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*Colonial Secretary's Office,
Perth, 14th January, 1880.*

HIS Excellency the Governor directs the publication of the following Despatches, with their enclosures, for general information.

By His Excellency's Command,
ROGER TUCKER^D. GOLDSWORTHY,
Colonial Secretary.

CIRCULAR.

Downing Street,
18th June, 1879.

SIR,—From reports which I have received of the proceedings which took place in the Supreme Court of New Zealand, in a recent case, *Regina v. Rennell*, in which the prisoner was accused of murder at Boutaritari, one of the Islands of the Gilbert or Kingsmill Group in the Pacific Ocean, it appears that the Court had no knowledge of the existence of the Western Pacific Order in Council of 1877, passed for the better government of Her Majesty's subjects in some Islands and places in the Pacific Ocean.

It is believed that the Governor of Fiji communicated copies of this Order in Council on its promulgation to the Governors of all the Australasian Colonies, in accordance with instructions which he received from the Secretary of State, but as it appears either not to have reached New Zealand or to have been overlooked in that Colony, I think it advisable to

send you the accompanying copy for the use of your Government. [Western Pacific Order in Council.]

I beg to refer you in connection with the Order to section 6 of the Pacific Islanders Protection Act of 1875, 38 and 39 Vict., Ch. 51.

I have, &c.,

M. E. HICKS BEACH.

The Officer Administering the Government of Western Australia.

[ENCLOSURE.]

AT THE COURT AT OSBORNE HOUSE,
ISLE OF WIGHT,

The 13th day of August, 1877.

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL.

WHEREAS Her Majesty the Queen has power and jurisdiction within some Islands and places in the Western Pacific Ocean, particularly described in this Order,

and therein collectively referred to as the Western Pacific Islands, the same not being within Her Majesty's Dominions, and not being within the jurisdiction of any civilized Power:

NOW THEREFORE, Her Majesty, by virtue and in exercise of the powers in this behalf by The Pacific Islanders Protection Acts 1872 and 1875, and by The Foreign Jurisdiction Acts 1843 to 1875, or otherwise, in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART I.—PRELIMINARY.

1. This Order may be cited as The Western Pacific Order in Council of 1877.

2. This Order is divided into Parts, as follows:

Part I.—Preliminary.

Part II.—Extent and application of Order.

Part III.—High Commissioner: Court.

Part IV.—Criminal matters.

Part V.—Civil matters.

Part VI.—General.

3. This Order shall, except as otherwise expressed, commence and have effect on a day fixed by Proclamation under the hand of the Governor of Fiji, or of the Officer for the time being administering the Government of Fiji, and published in the Royal Gazette of Fiji.

4. In this Order—

(1.) "The Secretary of State" means one of Her Majesty's Principal Secretaries of State;

(2.) "The Supreme Court" means the Supreme Court of Fiji;

(3.) "The Chief Justice of Fiji" means the Chief Justice for the time being of the Supreme Court;

(4.) "British Subject" means a subject of Her Majesty by birth or by naturalization;

(5.) "Resident" means having a fixed place of abode in one of the islands and places to which this Order extends and applies;

(6.) "Foreigner" means a subject or citizen of a State in amity with Her Majesty;

(7.) "Treaty" includes Convention, and Agreement in the nature of a Treaty or Convention, and every other engagement or instrument of a political character, together with every instrument annexed thereto or agreed to in pursuance thereof;

(8.) "Offence" includes crime, and any act punishable criminally, in a summary way or otherwise;

(9.) "Prosecutor" means complainant or any person appointed or allowed by the Court to prosecute;

(10.) "Month" means calendar month;

(11.) "Pounds" means pounds sterling;

(12.) "Will" means will, codicil, or other testamentary instrument;

(13.) "Office copy" means a copy, either made under direction of the Court, or produced to the proper officer of the Court for examination with the original, and examined by him therewith, and in either case sealed with the seal of the Court, as evidence of correctness;

(14.) "Oath and affidavit," and words referring thereto, or to swearing, may be construed to include affirmation and declaration, and to refer thereto, or to the making of an affirmation or declaration, where an affirmation or declaration is admissible in lieu of an oath or affidavit;

(15.) "Proved" means shown by evidence on oath, in the form of affidavit, or other form, to the satisfaction of the Court, or of the mem-

ber or officer thereof acting or having jurisdiction in the matter;

(16.) "Proof" means the evidence adduced in that behalf;

(17.) "Person" includes corporation;

(18.) Words importing the plural or the singular may be construed as referring to one person or thing, or to more than one person or thing, and words importing the masculine as referring to females (as the case may require).

PART II.—EXTENT AND APPLICATION OF ORDER.

Description of Western Pacific.

5. The islands and places in the Western Pacific Ocean to which this Order extends and applies, and which are in this order collectively referred to as the Western Pacific Islands, are the following, namely:

(1.) The groups of islands known as—

The Friendly Islands.

The Navigators' Islands.

The Union Islands.

The Phoenix Islands.

The Ellice Islands.

The Gilbert Islands.

The Marshall Islands or Archipelago.

The Caroline Islands.

The Solomon Islands.

The Santa Cruz Islands.

(2.) The Island of Rotumah.

(3.) The part of the Island of New Guinea eastward of the 143rd meridian of longitude.

(4.) The Islands or Archipelago of New Britain and New Ireland.

(5.) The Louisiade Archipelago.

(6.) All other islands in the Western Pacific Ocean not being within the limits of the Colonies of Fiji, Queensland, or New South Wales, and not being within the jurisdiction of any civilized Power.

(7.) The waters within three miles of every island or place aforesaid.

Application of Order.

6. This Order applies to—

(1.) All British subjects, for the time being, within the Western Pacific Islands, whether resident there or not.

(2.) All British vessels, for the time being, within the waters mentioned in Article 5 of this Order.

(3.) Foreigners, in the cases and according to the conditions in this Order specified, but not otherwise.

PART III.—HIGH COMMISSIONER: COURT.

High Commissioner.

7. There is hereby created and constituted, from the date of this Order, the Office of High Commissioner in, over, and for the Western Pacific Islands; and the person for the time being filling that office shall be styled Her Britannic Majesty's High Commissioner for the Western Pacific (and is in this Order referred to as the High Commissioner).

8. The High Commissioner shall have an official seal bearing the style of his office and such device as the Secretary of State from time to time approves.

Judicial Commissioners.

9. The Chief Justice of Fiji, and every other Judge, for the time being, of the Supreme Court, shall be, by virtue of his office, a Judi-

cial Commissioner for the Western Pacific (and is in this Order referred to as a Judicial Commissioner).

(2.) Where, in the opinion of the High Commissioner, the attendance of the Chief Justice, or of another Judge of the Supreme Court, to discharge the duty of a Judicial Commissioner is impracticable, or would be inconvenient, then, and in every such case, from time to time, the High Commissioner may, in the name and on behalf of Her Majesty, by writing under his hand and official seal, appoint a person of legal knowledge and experience to be a Judicial Commissioner for the Western Pacific, for particular purposes, or for a particular time, as to the High Commissioner in each case appears expedient (and every person so appointed is in this Order referred to as a Judicial Commissioner).

(3.) Each Judicial Commissioner shall, for the purposes of so much of Section 6 of the Pacific Islanders Protection Act of 1875, as relates to Deputy Commissioners, be deemed to be and shall, by virtue of this Order, be a Deputy Commissioner duly appointed and empowered under the provisions of this Order, and acting under the directions of the High Commissioner.

(4.) A Judicial Commissioner shall not be deemed to be a Deputy Commissioner within any other Article of this Order.

Deputy Commissioners.

10. There shall be Deputies of the High Commissioner, each of whom shall be styled one of Her Britannic Majesty's Deputy Commissioners for the Western Pacific (and is in this Order referred to as a Deputy Commissioner).

(2.) Every Deputy Commissioner shall be appointed, in the name and on behalf of Her Majesty, by the High Commissioner, by writing under his hand and official seal.

(3.) There shall be as many Deputy Commissioners as the Secretary of State from time to time thinks fit.

11. A Deputy Commissioner shall be liable to be suspended or removed from office by the High Commissioner by an instrument in writing, under his hand and official seal, stating the grounds of suspension or removal; and the same shall be reported forthwith to the Secretary of State.

(2.) The appointment of a Deputy Commissioner shall not be affected by any vacancy or change in the office of High Commissioner.

High Commissioner's Court.

12. There shall be a court styled Her Britannic Majesty's High Commissioner's Court for the Western Pacific (in this Order referred to as the High Commissioner's Court).

13. The members of the High Commissioner's Court shall be the High Commissioner, the Judicial Commissioners, and the Deputy Commissioners.

Assessors.

14. An Assessor, under this Order, shall be a competent and impartial British subject, of good repute, nominated and summoned by the High Commissioner's Court to act as Assessor therein.

(2.) An Assessor shall not have any voice in the decision of the Court in any case, criminal or civil.

(3.) But an Assessor dissenting, in a criminal case, from any decision of the Court or from

the sentence, or dissenting, in a civil case, from any decision of the Court, may record in the minutes of proceedings his dissent, and the grounds thereof.

(4.) An Assessor dissenting shall be entitled to receive, without payment, a certified copy of the minutes.

Officers.

15. Subject to the directions of the Secretary of State, the High Commissioner may from time to time appoint such and so many persons to be Registrars, Clerks, Bailiffs, Interpreters, and other Officers of the High Commissioner's Court, and prescribe their duties, as he thinks fit, and, subject as aforesaid, may remove from office any person so appointed.

(2.) Any Registrar of the Court, and any other officer of the Court designated in this behalf by the High Commissioner, shall have power to administer oaths and take affidavits, declarations, and affirmations.

Seal.

16. The High Commissioner's Court shall have a seal bearing the style of the Court and such device as the Secretary of State from time to time approves.

Jurisdiction.

17. All Her Majesty's jurisdiction, exercisable in the Western Pacific Islands in criminal and civil matters, shall, subject and according to the provisions of this Order, be vested in and exercised by the High Commissioner's Court.

18. The whole jurisdiction and authority of the High Commissioner's Court may, subject and according to the provisions of this Order, be exercised by the High Commissioner or by a Judicial Commissioner, while he (the High Commissioner or Judicial Commissioner) is either in the Western Pacific Islands or in Fiji.

19. The whole or any part of the jurisdiction and authority of the High Commissioner's Court, for or in respect of any district or part of the Western Pacific Islands, may, subject and according to the provisions of this Order, be exercised by a Deputy Commissioner, being authorised by the terms of his appointment to act for and in respect of that district or part, and being within that district or part.

(2.) The term "the district," or the "particular district," in this Order means the particular district or part for and in respect of which a Deputy Commissioner is so authorized to act, and in which the proceeding in question is pending or is intended to be taken.

20. Each member of the High Commissioner's Court exercising, for the time being, the jurisdiction and authority thereof in conformity with this Order shall, for the purposes of this Order, be deemed to form the High Commissioner's Court.

(2.) The term "the Court" in this Order includes and applies to every member so exercising jurisdiction or authority.

21. Where a British subject charged with an offence committed on the sea, or in any haven, river, creek, or place within the jurisdiction of the Admiralty, is found or brought within the Western Pacific Islands, the Court shall have power to take cognisance of the offence.

(2.) The Court shall have the like jurisdiction and authority, and the like proceedings

shall, subject and according to the limitation expressed in Article 31, be had in respect of the charge, as if the charge were for an offence committed within the Western Pacific Islands.

22. Subject to the other provisions of this Order, Her Majesty's criminal and civil jurisdiction exercisable in the Western Pacific Islands shall, as far as circumstances admit, be exercised on the principles of and in conformity with the Statute and other law for the time being in force in and for England, and with the powers vested in and according to the course of procedure and practice observed by and before the Courts of Justice and Justices of the Peace in England, according to their respective jurisdiction and authorities.

PART IV.—CRIMINAL MATTERS.

Criminal Law as in England.

23. Except as regards acts declared by this Order to be offences against this Order, any act that would not by a Court having criminal jurisdiction in England be deemed an offence, making the person doing the act amenable to punishment in England, shall not, in the exercise of criminal jurisdiction under this Order, be deemed an offence, making the person doing the act amenable to punishment.

Offences against Treaties.

24. The High Commissioner shall, by virtue of this Order, have power and authority to make, from time to time, in the name and on behalf of Her Majesty, by writing under his hand and official seal, such Regulations as to him seem fit for the Government of British subjects, by enforcing the observance by them of the stipulations of any Treaty between Her Majesty and any King, Chief, or other authority in the Western Pacific Islands, and for securing the maintenance (as far as regards the conduct of British subjects) of friendly relations between British subjects and those authorities and persons subject to them.

(2.) The Regulations may define offences against the same; and acts thereby defined to be offences are hereby declared to be offences against this Order; and the Regulations may impose a punishment for any such offence, as follows:

(i.) Imprisonment for any term not exceeding three months, with or without hard labor, and with or without a money penalty not exceeding ten pounds; or

(ii.) a money penalty alone, not exceeding ten pounds, without any imprisonment; and

(iii.) in case of a continuing offence,—in addition to any such punishment by imprisonment or a money penalty, or both, as aforesaid,—a money penalty, not exceeding in any case ten shillings for each day during which the offence continues after the day of the commission of the original offence.

(3.) The Regulations shall be so framed as in every case to allow of part only of the maximum punishment being adjudged.

(4.) The Regulations shall be published in the Royal Gazette of Fiji; and they shall be printed, and a printed copy thereof shall be affixed, and at all times kept exhibited conspicuously, at each Court-house.

(5.) Printed copies shall be sold at such price as the High Commissioner directs.

(6.) Until Regulations have been so affixed, and have been for one month kept so exhibited, at the Court-house of a district, no act done in

that district shall be deemed to be an offence against the Regulations.

(7.) For the purpose of a prosecution, and for all other purposes, a copy of the Royal Gazette of Fiji, publishing such Regulations, or a printed copy of an instrument purporting to be such Regulations, that copy purporting to be certified as a true copy under the hand and official seal of the High Commissioner, shall be conclusive evidence of the Regulations.

Orders of Prohibition and Removal.

25. Where it is shown by evidence on oath, to the satisfaction of the High Commissioner, that any British subject is disaffected to Her Majesty's Government,—or has committed or is about to commit an offence against the Pacific Islanders Protection Acts 1872 and 1875,—or is otherwise dangerous to the peace and good order of the Western Pacific Islands,—the High Commissioner may, if he thinks fit, by order under his hand and official seal, prohibit that person from being in the Western Pacific Islands, within the limits specified in the order, during any time therein specified, not exceeding two years.

(2.) If the person named in the order of prohibition fails to obey, or acts in contravention of, the order—

(i.) He shall be guilty of an offence against this Order, and, on conviction thereof, shall be liable to imprisonment for any time not exceeding two years, without prejudice to the operation of the order of prohibition;

(ii.) Whether the offender has been convicted of, or imprisoned for, that offence or not, the High Commissioner may, if he thinks fit, by order under his hand and official seal, authorize and direct that he be taken into custody, and be removed in custody to some place named in the order of removal, being a place in the Western Pacific Islands, beyond the limits specified in the order of prohibition;

(iii.) The offender shall be taken into custody and removed accordingly; and in such removal force may be used, if necessary; and he shall be discharged from custody at the place named in the order of removal.

(3.) An appeal shall not lie under this order against an order of prohibition or removal.

(4.) The High Commissioner, by order under his hand and official seal, may, from time to time, vary any order of prohibition (not extending the duration thereof), and may revoke any order of prohibition or removal.

(5.) The High Commissioner shall forthwith report to the Secretary of State every order made by him under this Article, and the grounds thereof, and the proceedings thereunder.

Deportation.

26. (i.) Where it is proved that there is reasonable ground to apprehend that a British subject is about to commit a breach of the public peace,—or is about to commit an offence against the Pacific Islanders Protection Acts 1872 and 1875,—or that the acts or conduct of a British subject are or is likely to produce or excite to a breach of the public peace,—the Court may, if it thinks fit, for reasons recorded in the minutes, cause him to be brought before it, and require him to give security to the satisfaction of the Court to keep the peace, or for his future good behaviour, as the case may require;

(ii.) Where a British subject is convicted of an offence before the Court, the Court may, if it thinks fit, require him to give security to the satisfaction of the Court for his future good behaviour, and for that purpose may (if need be) cause him to be brought before the Court:

In either of these cases, if the person required to give security fails to do so, the Court may, if it thinks fit, order that he be deported from the Western Pacific Islands to a place named in the order.

(2.) The place shall be either in Fiji, or in some other part of Her Majesty's dominions out of the United Kingdom, the Government whereof have consented to the reception therein of persons deported under this Order.

(3.) A Judicial Commissioner or Deputy Commissioner making an order of deportation shall forthwith report to the High Commissioner the order, and the grounds thereof; and the order shall not be carried into execution without the direction of the High Commissioner, by writing under his hand and official seal.

(4.) The person to be deported shall be detained in custody until a fit opportunity for his deportation occurs.

(5.) He shall, as soon as is practicable,—and in the case of a person convicted, either after execution of the sentence, or while it is in course of execution,—be embarked in custody, under the warrant of the High Commissioner, on board one of Her Majesty's vessels of war, or, if there is no such vessel available, then on board any British or other fit vessel bound to the place of deportation.

(6.) The warrant shall be sufficient authority to the commander or master of the vessel to receive and detain the person therein named, and to carry him to and deliver him up at the place named, according to the warrant.

(7.) The Court may order the person to be deported to pay all or any part of the expenses of his deportation. Subject thereto, the expenses of deportation shall be defrayed as the expenses relating to distressed British subjects are defrayed, or in such other manner as the Secretary of State from time to time directs.

(8.) The High Commissioner shall forthwith report to the Secretary of State every order of deportation made under this Order, and the grounds thereof and the proceedings thereunder.

(9.) An appeal shall not lie under this Order against an order of deportation.

(10.) If any person deported under this Order returns to the Western Pacific Islands without permission in writing of the Secretary of State (which permission the Secretary of State may give), he shall be deemed guilty of an offence against this Order, and shall for every such offence be liable to imprisonment for any term not exceeding one month, with or without hard labour, and with or without a money penalty not exceeding ten pounds, or to a money penalty not exceeding twenty pounds alone.

(11.) He shall also be liable to be forthwith again deported under the original Order, and a fresh warrant of the High Commissioner.

Extent of Punishment.

27. The Court, by a Judicial Commissioner, shall (subject and without prejudice to the other provisions of this Order) have power to adjudge any such punishment as any Court of criminal jurisdiction in England has for the time being power to adjudge.

(2.) The Court, by the High Commissioner or a Deputy Commissioner, shall (subject and without prejudice to the other provisions of this Order) have power to adjudge punishment as follows, but not further or otherwise, namely:

(i.) Imprisonment for any term not exceeding twelve months, with or without hard labour, and with or without a money penalty not exceeding fifty pounds; or

(ii.) A money penalty not exceeding fifty pounds, without any imprisonment; and

(iii.) In case of a continuing offence,—in addition to any such punishment by imprisonment or a money penalty, or both, as aforesaid,—a money penalty not exceeding in any case one pound for each day during which the offence continues after the day of the commission of the original offence.

Mode of Trial.

28. Where the offence charged is treason or murder, the charge shall be triable by a Judicial Commissioner, with Assessors, and not otherwise; and the presence of at least two Assessors throughout the trial shall be indispensable.

(2.) In each of the following other cases, namely:

(i.) Where the offence charged is manslaughter, or assault endangering life, or arson, or housebreaking;

(ii.) Where it appears to the Court, at any time before the trial, that the offence charged, if proved, would not be adequately punished by a sentence either of imprisonment for three months, with hard labour, or of a money penalty of twenty pounds;

the charge shall be triable with Assessors, and not otherwise.

(3.) Where this Order does not make a charge triable with Assessors it shall be triable by summary trial, without Assessors.

(4.) Where a charge is tried by summary trial, without Assessors, the punishment adjudged shall not exceed that specified in this Article.

Time of Examination and Trial.

29. Where a person, subject to the criminal jurisdiction of the Court, is charged with an offence on summons or warrant issuing out of the Court, he shall be brought before the Court within forty-eight hours after service of the summons or execution of the warrant, unless in any case circumstances unavoidably prevent his being brought before the Court within that period, which circumstances shall be recorded in the minutes.

(2.) In every case, he shall be brought before the Court as soon after the expiration of that period as circumstances reasonably admit, and the time and circumstances shall be recorded in the minutes.

30. Where the accused is ordered to be tried before the Court with Assessors, he shall be tried as soon after the making of the order as circumstances reasonably admit.

(2.) As long notice of the time of trial as circumstances reasonably admit shall be given to him in writing under the seal of the Court, which notice shall be recorded in the minutes.

Interrogation of Accused.

31. At the trial of an accused person, either by summary trial, or otherwise, on a

charge for an offence committed within the Western Pacific Islands, and not within the jurisdiction of the Admiralty, the Court may, if it thinks fit, from time to time, at any stage of the proceedings, without previously warning the accused, put such questions to him as the Court thinks necessary or proper for arriving at the truth respecting the charge, and his answers shall be evidence on the charge.

(2.) No oath shall be administered to the accused.

(3.) No question shall be put to him except by the Court.

(4.) No question shall be put to him, and no answer shall be received from him, other than questions and answers bearing immediately on the charge.

(5.) A question shall not be put to him, and an answer shall not be received from him, prejudicially affecting, or likely to prejudicially affect, any person other than the parties to the charge.

