BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 1 OF 2006

BETWEEN:

WILLIAM PENN

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Justice Brian Alleyne, SC	Chief Justice [Ag.]
The Hon. Mr. Justice Hugh Rawlins	Justice of Appeal
The Hon. Mde. Ola Mae Edwards	Justice of Appeal [Ag.]

Appearances:

Dr. Joseph Archibald, Q.C. with Ms. Anthea Smith for the Appellant
Mr. Terrence Williams; D.P.P. with Ms. Grace Henry McKinley for the Respondent

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2007: June 5;
December 3.

Criminal Appeal – Burglary – Appeal against Conviction – Jury who were summoned to be jurors from the voters' list – Whether the Registrar jurisdiction to settle the array of common jurors based on the voters' list – Section 10 & Section 11 of the Jury Act (CAP 36) – When is Section 24 of the Jury Act (CAP 36) applicable – Whether the trial should be considered a nullity

The appellant was convicted on three counts of burglary and sentenced to 8 years imprisonment on each count with sentences to run concurrently. He appealed against his conviction on the ground that the jury was summoned from the voters' list. The appellant

argued that the trial was a nullity because the process by which the jurors were selected was not done in accordance with the Jury Act (CAP 36). And secondly the selection deprived him of the opportunity being tried by his peers.

Held, upholding the appeal and setting aside the verdict and judgment and making an order for a venire de novo.

(1) The Registrar had no jurisdiction to settle the array of common jurors based on the voters' list. If she had, but was in breach of a procedural provision or some formal defect, it is only then that Section 24 would apply. The array of common jurors from the voters' list was invalid.

Montreal Street Railway Company and Another v Normandin [1916-17] All ER Rep. Ext 1244; [1917] AC 170; distinguished.

(2) Consequently the 9 people who were impanelled as a jury at the trial of the appellant could not properly assume jurisdiction. The appellant is entitled to take objection before this Court even though no objection was taken by the appellant and his counsel at trial.

JUDGMENT

[1] EDWARDS, JA [AG].: On the 20th March 2006, the appellant, Mr. William Penn, was convicted on 3 counts of burglary. He was tried before a judge and nine persons who were impanelled as a jury. He was sentenced to eight years imprisonment on each count on the 21st March 2006, with the sentences to run concurrently. The verdicts of the jury for the 3 counts were unanimous.

[2] On the 31st March 2006 the appellant appealed against his conviction and sentence. Grounds 1 and 2 of his 7 grounds of appeal concern the nine members

of the jury who were summoned to be jurors from the Voters List. These 2 grounds urge that:

> "1. The trial was a nullity because the names of the jurors who were selected as the trial jury did not emanate from the statutory process of the Jury Act (Cap.36) which requires in Section 10 a jury list revised and certified by the Magistrate for the ensuing calendar year 2006, and which further requires in Section 11 a jurors' book and jury register; and there has been no such Magistrate's certificate or jurors' book or jury register for the year 2006 according to a letter dated 24th March 2006 from the Registrar of the High Court to the Solicitors for the appellant stating partly as follows:
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> > "When I took up office here I met the practice, (which I enquired about and was advised had been in place for innumerable years) of using the voters list for choosing the names of persons to sit as jurors in the assizes. Consequently, there is no Jurors' Register or Magistrates' Revision Certificate to be perused or inspected."
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> 2. The trial was a nullity because the selection of jurors according to the voters list is contrary to the provisions of the Jury Act, and deprived the accused of the opportunity of trial by his peers selected according to the Jury Act (Cap. 36) where by his plea of not guilty on arraignment he put himself on the country for trial in accordance with Section 20 of the Criminal Procedure Act (Cap. 18)."

[3] This trial of the appellant was conducted in accordance with Section 26 of Cap. 36 which provides that: "Every jury impanelled for the trial of any proceeding shall consist of nine persons and no more."

[4] The qualifications for jury service are provided by Sections 4 and 5 of Cap. 36 section 4 provides as follows:-

> "4. Every person, between the ages of 21 and 60 years, who-
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> (a) has in his or her own name, or in trust for him or her, any lands or tenements, in the territory, of the value of two hundred and forty dollars or upwards; or
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> (b) rents any lands or tenements, in the territory, of the annual value of forty eight dollars, or upwards; or
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> (c) holds any office or situation, in the territory, at a salary amounting, with allowances, to the sum of two hundred and forty dollars per annum, or upwards; or
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> (d) is in receipt of an income, from whatever source derived, of one hundred and forty-four dollars 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."

