging to such Juror or Assessor within the jurisdiction of the Court making the order, or in default of recovery of the fine by such attachment and sale, such Juror or Assessor may be imprisoned in the Civil Jail for the space of fifteen days if the fine be not sooner paid.

Penalty for non-attendance of Juror or Assessor.