(6.) The interrogation of the accused by the Court shall not be regarded by the Court as in the nature of a cross-examination, but shall be conducted so as to allow of the accused making a full statement of what he desires to be taken as the truth of the matter.

(7.) If the accused refuses to answer, or answers falsely, any question put to him by the Court, he shall not be liable criminally for so doing, but the Court may draw therefrom such inference as it thinks just.

32. No influence by promise or threat or otherwise shall be used to the accused to induce him to answer any question or to make any statement.

33. The provisions of Articles 31 and 32 shall extend and apply to a preliminary examination, where the trial is to be before the Court.

34. In case of a preliminary examination, the whole interrogation of the accused by the Court, including every question put to him and every answer received from him, shall be recorded in full, and shall be read over to him; and he shall be at liberty to explain or add to his answers or statements.

(2.) When the whole has been made conformable to what the accused declares to be the truth, he shall sign it, if he will.

(3.) In every case the Deputy Commissioner shall certify it under his hand and the seal of the Court.

(4.) It shall be brought before the Court and shall be evidence on the trial.

35. The provisions of Articles 31, 32, and 34, shall extend and apply to trials, preliminary examinations, and other proceedings under this Order in the Supreme Court, either original or on appeal.

Remand.

36. Where an accused person is in custody, he shall not be remanded at any time for more than seven days, unless circumstances appear to the Court to make it necessary or proper that he should be remanded for a longer time, which circumstances, and the time of remand, shall be recorded in the minutes.

(2.) In no case shall a remand be for more than fourteen days at one time.

Bail.

37. Every accused person may be admitted by the Court to bail at any stage of the proceedings.

(2.) Where the offence charged is treason or murder, the High Commissioner or a Judicial

Commissioner shall alone have power to admit to bail.

(3.) Where the offence charged is one of the following, it shall be in the discretion of the Court to admit the accused to bail or not, according to the circumstances,—namely:

Felony (not being murder);

Assault with intent to commit felony;

Attempt to commit felony;

Perjury or subornation of perjury;

Riot;

Assault on a constable or officer of the Court in the execution of his duty, or on any person acting in his aid;

Neglect or breach of duty as a constable or officer of the Court.

(4.) In all other cases the Court shall admit the accused to bail, unless in any instance the Court, having regard to the circumstances, sees good reason to the contrary, which reason shall be recorded in the minutes.

(5.) The High Commissioner or a Judicial Commissioner may, if he thinks fit, admit to bail a person charged before a Deputy Commissioner with any offence, although the Deputy Commissioner, in the exercise of his discretion, has not thought fit to admit the accused to bail.

Convictions for minor or other offences than those charged.

38. If, on a trial, the Court is of opinion that the accused attempted to commit the offence with which he is charged, but did not complete it, he shall not be therefore acquitted, but the Court may find him guilty of the attempt, and may adjudge him to be punished, as if he had been charged with the attempt.

(2.) He shall not be liable to be prosecuted for the attempt.

39. If, on the trial of a person charged with robbery, the Court is of opinion that the accused committed an assault with intent to rob, but did not commit robbery, he shall not be therefore acquitted, but the Court may find him guilty of the assault, and may adjudge him to be punished, as if he had been charged with the assault.

(2.) He shall not be liable to be prosecuted for the assault.

40. If, on a trial for misdemeanour, the facts proved amount to a felony, the accused shall not be therefore acquitted of the misdemeanour.

(2.) He shall not be liable to be afterwards prosecuted for felony on the same facts, unless the Court thinks fit to abstain from giving any decision on the charge of misdemeanour, and to direct him to be prosecuted for felony, whereupon he may be dealt with as if he had not previously been charged with misdemeanour.

41. If on a trial for any of the following offences, namely,—burglary, or stealing in a dwelling-house, or breaking and entering and stealing in a shop, warehouse, or counting-house, or a building within the curtilage of a dwelling-house,—the facts proved authorize a conviction for one of those offences, not being the offence charged, the Court may find the accused guilty of that other offence, and may adjudge him to be punished, as if he had been charged with that other offence.

(2.) He shall not be liable to be afterwards prosecuted for that other offence.

Hard Labour.

42. Where a person is convicted before the Court of any of the following offences, namely:

Any cheat or fraud punishable at common law;

Any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, pervert, or defeat the course of public justice;

Any escape or rescue from lawful custody on a criminal charge;

Any public and indecent exposure of the person;

Any public selling, or exposing for public sale, or to public view, of any obscene book, print, picture, or other indecent exhibition;

the Court may, if it thinks fit, adjudge that the offender, besides being imprisoned for any term authorized by law, be kept to hard labour during the whole or any part of the term.

Damages for Assault.

43. The Court may, if it thinks fit, order a person convicted of an assault to pay to the person assaulted, by way of damages, any sum not exceeding ten pounds.

(2.) Damages so ordered to be paid may be either in addition to or in lieu of a money penalty, and shall be recoverable in like manner as a money penalty.

(3.) The person convicted shall not be liable to an action for the assault.

Order for Expenses.

44. The Court may, if it thinks fit, order a person convicted before it to pay all or any specified part of the expenses of his prosecution, or of his imprisonment or other punishment, or of both.

(2.) Where it appears to the Court that a charge is malicious, or frivolous and vexatious, the Court may, if it thinks fit, order the person making the charge to pay all or any specified part of the expenses of the prosecution.

(3.) In these respective cases the Court may, if it thinks fit, order that the whole, or such portion as the Court thinks fit, of the expenses so paid be paid over to the person injured or to the accused (as the case may be).

(4.) In all cases the reasons of the Court for making any such order or for refusing it, if applied for, shall be recorded in the minutes.

Manner and Place of Punishment.

45. The High Commissioner may from time to time, by general order under his hand and official seal, prescribe the manner in which, and the places within the Western Pacific Islands at which, sentences of imprisonment are to be carried into execution.

(2.) The High Commissioner may, if he thinks fit, in any case, by warrant under his hand and official seal, cause an offender convicted before the Court and sentenced to imprisonment to be sent to and imprisoned in any place in the Western Pacific Islands.

(3.) The warrant shall be sufficient authority to any person to whom it is directed or delivered for execution to receive and detain the person therein named, and to carry him to and deliver him up at the place named, according to the warrant.

46. Where an offender convicted before the Court is sentenced to imprisonment, and it appears to the High Commissioner expedient that the sentence be carried into effect within Her Majesty's dominions, the offender may (under section five of the Foreign Jurisdiction Act, 1843,) be sent for imprisonment to a place in Her Majesty's dominions.

(2.) The place shall be either Fiji, or some other part of Her Majesty's dominions out of the United Kingdom, the Government whereof have consented that offenders may be sent thither under this Article.

(3.) The High Commissioner may, by warrant under his hand and official seal, cause the offender to be sent to the place named in the warrant, in order that the sentence may be there carried into effect accordingly.

(4.) The warrant shall be sufficient authority to any person to whom it is directed or delivered for execution to receive and detain the person therein named, and to carry him to and deliver him up at the place named, according to the warrant.

Confirmation of Sentence.

47. Each Judicial Commissioner and Deputy Commissioner shall forthwith send to the High Commissioner, in such form as the High Commissioner from time to time directs, a report of the sentence of the Court in every case tried before the Judicial Commissioner or Deputy Commissioner, with an abstract of the minutes and notes of evidence, and with any observations which he thinks fit to make.

(2.) Where the sentence imposes a punishment of a money penalty of 50*l.*, or of one year's imprisonment, or any severer punishment, the sentence shall not be carried into execution, without the direction of the High Commissioner, by writing under his hand and official seal.

(3.) If in any case the High Commissioner does not direct that the sentence be carried into execution, he shall, by writing under his hand and official seal direct what lower money penalty or less severe punishment, in lieu of the punishment awarded by the Court, is to be inflicted; and the person convicted shall be liable to be so punished accordingly.

Remission of Punishment: Pardon.

48. The High Commissioner may, if he thinks fit, report to the Secretary of State, recommending a mitigation or remission of any punishment awarded by the Court; and thereupon the punishment may be mitigated or remitted by the Secretary of State.

(2.) But such a recommendation shall not be made with respect to a punishment adjudged by a Judicial Commissioner or a Deputy Commissioner, except on his recommendation, or on the dissent of the Assessors or an Assessor, if any, from the conviction or from the amount of punishment adjudged.

(3.) Nothing in this Order shall be deemed to affect Her Majesty's prerogative of pardon.

Reports of Criminal Cases to Secretary of State.

49. The High Commissioner shall send to the Secretary of State a report of the sentence of the Court in every case tried before the High Commissioner, with a copy of the minutes and notes of evidence, and with any observations which the High Commissioner thinks fit to make.

(2.) In any case, the High Commissioner shall, if and when required by the Secretary of State, transmit to him, with any observations which the High Commissioner thinks fit to make, the report and papers sent to the High Commissioner under Article 47, and a report of any direction of the High Commissioner thereon.

Backing of Warrants.

50. Where a warrant or order of arrest is issued by a competent authority in her

Majesty's dominions for the apprehension of a British subject accused of having committed an offence there, and being, or supposed to be, in the Western Pacific Islands, and the warrant or order is produced to the High Commissioner, or a Judicial Commissioner, he may sign his name on the back thereof.

(2.) The warrant or order, when so backed, shall be sufficient authority to any person to whom it was originally directed, and to any constable in the Western Pacific Islands, and to any officer of the Court to whom it is delivered by the Court for execution, to apprehend the accused at any place in the Western Pacific Islands, and to carry him and deliver him up, according to the warrant or order.

Trial out of Western Pacific.

51. Where the charge is triable, and is intended to be tried, in England, the Court may take the preliminary examination, and commit the accused for trial, and allow him to be taken to England.

52. (i.) Where the offence charged appears to a Deputy Commissioner to be such that, if proved, it would not be adequately punished by such punishment as a Deputy Commissioner has power to adjudge, and the trial cannot conveniently be had before a Judicial Commissioner;

(ii.) Where it seems to the Court for any reason expedient that the offence be inquired of, tried, determined, and punished within Her Majesty's dominions elsewhere than in England:

In either of these cases the accused may (under section 4 of the Foreign Jurisdiction Act, 1843,) be sent for trial to a place in Her Majesty's dominions.

(2.) The place shall be either Fiji, or some other part of Her Majesty's dominions out of the United Kingdom, the Government whereof have consented that accused persons may be sent thither under this Article.

(3.) The Court may, where it appears so expedient, by warrant under the hand of a member of the Court, and the seal of the Court, cause the accused to be sent for trial to the place named in the warrant accordingly.

(4.) The warrant shall be sufficient authority to any person to whom it is directed, or delivered for execution, to receive and detain the person therein named, and to carry him and deliver him up, according to the warrant.

(5.) Where any person is to be so sent for trial, the Court shall take the preliminary examination, and shall bind over such of the proper witnesses as are British subjects in their own recognisances to appear and give evidence on the trial.

53. Where a person charged with an offence is to be tried out of the Western Pacific Islands, the provisions of this Order relative to trial with Assessors in criminal cases shall apply to the proceedings, up to the point of the making of an order for trial before the Court with Assessors.

Appeal to Supreme Court.

54. (i.) Where a person is convicted before the Court, on a summary trial, and the sentence imposes a punishment of a money penalty of ten pounds or upwards, or of imprisonment for one month or upwards, and the person convicted declares his desire to appeal;

(ii.) Where a person is convicted before the Court, on a trial with Assessors, and the sentence imposes such a punishment as aforesaid, and an Assessor dissents from any

decision of the Court on trial, or from the conviction, or from the sentence, and the person convicted declares his desire to appeal;

(iii.) Where a person is convicted before the Court, and the sentence imposes a punishment of a money penalty of fifty pounds, or of one year's imprisonment, or any severer punishment, and the person convicted declares his desire to appeal;

(iv.) Where the Court thinks fit to reserve for the judgment of the Supreme Court any question of law or fact arising on the trial;

Then and in each of the four cases aforesaid the Court shall frame a statement setting out the facts, and the grounds of the conviction and sentence, and any question of law, and any objections alleged by the person convicted.

(2.) The Court shall annex to the statement certified copies of the summons, indictment (if any), and proceedings, and of all documentary evidence admitted or tendered, and the depositions, the notes of the oral testimony, any statement of objections to the conviction or sentence made by the person convicted, and any argument thereon that he desires to submit to the Supreme Court.

(3.) The Court shall forthwith send the statement and its annexes to the Supreme Court.

(4.) The Court shall postpone the execution of the sentence pending the appeal, and shall, as on a remand, either (if necessary) commit the person convicted to prison for safe custody, or admit him to bail or take security by recognisance, deposit of money, or otherwise, for his payment of the fine (if any).

(5.) The Supreme Court shall hear and finally determine the matter, after considering the statement of the Court, and hearing publicly any argument offered on behalf of the prosecution, or of the person convicted.

(6.) The Supreme Court may require the Court to make any amendment in or addition to the statement of the Court, or its annexes.

(7.) The judgment of the Supreme Court shall be delivered in open Court.

(8.) The Supreme Court shall either affirm or annul the conviction, or amend it, and shall either affirm or annul the sentence or vary it, not increasing the punishment, and shall give all necessary and proper consequential directions.

55. The Supreme Court shall not annul a conviction or sentence, or vary a sentence, on the ground—

- (i.) Of any objection which, if stated during the trial, might have been met by amendment by the Court; or
- (ii.) Of any error committed in the summoning of Assessors; or
- (iii.) Of any person having served as Assessor who was not qualified; or
- (iv.) Of any objection to any person as Assessor which might have been raised before or at the trial; or
- (v.) Of any informality in the swearing of any witness.

PART V.—CIVIL MATTERS.

Power to refuse Civil case.

56. The Court may in any case, if it thinks fit, refuse to allow a civil action or proceeding to be brought or taken in the Court if, in the opinion of the High Commissioner, the attendance of the Chief Justice, or of another Judge of the Supreme Court, or the appointment of a Judicial Commissioner for the hearing

of the action or proceeding, is impracticable or would be inconvenient,—or the place at which the action or proceeding is proposed to be brought or taken would be inconvenient—or there is no sufficient provision for defraying the fees and expenses of the Court.

(2.) The Court may in any case, if it thinks fit, refuse to allow a civil action or proceeding to be brought or taken in the Court unless security to the satisfaction of the Court is first given by deposit or otherwise for the fees and expenses of the Court.

Proceeding by Action.

57. Every proceeding in the Court relative to money, goods, land, or other property, or for the recovery of damages, or otherwise concerning any civil right or other matter of a civil nature at issue, shall be taken by action, and not otherwise, and shall be designated an action.

(2.) For the purposes of any enactment or other provision applicable under this Order to any civil proceeding in the Court, an action under this Order shall comprise and be equivalent to a suit, cause, or petition, or any civil proceeding, howsoever required by any such enactment or provision to be instituted or carried on.

Summary Nature of Procedure.

58. Every action shall be heard and determined in a summary way.

(2.) Any application in the course of an action may be made to the Court orally, and without previous formality, unless in any case the Court otherwise directs.

(3.) No action or proceeding shall be treated by the Court as invalid on account of any technical error or mistake in form or in words.

(4.) All errors and mistakes may be corrected by the Court in its discretion.

Writ of Summons.

59. Every action shall commence by a writ of summons, issued from the Court, on the application of the plaintiff, and served on the defendant.

Cause Book.

60. The Registrar in each district shall keep a book, called the Cause Book, in which all actions brought in the Court in the district shall be entered, numbered consecutively in each year, in the order in which they are commenced, with a short statement of the particulars of each action, and a note of the several proceedings therein.

Duration of Writ.

61. A writ of summons shall not be in force for more than twelve months from the day of its date (including that day).

(2.) If any defendant named in a writ is not served therewith, the plaintiff may, before the end of twelve months, apply to the Court for leave to renew the writ.

(3.) The Court, if satisfied that reasonable efforts have been made to serve the defendant, or for good reason, may order that the writ be renewed for six months from the date of renewal, and so, from time to time, during the currency of the renewed writ.

(4.) The writ shall be renewed by being resealed with the seal of the Court, and a note being made thereon by the Registrar, stating the renewal and the date thereof.

(5.) A writ so renewed shall remain in force and be available to prevent the operation of any statute of limitation, and for all other purposes, as from the date of the original writ.

(6.) The production of a writ purporting to be so renewed shall be sufficient evidence of the renewal and of the commencement of the action, as of the first date of the renewed writ, for all purposes.

Dismissal for failure to proceed.

62. If an action entered in the Cause Book is not proceeded with and disposed of within twelve months from service of the writ of summons, the Court may, if it thinks fit, without application by any party, order the same to be dismissed for failure to proceed.

Appearance.

63. No entry of appearance by a defendant to the writ of summons shall be necessary.

Further Particulars of Claim.

64. The Court may, at any time, if it thinks fit, either on or without application of a defendant, order the plaintiff to put in further particulars of his claim.

Written Statements.

65. There shall ordinarily be no written pleadings; but the Court may at any time, if it thinks fit, order the plaintiff to put in a written statement of his claim, or a defendant to put in a written statement of his defence.

Evidence.

66. The evidence on either side may, subject to the direction of the Court, be wholly or partly oral, or on affidavit, or by deposition.

Hearing with Assessors.

67. Subject to the provisions of this Order, every action which either—

(i.) relates to money, goods, or other property, or any civil right, or other matter, at issue, of the amount or value of two hundred pounds or upwards; or

(ii.) is instituted for recovery of damages, of the amount of two hundred pounds or upwards—

shall be triable with Assessors.

(2.) In all other cases an action shall be triable either with or without Assessors.

Orders.

68. The Registrar shall keep a book called the Order Book.

(2.) Every order of the Court shall be noted therein.

(3.) Every order of the Court formally drawn up shall be entered by being copied therein.

(4.) The Registrar shall make and keep therein proper alphabetical and other indexes to the contents thereof.

69. A minute of every order, whether interlocutory or final, shall be made by the Registrar in the minutes of proceedings at the time when the judgment or order is given or made.

(2.) Every such minute shall have the full force and effect of a formal order.

(3.) The Court may at any time order a formal order to be drawn up on the application of any party.

70. Where the member of the Court delivers a judgment in writing, the original, or a copy thereof signed by him, shall be filed in the Court with the papers in the action.

71. An order shall be drawn up in form only on the application of some party to the action, and shall then be passed and be certified by the seal of the Court, and be entered, and shall then form part of the record in the action.

(2.) An order shall not be enforced or appealed from, nor shall an office copy of it be granted, until it is part of the record.

(3.) An order shall be dated on the day of the delivery of the decision or judgment on which the order is founded.

(4.) Any party to an application or action is entitled to obtain an office copy of any order made thereon or therein.

72. Ordinarily, an order, other than an order of the High Commissioner, or of a Judicial Commissioner, shall not be enforced out of the particular district.

(2.) Where, however, the Court thinks that the urgency or other peculiar circumstances of the case so require, the Court (for reasons recorded in the minutes) may order any order to be enforced out of the particular district.

Order for Payment of Money.

73. All money ordered by the Court to be paid by any person shall be paid into an office of the Court, unless the Court otherwise directs.

74. Where an order ordering payment of money remains wholly or in part unsatisfied (whether an execution order has been made or not), the person prosecuting the order (in this Order called the judgment creditor), may apply to the Court for an order, ordering the person by whom payment is to be made (in this Order called the judgment debtor), to appear and be examined respecting his ability to make the payment; and the Court shall, unless it sees good reason to the contrary, make an order accordingly.

75. On the appearance of the judgment debtor, he may be examined on oath by or on behalf of the judgment creditor, and by the Court, respecting his ability to pay the money ordered to be paid, and for discovery of property applicable thereto, and respecting his disposal of any property.

(2.) He shall produce, on oath or otherwise, all books, papers, and documents in his possession or power relating to any property applicable to payment.

(3.) He may be examined respecting the circumstances under which he contracted or incurred the debt or liability, in respect of which the payment of money is ordered to be made, and respecting the means or expectation he then had of paying or discharging the debt or liability.

(4.) He shall sign his examination as taken down in writing.

(5.) Whether the judgment debtor appears or not, the judgment creditor, and any witness whom the Court thinks requisite, may be examined, on oath or otherwise, respecting the same matters.

(6.) The Court may, if it thinks fit, adjourn the examination from time to time, and require from the judgment debtor such security for his appearance as the Court thinks fit; and in default of his finding security, may, by order, commit him to the custody of an officer of the Court, there to remain until the adjourned hearing, unless sooner discharged.

76. If it appears to the Court, by the examination of the judgment debtor or other evidence,—

(i.) that the judgment debtor then has, or, since the making of the order, has had sufficient means to pay the money directed to be paid by him, and he refuses or neglects to pay the same according to the order; or

(ii.) that, with intent to defraud his creditors, or any of them, he has made or suffered any gift, delivery, or transfer of any property, or charged, removed, or concealed any property; or

(iii.) that the debt or liability in question has been contracted or incurred by him by or by reason of fraud, or false pretence, or breach of trust, committed by him; or

(iv.) that forbearance thereof was obtained by him by fraud or false pretence; or

(v.) that the debt or liability was wilfully contracted or incurred by him without his having had at the same time a reasonable expectation of being able to pay or discharge it:

then and in any such case the Court may, if it thinks fit, by order, commit him to prison for any time not exceeding forty days.