[5] Section 5 provides as follows:

"5. Every person, between the ages of 21 and 60 years, who-

(a) has, in his or her own name, or in trust for him or her, any lands or tenements, in the territory of the value of four thousand, eight hundred dollars, or upwards; or

(b) has, in his own name, or in trust for him, any lands, within the territory, of not less than one hundred acres in extent; or

(c) holds any office or situation, in the territory, at a salary amount, with allowances, to the sum of nine hundred and sixty dollars per annum, or upwards; or

(d) is in receipt of any income, from whatever source derived, of seven hundred and twenty dollars per annum, or upwards; or

(e) is the attorney of any tenant or trustee, absent form the territory of lands, within the territory, of not less than one hundred 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."

[6] Sections 6 and 7 of Cap. 36 specify the persons who are exempted or disqualified from serving as common or special jurors under the Act. Section 3(1) of Cap. 36 enacts-

"The registrar shall, if and when necessary, at the expense of the territory, 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."

[7] The mode of impanelling an array of common jurors is set out in Section 16 which states-

"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 my 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 empanelled 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) …

(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."

[8] Section 15 and Section 16 (2) (b) relate to jurors who are temporarily absent from the territory and jurors employed in the same business. The Registrar is required not to empanel in the same array of common jurors more than one juror employed

in the same business under certain circumstances, and to identify such jurors as temporarily absent and the jurors employed in the preliminary panel.

[9] Section 17 requires the Registrar to make the preliminary panel in the preliminary panel book, which shall be signed and dated by the Registrar. Section 18 requires that the thirty names or less marked "Impanelled" in the preliminary panel are to be entered in the prescribed manner in a panel of array. Sections 14 and 22 mandate the Registrar to summon an array of common jurors to serve at the next sitting of the High Court, from the panel of array whenever the date approaches for a sitting of the Court.

[10] The Act stipulates that every year between the 1st and 7th days of December the Registrar shall prepare a list in the prescribed manner for the ensuing calendar year, of all persons resident in the territory who in the Registrar's opinion are liable to serve as common jurors and special jurors. Sections 8, 9 and 10 of the Jury Act provide for the publication of this juror's list by the Registrar, the revision of this list by the Magistrate, the specified period within which the revision should be carried out, and the procedure to be followed in executing this revision.

[11] Section 10 (4) states that –

> "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."

[12] Section 11 states as follows-

> "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-
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> (a) in the heading, the word "Register" shall be substituted for the "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.
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> (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 jury 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 to, and serve as a common juror, as hereinafter provided."

[13] The Act, by Section 27, provides for 3 peremptory challenges by each person charged, and gives the right to the Crown to the ask that jurors stand by until the panel has been "gone through" or perused, when a common jury is being impanelled. At the trial, the appellant also had the right to challenge any juror for cause. The record discloses that the appellant peremptorily challenged 3 jurors while the Crown asked 14 jurors to stand by, and 6 jurors were excused by the learned Judge for cause. The appellant, by his counsel, made no application to quash the array of common jurors or challenge to any juror for cause.

[14] Section 24 of Cap. 36 enacts-

> "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 interest of justice that the array should be quashed."

[15] It appears that learned Queen's Counsel, Dr. Archibald, became aware that the voters' list had been used for settling the panel of array, only after he had made a written request on the 22nd March 2006, for the Registrar to permit him to inspect the jurors' book, the revised jury list, and the Magistrate's certificate of revision for the calendar year 2006.

[16] The only ground upon which the challenge to the array is allowed at common law is the unindifferency or default of the sheriff or official responsible for the summoning of jurors[3]. For an objection to the array to be successful a mere failure to comply with statutory provisions is insufficient. Favour or partiality must

[3] Connell v Reg (1844) x 1 Clark & Finnelly 155, 8 ER 1061

be proven in the officer responsible for summoning the array.[2] The principles disclosed in settled cases at common law and under statute are that: (1) no ground for challenge to the array exists where the sheriff has not been guilty of fault; (2) where merely ministerial duties have not been complied with this is no ground for challenge to the array; and (3) in order for the appellant to avail himself of the Registrar's breach of the statutory provisions there must be evidence directly or inferentially pointing to the fact that the defendant may have been prejudiced or may not have received a fair trial.[3] These were the points raised by the learned DPP, Mr. Williams, who relied on these principles and authorities mentioned in the footnotes. He argued that since the appellant had made no objection to the array of jurors at the High Court pursuant to Section 24 of Cap. 36, or show that he was prejudiced, there was no basis for him to successfully challenge the selection process of the jury after a verdict had been given and sentence passed.

