

(3.) Any such order may be made at any time after the commencement of the prosecution, and whether before or during the trial; but if made after any evidence has been heard at the trial, all such evidence shall, except so far as repeated before the Court and assessors, be of no force or effect.

Number and qualifications of assessors.

215. (1.) The assessors shall in all cases be four in number, and shall be such fit and proper persons (whether men or women) as the Court thinks fit to appoint, and the consent of the assessor shall not be requisite for his appointment.

(2.) No person shall be appointed as an assessor unless he has first been nominated by the Administrator by warrant published in the *Western Samoa Gazette* as a person qualified for appointment as an assessor under this Order, either generally or in respect of any particular case or class of cases; and the Administrator may accordingly from time to time nominate in this behalf such and so many persons as he thinks qualified by reason of their character, education, ability, or reputation to hold such office, and may at any time in like manner revoke any such nomination.

Default of assessors.

216. If any person so appointed as an assessor, and having had reasonable notice of the time and place of the trial, fails without reasonable excuse duly to attend at the trial or at any adjournment thereof, or duly to make oath as such, or duly to act as assessor throughout the trial, he shall be guilty of contempt of the High Court and shall be punishable accordingly.

Remuneration of assessors.

217. Every assessor shall be entitled to receive from the Samoan Treasury such remuneration or allowances in respect of his services as may be authorized by the Court at the trial in conformity with any rules of Court which may be made in that behalf.

Oath of assessors.

218. Before an assessor commences to act as such he shall in open Court and in the presence of the accused make oath to act well and truly as assessor and to decide in accordance with the evidence and with law.

Change of assessors.

219. At any time after the appointment of an assessor and before he has been sworn as aforesaid the Court may, either of its own motion or on the application of the prosecutor or the accused, if satisfied there is any reasonable and sufficient objection to that assessor, remove him and appoint another assessor in his place.

Discharge of assessors and new trial.

220. If at any time after the commencement of the trial and before judgment the Court is of opinion that, owing to the misbehaviour of any assessor, or to the death, illness, or absence of any assessor, or to any accident or misadventure, or to any other sufficient cause, a new trial is necessary in the interests of justice, the Court may discharge the assessors and order a new trial accordingly.

Concurrence of assessors.

221. On a trial with assessors no person shall be convicted of any offence unless the conviction is concurred in by not less than three of the assessors.

Concurrence of Court.

222. If the Court is of opinion that the accused should not be convicted, or if less than three of the assessors concur in his conviction, the accused shall be acquitted.

Sentence.

223. The concurrence of assessors in the sentence to be passed by the Court shall not be necessary.

Concurrence of assessors not necessary except for conviction.

224. The concurrence of the assessors shall not be necessary for any act of the Court other than conviction, and in all other respects the jurisdiction of the Court shall be exercised in the same manner as if it was sitting without assessors.

#### Miscellaneous.

Alternative and cumulative charges.

225. (1.) Subject to the provisions of this clause, in any prosecution in the High Court the information of the prosecutor may relate to two or more distinct offences whether alternative or cumulative.

(2.) No information for the offence of murder shall charge any other offence except manslaughter.

(3.) No information for the offence of rape shall charge any other offence except indecent assault and an attempt to commit rape.

Relation between information and conviction.

226. On an information for any offence the accused may be convicted either of the offence charged in the information or of any offence which is included within the offence so charged and which might lawfully have been charged in the same information.