77. On the examination, the Court if it thinks fit, whether it makes an order for commitment or not, may rescind or alter any order for the payment of money by instalments or otherwise, and may make any further or other order, either for payment of the whole amount forthwith, or by instalments, or in any other manner, as the Court thinks just.

78. The expense of the judgment debtor's maintenance in prison shall be defrayed, in the first instance, by the judgment creditor, and may be recovered by him from the judgment debtor as the Court directs.

(2.) The expenses shall be estimated by the Court, and shall be paid by the judgment creditor at such times and in such manner as as the Court directs.

(3.) In default of payment, the judgment debtor may be discharged if the Court thinks fit.

79. Imprisonment of a judgment debtor under the foregoing provisions shall not operate as a satisfaction or extinguishment of the debt or liability to which the order relates, or protect the debtor from being anew imprisoned for any new fraud or other default making him liable to be imprisoned, or deprive the judgment creditor of any right to have execution against his goods, as if there had not been such imprisonment.

80. The judgment debtor, on paying at any time the amount ordered to be paid, and all costs and expenses, shall be discharged.

Order other than for Payment of Money.

81. Where the order is one ordering some act to be done other than payment of money, there shall be indorsed on the copy of it served on the person required to obey it, a memorandum in the words or to the effect following:

If you, the within-named A.B., neglect to obey this order within the time therein appointed, you will be liable to be arrested, and to have your property sequestered.

82. Where the person directed to do the act refuses or neglects to do it according to the order, the person prosecuting the order may

apply to the Court for another order for the arrest of the disobedient person.

(2.) Thereupon the Court shall, unless it sees good reason to the contrary, make an order ordering and empowering an officer of the Court therein named to take the body of the disobedient person, and detain him in custody until further order.

(3.) He shall be liable to be detained in custody until he has obeyed the order in all things that are to be immediately performed, and given such security as the Court thinks fit, to obey the order in other respects (if any) at the future times thereby appointed; or, in case of his no longer having the power to obey the order, then until he has been imprisoned for such time, or until he has paid such fine, as the Court thinks just.

Injunctions and Orders before Action.

83. On proof of extreme urgency or other peculiar circumstances, the Court may, if it thinks fit, before service of a writ of summons, and without notice, make an order of injunction, or an order to sequester money or goods, or to stop the clearances of a vessel, or to hold to bail, or to attach property.

(2.) Before making the order the Court shall require the person applying for it to enter into a recognisance, with or without a surety or sureties, as the Court thinks fit, as security for his being answerable in damages to the person against whom the order is sought.

(3.) The order shall not remain in force more than twenty-four hours, and shall, at the end of that time, wholly cease to be in force, unless within that time an action is regularly brought by the person obtaining the order.

(4.) The order shall be dealt with in the action as the Court thinks just.

84. An order to hold to bail shall state the amount (including costs) for which bail is required.

(2.) It shall be executed forthwith.

(3.) The person arrested under it shall be entitled to be discharged from custody under it on bringing into Court the amount stated in the order, to abide the event of such action as may be brought, or on entering into a recognisance, with or without a surety or sureties, as the Court thinks fit, as a security that he will abide by the orders of the Court in any action brought.

(4.) He shall be liable to be detained in custody under the order for not more than seven days, if not sooner discharged; but the Court may, from time to time, if it thinks fit, renew the order.

(5.) No person, however, shall be kept in custody under any such order and renewed order for a longer time, in the whole, than thirty days.

Plaintiff out of particular District.

85. Where a person taking out a writ of summons, either alone or jointly with any other person, is out of the district, or is only temporarily therein, he shall file in the Court, at or before the issuing of the writ of summons, a written statement of a fit place within the district where notices and other papers issuing from the Court may be served on him.

(2.) He shall also give security for costs by deposit of the sum of fifty pounds, or by bond in the penal sum of one hundred pounds.

(3.) The Court may, at any time, either of its own motion or on the application of any defendant, order the plaintiff to give further or

better security to the amount aforesaid for costs, and may direct proceedings to be stayed in the meanwhile.

Abconding Defendant.

86. Where an action is brought for the recovery of a sum exceeding five pounds, and it is proved that the defendant is about to abscond, the Court may, if it think fit, order that he be arrested and delivered into safe custody, to be kept until he gives bail or security, with a surety or sureties, in such sum, expressed in the warrant, as the Court thinks fit, not exceeding the probable amount of debt or damages and costs to be recovered in the action, that he will appear at any time when called on while the action is pending, and until execution or satisfaction of any order made against him, and that, in default of appearance, he will pay any money and costs which he is ordered to pay in the action.

(2.) The expenses incurred for the subsistence of the defendant while under arrest shall be paid by the plaintiff in advance at such rate and in such amounts as the Court directs, and the total amount so paid may be recovered by the plaintiff in the action unless the Court otherwise directs.

(3.) The Court may at any time, on reasonable cause shewn, discharge or vary the order.

Removal of Property by Defendant.

87. Where it is proved that the defendant, with intent to obstruct or delay the execution of any order to be obtained or already obtained against him, is about to remove any property out of the district, the Court may, if it thinks fit, on the application of the plaintiff, order that the property be forthwith seized and secured.

(2.) The Court may at any time, on reasonable cause shewn, discharge or vary the order.

Arrest of Vessel.

88. On proof of extreme urgency or other peculiar circumstances, the Court may, if it thinks fit, on the application of a plaintiff, or of its own motion, make an order for stopping the clearances of, or for the arrest and detention of, a vessel about to leave the district, other than a vessel enjoying immunity from civil process.

(2.) The Court may at any time, on reasonable cause shewn, discharge or vary the order.

Compensation to Defendant.

89. If it appears to the Court that any order made under Article 86, 87, or 88, was applied for on insufficient grounds, or if the plaintiff's action fails, or judgment is given against him, by default or otherwise, and it appears to the Court that there was no probable ground for his bringing the action, the Court may, if it thinks fit, on the application of the defendant, order the plaintiff to pay to the defendant such amount as appears to the Court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.

(2.) Payment of compensation under this Article shall be a bar to any action for damages in respect of anything done in pursuance of the order, and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks just.

Admiralty.

90. The Court by a Judicial Commissioner shall be a Court of Vice-Admiralty.

Bankruptcy.

91. The Court shall be a Court of Bankruptcy, and as such shall, as far as circumstances admit, have, with respect to resident British subjects, and to their debtors and creditors, being either resident British subjects, or foreigners submitting to the jurisdiction of the Court, all such jurisdiction as for the time being belongs to the Court of Bankruptcy and the County Courts in England, or to any other judicial authority having for the time being jurisdiction in bankruptcy in England.

(2.) Proceedings in bankruptcy shall commence by writ of summons addressed to the party intended to be made bankrupt, calling on him to shew cause why he should not be adjudicated bankrupt.

(3.) On the issue of the writ, a Deputy Commissioner shall have authority to appoint a receiver over the property of the respondent; but a Deputy Commissioner shall not in any case proceed further, in the first instance, and shall reserve, and forthwith report, the matter, for the decision or direction of a Judicial Commissioner, and shall obey and execute every such decision or direction.

Lunacy.

92. The Court, by a Judicial Commissioner, shall, as far as circumstances admit, have in itself exclusively, for and within the Western Pacific Islands, with respect to resident British subjects, all such jurisdiction relative to the custody and management of the persons and estates of persons of unsound mind, as for the time being belongs to the Lord Chancellor or other person or persons in England intrusted by virtue of the Queen's sign-manual with the care and commitment of the custody of the persons and estates of persons found by inquisition in England, idiot, lunatic, or of unsound mind.

Matrimonial Causes.

93. The Court, by a Judicial Commissioner, shall be a Court for matrimonial causes, and, as such, shall, as far as circumstances admit, have in itself exclusively, for and within the Western Pacific Islands, with respect to resident British subjects, all such jurisdiction, except the jurisdiction relative to dissolution or nullity or jactitation of marriage, as for the time being belongs to the High Court of Justice in England in matrimonial causes.

Probate.

94. The Court, by a Judicial Commissioner, shall be a Court of Probate, and, as such, shall, as far as circumstances admit, have, for and within the Western Pacific Islands, with respect to the property of deceased resident British subjects, all such jurisdiction as for the time being belongs to Her Majesty's High Court of Justice in England in cases of probate.

(2.) The Court, by a Deputy Commissioner, shall, however, also have power to grant probate or letters of administration where there is no contention respecting the right to the grant, and it is proved that the deceased was resident at his death within the district of the Deputy Commissioner.

(3.) Such probate or administration shall have effect over all the property of the deceased within the Western Pacific Islands, and shall effectually discharge persons dealing with an executor or administrator thereunder, notwithstanding that any defect afterwards appears in the grant.

(4.) The grant shall not be impeachable by reason only that the deceased was not at the time of his death resident within the district.

95. A British subject may in his lifetime deposit for safe custody in the Court his own will, sealed up under his own seal and the seal of the Court.

Proceedings on Death.

96. The Court shall endeavour to obtain, as early as may be, notice of the death of every British subject dying within the particular district, whether resident or not, and all such information respecting his affairs as may serve to guide the Court with respect to the securing and administration of his property.

(2.) On receiving notice of the death the Court shall put up a notice thereof at the Court-house, and shall keep the same there until probate or administration is granted; or, where it appears to the Court that probate or administration will not be applied for, or cannot be granted, for such time as the Court thinks fit.

97. Where a British subject resident dies in the Western Pacific Islands intestate, then, until administration is granted, his personal property shall be deemed to be vested in the High Commissioner.

98. Where a British subject not resident dies in the Western Pacific Islands, the Court shall, where the circumstances of the case appear to the Court so to require, forthwith on his death, or as soon after as may be, take possession of his personal property within the district, or put it under the seal of the Court (in either case, if the nature of the property or other circumstances so require, making an inventory), and so keep it until it can be dealt with according to law.

(2.) All expenses incurred on behalf of the Court in the execution of this Article shall be the first charge on the personal property of the deceased within the district; and the Court shall, by sale of part of that property or otherwise, provide for the discharge of those expenses.

99. If a person named executor in a will takes possession of and administers or otherwise deals with any part of the personal property of the deceased, and does not obtain probate within one month after the death, or after the termination of any proceeding respecting probate or administration, he shall be deemed guilty of an offence against this Order, and shall on conviction thereof before a Judicial Commissioner with Assessors, be liable to a money penalty not exceeding twenty pounds.

100. If any person, other than the person named executor or Administrator, or an officer of the Court, takes possession of and administers or otherwise deals with any part of the personal property of a British subject dying in the Western Pacific Islands whether resident or not, he shall be deemed guilty of an offence against this Order, and shall on conviction thereof, before a Judicial Commissioner, with Assessors, be liable to a money penalty not exceeding twenty pounds.

101. Where a British subject dies in the Western Pacific Islands, whether resident or not, then any person having in his possession or under his control any paper or writing of the deceased, being or purporting to be testamentary, shall forthwith bring the original to the Court for the District where the death happens, and deposit it there.

(2.) If any person fails to do so for fourteen days after having knowledge of the death of the deceased, he shall be deemed guilty of an offence against this Order, and on conviction thereof before a Judicial Commissioner with Assessors, shall be liable to a money penalty not exceeding twenty pounds.

102. Where it is shewn to the Court that any paper of the deceased, being or purporting to be testamentary, is in the possession or under the control of a British subject, the Court may, in a summary way, whether a proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

103. Where it appears to the Court that there are reasonable grounds for believing that any person has knowledge of any paper of the deceased being or purporting to be testamentary (although it is not shewn that the paper is in his possession or under his control) the Court may, in a summary way, whether a proceeding for probate or administration is pending or not, order that he be examined respecting it in open Court or elsewhere, and that he do attend for that purpose, and after examination, that he do produce the paper and bring it into Court.

Administration of Property.

104. A person claiming to be a creditor or legatee, or the next of kin, or one of the next of kin, of a deceased person, may apply for and obtain a writ of summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend before the Court and shew cause why an order for the administration of the property of the deceased should not be made.

(2.) On proof of service of the writ, or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court thinks fit, the Court may, if it thinks fit, make an immediate order for the administration of the property of the deceased.

(3.) The Court shall have full discretionary power to make or refuse or postpone the making of any such order, or to give any special directions respecting the carriage or execution of it; and in the case of applications for such an order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants, or classes of claimants, as the Court thinks fit.

(4.) If the Court thinks fit, the carriage of the order may subsequently be given to such person, and on such terms, as the Court thinks fit.

(5.) On making such an order, or at any time afterwards, the Court may, if it thinks fit, make any further or other order for compelling the executor or administrator to bring into Court, for safe custody, all or any part of the money, or securities, or other property of the deceased, from time to time coming to his hands, or otherwise for securing the safe-keeping of the property of the deceased, or any part thereof.

(6.) If the extreme urgency or other peculiar circumstances of the case appear to the Court so to require (for reasons recorded in the minutes), the Court may of its own motion issue such a writ and make orders and cause proper proceedings to be taken thereon.

105. In a case of intestacy, where the peculiar circumstances of the case appear to the Court so to require (for reasons recorded in the minutes), the Court may, if it thinks fit,

of its own motion, grant letters of administration to an officer of the Court.

(2.) The officer so appointed shall act under the direction of the Court, and shall be indemnified thereby.

(3.) He shall publish such notices, if any, as the Court thinks fit, in the Western Pacific Islands, Fiji, and any other Colony, the United Kingdom, and elsewhere.

(4.) The Court shall require and compel him to file in the Court his accounts of his administration at intervals not exceeding three months, and shall examine them and report thereon to the High Commissioner.

(5.) The accounts shall be in all cases audited by or under the direction of the High Commissioner; for which purpose every Deputy Commissioner shall, on the 1st day of February and the 1st day of August, in every year, send to the High Commissioner all accounts so filed in the then last half-year.

Case for Supreme Court.

106. Any decision or judgment may be given by the Court subject to a case to be stated for the opinion of the Supreme Court.

Re-hearing.

107. Any member of the Court may, on the application of any party, if he thinks fit, for reasons recorded in the minutes, order a re-hearing before him of an action heard before him.

(2.) The provisions of this Order respecting a hearing shall extend, as far as may be, to such a re-hearing.

108. The High Commissioner being in the Western Pacific Islands, may, if he thinks fit, on the application of any party to an action heard before a Deputy Commissioner, order a re-hearing thereof before himself, with the Deputy Commissioner before whom it was heard, or with any other Deputy Commissioner.

(2.) If, on the re-hearing, there is a difference of opinion between the High Commissioner and the Deputy Commissioner sitting with him, the opinion of the High Commissioner shall prevail.

(3.) The provisions of this Order respecting a hearing shall extend, as far as may be, to such a re-hearing.

Appeal to Supreme Court of Fiji.

109. An appeal shall not lie from an order made without notice.

(2.) If any person thinks himself aggrieved by an order so made, he may apply to the High Commissioner's Court to vary or discharge it, and an appeal shall lie from the decision on that application.

110. Where in a civil action a decision of the Court, with or without Assessors, other than an order without notice,—

(i.) is given in respect of a sum of fifty pounds or upwards; or

(ii.) determines, directly or indirectly, a claim or question respecting money, goods, or other property or any civil right or other matter of the amount or value of fifty pounds or upwards;

any party aggrieved by the decision may, on complying with the following conditions, appeal to the Supreme Court,—namely:

(a.) He shall give security to the satisfaction of the Court appealed from (in this Order referred to as the Court below) to an amount not exceeding one hundred pounds, for prosecution of

the appeal, and for payment of all such costs as may be awarded to any respondent by the Supreme Court;

- (b.) He shall pay into the Court below a sum estimated by that Court to be the amount of the expense of the making-up and transmission to the Supreme Court of the record.

(2.) In any other case the Court below may, if it thinks fit, give leave to appeal on like conditions.

111. In any case the Supreme Court may give leave to appeal on such terms as it thinks just.

112. After six months from the date of an order an appeal against it shall not lie except by leave of the Supreme Court.

(2.) After twelve months from the date of an order, application for leave to appeal against it shall not be entertained by the Supreme Court.

113. Where a person ordered to pay money, or do any other act, appeals, the Court below shall direct either that the decision appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as it thinks just.

(2.) If the Court directs the decision to be carried into execution, the person in whose favor it is given shall, before the execution of it, give security to the satisfaction of the Court for performance of the order to be made on appeal.

(3.) If the Court directs the execution of the decision to be suspended, the person against whom it is given shall, before an order for suspension is made, give security to the satisfaction of the Court for performance of such order as shall be made on appeal.

114. The appellant shall file an appeal motion paper in the Court below.

(2.) He may at the same time file any argument which he desires to submit to the Supreme Court in support of the appeal.

(3.) The motion-paper and the argument (if any) shall be served on such persons as respondents as the Court below directs.

115. A respondent may, within seven days after service, file in the Court below such argument as he desires to submit to the Supreme Court against the appeal.

(2.) Copies thereof shall be furnished by the Court below to such persons as the Court thinks fit.

116. On the expiration of the time for the respondent filing his argument, the Court below shall, without the application of any party, make up the record of appeal, which shall consist of the writ of summons, statements of claim and defence (if any), orders, and proceedings, a certified copy of all written and documentary evidence admitted or tendered, and the notes of the oral evidence, the appeal motion-paper, and the arguments (if any).

(2.) The several pieces shall be fastened together, consecutively numbered; and the whole shall be secured by the seal of the Court below, and be forthwith forwarded by that Court to the Supreme Court.

(3.) The Court below shall not, except for some special cause, take on itself the responsibility of the charge or of the transmission to the Supreme Court of original letters or documents produced in evidence. They shall be returned to the parties producing them, and they shall produce the originals, if required by the Supreme Court, at or before the hearing of the appeal.

117. After the record of appeal is transmitted, until the appeal is disposed of, the Supreme Court shall be in exclusive possession of the whole action, as between the parties to the appeal.

(2.) Every application in the action, as between the parties to the appeal, shall be made to the Supreme Court and not to the Court below; but any application may be made through the Court below.

118. The Supreme Court shall, after receiving the record of appeal, fix a day for the hearing of the appeal, and shall give notice thereof through the Court below, or otherwise, to the parties to the appeal, such a day being fixed as will allow of the parties attending in person or by counsel or solicitor, if they so desire.

(2.) But if all the several parties to an appeal appear in person in Fiji, or appoint persons there to represent them as their counsel or solicitors in the appeal, and cause the appearance or appointment to be notified to the Supreme Court, the Court shall dispose of the appeal, without being required to give notice through the Court below, or otherwise to the parties to the appeal, of the day fixed for the hearing thereof.

119. The Supreme Court may, if it thinks fit, require a party to an appeal to appear personally before it on the hearing of the appeal, or on any occasion pending the appeal.

120. It is not open, as of right, to a party to an appeal to adduce new evidence in support of his original case, but a party may allege any facts essential to the issue that have come to his knowledge after the decision of the Court below, and may adduce evidence in support of his allegations.

(2.) The Supreme Court may in any case, if it thinks fit, allow or require new evidence to be adduced.

121. The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the action, as among the parties to the appeal, and for that purpose may amend any defect or error in the record of appeal.

(2.) The Supreme Court may direct the Court below to inquire into and certify its finding on any question as among those parties, or any of them, which the Supreme Court thinks fit to determine before final judgment in the appeal.

(3.) Generally, the Supreme Court shall, as among the parties to the appeal, have as full jurisdiction over the whole action as if it had been originally instituted and prosecuted in the Supreme Court by parties subject to the original jurisdiction of the Supreme Court.

(4.) The Supreme Court may, if it thinks fit, remit the action to the Court below to be re-heard, or to be otherwise dealt with as the Supreme Court directs.

122. The powers of the Supreme Court under this order may be exercised by the Supreme Court, notwithstanding that the appeal is brought against part only of the decision of the Court below.

(2.) Those powers may be exercised in favor of all or any of the parties to the action, although they have not appealed from, or complained of, the decision.

Rules for Appeal.

123. The Supreme Court may, from time to time, with the concurrence of the High Commissioner, make such Rules as to the Court

seem fit for the better execution of the provisions of this Order relating to appeals in civil actions.

Appeal to the Queen in Council.

124. For the purposes of appeal to Her Majesty the Queen in Council, an order or decision of the Supreme Court on appeal under this Order shall be equivalent in all respects to an order or decision of the Supreme Court under its original jurisdiction.

PART VI.—GENERAL.

Assessors.

125. Where a charge or an action is triable with Assessors, then—

- (i.) In proceedings before the High Commissioner, or a Judicial Commissioner, there may be one Assessor, or two, three, or four Assessors.
- (ii.) In proceedings before a Deputy Commissioner there shall ordinarily be not fewer than two, and not more than four, Assessors.

(2.) Where, however, by reason of local circumstances, the High Commissioner, or a Judicial Commissioner, or a Deputy Commissioner, is able to obtain the presence of one Assessor only, he may, if he thinks fit, sit with one Assessor only.

(3.) Where for like reasons, the High Commissioner, or a Judicial Commissioner, is not able to obtain the presence of any Assessor, he may, if he thinks fit, sit without an Assessor.

(4.) In every such case the reasons shall be recorded in the minutes.

(5.) This Article is subject to the provisions of Article 28.

126. The summons to a person to attend to act as Assessor shall be in writing, and shall require the attendance of the person therein named to act as Assessor at the time and place therein specified.

(2.) The summons shall be served on him by being delivered to him personally, unless he is at the time of service absent from his usual place of abode, and then it may be left for him there with some adult inmate.