[17] The application of these principles to the circumstances which existed at the appellant's trial and Section 24 of Cap. 36, presupposes that the authorities relied on, from which the principles emanated, were decided upon similar or comparable facts, and within a similar statutory context.

[18] In Connell the challenge to the array in the Court of Queens Bench in Dublin alleged that the jurors' book had not been completed in conformity with statutory requirement. The challenge complained that 59 persons who qualified for jury service had been fraudulently omitted from the general list and jury book in order to prejudice the defendants. There were no specific accusations of unindifferency or default against the sheriff or other officer concerned in preparing the list. The challenge failed and the appellants were convicted for conspiracy. Under the Statute 3 & 4 Will. 4,c.91, the sheriff no longer had the duty of selecting jury men. The statute instead, placed these functions in the hands of certain officers who

[2] Hayes & Rice v The Queen, William Fogarty v The Queen (1867) 10 ILR53; R V Thomas Burke [1867] 10 Cox CC579

[3] Montreal Street Railway Company and Another v Normandin [1916-17] All ER Rep. Ext 1244; [1917] AC. 170; Richardson v R [2004] EWCA Crim. 2997 (28/10/04.

were to prepare the list for the sheriff's use. The House of Lords found that the complaint was really that the material in the jury book from which the jury was selected by the sheriff, and for which the sheriff was not responsible, was improperly composed; and therefore this was not a ground of challenge to the array. Lord Chief Justice Tindall stated at page 249 that "…if such deficiency were allowed to be a ground of challenge to the array, the business of every assize… might effectually be stopped."[4]

[19] In Forgarty Blackburn C.J. held that the substance of the accusations on which the challenges were based "amounts to… an omission by the person or persons employed to summon the jury…. [T]his omission does not inculpate the sheriff; and affords no ground for arguing that the panel was not duly arrayed."[5] Section 15 of the Relevant Statute 3 & 4 W.4, c.91, gave the Court power to make an order orally or otherwise for the return of a jury for the trial of an issue or for the amending or enlargening of the jury panel returned for the trial of any such issue. The section also provided and for the return to every such order and the proceedings thereon to be made in the manner "heretofore used and accustomed in such Court", except that the jurors should be from the country, and should be qualified according to the Act.

[20] Section 18 of the said Statute provided "that the summons of every man to serve on any jury, common or special shall be made by the proper officer six days at least before the day on which the juror is to attend". It was held in Forgarty that section 18 did not apply to jurors who were summoned and empanelled by the directions of the Courts of Oyer and Terminer and Gaol Delivery pursuant to section 15 of the said Statute. It was further held that even if section 18 applied, the sheriff's omission to summon the jurors in a timely manner could not afford a ground for questioning the whole panel since section 18 was directory and made

[4] See Note 1 above
[5] See Note 2 above

with a view to the case and convenience of the jurors. In this regard Blackburn C.J opined –

> "I do not mean to say that summoning a jury in due time is not an object of vast importance; but, looking to other interests and the primary object of the statute, omission to summon them in due time could never have been intended to have the effect of frustrating the entire proceedings: and I may here refer, to the language of Lord Lyndhurst, in O'Connell v The Queen [II CL & Fin. 189] who says "whatever is directory in an Act of Parliament, is imperative; but the question is what is essential to the validity of the thing to be done". "

[21] It was further held in Forgarty that challenging the 3 persons who were returned on the panel and whose names were not on the jurors' book is a challenge to the polls and not to the array. Concerning another contention that a juror put on the panel had appeared in Court without being summoned and was not qualified to serve, it was held that the omission to serve a juror is no evidence of his personal unfitness.

[22] In Regina v Thomas Burke the allegations included that the jury panel had been arrayed from an 1867 jurors' book which did not contain or purport to contain any general list of jurors, revised and corrected by the justice as directed by statute; and that the sheriff improperly and in default of his duty had arrayed the panel from for the said book. In support of these allegations the prisoner's Queen's Counsel submitted that since the Magistrate had failed to make out a general list with the names arrayed according to property and hand them to the clerk of peace, the sheriff was bound to treat the jurors' book made out from the baronial lists as a nullity. Queen's Counsel argued further that some unknown person had copied a list into the jurors' book for 1867, and the names in the 1866 jurors' book were not the names in the 1867 jurors' book. In such a situation, he contended that the sheriff was bound to go back to the jurors' book for 1866.