127. The Court may, on reasonable cause shewn, excuse from attendance, generally or in any particular case, any person summoned to act as Assessor.

128. The Court may, if it thinks fit, on or without an application or suggestion by any party to an action, or the accused, discharge from attendance, generally, or in any particular case, any person summoned to act as Assessor.

129. If in the course of a trial an Assessor is, by sufficient cause, prevented from continuing to serve, the trial shall proceed, with the aid of the other Assessor (if any).

(2.) If in any case the sole Assessor is, or all the Assessors are, prevented from continuing to serve, the proceeding shall be stayed, and a new trial shall be held, with another Assessor or other Assessors.

(3.) This Article is subject to the provisions of Article 28.

130. If any person summoned to act as Assessor fails, without lawful excuse, to attend at the trial, or at any adjournment thereof, or to continue to serve throughout the trial, he shall be liable under a summary order of the Court to a money penalty not exceeding five pounds, to be levied by attachment and sale of his goods within the district, and in default of recovery thereby of the money penalty, to be

imprisoned as a civil prisoner for any time not exceeding three days, if the money penalty is not sooner paid.

Arbitration.

131. The Court may, with consent of the parties, refer to arbitration the final determination of any action pending, or of all matters in difference between the parties, on such terms and with such directions as to appointment of an arbitrator and other things as the Court thinks fit, with or without security from the parties or any of them, that they will abide by the result of the reference.

(2.) In any such case the award shall be final and conclusive.

(3.) On the application of any party a decree of the Court may be entered in conformity with the award, and the decree shall not be open to appeal or re-hearing.

132. Every agreement for reference to arbitration or submission to arbitration by consent, between or by British subjects may, on the application of any party, be made a rule of the Court.

(2.) The Court shall thereupon have authority to enforce the agreement or submission and the award made thereunder, and to control and regulate the proceedings before and after the award, in such manner and on such terms as the Court thinks just.

Reconciliation.

133. In criminal matters, where all parties concerned are British subjects, the Court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings taken for assault or for any other offence not amounting to felony and being of a private or personal character, on terms of payment of compensation or other terms approved by the Court, and may thereupon order the proceedings to be stayed.

134. In civil matters, the Court and its officers shall, as far as there is proper opportunity, promote reconciliation among persons over whom the Court has jurisdiction, and encourage and facilitate the settlement in an amicable way, and without recourse to litigation, of differences among them.

(2.) Where a civil proceeding is pending, the Court may promote reconciliation among the parties thereto, and encourage and facilitate the amicable settlement thereof.

Seals.

135. Writs of summons, orders, and other instruments issuing from the Court, shall be sealed with the seal of the Court.

Minutes of Proceedings.

136. In every case, criminal or civil, minutes of the proceedings shall be drawn up, and shall be signed by the member of the Court before whom the proceedings are taken, or the presiding member, and shall, where the case is heard with Assessors, be open for their inspection and for their signature, if concurred in by them.

(2.) The minutes, with the depositions of witnesses, and the notes of evidence taken by the Court, at the trial or hearing, shall be preserved in a public office of the Court.

Obstruction or Disturbance of Court.

137. (i.) If any person wilfully obstructs by act or threat an officer of the Court in the performance of his duty; or

(ii.) Within or close to the room or place where the Court is sitting, wilfully misbehaves in a violent, threatening, or disrespectful manner to the disturbance of the Court, or to the intimidation of suitors or others resorting thereto; or

(iii.) Wilfully insults any member of the Court, or any Assessor, or any clerk or officer of the Court, during his sitting or attendance in Court, or in his going to or returning from Court;—

The person so acting shall be liable to be immediately apprehended by order of the Court, and to be detained until the rising of the Court, and on inquiry and consideration then and there, and without further trial, to be punished with a money penalty of not more than one pound, or with imprisonment for not more than six hours, in the discretion of the Court.

(2.) A minute shall be made and kept of every such case of punishment, recording the facts of the offence, and the extent of the punishment; and in the case of a Deputy Commissioner a copy of the minute shall be forthwith sent to the High Commissioner.

(3.) Except in the cases and in the manner provided in this Article, a Deputy Commissioner shall not have power to punish for contempt of Court.

(4.) A person punished for an offence under this Article shall not be liable to a prosecution or action in respect of the same matter; and any such prosecution or action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks just.

Misconduct of Officers of Court.

138. If an officer of the Court employed to execute an order by neglect or omission loses the opportunity of executing it, then, on complaint of the person aggrieved, and proof of the fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof.

(2.) The order shall be enforced as an order directing payment of money.

139. If a clerk or officer of the Court, acting under pretence of the process or authority of the Court, is charged with extortion, or with not paying over money duly levied, or with other misconduct, the Court, if it thinks fit, may inquire into the charge in a summary way, and may for that purpose summon and enforce the attendance of all necessary persons, as in an action, and may make such order for the repayment of any money extorted, or for the payment over of any money levied, and for the payment of such damages and costs, as the Court thinks just.

(2.) The Court may also, if it thinks fit, impose on the clerk or officer such money penalty, not exceeding five pounds for each offence, as the Court thinks just.

(3.) A clerk or officer punished for an offence under this Article shall not be liable to a prosecution or action in respect of the same matter; and any such prosecution or action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks just.

Fees and other Money.

140. All costs, and all charges and expenses of witnesses, prosecutions, punishments, and deportations, and all other charges and expenses, and all fees, forfeitures, and money

penalties payable under this Order, may be levied by distress and seizure and sale of ships, goods, and lands.

(2.) Any bill of sale, or mortgage or transfer of property, made with a view of avoiding such distress, seizure, or sale, shall not be effectual to defeat the provisions of this Order.

141. All fees, forfeitures, and money penalties levied under this Order shall be carried to the public account.

Witnesses.

142. In any case, criminal or civil, and at any stage thereof, the Court, either of its own motion, or on the application of any party, may summon a British subject, being within the district, to attend to give evidence, or to produce documents, or to be examined.

(2.) If the person summoned, having reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the Court, he shall be deemed guilty of an offence against this Order, and on conviction thereof, on summary trial, shall be liable to a money penalty not exceeding twenty pounds, or to imprisonment for any term not exceeding fourteen days.

(3.) A person punished for an offence under this Article shall not be liable to a prosecution or action in respect of the same matter; and any such prosecution or action if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks just.

143. In a criminal case, where it is proved that a British subject is likely to give material evidence, either for the prosecution or for the defence, and that he will not voluntarily attend to give evidence, the Court shall issue a summons for his attendance.

(2.) If he does not obey the summons, and does not excuse his failure to the satisfaction of the Court, then (after proof of service of the summons) the Court may issue a warrant to compel his attendance.

(3.) Where it is proved that he will not attend to give evidence unless compelled to do so, the Court, instead of issuing a summons, may issue a warrant in the first instance.

(4.) If, on his appearance, either in obedience to a summons, or on being brought up under a warrant, he refuses to take an oath, or having taken an oath, to answer any question put to him, and does not excuse his refusal to the satisfaction of the Court, the Court may, by warrant, commit him to prison, there to remain for not more than seven days, unless he in the meantime consents to answer duly on oath.

144. If a British subject wilfully gives false evidence on oath in the Court in any case, criminal or civil, or on a reference, he shall be deemed guilty of wilful and corrupt perjury.

Foreigners.

145. Where a foreigner desires to bring in the Court an action against a British subject,—or a British subject desires to bring in the Court an action against a foreigner,—the Court shall entertain the same, and shall hear and determine it, and (although the case, if between British subjects, would not be triable, or necessarily triable, with Assessors) if all parties desire, or the Court thinks fit to direct, a trial with Assessors, then with Assessors, but in all other respects according to the ordinary course of the Court:

(2.) Provided that the foreigner first obtains and files in the Court the consent in writing of the competent authority on behalf of his own nation to his submitting, and does submit, to the jurisdiction of the Court, and, if required by the Court, gives security to the satisfaction of the Court, by deposit or otherwise, to pay fees, damages, costs, and expenses, and abide by and perform the decision to be given by the Court, or on appeal.

146. A cross action shall not be brought in the Court against a plaintiff, being a foreigner, who has submitted to the jurisdiction, by a defendant, without leave of the Court first obtained.

(2.) The Court before giving leave shall require proof from the defendant that his claim arises out of the subject-matter in dispute, and that there is reasonable ground for it, and that it is not made for vexation or delay.

(3.) Nothing in this provision shall prevent the defendant from bringing in the Court against the foreigner after the termination of the action in which the foreigner is plaintiff any action that the defendant might have brought in the Court against the foreigner, if this Article had not been inserted in this Order.

147. Where a foreigner obtains in the Court an order against a defendant being a British subject, and in another action that defendant is plaintiff and the foreigner is defendant, the Court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other action, and may set off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action.

148. Where a plaintiff, being a foreigner, obtains an order in the Court against two or more defendants being British subjects jointly, and in another action one of them is plaintiff and the foreigner is defendant, the Court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other action, and may set off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action, without prejudice to the right of the British subject to obtain contribution from his co-defendants under the joint liability.

149. Where a foreigner is co-plaintiff in an action with a British subject who is within the district, it shall not be necessary for the foreigner to give security under Article 145, as regards fees and costs, unless the Court so directs, but the co-plaintiff British subject shall be responsible for all fees and costs.

Foreign Tribunal.

150. Where it is proved that the attendance of a British subject to give evidence, or for any other purpose connected with the administration of justice is required in a Court or before a judicial officer of a State in amity with Her Majesty, within the Western Pacific Islands, the Court may, if it thinks fit, in a case and in circumstances in which the Court would require his attendance before itself, order that he do attend in that Court or before that judicial officer, and for the purposes aforesaid.

(2.) If the person ordered to attend, having reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the Court, he shall (in-

dependently of any other liability) be deemed guilty of an offence against this Order, and shall for every such offence, on conviction thereof, by summary trial, be liable to a money penalty not exceeding twenty pounds, or to imprisonment for any term not exceeding fourteen days.

Procedure: Schedule.

151. The provisions contained in the Schedule to this Order, with the Appendix of Forms to that Schedule, shall be deemed part of this Order, and shall have effect accordingly, for the regulation of procedure under this Order.

Rules by High Commissioner.

152. The High Commissioner, with the advice and assistance of the Chief Justice of Fiji, may, from time to time, by writing under the hand and official seal of the High Commissioner and the hand of the Chief Justice, make Rules for the better execution of the provisions of this Order.

(2.) The Rules shall be in conformity with the practice and procedure of the Supreme Court, with such variations as the circumstances of the Western Pacific Islands appear to the High Commissioner, with the advice and assistance of the Chief Justice, to require.

(3.) The Rules may provide for all or any of the following matters, and for any other matter arising in the course of any criminal or civil case, namely:—

Times and places of sittings with Assessors in criminal cases.

Times and places of sittings for hearing of actions.

Setting down of actions for hearing.

Case for opinion of Supreme Court.

New trial.

Interrogatories for examination of plaintiff.

Tender.

Interpleader.

Attachment of debts.

Interlocutory applications.

Ex-parte orders.

Orders to shew cause.

Orders in general.

Scale of costs and charges to be allowed to solicitors and others.

Taxation and settlement of costs and charges by Registrar or other officer.

(4.) Rules made under this Article may alter any provision in the Schedule to this Order, and shall have effect, notwithstanding any provision in that Schedule.

Fees of Court.

153. The High Commissioner shall from time to time, with the advice and assistance of the Chief Justice of Fiji, by writing under the hand and official seal of the High Commissioner and the hand of the Chief Justice, prescribe the fees to be taken under this Order in the Court, or by any officer of the Court, or by any person authorized or appointed to act in respect of any proceedings in the Court or otherwise.

Report of Rules.

154. The High Commissioner shall from time to time forthwith report to the Secretary of State all Rules made by any authority, and all lists of Fees prescribed under this Order.

Limitation of Proceedings.

155. A proceeding (civil or criminal) shall not be commenced in the Court against any person for anything done or omitted under

this Order, unless notice in writing is given by the intending plaintiff or prosecutor to the intended defendant one month at least before the commencement of the proceeding, nor unless it is commenced within three months next after the act or omission complained of, or in case of a continuation of damage, within three months next after the ceasing of the damage.

(2.) The plaintiff in such a civil proceeding shall not succeed if tender of sufficient amends is made by the defendant before the commencement thereof: and if no tender is made, the defendant may at any time pay into the Court such sum of money as he thinks fit; and thereupon such proceeding and order shall be had and made in and by the Court as the Court thinks just.

Exhibition and Sale of Copies of Order.

156. A copy of this Order shall be exhibited in each Court-house.

(2.) Printed copies shall be provided, and shall be sold at such price as the High Commissioner directs.

And the Right Honorable the Earl of Carnarvon and the Right Honorable the Earl of Derby, two of Her Majesty's Principal Secretaries of State, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein as to them may respectively appertain.

C. L. PEEL.

WESTERN PACIFIC.

ORDER IN COUNCIL: 1877.

SCHEDULE.

PROCEDURE, WITH APPENDIX OF FORMS.

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SCHEDULE

FORMING

PART OF THE WESTERN PACIFIC
ORDER IN COUNCIL OF 1877.

Preliminary.

157. This Schedule is divided into Parts as follows:

- Part A.—Criminal and civil.
- Part B.—Criminal.
- Part C.—Civil.

PART A.—CRIMINAL AND CIVIL.

Application of Part.

158. The provisions in this Part, except where they are expressed to operate in a criminal or in a civil case, apply to all proceedings, criminal and civil.

Counsel, Solicitors, and Agents.

159. Every person doing an act or taking a proceeding in the Court, as plaintiff in a civil case, or as prosecutor in a criminal case, or otherwise, shall do so in his own name and not otherwise, and either—

- (a) By himself; or
- (b) By his counsel or solicitor; or
- (c) By his attorney, procurator, or agent thereunto lawfully authorised in writing.

(2.) Where the act is done or proceeding taken by an attorney, procurator or agent the power of attorney, or instrument constituting the procurator or agent, or an authenticated copy thereof, shall be first filed in the Court.

(3.) Where the authority has reference only to the particular proceeding, the original document shall be filed.

(4.) Where the authority is general, or has reference to other matters in which the attorney, procurator, or agent is empowered to act, an authenticated copy of the document may be filed.

160. In a criminal case, however, the Court may, if it thinks fit, allow the accused to have the assistance of a friend in the conduct of his defence.

Witnesses.

161. In a civil case, the Court may, if it thinks fit, order that the proper allowances to a person appearing or summoned to give evidence be defrayed by the parties, or any of them.

(2.) In a civil case, where a person summoned to give evidence appears, the Court may, if it thinks fit, order him to give evidence, although his proper allowances have not been paid or tendered to him.

162. The Court, on the application of either party, or of its own motion, may, if it thinks fit, order witnesses on both sides to be kept out of Court until they have respectively given their evidence.

(2.) This provision does not extend to the parties themselves, nor to their respective legal advisers, although intended to be called as witnesses.

163. The Court shall take a note of the substance of all oral evidence taken before it, in a narrative form, but shall put down the terms of any particular question or answer, if there appears reason for doing so.

(2.) The notes of evidence shall be filed in the Court.

(3.) No person shall be entitled as of right, at any time or for any purpose, to inspection, or a copy, of the Court's notes of evidence.

164. Each witness, after examination in chief, is subject to be cross-examined by the other party, and to be re-examined by the party calling him, and after re-examination may be questioned by the Court, and shall not be recalled or further questioned save through and by leave of the Court.

165. In a civil case, where evidence taken by affidavit or on deposition is offered, the party offering it may, as he thinks fit, read it, or any part of it, either before or after the oral evidence on his part (if any) is concluded.

166. Any objection to the reception of evidence shall be made at the time the evidence is offered, and shall be argued and decided at the time.

(2.) Where a question proposed to be put to a witness is objected to, the Court, unless the objection appears frivolous, shall, if required by either party, take a note of the question and objection, and mention on the notes whether the question was allowed to be put or not, and the answer to it, if put.

167. In a civil case, where a person whose testimony would have been admissible is dead or insane, or, for any reason appearing sufficient to the Court, is not present to give evidence, the Court may, if it thinks fit, receive proof of any testimony given by him in any former civil judicial proceeding: provided the subject matter of the former proceeding was substantially the same as that of the pending proceeding, and that the parties to the pending proceeding were parties to the former proceeding or bound by it, and had an opportunity in it of cross-examining the person of whose former testimony proof is to be so given.

168. In a criminal case, nothing in this Order shall prevent the prosecutor from giving in evidence at the trial any admission or confession, or other statement of the accused, made at any time, which would by law, independently of this Order, be admissible as evidence against him.

169. In a civil case, where the circumstances of the case appear to the Court so to require, for reasons recorded in the minutes, the Court may, when an action or application is pending, take the evidence of any witness at any time as preparatory to the hearing; and the evidence so taken may be used at the hearing, subject to just exceptions.

(2.) The evidence shall be taken in like manner, as nearly as may be, as evidence at the hearing of an action is to be taken; then, the note of the evidence shall be read over to the witness and tendered to him for signature; if he refuses to sign it, the Court shall add a note of his refusal; the evidence may be used as if he had signed it.

(3.) Evidence may be taken, in like manner, on the application of any person, although no action or application is pending, where it is proved that the person applying has good reason to apprehend that a proceeding will be taken against him in the Court, and that some person within the district at the time of application can give material evidence respecting the subject of the apprehended proceeding, but that he is about to leave the district, or that from some other cause the person applying will lose the benefit of his evidence if it is not at once taken.

170. The Court may, if it thinks fit, refuse to allow any questions or inquiries which it

regards as indecent or scandalous to be put, although they may have some bearing on the questions before the Court; but the Court may, if it thinks fit, refrain from so refusing, where any such question or inquiry is shewn to relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

171. The Court shall refuse to allow any question to be put which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

172. A witness may, with the leave of the Court but not otherwise, be asked whether he has been convicted of any offence, and if he denies the suggestion, or refuses to answer, the conviction may be proved.

(2.) A certificate, containing the substance and effect only, without the formal part, of the indictment, information, or charge, and the conviction, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court where the conviction was had or by a deputy of that Clerk or officer, shall, on proof of the identity of the witness, be sufficient evidence of the conviction, without proof of the signature or official character of the person appearing to have signed the certificate.

173. The party producing a witness may not impeach his credit by general evidence of bad character.

(2.) But if a witness is, in the opinion of the Court, adverse to the party producing him, that party may contradict him by other evidence, or, with the leave of the Court, may prove that the witness has made at another time a statement inconsistent with his present testimony.

(3.) Before, however, such last-mentioned proof can be given, the circumstances of the supposed statement, sufficiently to point out the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made that statement.

174. If a witness on cross-examination respecting a former statement made by him relative to the subject matter of the trial, and inconsistent with his present testimony, does not admit that he made that statement, proof may be given that he did make it.

(2.) But, before that proof can be given, the circumstances of the supposed statement, sufficiently to point out the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made that statement.

175. A witness may be cross-examined respecting previous statements made by him in writing, or reduced into writing, relative to the subject matter of the trial, without the writing being shewn to him.

(2.) But if it is intended to contradict him by the writing, his attention must, before proof in contradiction can be given, be called to those parts of the writing which are to be used for the purpose of contradicting him.

(3.) In any such case the Court may, at any time during the trial, require the production of the writing for its inspection, and may thereupon make such use of it for the purposes of the trial as the Court thinks fit.

176. In a criminal case, the court may, if it thinks fit, at any stage of the proceedings, summon and examine any witness, or examine as a witness any person present, although not summoned as a witness.

177. In a criminal case, the examination of a witness taken in the presence of the accused may be given in evidence if the witness is dead, or it is proved that his attendance cannot be procured.

(2.) Where the examination purports to have been taken before a competent person, it may be admitted without proof of the signature or official character of that person, unless the Court sees good reason to the contrary.

178. In a criminal case, the declaration of a deceased person, whether made in the presence of the accused or not, may be given in evidence, if the deceased, at the time of making it, believed himself to be in danger of approaching death, though hoping to recover.

179. Comparison of a disputed writing with a writing proved to be genuine may be made by witnesses, and the genuine writing and the evidence of witnesses respecting it may be submitted to the Court, as evidence respecting the genuineness of the disputed writing.

Documentary Evidence.

180. In a civil case, any party may call on any other party, by notice filed and served, to admit any document, subject to just exceptions.

(2.) In case of refusal or neglect to admit, the costs of proof of the documents shall be paid by the party neglecting or refusing, unless the Court is of opinion that the refusal to admit was reasonable.

(3.) No costs of proof of any document shall be allowed unless notice to admit has been given, except in cases where the omission to give notice has, in the opinion of the Court, produced a saving of expense.

181. Every document offered as evidence, and not objected to, shall be put in and read or taken as read by consent.

182. Every document put in evidence shall be marked by the Court at the time, and shall be retained by the Court during the trial, and shall afterwards be returned to the party who put it in, or from whose custody it came, unless it is impounded by order of the Court.

183. The Court may permit a party to use his books of account as evidence in support of his claim or defence, if the same appear to the Court to be kept in the course of business with reasonable regularity.

184. A witness, whether a party or not, shall not be bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, or any document held by him for any other person who would not be bound to produce it if in his own possession.

185. Any person present in Court, whether a party or not, may be called on and compelled by the Court to produce any document then and there in his actual possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to produce that document.