[23] Whiteside C.J. found that the challenge to the array on the basis of these allegations could not be sustained since the sheriff had no control over the matters directed to be done by the justices, all of which have been omitted. The prisoner

could not be prejudiced by the omission to classify the names in the jurors' book according to property because he has a distinct ground of challenge by any juror for want of the proper qualification.

[24] In Montreal the appellants on the 10th January 1913 presented a petition in revocation of judgment, known in Quebec, Canada as a requite civile. The petition alleged that the jury which had tried the case was without jurisdiction because it had been illegally formed; and that one of the jurors was related to the respondent, had an interest in the suit, and was guilty of misconduct which prevented a fair and impartial verdict .

[25] This petition was eventually heard by Monet J who dismissed the petition on its merits. The appellant had proved that in 1912 when the cause was tried the very elaborate and minute provisions contained in the Revised Statutes of Quebec, for the constitution of a revising board to annually revise the jury lists, there being one list of grand and another of petit juries, had for several years been neglected by the sheriff. There had been no revision at all, and old lists had been used. The sheriff and the prothontary had some shared responsibility for the jury lists revision. The sheriff who was a member of the revision board, was required to notify the prothonotary of the revision of the grand jury list, whereupon the prothonotary was required to immediately prepare a list of persons qualified to serve as jurors in civil cases by taking from the grand jury for criminal cases, the names of all persons residing within 15 miles of his office. When an order is made for the trial of a civil case by a jury, the prothonotary's duty was to take the names in order from the list to form the panel for that case. Though it was not clear that the prothonotary had neglected his duties, he used an old list of grand jurors deposited in his office from which the names of the civil jury were duly taken in order. The statutes contained no enactment as to what should be the consequence of non-observance of these provisions. Monet J decided that he ought not to interfere where the appellant had shown no prejudice although irregularities or breaches of the provisions of law had occurred.

[26] The appellant appealed to the Privy Council after the Court of Review of Quebec affirmed the judgment of Monet J. Having reviewed several old English authorities, some previously decided cases of Monet J, and the objects sought to be obtained by the elaborate statutory provisions, Sir Arthur Channell while endorsing the views of Monet J as being very reasonable, stated at page 4 of his leading judgment-

> "In this case the prothonotary had a list in fact, although an old one, and the men on it had all been qualified, and probably in most cases remained so. The names were taken in proper rotation, and those ultimately sworn appear all to have been qualified. As to some of the matters, such as the omission to initial correct alterations; it would be impossible to hold that these made the whole list null and void. Having regard to the nature of the sheriff's duties and their object, it seems quite unnecessary and wrong to hold that the neglect of them makes the list null and void; and although the prothonotary's neglect, if it had been in the matter of the order of taking the names, might have resulted in a packed jury, the neglect if there had been any, in other matters would be of the same kind as the sheriff's. It does a less harm to allow cases tried by a jury formal as this one was, with the opportunities there would be to object to any unqualified man called into the box to stand good, than to hold the proceedings null and void. So to hold would not, of course, prevent the courts granting new trials in cases where there was reason to think that a fair trial had not been had."

[27] The judgments in none of these authorities disclose or suggest that the relevant statutes had a provision which defined the meaning of the word "juror". In Montreal, there is no mention of any statutory requirement for a jurors' book or register to be kept by the appropriate official, while in the other cases the jurors' book required by statute existed. These are distinguishing facts in my view which bear significant weight. The case turns on the definition of the word "juror" in section 2 of Cap.36 and its relationship with Section 24 in my view. In the absence of any apparent statutory definition of the word "juror" in English statute law, Halsburys Laws of England states that "Juries are bodies of persons convened by process of law to represent the public, and to discharge upon oath or

affirmation defined public duties. It is enacted that juries ought to be duly empanelled and returned."[6]

[28] Under the Laws of the British Virgin Islands a "juror" is defined in Section 2 of Cap. 36 as "a person whose name is included in a jurors' register for the time being in force."

[29] Section 2 states also that " jurors' register" when not qualified by the addition of a year means jurors' register for the time being in force."

[30] The first question to be answered therefore is whether or not the statutory definition of the word "juror" permits a person whose name is only on a voters' list to be empanelled as one of the common jurors in the array to serve the Court under Section 16 of Cap. 36?