186. Any person, whether a party or not, may be summoned to produce a document without being summoned to give evidence.

(2.) Any person summoned merely to produce a document shall be deemed to have complied with the summons, if he causes the document to be produced instead of attending personally to produce it.

Affidavits.

187. Before an affidavit is used in the Court for any purpose, the original shall be filed in the Court.

(2.) The original or an office copy shall alone be recognised for any purpose in the Court.

188. An affidavit purporting to be sworn before a British Consular officer appearing or proved or known to be authorised to take affidavits in any country, or before a Judge or other person in the United Kingdom or in a British colony or possession, appearing or proved or known to be authorised to take affidavits, or before a Mayor or other Magistrate in a foreign country, appearing or proved or known to be authorised to administer an oath, or in the case of a foreigner being in the Western Pacific Islands before his own proper Consular authority, may, as regards form, be used in the Court without proof of any matter, subject, as regards the contents, to the rules of evidence.

189. An affidavit shall not be admitted if it appears or is proved to have been sworn before a person on whose behalf it is offered, or before his solicitor, or before a partner or clerk of his solicitor.

190. An affidavit may be used, notwithstanding any defect in form, if it appears or is proved to have been sworn before a person authorised, and the form of the affidavit and of the attestation thereto appear or are proved to be in accordance with the law and custom of the place where it was sworn.

191. A defective or erroneous affidavit may be amended and re-sworn, by leave of the Court.

192. The Court may, if it thinks fit, for reasons recorded in the minutes, admit an affidavit in evidence, although it is shown that the party against whom it is offered in evidence had no opportunity of cross-examining the person making it.

193. Every affidavit made in the Western Pacific Islands, and used in the Court shall contain only a statement of facts and circumstances to which the witness deposes, either from his own personal knowledge, or from information which he believes to be true.

(2.) It shall not contain extraneous matter, by way of objection or prayer, or legal argument or conclusion.

194. Where a witness deposes by affidavit, made in the Western Pacific Islands, to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

195. Where his belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place, and circumstances of the information.

196. The Court or Registrar, or any other person in the Western Pacific Islands, authorised to take affidavits, shall, in taking affidavits, observe the following regulations, namely:

(1.) Every affidavit taken in an action or proceeding shall be headed in the Court, and in the action or proceeding.

(2.) Every affidavit shall state the full name, trade, or profession, address, and nationality of the witness.

(3.) It may be in the first or in the third

person, and may be divided into convenient paragraphs numbered consecutively.

(4.) Any interlineation, alteration, erasure, or obliteration, made before the affidavit is sworn, shall be attested by the person administering the oath, who shall affix his signature or initials in the margin immediately opposite thereto.

(5.) Where an affidavit proposed to be sworn is illegible, or difficult to read, or is in the judgment of the person who would have to administer the oath so written as to facilitate fraudulent alteration, he may refuse to administer the oath, and may require the affidavit to be re-written.

(6.) The affidavit when sworn shall be signed by the witness, or, if he cannot write, marked by him with his mark, in the presence of the person administering the oath.

(7.) The jurat shall be written without interlineation, alteration, erasure, or obliteration, immediately at the foot of the affidavit, and towards the left side of the paper, and shall be signed by the person administering the oath, and be sealed with the seal of the Court.

(8.) It shall state the date of the swearing, and the place where the affidavit is sworn.

(9.) It shall state that the affidavit was sworn before the person administering the oath.

(10.) Where the witness is blind or illiterate, it shall state that fact, and that the affidavit was read over to him in the presence of the person administering the oath, and that the witness appeared to understand it.

(11.) Where the witness makes a mark instead of signing, the jurat shall state that fact, and that the mark was made in the presence of the person administering the oath.

(12.) Where two or more persons join in making an affidavit, their several names shall be written in the jurat, and it shall appear by the jurat that each of them has been sworn to the truth of the several matters stated by him in the affidavit.

(13.) The person administering the oath shall not allow an affidavit when sworn to be altered in any manner without being re-sworn.

(14.) If the jurat has been added and signed, he shall add a new jurat on the affidavit being re-sworn; and in the new jurat he shall mention the alteration.

(15.) He may refuse to allow the affidavit to be re-sworn, and may require the affidavit to be re-written.

PART B.—CRIMINAL.

Application of Part.

197. The provisions in this Part apply to criminal proceedings only.

Summons or Warrant before Trial.

198. Where a person subject to the jurisdiction of the Court is charged before the Court with an offence, the Court shall proceed, if he is not in custody, either by way of summons to him, or by way of warrant for his apprehension in the first instance, according to the nature and circumstances of the case.

199. For the issuing of a summons, the charge need not be put in writing, or be sworn to, unless the Court so directs.

(2.) The person effecting service shall attend at the time and place mentioned in the summons to prove service.

(3.) Notwithstanding the issuing of a summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused.

(4.) A warrant shall not be issued, in the first instance, unless the charge is in writing and on the oath of the person laying the charge, or of some witness.

(5.) If a person summoned does not obey the summons, the Court may (after proof of service of the summons) issue a warrant for his apprehension.

(6.) A warrant need not be made returnable at any particular time, but may remain in force until executed.

(7.) It may be executed by the apprehension of the accused at any place within the district, and, in case of fresh pursuit, it may be executed at any place in another district without further authority.

Summary Trial.

200. The following provisions, under the head *Summary Trial*, apply only to cases where the charge is tried by summary trial.

201. Where the accused comes before the Court on summons or warrant, or otherwise, either originally or on adjournment, then, if the prosecutor, having had notice of the time and place appointed for the hearing, or adjourned hearing, of the charge, does not appear, the Court shall dismiss the charge, unless, for some reason recorded in the minutes, it thinks fit to adjourn, or further adjourn, the hearing.

(2.) If both parties appear, the Court shall proceed to try the charge.

202. The room or place in which the Court sits to try the charge is an open and public Court, and the public generally may have access thereto as far as it can conveniently contain them.

203. The substance of the charge shall be stated to the accused, and he shall be asked if he admits or denies the truth of it.

(2.) If he admits the truth of the charge, the Court may convict him thereof.

(3.) If he denies the truth of the charge, the Court shall proceed to hear the prosecutor and his witnesses, and other evidence.

204. The prosecutor shall be at liberty to conduct the charge, and to have witnesses examined and cross-examined by himself, or by counsel or solicitor on his behalf.

205. The accused shall be at liberty to make his full answer and defence to the charge, and to have witnesses examined and cross-examined by himself, or by counsel or solicitor, or a friend on his behalf; and if the accused does not employ counsel or solicitor, or has not the assistance of a friend, the Court shall, at the close of the examination of each witness for the prosecution, ask the accused whether he wishes to put any question to that witness.

(2.) If he puts any question to a witness, that witness may be re-examined by or on behalf of the prosecutor.

(3.) At the close of the prosecutor's evidence, if it appears to the Court that the case is made out against the accused sufficiently to require him to make a defence, the Court shall ask him if he wishes to say anything in answer to the charge, or has any witnesses to examine, or other evidence to adduce in his defence; and the Court shall then hear the accused and his witnesses, and other evidence, if any.

206. The prosecutor shall not in any case be

allowed to make any observations by way of reply to the evidence adduced by the accused.

207. If the accused adduces in his defence any evidence other than evidence to character, the prosecutor may, if the Court thinks fit, adduce evidence in reply.

208. The accused shall not in any case be allowed to make any observations on evidence adduced by the prosecutor in reply.

209. The Court having heard what each party has to say as aforesaid, and the testimony of the witnesses, and the other evidence adduced, shall consider the whole matter, and finally determine the same, and shall either convict the accused or dismiss the charge.

210. In case of conviction, an order of conviction shall be drawn up in form, and shall be preserved among the records of the Court.

211. In case of dismissal, the Court shall, on the application of the accused, make an order of dismissal, an office copy whereof shall, on being produced, without further proof, be a bar to any subsequent charge against him for the same matter.

Trial with Assessors.

212. The following provisions, under the head *Trial with Assessors*, apply only to cases where the charge is to be tried with Assessors, and not by summary trial.

213. Where the accused comes before the Court on summons or warrant, or otherwise, the Court shall proceed with the preliminary examination, and shall as part thereof, in his presence take the statements on oath of those who know the facts and circumstances of the case, and put them into writing (called the depositions).

214. The room or place in which the preliminary examination is held is not an open or public Court for that purpose; and the Court may, if it thinks that the ends of justice will be best answered by so doing, order that no person have access to, or be or remain in, that room or place without the express permission of the Court.

215. The accused may put questions to each witness produced against him, and the witness's answer thereto shall be part of his deposition.

216. The deposition of each witness shall be read over to the witness, and shall be signed by him.

217. At the close of the evidence for the prosecution, if the Court considers it not sufficient to put the accused on his trial, the Court shall forthwith order him, if in custody, to be discharged.

218. If the Court considers the evidence sufficient to put the accused on his trial, the Court shall make an order that he be tried by the Court with Assessors: and he shall be so tried, without further preliminary proceeding.

219. The charge on which the Court orders him to be tried shall be stated in writing, by or under the direction of the Court.

220. But where the trial is not to be before the Court, or before the Supreme Court, the Court shall (without necessarily requiring the attendance of the witnesses) read over to the accused the depositions, and shall then say to him these words:—

Having heard the evidence, do you wish to say anything in answer to the charge? You need not say anything unless you wish. You have nothing to hope from any promise of favour, and nothing to fear from any threat held out to you to induce

you to make any admission or confession.

Whatever you say will be written down, and may be given in evidence against you.

(2.) Whatever the accused then says shall be written down, and shall be read over to him, and shall be kept with the depositions.

221. The Court shall bind by recognisance, the prosecutor and every witness to appear at the trial and to prosecute, or to prosecute and give evidence, or to give evidence (as the case may be).

(2.) If a person refuses to enter into a recognisance, the Court may send him to prison, there to remain until after the trial, unless in the meantime he enters into a recognisance.

(3.) But if afterwards, from want of sufficient evidence or other cause, the accused is discharged before trial, the Court shall order that the person imprisoned for so refusing be also discharged.

222. Until the trial the Court shall either admit the accused to bail, or send him to prison for safe keeping.

223. The accused shall be entitled to have a copy of the charge on which he is to be tried, and of the depositions, on payment of a reasonable sum, not exceeding 6d. for every 100 words, or if the Court thinks fit, without payment.

(2.) The Court shall, on the completion of the depositions, inform him of the effect of this provision.

224. The written charge (if any) made in the first instance, the depositions, the statement of the accused, the charge on which the Court orders him to be tried, the recognisances of the prosecutor and witnesses, and the recognisances of bail (if any), shall be carefully kept or transmitted for the trial, and shall be before the Court before which the trial is held.

225. The Court may at any time amend the charge in any matter of form or of substance, but not so as to prejudice the accused in his defence.

226. A charge shall not be open to objection for not stating, or for incorrectly stating, any matter proof whereof is unnecessary.

227. It shall be sufficient in a charge to describe any coin or coins, or any note or notes of any bank, as money, without specifying any particular coin or bank note.

228. The Court may, if it thinks it just, order further particulars of the charge to be delivered to the accused.

229. Parties may be charged with different offences in the same charge, where the person injured is one and the same person, or the several offences constitute or relate to one and the same transaction.

(2.) The Court may, nevertheless, afterwards, if it thinks fit, order the charges to be separated, and separate trials to be had.

230. At the trial, the accused shall be placed in the Court unfettered, unless the Court otherwise orders, for reasons recorded in the minutes.

(2.) The charge shall be read over to the accused by the Registrar, interpreter, or other officer of the Court, and shall, if necessary, be explained to him under the direction of the Court.

(3.) The accused shall be required to answer immediately to the charge.

(4.) If he answers Not Guilty, he shall, without further form, be deemed to have put himself on his trial.

(5.) If he so desires, he may answer that he has been already lawfully convicted or ac-

quitted (as the case may be) of the offence charged, and the Court shall first ascertain and determine the truth of this answer.

(6.) If he cannot or will not make any answer, the Court may, if it thinks fit order the Registrar to enter an answer of Not Guilty on behalf of the accused; and the entry thereof shall have the same effect as if he had actually so answered, and the trial shall proceed.

(7.) If the accused appears to the Court to be of unsound mind, the Court shall make such order touching his safe keeping as the Court thinks proper.

Postponement or adjournment.

231. The Court may from time to time postpone any trial or adjourn any trial already begun, if it considers that the postponement or adjournment is proper, or will promote the ends of justice; and the reasons shall be recorded in the minutes.

(2.) The absence of a witness is a good ground for postponement or adjournment, if the Court considers that his testimony is likely to be material, and that there is reasonable probability of his attendance in case of postponement or adjournment.

(3.) An adjournment ordered for any cause shall be made to a certain time and place, appointed and stated at the time of adjournment, in the presence and hearing of the parties or their respective counsel or solicitors.

(4.) During an adjournment the Court may, in its discretion, according to the nature and circumstances of each case, either suffer the accused to go at large, or commit him by warrant to such prison or other place of security, or such other safe custody, as the Court thinks fit, or may admit him to bail.

(5.) If at any time and place of adjournment the accused does not appear, the Court may, if it thinks fit, proceed as if he was present.

(6.) The Court may, if it thinks fit, from time to time during an adjournment, order the accused to be brought before it.

Order for payment of Money.

232. Where the Court orders money to be paid by a person convicted, or by a prosecutor, for penalty, compensation, expenses, or otherwise, the money may be levied on the goods of the person ordered to pay the same, by distress and sale under warrant.

(2.) That person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(3.) If the officer having the execution of the warrant returns that he could find no goods, or no sufficient goods, whereon to levy the money mentioned in the warrant, with expenses, the Court may by warrant commit the person ordered to pay to prison for a time specified in the warrant, unless the money, and all expenses of the distress, commitment, and conveyance to prison, to be specified in the warrant, are sooner paid.

(4.) Where it is proved that distress and sale of goods would be ruinous to the person ordered to pay the money and his family, or (by his confession or otherwise) that he has no goods whereon a distress may be levied, then the Court, if it thinks fit, may, instead of issuing a warrant of distress, commit him to

prison, with or without hard labor, for a time specified in the warrant, unless the money, and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

(5.) The person committed may at any time pay the sum mentioned in the warrant, with the amount of expenses therein mentioned (if any), to the person in whose custody he is, and that person shall thereupon discharge him, if he is in custody for no other matter.

(6.) The commitment shall not be for more than two months.

Imprisonment.

233. Where a conviction does not order the payment of money, but orders that the offender be imprisoned, the Court shall issue a warrant of arrest, and, if necessary, of commitment accordingly.

Mode of giving Bail.

234. Where the accused is, at any stage of the proceedings, to be admitted to bail, he shall enter into a recognisance binding him to appear as and when required.

(2.) The recognisance shall be either with a surety or sureties, or without a surety, as the Court thinks fit, according to the nature and circumstances of the case.

(3.) On the completion of the recognisance, the accused shall be discharged from custody.

Warrant into other District.

235. Where a person charged with an offence escapes or removes from the district within which it was committed, and is found within another district, the Court in the district within which he is found may either—

(a.) proceed in the case to summary trial, or to examination and trial with Assessors (as the case may require), in like manner as if the offence had been committed in that district; or—

(b.) On the requisition or with the consent of the Court in the district within which the offence was committed, send him in custody to that Court, or require him to give security for his surrender to that Court, there to answer the charge and to be dealt with according to law.

(2.) Where a person is to be so sent in custody, a warrant shall be issued by the Court in the district within which he is found; that warrant shall be sufficient authority to any person to whom it is directed or to whom it is delivered for execution to receive and detain the person therein named, and to carry him to and deliver him up to the Court in the district within which the offence was committed, according to the warrant.

Search Warrant.

236. Where it is proved that in fact, or according to reasonable suspicion, anything on, by, or in respect of which an offence cognisable by the Court has been committed, is in a house or place of or belonging to a British subject, the Court may, by warrant (called a search-warrant), authorise an officer of the Court therein named to search the house or place (which shall be named or described in the order), and, if anything searched for be found, to seize it, and apprehend the occupier of the house or place.

(2.) A general search-warrant shall not be granted.

(3.) The officer named in the warrant shall alone execute it, but he may be accompanied by any person necessary to assist him.

(4.) If the house or place is closed, and the officer, after demanding admission and stating his authority and the object of his visit, is refused admission, the house or place may be forced open.

(5.) Where there is suspicion only, the warrant shall so state, and then it may be executed in the day-time only; otherwise it may be executed in the night-time.

Sunday and Holidays.

237. A search-warrant, or a warrant for apprehension or commitment, or other purpose, may be issued and executed on Sunday, Good Friday, or Christmas Day, where the urgency of the case so requires.

PART C.—CIVIL.

Application of Part.

238. The provisions in this Part apply to civil proceedings only.

Plaintiffs and Defendants.

239. Persons may be joined as defendants against whom a right to any relief is alleged to exist, whether jointly, severally, or in the alternative.

(2.) Judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

240. Where there are several parties having the same interest in one action, one or more of them may sue or be sued, or may be authorised by the Court to defend, in the action, on behalf or for the benefit of all parties so interested.

241. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing those parties in the action.

(2.) But the Court may, at any stage of the proceedings, order any of those parties to be made parties to the action, either in addition to or in substitution.

242. On proof that any person who ought to be a party to an action as plaintiff or as defendant has not been so made a party thereto, the Court may, if it thinks fit, order that he be made such a party.

243. Subject to the other provisions of this Order, the following rules shall be observed:

(a.) Claims by a trustee in bankruptcy as such shall not, except by leave of the Court, be joined with any claim by him in any other capacity.

(b.) Claims by or against husband and wife may be joined with claims by or against either of them separately.

(c.) Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

(d.) Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

244. A defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action may at any time apply to the Court for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding.

(2.) If, on the hearing of the application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one action, the Court may order any of them to be excluded.

Married Women.

245. A married woman may sue as plaintiff by her next friend.

(2.) A married woman may also, by leave of the Court, sue or defend without her husband and without a next friend, on giving such security (if any) for costs as the Court thinks right.

(3.) Where husband and wife are both defendants to an action, service on the husband shall be good service on the wife, but the Court may, if it thinks fit, order service on the wife with or without service on the husband.

Infants as Plaintiffs.

246. Infants may sue as plaintiffs by their next friends.

Infants and Persons of Unsound Mind as Defendants.

247. Where, on default made by a defendant in defending the action, it appears to the Court that he is an infant or a person of weak or unsound mind, so that he is unable of himself to defend the action, the Court may, if it thinks fit, on the application of the plaintiff, or of its own motion, appoint by order some fit person to be guardian of the defendant for the purpose of the action, by whom he may defend it.

(2.) Before such an order is made, the Court shall cause such notice as it thinks reasonable to be served on or left at the dwelling-house of the person with whom or under whose care the defendant is, and also, unless the Court sees good reason to the contrary, in the case of an infant not residing with or under the care of his father or guardian, to be served on or left at the dwelling-house of his father or guardian.

(3.) Service on the guardian so appointed shall be good service.

Partnerships.

248. Two or more persons claiming or being liable as partners may sue or be sued in the name of their firm.

(2.) The plaintiffs shall, on demand in writing by any defendant, declare forthwith the names and places of residence of all the persons constituting their firm.

(3.) If they fail to do so, the action may, on an application made to the Court for that purpose by the defendant, be stayed.

(4.) When the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the writ.

(5.) All proceedings shall nevertheless continue in the name of the firm.

249. Where partners are sued in the name of their firm, the writ shall be served either on any one or more of the partners, or at the principal place of business of the partnership within the district, on any person having at

the time of service the control or management of the partnership business there.

250. An order made against partners in the name of the firm may be enforced as follows:

- (a.) Against any property of the partners, as such.
 - (b.) Against any person who has admitted in the action that he is, or has been adjudged to be, a partner.
 - (c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.
- (2.) If the party who has obtained the order claims to be entitled to enforce it against any other person as being a partner, he may apply to the Court for leave to do so.
- (3.) If the liability is not disputed, the Court may give leave.
- (4.) If the liability is disputed, the Court may order that it be tried and determined as if it were an issue in the action.

Pauper.

251. The Court may admit a person to sue as a pauper, on proof of his poverty, and of his having a case proper for some relief in the Court.

(2.) The Court may admit a person to defend as a pauper, on proof of his poverty.

(3.) The Court may, if it thinks fit, by order, assign a counsel or solicitor to assist a person admitted to sue or defend as a pauper; and the counsel or solicitor so assigned shall not be at liberty to refuse his assistance, unless he satisfies the Court of some good reason for refusing.

(4.) If a person admitted to sue or defend as a pauper gives or agrees to give any fee, profit, or reward for the conduct of his business in the Court, he shall be forthwith dispaupered, and shall not be afterwards admitted again in that action to sue or defend as a pauper.

(5.) A person admitted to sue or defend as a pauper may be dispaupered by order of the Court, on proof that he was not, when admitted, or no longer is, of sufficient poverty, or that he is abusing his privilege by vexatious proceedings.

Death of Party or other Change.

252. Where, after action brought, any change or transmission of interest or liability occurs in relation to any party to the action, or any party to the action dies, or (being a woman) marries, or the action in any other way becomes defective or incapable of being carried on, any person interested may obtain from the Court any order requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings.

(2.) But any person served with such an order may, within such time, not exceeding fourteen days, as the Court in the order or otherwise directs, apply to the Court to discharge the order.

Matters arising pending Action.

253. Any ground of defence which has arisen after action brought may be set up by the defendant, either alone or together with other grounds of defence.

Payment into Court in Satisfaction.

254. Where an action is brought to recover a debt or damages, any defendant may, at any time after service of the writ, pay into the

office of the Court a sum of money by way of satisfaction or amends.

(2.) It shall be paid to the proper officer, who shall give a receipt for the same.

(3.) The defendant shall give the plaintiff notice that he has paid in that money, stating in respect of what claim.

255. Money so paid in may, unless the Court otherwise orders, be paid out to the plaintiff, or to his solicitor, on the written authority of the plaintiff.

(2.) An affidavit shall not be necessary to verify the plaintiff's signature to the authority unless specially required by the officer of the Court.

256. The plaintiff may, after receipt of notice of payment in, accept the amount in satisfaction of the causes of action in respect of which it is paid in; in which case he shall give notice thereof to the defendant, and the Court shall make such order thereon as shall be just.

Set-off. Counter-Claim.

257. A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sounds in damages or not.

(2.) The set-off or counter-claim shall have the same effect as if the defendant had brought a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim.

(3.) But the Court may, on the application of the plaintiff before trial, if in the opinion of the Court the set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Discontinuance.

258. The plaintiff may, at any time, by notice in writing, wholly discontinue his action, or withdraw any part of his alleged cause of complaint.

(2.) Thereupon he shall be liable to pay the defendant's costs of the action, or, if the action is not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn.

(3.) The discontinuance or withdrawal shall not be a defence to a subsequent action.

(4.) The Court may, if it thinks fit, before, or at, or after the trial, order an action to be discontinued, or any part of the alleged cause of complaint to be struck out.

Issues.

259. In any action the Court may direct the parties to prepare issues, and the issues shall, if the parties differ, be settled by the Court.

Proceeding at Hearing.

260. The order of proceeding at the hearing of an action shall be as follows:

(2.) The party on whom the burden of proof is thrown by the nature of the material questions between the parties has the right to begin; he shall address the Court and open his case.

(3.) He shall then call his evidence and examine his witnesses in chief.

(4.) When he has concluded his evidence, he shall ask the other party if he intends to call evidence (in which term is included evidence taken by affidavit or deposition, or

under commission, and documentary evidence not already read or taken as read); if answered in the negative, the party beginning shall be entitled to sum up the evidence already given, and comment thereon; but if answered in the affirmative, he shall wait for his general reply.

(5.) When the party beginning has concluded his case, the second party shall be at liberty to address the Court and to call evidence, and to sum up and comment thereon.

(6.) If no evidence is called or read by the second party, the party beginning (saving the right of the Crown) shall have no right to reply, unless he has been prevented from summing up his case by the statement of the second party of his intention to call evidence.

(7.) The case on both sides shall then be considered closed.

(8.) If the second party calls or reads evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may call fresh evidence in reply to the evidence given on the other side, on points material to the determination of the issues, or any of them, but not on collateral matters.

(9.) Where evidence in reply is tendered and allowed to be given, the second party shall be at liberty to address the Court, and the party beginning shall be entitled to the general reply.

Absence of Parties at Hearing.

261. If at the time appointed for the hearing the plaintiff does not appear, the Court shall, unless the Court sees good reason to the contrary, strike out the action, and make such order respecting costs in favour of any defendant appearing as the Court thinks just.

(2.) If the plaintiff a second time in like manner fails to appear, the Court shall, unless it sees good reason to the contrary, dismiss the writ of summons, which dismissal shall have the like effect as a judgment for the defendant on the merits at the hearing.

262. If at the time appointed for the hearing the plaintiff appears, but the defendant or any of the defendants does not appear, the Court shall, before hearing the action, inquire into the service of the writ of summons on the absent party or parties.

(2.) The Court, if not satisfied respecting service on every party, shall order that further service be made as the Court directs, and shall adjourn the hearing for that purpose.

(3.) The Court, if not satisfied respecting service on every party, may, if it thinks fit, proceed to hear the action, notwithstanding the absence of the defendant or of any of the defendants.

263. If the Court hears the action and makes an order against a defendant in his absence, the Court may afterwards, on such terms as the Court thinks fit, re-hear the action, on proof that his absence was excusable, and that he has a defence on the merits.

Judgment.

264. The decision or judgment given by the Court in an action shall be delivered in open Court.

(2.) Where the Court reserves judgment at the hearing, parties to the action shall be served with notice to attend and hear judgment, unless the Court at the hearing states the day on which judgment will be delivered, in which case there shall be no further notice.

(3.) All parties shall be deemed to have

notice of the decision or judgment, if pronounced at the hearing.

(4.) All parties served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.

Costs.

265. In every action the costs of the whole action, and of each particular proceeding therein, and the costs of every proceeding in the Court, are in the discretion of the Court, as regards the person by whom they are to be paid.

(2.) But the Court shall not order the successful party in an action to pay to the unsuccessful party the costs of the whole action; although the Court may order the successful party, notwithstanding his success in the action, to pay the costs of any particular proceeding therein.

(3.) The Court may order any costs to be paid out of any fund or property to which an action or proceeding relates.

(4.) Where the Court orders costs to be paid by any party, the Court may, if it thinks fit, order all proceedings by or on behalf of that party in the same action or proceeding, or connected therewith, to be stayed until the costs are paid.

Orders.

266. Where an order orders a person to pay money, or do any other act, the same or some subsequent order shall state the precise time within which the payment, or other act, is to be made or done, reckoned from the date or service of the order in which the time is stated, or from some other point of time, as the Court thinks fit.

(2.) The time stated may be immediately after service of the order, if the Court thinks fit.

(3.) A person ordered to pay money, or do any other act, is bound to obey the order, on being served with it, and without any demand for payment or performance.

Order for Payment of Money.

267. The Court may, if it thinks fit, order that money ordered to be paid be paid by instalments specified.

268. Where an order orders payment of money, there shall be indorsed on the copy of it served on the person required to obey it a memorandum in the words or to the effect following:

If you, the within-named A. B., neglect to obey this order by the time therein appointed, you will be liable to have a writ of execution issued against your goods, under which they may be seized and sold; and you will also be liable to be summoned by the Court, and to be examined respecting your ability to make the payment directed by this order, and to be imprisoned in case of your not answering satisfactorily on that examination.

269. Where an order orders payment of money, and the person ordered to pay refuses or neglects to do so according to the order, a person entitled to the benefit of the order may apply to the Court, for execution against the goods of the disobedient person.

(2.) Thereupon the Court shall, unless it sees good reason to the contrary, issue an order of execution (called an execution order), ordering and empowering an officer of the Court, therein named, to levy the money ordered to be paid, by distress and sale of the

goods of the disobedient person (called the execution debtor), wheresoever found within the district.

(3.) On the order there shall be indorsed the sum of money and costs adjudged and the further sum to be levied for costs of the execution.

270. Where an order orders payment of money by instalments, execution shall not issue until after default in payment of some instalment according to the order.

(2.) Execution or successive executions may then issue for the whole money then remaining unpaid, or for such portion thereof as the Court orders, either when making the original order, or at any subsequent time.

271. The officer executing the order may, by virtue thereof, seize any of the goods of the execution debtor, except the wearing apparel and bedding of himself and his family, and the tools and implements of his trade, to the value of five pounds, all which shall to that extent be exempted from seizure.

272. The sale of the goods seized shall be made by order of the Court, and shall be conducted under the direction of the Court, and by a person nominated by the Court.

(2.) But no steps shall be taken therein without the demand of the person obtaining the execution order (called the execution creditor).

(3.) The execution creditor shall be liable for any damage recoverable in consequence of any proceeding taken at his instance.

(4.) The sale shall not be made until after the end of five days at least next following the day of seizure, unless the goods are of a perishable nature, or on the request in writing of the execution debtor, or under order of the Court made for reasons recorded in the minutes.

(5.) Until sale, the goods shall be deposited by the officer in some fit place, or they may remain in the custody of a fit person approved by the Court and put into possession by the officer.

273. The Court shall not order the sale of the goods seized unless it is proved that they belong to the execution debtor, and are in a place where the Court has jurisdiction.

(2.) Where a claim is made by a third party to the goods or part thereof, the same, if made by a British subject, shall be decided by the Court in a summary way, as between the claimant and the execution creditor.

(3.) If the claim is made by a foreigner, the Court may, if it thinks fit, either oblige the execution creditor to establish his claim before selling the goods, or sell the goods and require the execution creditor to defend any claim.

274. The officer executing an execution order, may, by virtue thereof, seize any money, bank-notes, cheques, bills of exchange, promissory notes, bonds, or securities for money belonging to the execution debtor.

(2.) The Court shall hold the property or instruments seized (other than money and securities immediately convertible into money) as security for the amount directed to be levied, or so much thereof as is not otherwise levied, for the benefit of the execution creditor.

(3.) The execution creditor may sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might have sued, for the recovery of the money secured or made payable by any instrument seized, when the time for suing arrives.

275. If before or after seizure the execution debtor, by payment into Court, or to the

officer executing the order, satisfies the execution, the order shall be superseded, and the goods and property and instruments seized shall be released and delivered up.

Sequestration.

276. In case the person against whom an order of arrest issues is not and cannot be found, or is taken and detained in custody without obeying the order, then the person prosecuting the order may apply to the Court for an order of sequestration against his property.

Service.

277. Service of a writ of summons, order, or other instrument, of which service is required by this Order, or according to the course of the Court, or under any order of the Court, shall be made by an officer of the Court, unless in any case the Court thinks fit otherwise to direct.

(2.) Service of an instrument not being a writ of summons, order, or other instrument issued by the Court itself, shall not be made except under an order of the Court, indorsed on or subscribed or annexed to the document to be served, which order shall be deemed part of the document to be served.

(3.) Personal service is effected by the production to the person to be served of the original instrument, and the leaving with him of a copy thereof.

(4.) Unless in any case the Court thinks it just and expedient otherwise to direct, service shall be personal.

(5.) Where it appears to the Court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently effected, the Court may order that service be effected either—

(i.) By delivery of the instrument to some adult inmate at the usual or last known place of abode or business within the district of the person to be served; or

(ii.) By delivery thereof to some person being an agent of the person to be served, or to some other person within the district, on proof that there is reasonable probability that the instrument will, through that agent or other person, come to the knowledge of the person to be served; or

(iii.) By advertisement in some newspaper circulating within the district; or

(iv.) By notice put up at the Court-house, or at some other place of public resort within the district.

(6.) An order for service may be varied from time to time with respect to the mode of service directed by the order.

(7.) Service not required to be personal shall be made before five o'clock in the evening.

(8.) If made after that hour on any day but Saturday, it shall be considered as made on the following day.

(9.) If made after that hour on Saturday, it shall be considered as made on the following Monday.

(10.) Service shall not be made on Sunday, Christmas Day, or Good Friday.

278. Where the suit is against a corporation, or a company authorised to sue and be sued in the name of an officer or trustees or otherwise, the instrument may be served by delivery thereof to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company.

279. Where service cannot be effected without expense, the officer of the Court shall not, except by special order of the Court, be bound to effect service, unless his reasonable expenses are first tendered to him by the party requiring service.

(2.) Those expenses shall be part of the costs of the action.

Service out of District.

280. The Court may, if it thinks fit, on the application of a plaintiff, make an order giving him leave to effect service of a writ of summons out of the district in any of the following cases:

- (i.) Where the whole or any part of the subject-matter of the action is land or other property situate within the district, or any act, deed, will, or thing affecting such land or property;
- (ii.) Where the contract which is sought to be enforced, rescinded, or otherwise affected in the action, or for breach whereof damages or other relief are or is sought, was made or entered into within the district;
- (iii.) Where there has been a breach within the district of a contract, wherever made;
- (iv.) Where any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is within the district.

(2.) The application shall be supported by evidence, on affidavit, or otherwise, showing in what place or country the person to be served is or probably may be found, and whether he is a British subject or not, and the grounds of the application.

(3.) The order giving leave shall prescribe the mode of service.

281. As regards any instrument other than a writ of summons, ordinarily, service shall not be made out of the district, except under an order for that purpose made by the Court for the district within which service is to be made, which order may be made on the request of the Court for any other district, and shall in each case prescribe the mode of service.

(2.) But, on proof of urgency or other peculiar circumstances, the Court may, if it thinks fit, order that service of any instrument be made out of the district.

Computation of Time.

282. Where by this Order, or the course of the Court, or any order of the Court, any limited time from or after any date or event is appointed or allowed for the doing of any act, or the taking of any proceeding, and the time is not limited by hours, the following rules shall apply;

- (i.) The limited time does not include the day of the date or of the happening of the event, but commences at the beginning of the day next following that day;
- (ii.) The act or proceeding must be done or taken at latest on the last day of the limited time;
- (iii.) Where the limited time is less than six days, the following days shall not be reckoned as part of the time, namely, Sunday, Good Friday, Monday and Tuesday in Easter week, Christmas Day, and the day next

before and the day next after Christmas Day;

- (iv.) When the time expires on one of those days, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being one of those days.

Discretion of Court as to Practice.

283. Notwithstanding anything in the foregoing Order or in these provisions, the Court (for reasons recorded in the minutes) may at any time, and from time to time, do any of the following things, as the Court thinks just:

- (i.) Defer or adjourn the hearing or determination of any proceeding or application;
- (ii.) Order or allow any amendment of any writ of summons, notice, or other instrument;
- (iii.) Appoint or allow a time for the doing of any act or the taking of any proceeding;
- (iv.) Either before or after the expiration of the time appointed or allowed, enlarge or abridge that time.

Consequential Amendments.

284. Where the Court makes any order respecting parties, or any other matter, it may order all such amendments of the writ of summons and other instruments in the action to be made, as the Court considers necessary or proper for giving effect to the order of the Court.

Order on Terms.

285. The Court, on making any order which it is in its discretion to make, may make the order on such terms respecting time, costs, security, the bringing of another action, and other matters as the Court thinks just.

Probate or Administration in General.

286. Probate or letters of administration with will annexed shall not issue for seven days from the death of the deceased, except under the direction of the High Commissioner, or a Judicial Commissioner, or in case of great urgency.

(2.) Letters of administration (not with will annexed) shall not issue for fourteen days from the death of the deceased, except under the direction of the High Commissioner, or a Judicial Commissioner, or in case of great urgency.

287. The Court may, of its own motion, or on the application of any person claiming an interest under a will, give notice to the executors (if any) therein named to come in and prove the will or to renounce probate, and they, or some or one of them, shall, within fourteen days after notice, come in and prove or renounce accordingly.

288. Where probate or administration is, for the first time, applied for after three years from the death of the deceased, a grant shall not be made except under the direction of the High Commissioner, or a Judicial Commissioner.

289. Where, before a Deputy Commissioner, a dispute or question arises in relation to the grant or the application for it, or it appears to the Deputy Commissioner doubtful whether or not the grant should be made, the Deputy Commissioner shall communicate with the High Commissioner, or a Judicial Commissioner.

(2.) The High Commissioner, or a Judicial Commissioner, shall direct the Deputy Commissioner to proceed in the matter according to such instructions as the High Commissioner, or a Judicial Commissioner, thinks fit, or shall by order remove the matter to be dealt with by the High Commissioner, or a Judicial Commissioner.

290. A Deputy Commissioner, before proceeding on an application, shall ascertain that the deceased was at his death resident in the district, and shall not for this purpose consider himself bound to rest satisfied with the evidence offered by the applicant.

291. The Court shall require evidence, in addition to that offered by the applicant, of the identity of the deceased, or of the applicant, where additional evidence in that behalf seems to the Court necessary or desirable.

292. The Court shall ascertain the value of the property of the deceased as correctly as circumstances allow.

293. In no case shall the Court issue probate or letters of administration until all inquiries which the Court sees fit to institute have been answered to its satisfaction.

294. The Court shall, however, afford as great facility for the obtaining of probate or administration as is consistent with due regard to the prevention of error and fraud.

295. In the following cases a grant shall not issue, except under the direction of a Judicial Commissioner, namely:

Probate or administration with will annexed, where the will was executed before the 1st of January 1838, and there is no testamentary paper of a date later than the 31st of December 1837;

Probate and administration with will annexed, the will being merely an execution of a special power, or being the will of a married woman made by virtue of a power;

Administration for the use or benefit of a minor or infant, or of a lunatic or person of unsound mind;

Administration (with or without will annexed) of the property of a bastard dying either a bachelor or spinster, or a widower or widow without issue, or of a person dying without known relative;

Limited administration;

Administration to be granted to a person not resident.

296. Revocation or alteration of a grant of probate or administration shall not be made except under the immediate direction of a Judicial Commissioner.

297. A notice to prohibit a grant of probate or administration may be filed in the public Court office of the High Commissioner or of any Deputy Commissioner.

(2.) Immediately on such a notice being filed in the public Court office of the High Commissioner, a copy thereof shall be sent to the Deputy Commissioner for the district (if any) in which it is alleged the deceased was resident at his death, and to any other Deputy Commissioner to whom it appears to the High Commissioner expedient to send a copy.

(3.) Immediately on such a notice being filed in the public Court office of any Deputy Commissioner he shall send a copy thereof to the High Commissioner, and also to the Deputy Commissioner for any other district in which it is known or alleged the deceased had, at his death, a place of abode.

(4.) The notice shall remain in force three months only from the day of filing; but it may be renewed from time to time.

(5.) The notice shall not affect a grant made on the day on which the notice is filed, or on which a copy thereof is received, as the case may be.

(6.) The person filing the notice shall be warned by a warning in writing, under the seal of the Court, delivered at the place mentioned in the notice as his address.

(7.) After the notice has been filed in the public Court office of a Deputy Commissioner, or a copy thereof has been received by a Deputy Commissioner, a grant of probate or administration shall be made only under the direction of the High Commissioner or of a Judicial Commissioner.

298. Notices in the nature of citations shall be given by publication in such newspapers or in such other manner as the Court in each case thinks fit.

299. Every original will of which probate or administration with will annexed is granted, shall be filed and kept in the public Court office of the High Commissioner or of the Deputy Commissioner issuing the grant, in such manner as to secure at once the due preservation and the convenient inspection of the same.

(2.) No original will shall be delivered out for any purpose without the direction in writing of the High Commissioner or of a Judicial Commissioner.

(3.) An office copy of the whole or of any part of a will, or an official certificate of a grant of administration, may be obtained from the Court on payment of the proper fees.

300. On the 1st of February and the 1st of August in every year every Judicial Commissioner and Deputy Commissioner shall send to the High Commissioner—

(i.) A list of the grants of probate and administration made by the Judicial Commissioner or Deputy Commissioner up to the last preceding 1st of January and 1st of July respectively, not included in any previous list;

(ii.) A copy, certified by the Judicial Commissioner or Deputy Commissioner to be a correct copy, of every will to which each probate or administration relates.

Probate or Administration with Will annexed.

301. On receiving an application for probate or for administration with will annexed, the Court shall inspect the will and see whether it appears to be duly signed and witnessed, according to the enactments relative thereto.

(2.) The will is not duly signed and witnessed, unless—

(a.) The testator made or acknowledged his signature in the presence of two witnesses;

(b.) The two witnesses were present with him at the same time;

(c.) They attested and subscribed the will in his presence, and in the presence of each other.

(3.) If the will appears to be duly signed and witnessed, the Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the will to have been, in fact, so signed and witnessed.

(4.) If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the will was, in fact, so signed and executed.

(5.) The affidavit shall be engrossed and form part of the probate, so that the probate may be complete.

(6.) If, on perusal of the affidavit, it appears that the will was not, in fact, duly signed and attested, the Court shall refuse probate.

(7.) If, on the perusal of the affidavit, it appears to a Deputy Commissioner doubtful whether or not the will was, in fact, duly signed and attested, he shall communicate with the High Commissioner or a Judicial Commissioner for directions.

(8.) If both the subscribing witnesses are dead, or if, from other circumstances, such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the will; but if no such affidavit can be obtained, proof shall be required of that fact and of the handwritings of the deceased and subscribing witnesses, and also of any circumstances raising a presumption in favour of the due signing and attestation of the will.

302. Where the testator was blind or illiterate, the Court shall not grant probate of the will or administration with the will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the will, that the will was read over to the deceased before its execution, or that he had at that time knowledge of its contents.

(2.) Where this information is not forthcoming, a Deputy Commissioner shall communicate with the High Commissioner or a Judicial Commissioner for directions.

303. The Court, on being satisfied that the will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations or erasures or obliterations appearing in it, and requiring to be accounted for.

(2.) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the will at the time of its execution, or unless, if made afterwards, they have been duly signed and attested in the mode required for a will, or unless they have been made valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

(3.) Where interlineations, alterations, erasures, or obliterations appear in the will, unless they are duly signed and witnessed or recited in or otherwise identified by the attestation clause, an affidavit, in proof of their having existed in the will before its execution, shall be filed.

(4.) If it is not proved when an erasure or obliteration was made, and the words erased or obliterated are not entirely effaced, and can, on inspection of the will, be read, they shall form part of the probate.

(5.) Where words have been erased which might have been of importance, an affidavit shall be required.

(6.) If reasonable doubt exists in regard to any interlineation, alteration, erasure, or obliteration, a Deputy Commissioner shall communicate with the High Commissioner or a Judicial Commissioner for directions.