[31] Dr. Archibald asserts that unlike the British Virgin Islands, in England the voters' list is the basis for selecting jurors. Halsbury's states that "it is the duty of every registration officer in making out the electors lists for the register for any year to mark the name of any person appearing in those lists who is qualified and liable to serve as a juror.[7]" "The electors lists with the names of the persons marked as jurors must be published by the registration officer on or before the 28th November in every year; and kept published until the publication of the register prepared from these lists.[8]" Jurors books containing the names of the persons who are marked as qualified and liable to serve as jurors in the electoral register made out by the registration officers must be made up by the designated official not later than the 1st July following the publication of the electoral register.[9] The English Statutes provide for persons who are marked as jurors on the electors lists to be unmarked on the basis of their disqualification or exemption. As soon as the jurors' book has

[6] Halsbury Law of England Vol. 23 3rd ed. para. 1
[7] At para. 9 of Halsbury"s Laws of England
[8] At para 12 of Halsbury's Laws of England
[9] At paras. 13-15 of Halsbury's Laws of England

been prepared, the English Statutes require the designated officials to deliver the book to the sheriff for the county or other person charged with the return of jurors, and every sheriff or person so charged must, within 10 days next after he quits office, deliver to his successor any jurors book in his possession which was prepared in the calendar year in which he quits office, or relates to any period falling wholly or partly within the period of four years ending with the day on which he quits office.[10]

[32] Dr. Archibald contends that since the voters' list was the arbitrary choice of successive Registrars, and the composition of the voters' list did not depend on the criteria for qualification and disqualification as a common juror under sections 4 to 7 of Cap. 36, there was obviously a fundamental violation of the Jury Act. An array of purported common jurors derived from such a voters' list cannot be the subject of a challenge under Section 24 of Cap. 36, Dr. Archibald asserts.

[33] It is obvious that the legislation intended to place some reasonable limitation on the scope of the source of the jury panel. The legislative effort to define the word 'juror' in terms of "a person whose name is included in a jurors' register" demonstrates, in my view, that the existence of a jurors' register is not a mere formality under the Jury Act. When an interpretation section in an Act states that a word or phrase "means…", any other meaning is excluded. To extend the definition "juror" to include a person whose name is included in a voters' list when there is no provision in the Act contemplating the use of such a list for empanelling an array of common jurors, this would be totally irreconcilable with the rest of the statute in my view. Such an extension would be tantamount to judicial legislation which is not an option for this Court. The tenor of the Act does not permit the Court to ignore the definition of "juror" in order to avoid administrative inconvenience. It is significant that there is no provision in Cap. 36 which is similar to Section 15 of the Statute 3 & 4 W.4, c91 in Forgarty which would permit the trial judge to make an order orally or otherwise for enlarging or amending of the

[10]At para 16 of Halsbury's Laws of England

jury panel by reliance on the voters' list, subject to the qualifications specified by the Act. The absence of such a provision probably resulted from the legislators' failure to foresee or contemplate the situation which currently exists.

[34] Though I agree with the learned D.P.P that the legislators obviously intended that a generous interpretation be afforded section 24 in determining the outcome of an irregularity or breach of statutory provisions under Cap. 36, and that formal defects in making the array were not intended to invalidate the array unless the interests of justice so demands, the approach of the Privy Council in Montreal Street Railway which is strenuously urged by the D.P.P, ought not to be applied, since the Privy Council did not consider the existence of any statutory definition of the word "juror" in formulating its opinion.

[35] Looking at the object of the Jury Act, to hold that the requirements for a jurors' register and jurors' book are directory and not mandatory would not promote the main object of the legislature, in my view.

[36] I am satisfied therefore that the registrar had no jurisdiction to settle the array of common jurors based on the voters' list. If she had such a jurisdiction, but was in breach of a procedural provision or there was some other formal defect, it is only then that Section 24 would apply. The non-existence of the jurors' book cannot therefore be cured by the operation of Section 24. The array of common jurors from the voters' list was invalid.

[37] Consequently the 9 persons who were empanelled as a jury at the trial of the appellant could not properly assume jurisdiction. "The Court cannot properly assume jurisdiction by ignoring its lack of jurisdiction."[10] It is as if the trial had

[10] Per Sir Vincent Floissac C.J. in Pierre v R [1993] 45 W.I.R. 156 at page 159

taken place before no jury at all. The appellant is entitled to take the objection before this Court even though no objection was taken by the appellant and his Counsel at the trial.

[38] In my view the verdict and judgment in this case should be set aside and an order made for a venire de novo to issue.

[39] The Court therefore orders that the conviction and judgment on the indictment whereupon the appellant was convicted be set aside and annulled, and that the appellant do appear at the next session of the assizes there to take his trial according to law upon the said indictment.

Ola Mae Edwards
Justice of Appeal [Ag.]

I concur

Brian Alleyne, SC
Chief Justice [Ag.]

I concur

Hugh Rawlins
Justice of Appeal