304. Where a will contains a reference to any instrument of such a nature as to raise a

question whether it ought or ought not to form a constituent part of the will, the Court shall require the production of the instrument, with a view to ascertain whether or not it is entitled to probate: and if it is not produced, a satisfactory account of its non-production shall be proved.

(2.) An instrument cannot form part of a will unless it was in existence at the time when the will was executed.

(3.) If there are vestiges of sealing wax or wafers or other marks on the will, leading to the inference that some instrument has been at some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the instrument shall be required; if it is not produced, a satisfactory account of its non-production shall be proved.

(4.) If doubt exists whether or not a document is entitled to probate as a constituent part of a will, the Deputy Commissioner shall communicate with the High Commissioner or a Judicial Commissioner for directions.

305. Where a person appointed executor in a will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases.

(2.) Without further renunciation, the representation to the testator and the administration of his property go and may be committed as if that person had not been appointed executor.

306. Every will or copy of a will, to which an executor or an administrator with will annexed is sworn, shall be marked by the executor or administrator, and by the person before whom he is sworn.

307. The Court shall take care that the copies of wills to be annexed to probates or letters of administration are fairly and properly written, and shall reject any not so written.

Intestacy.

308. The Court, in granting letters of administration, shall proceed, as far as may be, as in cases of probate.

(2.) The Court shall ascertain the time and place of deceased's death, and the value of the property to be covered by the administration.

(3.) The person to whom administration is granted shall give bond with two or more responsible British subjects, as sureties, to the High Commissioner, conditioned for duly collecting, getting in, and administering the personal property of the deceased.

(4.) Where, however, the property is under the value of fifty pounds, the Court may, if it thinks fit, take one surety only.

(5.) The bond shall be in a penalty of double the amount under which the personal estate of the deceased is sworn, unless the Court in any case thinks it expedient to reduce the amount, for reasons to be forthwith certified by a Deputy Commissioner to the High Commissioner.

(6.) The Court may also in any case direct that more bonds than one shall be given, so as to limit the liability of any individual surety to such amount as the Court thinks reasonable.

(7.) The High Commissioner may, on being satisfied that the condition of the bond has been broken, assign the same to some person; that person may thereupon sue on the bond in his own name, as if it had been originally

given to him instead of to the High Commissioner, and may recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the bond.

309. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the Court shall require proof that notice of the application has been given to the other next of kin.

Arbitration.

310. The following provisions, under the head *Arbitration*, apply only to cases where the agreement for reference to arbitration or submission to arbitration by consent is made a rule of Court.

311. The arbitrators shall make their award within one month after they have entered on the reference or have been called on to act by notice in writing from any party, unless the document authorising or making the reference contains a different limit of time.

312. The Court may, if it thinks fit, on reasonable notice to all parties, from time to time enlarge the time for making the award for such time as the Court thinks just, the reasons for enlargement being recorded in the minutes.

313. An umpire may enter on the reference in lieu of the arbitrators, if the arbitrators have allowed their time, or their extended time, to expire without making an award, or have filed in the Court a notice in writing that they cannot agree.

314. The authority of arbitrators or an umpire is not revocable except by the Court.

315. Where it appears to the arbitrators or umpire that any difficult question of law is involved in or raised by the facts as finally ascertained by them or him, they or he may, if it seems to them or him fit, state the award (as to the whole or any part thereof) in the form of a case for the opinion of the Court.

(2.) The Court shall consider and deliver judgment on the case, and shall be at liberty to draw inferences of fact from the facts stated, and to amend the case by reason of any irregularity, mistake, or imperfection.

316. The arbitrators or umpire shall have power to award how the costs of the reference shall be borne, in the whole or in part.

(2.) But an award respecting costs shall not preclude a party against whom costs are awarded from applying to the Court to tax the costs; and on that application the costs, including the remuneration (if any) of the arbitrators and umpire, or any of them, shall be taxed at a reasonable rate by the Court; and the Court shall make such order respecting the costs of taxation as the Court thinks just.

317. The award shall be in writing, signed by the arbitrators or umpire making it.

(2.) It shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to.

(3.) It shall comprehend a finding on each of the several matters referred.

318. The arbitrators or umpire making an award shall, within the time limited, deposit the award in the Court, inclosed in a sealed cover, and indorsed with the names of the parties to the reference, and with a note of the amount claimed by the arbitrators and umpire for remuneration.

(2.) Notice of the award having been deposited shall be served by the Court on the

parties, who shall be at liberty to read the award, and to have copies of it.

319. Any person interested may, within seven days after notice of the award, apply to the Court to prevent the execution of the award, or of any specified part of it.

(2.) In default of any such application, the Court shall proceed, on reasonable notice to all parties, to make such order for carrying into effect the award, or any part thereof, and as to costs and other things, as the Court thinks just.

320. The Court may at any time, and from time to time, remit the matters referred, or any of them, to the reconsideration and re-determination of the arbitrators or umpire, on such terms as to costs and other matters as the Court thinks just.

321. The Court shall not refuse to execute an award merely on the ground of irregularity in the submission, or during the reference, where the irregularity has not been substantially prejudicial to the party objecting.

APPENDIX TO SCHEDULE.

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FORMS.

* * The following is the General Heading referred to in these Forms.
In Her Britannic Majesty's High Commissioner's Court for the Western Pacific at []

Criminal Jurisdiction.

[or, as the case may be

Civil Jurisdiction.

or

Admiralty Jurisdiction.

or

Bankruptcy Jurisdiction.

or

Lunacy Jurisdiction.

or

Matrimonial Jurisdiction.

or

Probate Jurisdiction.]

[Thursday], the day of , 18 .

With this addition in Writs of Summons and subsequent instruments in Civil actions—

Between A.B. Plaintiff

and

C.D. Defendant

[or, as the case may be,

In the matter of A.B., deceased.]

* * The following is the form of Jurat to an Affidavit referred to in these Forms.

Sworn at
this day of , 18 . }
Before me, X.Y.,
Registrar.
[or as the case may be.]

I.—CRIMINAL.

1.

Information to ground Search Warrant.

(General Heading.)

C.D., of , [labourer], sworn, complains that on the day of the following goods, of the value of namely :

[Here describe the goods.]

were stolen and unlawfully carried away from and out of at by some person or persons unknown, and that he has reasonable cause to suspect, and does suspect, that those goods, or some of them, are concealed in [the dwelling house (describing it) of A.B. of]; for he, the said C.D., on his oath, deposes and says that

[State the grounds.]

Taken and sworn before me this day of } (Seal.)
18 , at }

2.

Search Warrant.

(General Heading.)

To X.Y., Police Officer, and other Officers of this Court. C.D., of , has this day made information on oath before this Court that [copy from information down to "for he"]. You are, therefore, hereby authorised and commanded, in the name of Her Majesty Queen Victoria, with proper assistance, to enter the [dwelling house] of the said A.B., and there to diligently search for the said goods, and if the same, or any thereof, are found on search, to bring the goods so found, and also the said A.B., before this Court, to be dealt with according to law.

(Seal.)

3.

Charge.

(General Heading.)

C.D., of , [labourer], sworn, charges that [state the offence]. (Seal.)

4.

Summons to Accused.

(General Heading.)

To A.B., of , [labourer].
You have this day been charged [on oath] before this Court for that you [stating shortly the offence charged].
Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, to appear before this Court on [Saturday next], the day of at [10 o'clock in the forenoon] at [], to answer to the said charge, and to be further dealt with according to law.

(Seal.)

5.

Warrant in first instance for Apprehension of Accused.

(General Heading.)

To X.Y., Police Officer, and other Officers of this Court. A.B., of , [labourer], has this day been charged [on oath] before this Court for that he [stating shortly the offence charged].
Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, forthwith to apprehend the said A.B., and to bring him before this Court to answer to the said charge, and to be further dealt with according to law.

(Seal.)

6.

Warrant for Apprehension of Accused where Summons is disobeyed.

(General Heading.)

To X.Y., Police Officer, and other Officers of this Court.

A.B., of , [labourer], was on the day of 18 charged [on oath] before this Court for that [as in Summons].

And the said A.B. was, by summons of this Court, commanded to appear before this Court on [] at [], to answer to the said charge, and to be further dealt with according to law.

And (as it has now been proved to this Court) he was duly served with the said summons. But he has not appeared according thereto.

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, forthwith to apprehend him, and to bring him before this Court to answer to the said charge, and to be further dealt with according to law.

(Seal.)

7.

Summons of a Witness.

(General Heading.)

To E.F., of , [labourer].
A.B., of , [labourer], has been charged before this Court for that [as in the Summons or Warrant against the accused].

And it appears to this Court that you are likely to give material evidence concerning the said charge.

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, to appear before this Court on [Saturday next] the [] day of [] 18 , at [10 o'clock in the forenoon], at [], to testify what you shall know concerning the said charge.

(Seal.)

8.

Warrant where Witness has not obeyed Summons.

(General Heading.)

To X.Y., Police Officer, and other Officers of this Court. A.B., of , [labourer], has been charged before this Court for that [as in Summons].

And it appearing to the said Court that E.F., of [labourer], is likely to give material evidence concerning the said charge, the said E.F. was, by summons of this Court, commanded to appear before this Court on [] at [] at [], to testify what he should know concerning the said charge.

And (as it has now been proved to this Court) he was duly served with the said summons. But he has not appeared according thereto, and has not excused his failure to do so to the satisfaction of this Court.

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, to bring and have the said E.F. before this Court on [], at [10 o'clock in the forenoon], at [], to testify what he shall know concerning the said charge.

(Seal.)

9.

Warrant for Witness in first instance.

(General Heading.)

To X.Y., Police Officer, and other Officers of this Court. A.B., of , [labourer], has been charged before this Court for that [as in Summons].

And it appears to this Court that E.F., of [labourer], is likely to give material evidence concerning the said charge, and that it is probable he will not attend to give evidence unless compelled to do so.

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, to bring and have the said E.F. before this Court on [Saturday next] the day of [18], at [10 o'clock in the forenoon] at [], to testify what he shall know concerning the said charge. (Seal.)

10.

Warrant for commitment of Witness for refusing to be Sworn or to give Evidence.

(General Heading.)

To X.Y., Police Officer of this Court, and to the Keeper of [] Prison at [],

A.B., of [], [labourer], has been charged before this Court for that [as in Summons]. And E.F., of [], [labourer], now being before this Court to testify what he knows concerning the said charge in pursuance of a summons [or warrant] issued by this Court, and being required refuses to take an oath [or having taken an oath refuses to answer a certain question now put to him concerning the said charge,] and does not excuse his refusal to the satisfaction of this Court.

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, you, the above named X.Y., to take the said E.F., and convey him safely to the above-named prison and there deliver him to the keeper thereof, together with this warrant;

And you, the keeper of the said prison, to receive the said E.F. into your custody in the said prison, and to keep him there safely for [seven] days, unless he in the meantime consents to answer duly on oath.

(Seal.)

11.

Warrant committing the Accused for safe custody during an Adjournment of the Hearing, or where the Hearing is not at once proceeded with, or Remanding him.

(General Heading.)

To X.Y., Police Officer of this Court, and to the keeper of [] prison [],

A.B., of [], [labourer], has been charged before this Court for that [as in Summons].

* And the hearing of the said charge is adjourned [or cannot be at once proceeded with], and it is necessary that the said A.B. should in the meantime be kept in safe custody.*

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, you, the above-named X.Y., forthwith to convey the said A.B. to the above-mentioned prison, and there deliver him to the keeper thereof, together with this warrant. And you, the keeper of the said prison, to receive the said A.B. into your custody in the said prison, and there safely keep him until the day of [] instant, and then to have him before this Court at [10 o'clock in the forenoon] of the same day at [] to answer further to the said charge, and to be further dealt with according to law.

(Seal.)

[In cases for trial with Assessors substitute for the words between asterisks * * the following:—And it appears to this Court necessary to remand the said A.B.]

12.

Recognisance of Bail on Adjournment of Hearing, or where Hearing is not at once proceeded with, or instead of remand on an Adjournment of Preliminary Examination, or for Surrender for Trial.

(General Heading.)

We, A.B., of [], [labourer], L.M., of [], [grocer], and N.O., of [], [butcher], come personally before this Court, and severally acknowledge ourselves to owe to our Sovereign Lady Queen Victoria the several sums following, namely, the said A.B. the sum of £ [] sterling, and the said L.M. and N.O. the sum of £ [] sterling each, to be levied on our several goods, if the said A.B. fails in the condition hereon indorsed.

A.B.
L.M.
N.O.

(Seal.)

Condition indorsed.

The condition of the within-written recognisance is as follows:—

The within-bounden A.B. has been charged before this Court for that [as in Summons].

If, therefore, the said A.B. appears * before this Court on [] at [] o'clock, at [] to answer (further) to the said charge, and to be (further) dealt with according to law,* then the said recognisance shall be void, and otherwise shall remain in full force.

(Where the recognisance is for surrender for trial, substitute for the words between asterisks * *, the following:— before [] on [] at [] o'clock, at [] and then and there surrenders himself into the custody of the keeper of the [] prison there, to answer to such charge as may be preferred against him for the offence aforesaid, and take his trial thereon, and not depart from the Court without leave.

13.

Notice of Recognisances to be given to Accused and each of his Sureties.

(General Heading.)

To A.B., of [], (labourer), L.M., of [], (grocer), and N.O., of [], (butcher).

You, A.B., are bound in the sum of £ [] sterling, and you, his sureties, L.M. and N.O., in the sum of £ [] sterling each, that you, A.B., appear before this* Court on the day of [] at [] o'clock, at [] to answer (further) to the charge made against

you by C.D., and to be further dealt with according to law;* and unless you, A.B., do so, the recognisance entered into by you, A.B., L.M., and N.O., will be forthwith levied on your respective goods.

(Seal.)

(Where the recognisance is for surrender for trial, substitute for the words between asterisks * *, words corresponding to the terms of the condition.)

14.

Summary Conviction for a Penalty to be levied by Distress, and in default of a sufficient Distress, Imprisonment; or for a Penalty, and in default of Payment, imprisonment.

(General Heading.)

A.B., of [], (labourer), is this day convicted before this Court for that (state the offence and time and place when and where committed).

And this Court adjudges the said A.B. for his said offence to pay the sum of £ [] sterling (state the penalty, and also the compensation, if any), to be paid and applied according to the [] (and also to pay to the said C.D. the sum of £ [] sterling for his costs in this behalf).

And if the said sums be not paid forthwith (or on or before next), then* this Court orders that the same be levied by distress and sale of the goods of the said A.B.

And in default of sufficient distress,* this Court adjudges the said A.B. to be imprisoned (and to be kept to hard labour) for the space of [] (unless the said sums and all costs and charges † of the said distress (and † of the commitment and conveyance of the said A.B. to prison) be sooner paid.

(Seal.)

(Where the issuing of a distress-warrant would be ruinous to the person convicted and his family, or it appears that he has no goods whereon a distress could be levied, then substitute for the words between the asterisks * * the following:—(inasmuch as it has now been made to this Court that the issuing of a warrant of distress would be ruinous to the said A.B. and his family (or that the said A.B. has no goods whereon the said sums can be levied by distress.)

(Where the conviction is for a penalty, and, in default of payment, imprisonment, omit the words between the asterisks * *, and also the words between the marks † †.)

15.

Warrant of Distress upon Conviction, as that last mentioned, or where the Person convicted is to pay Costs but no Penalty.

(General Heading.)

To X.Y., Police Officer of this Court.

A.B., of [], [labourer], stands convicted before this Court, by a conviction dated the day of [], for that [as in a conviction].

And it is in and by the said conviction adjudged that the said A.B. should,* for his said offence, pay [as in conviction], and should also * pay to the said C.D. the sum of £ [] sterling for his costs in that behalf.

And that if the same should not be paid forthwith [or on or before the day of []], the same should be levied by distress and sale of the goods of the said A.B.

And the said A.B., although required to pay the same according to the said conviction, has not paid the same. Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, that you forthwith make distress of the goods of the said A.B., and if within the space of [] days next after the making of such distress, the said sums, † together with the reasonable charges of the making and keeping of the said distress, be not paid, then that you sell the said goods by you distrained, and pay the money arising thereby into this Court, in order that it may be applied according to law, and that the overplus, if any, may be rendered on demand to the said A.B., and that if no such distress can be found, then you certify the same to this Court, in order that further proceedings may be had according to law.

(Seal.)

[Where the person convicted is to pay costs, but no penalty, omit the words between asterisks * *, and for the word "sums" marked †, read "sum."]

16.

Warrant (on a Conviction for a Penalty) for Commitment of the Person convicted in the first instance without previous Warrant of Distress.

(General Heading.)

To X.Y., Police Officer of this Court, and to the keeper of [] prison at [],

A.B., of [], [labourer], stands convicted before this Court by a conviction dated the day of [], for that [as in conviction].

And it is in and by the said conviction adjudged that the said A.B. should for his said offence, pay [as in conviction], and should also pay to the said C.D. the sum of £ [] sterling for his costs in that behalf.

And that if the said sums should not be paid forthwith [or on or before the day of []], the said A.B. should be imprisoned [and be kept to hard labour], unless the same [and the costs and charges of the conveying of the said A.B. to prison] should be sooner paid.

And the said A.B., being required to pay the said sums according to the said conviction, has not done so.

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, you, the above-named X.Y., to take the said A.B. and convey him to the prison [at []], and there deliver him to the keeper thereof, together with this warrant; and you, the said keeper of the said prison, to receive the said A.B. into your custody in the said prison, and there to imprison him [and keep him to hard labour], for the space of [] (unless the said several sums (and the costs and charges of the conveying of him to the said prison, amounting to the further sum of £ []), be sooner paid.

(Seal.)

17.
Officer's Return if no sufficient Distress to be indorsed on the Warrant.
(General Heading.)

I, X.Y., of [] Police Officer of this Court, do hereby certify to this Court that, by virtue of the within-written warrant, I have made diligent search for the goods of the within-named A.B., and that I can find no sufficient goods of the said A.B. whereon the sums within-mentioned can be levied.
X.Y.

18.
Warrant of Commitment for Want of Distress.
(General Heading.)

To X.Y., Police Officer of this Court, and to the keeper of [] prison at [].
(Proceed as in warrant of distress,—Form 52,—down to the commencement of the commanding part, and then thus:—)
And on the [] day of [] 18, this Court issued a warrant to you, the above-named X.Y., commanding you to levy the said sum of £ [] and £ [] (or the said sum of £ [] for costs) by distress and sale of the goods of the said A.B.
And it now appears to this Court, as well by the return of you, the said X.Y., to the said warrant, as otherwise, that you have made diligent search for the goods of the said A.B., but that no sufficient distress whereon the said sums could be levied could be found.
Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, you, the said X.Y., to take the said A.B., and convey him safely to the prison at [], and there deliver him to the keeper thereof, together with this warrant, and you, the said keeper of the said prison, to receive the said A.B. into your custody in the said prison, and there to imprison him (and keep him to hard labor), for the space of [], unless the said sums (or sum), and all the costs and charges of the said distress (and of the commitment and conveying to the said prison of the said A.B.), amounting to the further sum of £ [], be sooner paid.
(Seal.)

19.
Summary Conviction where the Punishment is Imprisonment and no Penalty.
(General Heading.)

A.B., of [] (labourer), is this day convicted before this Court for that [state the offence, and the time and place when and where committed].
And this Court adjudges the said A.B. for his said offence to be imprisoned and to be kept to hard labour for the space of [].
[And this Court also adjudges the said A.B. to pay to the said C.D. the sum of £ [] sterling for his costs in this behalf. And if the same be not paid forthwith [or on or before next], then * this Court orders that the same be levied by distress and sale of the goods of the said A.B.]
And in default of sufficient distress * this Court adjudges the said A.B. to be imprisoned [and to be kept to hard labour] for the space of [], to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs be sooner paid.]
(Seal.)

[Where the issuing of a distress warrant would be ruinous to the person convicted and his family, or it appears that he has no goods whereon a distress could be levied, then substitute for the words between the asterisks * the following:—]
Inasmuch as it has now been made to appear to this Court that the issuing of a warrant of distress in this behalf would be ruinous to the said A.B. and his family [or that the said A.B. has no goods whereon the said sum could be levied by distress].

20.
Warrant of Commitment on a Conviction as that last mentioned.
(General Heading.)

To X.Y., Police Officer of this Court, and the Keeper of [] prison at [].
A.B., of [] (labourer), stands convicted before this Court, by a conviction dated the [] day of [], for that [as in conviction].
And it is in and by the said conviction adjudged that the said A.B. for his said offence should be imprisoned and be kept to hard labour for the space of [].
Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, you the above-named X.Y., to take the said A.B., and convey him to the said prison, and there deliver him to the keeper thereof, together with this warrant; and you, the said keeper of the said prison, to receive the said A.B. into your custody in the said prison, and there to imprison him [and keep him to hard labour] for the space of [].
(Seal.)

21.
Order of Dismissal of Charge.
(General Heading.)

A.B., of [] (labourer), was on the [] day of [], charged before this Court for that [as in summons or warrant].
And now both the said parties appear before this Court in order that it may hear and determine the said charge [or the said A.B. appears before this Court, but the said C.D., although duly called, does not appear].
Whereupon, the matter of the said charge being by this Court duly considered, * it manifestly appears to this Court that the said charge is not proved, and * this Court dismisses the same.
And adjudges that the said C.D. do pay to the said A.B. the sum of £ [] sterling for his costs in this behalf, and if the same be not paid forthwith [or on or before []], this Court orders that the same be levied by distress and sale of the goods of the said C.D.; and in default of sufficient distress, this Court adjudges the said C.D. to be imprisoned in [] prison at [], (and there be kept to hard labour), unless the same sum and all costs and charges of the said distress (and of the commitment and conveying to the said prison of the said C.D.) be sooner paid.
(Seal.)
(Where the person making the charge does not appear at the hearing the words between asterisks * may be omitted.)

22.
Certificate of Dismissal of Charge to be given to Accused.
(General Heading.)

This is to certify that a charge made on the ([]) day of ([]) by C.D., of [] (labourer), against A.B., of [] (labourer), for that [as in summons or warrant], is now considered by this Court, and is by this Court dismissed (with costs).
(Seal.)

23.
Warrant of Distress for Costs to be paid by the Person making the Charge on an Order for Dismissal of the Charge.
(General Heading.)

To X.Y., Police Officer of this Court.
A.B., of [] (labourer), was on the [] day of [] 18, charged before this Court for that [as in summons or warrant].
And afterwards, namely, on the [] day of [] 18, both parties appeared before this Court in order that it should hear and determine the said charge [or the said A.B. appeared before this Court, but the said C.D., although duly called, did not appear], and thereupon the matter of the said charge being duly considered by this Court, * and it manifestly appearing to this Court that the said charge was not proved, * this Court did dismiss the same, and adjudge that the said C.D. should pay to the said A.B. the sum of £ [] sterling, for his costs in that behalf, and that if the said sum should not be paid forthwith [or on or before []], then the same should be levied by distress and sale of the goods of the said C.D.
And the said C.D., although required to pay the same according to the said order, has not paid the same.
Therefore you are hereby commanded—
(Proceed as in the commanding part of the Form of warrant of distress upon conviction, where the person convicted is to pay costs but no penalty (Form 15), only substituting the name of C.D., the prosecutor, for the name of A.B., the accused, and for the word "sums" at the mark † read "sum.")
(Seal.)

24.
Warrant of Commitment for Want of Distress in the last case.
(General Heading.)

To X.Y., Police Officer of this Court, and to the Keeper of [] prison at [].
(Proceed as in last Form down to the commencement of the commanding part, and then thus:—)
And on the [] day of [] 18, this Court issued a warrant to you, the above-named X.Y., (proceed as in Form 23, only substituting the name of C.D., the prosecutor, for the name of A.B., the accused).
(Seal.)

25.
Depositions and Statement of Accused, on Preliminary Examination, where Trial to be before Court or Supreme Court.
(General Heading.)

A.B., of [] (labourer), stands charged before this Court for that he [as in summons].
And in the presence and hearing of the said A.B., C.D., of [] (labourer), and E.F., of [] (labourer), depose on oath as follows:—
First, the said C.D. says as follows:—[state the deposition of the witness as nearly as possible in the very words he uses. When his deposition is complete let him sign it].
Secondly, the said E.F. says as follows:—[state his deposition in same manner].
And the charge having been read to the said A.B., and C.D. and E.F., witnesses for the prosecution, having been severally examined in his presence and hearing, and their respective depositions having been read over to him, the said A.B. says as follows:—[state whatever the accused says, and as nearly as possible in the very words he uses. Get him to sign the statement, if he will].
A.B.
(Seal.)

26.
Depositions and Statement of Accused, on Preliminary Examination, where Trial not to be before Court or Supreme Court.

[As in Form 25 down to beginning of last paragraph, and then thus:—]
And the said charge having been read to the said A.B., and C.D. and E.F., witnesses for the prosecution, having been severally examined in his presence and hearing, and their respective depositions having been read over to the said A.B., these words are now said to the said A.B. by this Court, namely:
Having heard the evidence, do you wish to say anything in answer to the charge? You need not say anything unless you wish. You have nothing to hope from any promise of favour, and nothing to fear from any threat held out to you, to make any admission or confession. Whatever you say will be written down, and may be given in evidence against you.
Whereupon the said A.B. says as follows:—[state whatever the accused says, and as nearly as possible in the very words he uses. Get him to sign the statement, if he will].
A.B.
(Seal.)

27.
Order and Charge for Trial before the Court with Assessors.
(General Heading.)

This Court orders that A.B., of [] (labourer), be put on his trial before this Court with Assessors on the following charge (that is to say):—
For that he the said A.B. (state charge as appearing after investigation to be sustainable on the evidence).
(Seal.)

28.
Warrant of Commitment of Accused for Trial, before Court or Supreme Court, on conclusion of Preliminary Examination.

(General Heading.)

To X.Y., Police Officer of this Court, and to the Keeper of the prison at (),
(This Court has ordered that A.B., of (), be put on his trial (as in Form 27).)

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, you, the above-mentioned X.Y., to convey the said A.B. to the above-mentioned prison, and there to deliver him to the keeper thereof, together with this warrant; and you the said keeper of the said prison to receive the said A.B. into your custody in the said prison, and there safely keep him till he shall be thence delivered by due course of law. (Seal.)

29.
Warrant of Commitment of Accused for Trial, not before Court or Supreme Court, on conclusion of Preliminary Examination.

(General Heading.)

To X.Y., Police Officer of this Court, and to the Keeper of the prison at (),
A.B., of (), (labourer), stands charged before this Court, on the oath of (), and others, for that (as in summons).
Therefore (proceed as in Form 28).

30.
Recognizance to prosecute or give Evidence.
(General Heading.)

C.D., of (), (labourer), comes personally before this Court, and acknowledges himself to owe to Our Sovereign Lady Queen Victoria the sum of £ sterling to be levied on his goods if he fails in the condition herein indorsed.
(Signed) C.D.
(Seal.)

Condition indorsed.

The condition of the within-written recognizance is as follows:—

This Court has ordered that A.B., of (), (labourer), be put on his trial (as in Form 27).

Or, A.B., of (), (labourer), stands charged before this Court (as in Form 29).

If, therefore, the within-named C.D. appears before this Court (or as the case may be) on () at (), * and then and there prosecutes the charge (and gives evidence thereon) * then the said recognizance shall be void, and otherwise shall remain in full force.

(Where the recognizance is only to give evidence, substitute for the words between the asterisks * the following :) and then and there gives evidence on the said charge.

31.
Notice of Recognizance to be given to Prosecutor and each of his Witnesses.
(General Heading.)

To C.D., of (), (labourer).
You are bound in the sum of £ sterling to appear before this Court on (), at () and then and there to prosecute and give evidence against (or to prosecute, or to give evidence against) A.B., of (), (labourer), and unless you do so, that sum will be forthwith levied by seizure and sale of your goods.
(Seal.)

32.
Commitment of Witness for refusing to enter into Recognizance.
(General Heading.)

To X.Y., Police Officer of this Court, and to the Keeper of () prison at ().
C.D., of (), (labourer), has been charged before this Court for that (as in Summons).

And E.F., of (), (labourer), having been now examined before this Court concerning the said charge, and being required, refuses to enter into a recognizance to give evidence against the said C.D.

Therefore you are hereby commanded, in the name of Her Majesty Queen Victoria, you, the above-named C.D., to take the said E.F., and convey him safely to the above-named prison, and there deliver him to the keeper thereof, together with this warrant.

And you, the keeper of the said prison, to receive the said E.F. into your custody in the said prison, and to keep him there safely until after the trial of the said C.D. for the said offence, unless the said E.F. in the meantime consents to enter into such recognizance as aforesaid.
(Seal.)

33.
Order of Prohibition by High Commissioner.
Whereas it has been shown by evidence on oath to my satisfaction that E.F. of (), a British subject, is disaffected to Her Majesty's Government (or has committed or is about to commit an offence against the Pacific Islanders Protection Acts, 1872 and 1875, or is dangerous to the peace and good order of the Western Pacific Islands). Now, therefore, I do hereby prohibit the said E.F. from being in the Western Pacific Islands within the following limits, that is to say (specify limits), during (specify time) from the date of this Order.
Given at (), 18 , under my hand and official seal, this day of ().
(Signature and Seal.)

II.—CIVIL (IN GENERAL).

34.
Writ of Summons.
General Heading.
To C.D., of (), the above-named defendant.
You are hereby commanded in the name of Her Majesty Queen Victoria, to attend this Court on (Thursday), the day of 18 , at (ten) o'clock in the forenoon, being the day and hour appointed for the hearing of an action brought

against you by the above-named plaintiff, A.B., of (), the particulars of the claim being stated below.

If you fail to attend according to this summons, the plaintiff may proceed, and the Court may give judgment in your absence. (Seal.)

Particulars of Claim.

The plaintiff's claim is—

(To recover £ for the price of goods sold.)

(To recover £ for the use and occupation of a House.)

(To have an account taken of the partnership dealings between the plaintiff and defendant, and to have the affairs of the partnership wound up.)

(For damages for negligence in the custody of goods, and for wrongful detention thereof.)

(As executor—or administrator—of K.L., late of deceased, for ().)

(Against the defendant as executor—or administrator—of M.N., late of deceased, for ().)
(Or as the case may be.)
(Print on Form.)

NOTE.—The Registrar of the Court may fill up the particulars if the plaintiff requests him to do so.

Indorsements on Writ of Summons.
In Her Britannic Majesty's High Commissioner's Court for the Western Pacific.

B. v. D.

Writ of Summons

with

Particulars of Claim.

Issued under the Western Pacific Order in Council, 1876, Art. For hearing on (Thursday), the day of 18 , at 10 o'clock in the morning.

Served by () on the within-named C.D., on (Thursday), the day of (), o'clock at (), personally (or as the case may be).

(Signature of officer effecting service.)
Returned into the Registrar's office on the same day (or as the case may be), at o'clock in the noon.
(Signature of Registrar.)
(Print on Form.)

NOTE.—This should be filled up forthwith after service, by the officer effecting it.

NOTE.—The return should be made forthwith after service.

35.
Form of Cause Book.
Suits in the year 18

Appeal.	
Review.	
Return of Execution.	
Particulars of Execution ordered.	
Date of Appeal, Judgment on Appeal.	
Date of Hearing, Judgment.	
Particulars of Claim.	
Name, Description, and Place of Abode of Defendant.	
Name, Description, and Place of Abode of Plaintiff.	
Date of Writ.	
No. of Suit.	

36.

Notice of Payment into Court.
General Heading.

To
Take notice that the defendant has paid into Court £
and says that that sum is enough to satisfy your claim (or your
claim for)
(Seal.)

37.

Acceptance of Sum paid into Court.
General Heading.

To
Take notice that the plaintiff accepts the sum of £
paid by you into Court in satisfaction of the claim in respect
of which it is paid in.
Seal.

38.

Notice to admit Documents.
General Heading.

To
Take notice that the plaintiff or defendant in this action pro-
poses to adduce in evidence the documents specified in the
schedule hereto, and that the same may be inspected by you, or
your solicitor or agent, at , on , between
the hours of ; and you are hereby required, within
forty-eight hours from the last-mentioned hour, to admit that
such of the said documents as are specified to be originals were
respectively written, signed, or executed as they purport to
have been; that such as are specified as copies are true copies;
and that such as are stated to have been served, sent, or de-
livered, were so served, sent, or delivered; saving all just ex-
ceptions to the admissibility of the said documents in evidence.
Seal.

Here describe the documents in a Schedule.

39.

Affidavit as to Documents.
General Heading.

I, the above-named defendant C.D., make oath and say as
follows:—

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.
2. I object to produce the documents set forth in the second part of the first schedule hereto.
3. State upon what grounds the objection is made, and verify the facts as far as may be.
4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.
5. The last-mentioned documents were last in my possession or power on state when.
6. State what has become of the last-mentioned documents, and in whose possession they now are.
7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

Jurat.

Schedules.

40.

Notice to produce Documents for Inspection.
General Heading.

To
Take notice that the plaintiff or defendant requires you to produce for his inspection the following documents referred to in your affidavit, dated the day of or as the case may be.

Describe documents required.

Seal.

41.

Notice to inspect Documents.
General Heading.

To
Take notice that you can inspect the documents mentioned in your notice of the day of (or, except the deed numbered in that notice, or as the case may be) at the office of () on Thursday next the instant, between the hours of 12 and 4 o'clock.
Or, that the (plaintiff or defendant) objects to give you inspection of the documents mentioned in your notice of the day of on the ground that (state the ground).

42.

Writ summoning Person to be Witness.
General Heading.

To
You are hereby commanded in the name of Her Majesty Queen Victoria to be before this Court at , on the day of at o'clock in the forenoon, to give your testimony in this action (and you are required to bring with you, specify documents).
Seal.

43.

Judgment and Order at Trial.
General Heading.

This action coming on for trial (the day of and) this day, before , in the presence of counsel for the plaintiff and the defendants (or if some of the defendants do not appear, for the plaintiff and the defendant C.D., no one appearing for the defendants E.F., and G.H.), this Court, on hearing the evidence, and what was alleged by counsel on both sides, declares
And the Court orders and adjudges

44.

Writ of Seizure and Sale.
General Heading.

To
You are hereby commanded in the name of Her Majesty Queen Victoria that of the goods of C.D. in the district of this Court you cause to be made the sum of £ per annum from the day of * which said sum of money and interest were lately in this Court in this action, by order dated the day of , ordered to be paid by the defendant C.D. to E.F. And that of those goods you further cause to be made the sum of £ for costs in the said order mentioned, which costs have been taxed and allowed by this Court at the sum of £ together with interest thereon at the rate of per centum per annum from the day of * and that you have that money and interest before this Court immediately after the execution hereof. And that in what manner you shall have executed this writ, you make appear to this Court immediately after the execution thereof. And that you have there then this writ.
Seal.

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

45.

Writ of Attachment of Debts and other Property in hands of Third Person.
General Heading.

To
You are hereby commanded in the name of Her Majesty Queen Victoria to appear before this Court on the day of , at 10 o'clock in the forenoon, to be examined touching the property of the above-named C.D., which may have been attached in your hands by virtue of this writ.
And to take notice that, from the time of the service on you of this writ of attachment, all property whatsoever within the district of this Court, other than lands, or any interest therein, to which the said C.D. is beneficially entitled, whether solely or jointly with others, and which at the time of the service of this writ, or at any time before the same is discharged, is or shall be in your custody or under your control, and all debts due or accruing due by you to him at or during such time as aforesaid, are (subject to Crown debts, and to any prior title thereto, and to any lien or charge thereon) respectively attached in your hands to satisfy the claim of the above-named C.D.; and that if, without leave of this Court at any time after the service of this writ, and before the same is discharged, you knowingly and wilfully part with the custody or control of any property so attached, or remove the same out of the district of this Court, or sell or dispose of the same, or pay over any debt due by you to the said C.D., except only to or to the use of the said A.B., you will be liable to attachment, and to pay such damages to the said A.B. as this Court shall award.
Seal.

46.

Writ of Arrest and Imprisonment.
General Heading.

Whereas C.D., the above-named defendant, has failed to point out sufficient goods and lands within the district of this Court to satisfy the order made against him in this suit on the day of . You are therefore hereby commanded, in the name of Her Majesty Queen Victoria, forthwith to take and arrest the body of the said C.D., and him safely to lodge in the Debtors' Prison at (or as the case may be), there to remain for one year, unless he is sooner discharged by order of this Court.
Seal.

47.

Summons for Discharge of Prisoner for Debt.
General Heading.

To A.B., the above-named plaintiff.
You are hereby summoned to appear before this Court on the day of , at the hour of in the forenoon, to show cause why C.D., the above-named defendant, should not be discharged from imprisonment under the Writ issued in this suit on the day of
Seal.

48.

Writ of Delivery.
General Heading.

To
You are hereby commanded, in the name of Her Majesty Queen Victoria, that, without delay, you do seize and deliver or cause to be returned to the above-named plaintiff A.B. the following goods, that is to say (*here enumerate the goods for the return of which execution has been ordered to issue*), which lately in this Court the above-named defendant C.D. was ordered to deliver to the said A.B.

Seal.

49.

Writ of Sequestration.
General Heading.

To (*names of not less than two Commissioners*).
Whereas by an order of this Court made in this action, dated the day of 187 , it was ordered that the said C.D. should (pay into Court to the credit of the said action the sum of £ , or as the case may be). Know ye, therefore, that this Court, in confidence of your prudence and fidelity, hereby in the name of Her Majesty Queen Victoria, gives to you full power and authority, and commands you, to enter on all the lands whatsoever of the said C.D. within the district of the said Court, and to collect, receive, and sequester into your hands not only all the rents and profits thereof, but all his goods whatsoever, and to keep the same under sequestration in your hands until this Court makes order to the contrary.

Seal.

50.

Order to arrest absconding Defendant.
General Heading.

To
Whereas it has been shown to this Court that C.D., the above-named defendant, is about to abscond, you are therefore hereby commanded, in the name of Her Majesty Queen Victoria, to take and arrest the body of the said C.D., and him to deliver to the Keeper of the Debtors' Prison (*or as the case may be*), there to be kept until this Court makes order to the contrary. And also, forthwith after the execution of this writ, to return the same into this Court, with the place, time, and mode of execution indorsed thereon.

Seal.

51.

Bail Bond.
General Heading.

Know all men by these presents that we, C.D., of E.F., of , and G.H., of , are held and firmly bound to I.J., Esq., one of Her Britannic Majesty's Deputy Commissioners for the Western Pacific, in the sum of £ , sterling, to be paid to him or his successor in office for the time being, for which payment we bind ourselves, and each of us for himself, in the whole, our and every of our heirs, executors, and administrators, firmly by these presents, sealed with our seals.

C.D. Seal.
E.F. Seal.
G.H. Seal.

Sealed and delivered in the presence of

The condition of this bail bond is such that if the above-bounden C.D. appears before this Court at any time when called on, while this suit is pending, and until execution or satisfaction of any order made against him therein, then this bond shall be void, and otherwise shall remain in full force.

Seal of Court.

52.

Order to attach Property before Judgment.
General Heading.

To
Whereas it has been shown to this Court that the above-named defendant C.D., with intent to obstruct or delay the execution of any order to be obtained or already obtained against him, is about to remove out of the district of this Court his goods or part thereof: You are, therefore, hereby commanded, in the name of Her Majesty Queen Victoria, to seize, attach, and take into your hands his goods (*or certain goods specified*), and to hold the same until the further order of this Court; and also forthwith, after the execution of this writ, to return this writ into this Court, with the place, time, and mode of execution indorsed thereon.

Seal.

III.—PROBATE AND ADMINISTRATION.

53.

To be required when there is not a formal and regular attestation clause.
Affidavit of Attesting Witness in Proof of due Execution of Will or codicil dated after 31 December 1837.
General Heading.

I, C.D., of , make oath and say that I am one of the subscribing witnesses to the last Will (*or Codicil, as the case may be*) of A.B., late of , deceased, the same being now hereto annexed, bearing date , and that the testator executed the said Will (*or Codicil*) on the day of the date thereof, by signing his name at the foot or end thereof (*or in the testimonium clause thereof, or in the attestation clause thereto, as the case may be*), and the same now appears thereon (*), in the presence of me and of , the other subscribing witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said Will (*or Codicil*) in the presence of the testator.

C.D.

Jurat.

* If the signature is in the testimonium clause or attestation clause, insert "intending the same for his final signature to his will."

54.

Oath for Executor.
(General Heading.)

I, C.D., of , make oath and say as follows:—
1. I believe the paper writing (*or the paper writings*) hereto annexed and marked by me (*) to contain the true and original last Will (*or last Will with Codicils*) of A.B., late of , deceased.
2. I am the sole executor (*or one of the executors*) therein named (*or executor according to the tenour thereof, executor during life, executrix during widowhood, or as the case may be*).
3. I will faithfully administer the personal property of the testator by paying his just debts and the legacies given by his Will (*or Will and Codicils*), so far as his personal property shall extend and the law bind me.
4. I will exhibit an inventory, and render an account of my executorship, whenever lawfully required.
5. The testator died at , on the day of , 18 .
6. At the time of his death he had his fixed place of abode at within the district of this Court.
7. The whole of his personal property does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

C.D.

(Jurat.)

* Each testamentary paper to be marked by the persons sworn and the person administering the oath.
Where more executors than one are appointed, and all are not sworn, a memorandum should be made in the margin of the oath that power is to be reserved to the other executors or executor, or that they have or he has renounced.

55.

Oath for Administrator with Will Annexed.
(General Heading.)

I, C.D., of , make oath and say as follows:—
1. I believe the paper writing (*or paper writings*) hereto annexed, and marked by me (*) to contain the true and original last Will (*or last Will with Codicils*) of A.B., late of , deceased.
2. The executor therein named is dead without having taken probate thereof (*or as the case may be*).
3. I am the residuary legatee in trust named therein (*or as the fact may be*).
4. I will faithfully administer the personal property of the testator, by paying his just debts and the legacies given by his Will (*or Will and Codicils*), so far as his personal property shall extend and the law bind me, and distributing the residue of his personal property according to law.
5. I will exhibit an inventory and render an account of my administration whenever lawfully required.
6. The testator died at , on the day of , 18 .
7. At the time of his death he had his fixed place of abode at within the jurisdiction of this Court.
8. The whole of his personal property does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

C.D.

(Jurat.)

* Each testamentary paper is to be marked by the persons sworn and the person administering the oath.

56.

Oath for Administrator (not with Will Annexed).
(General Heading.)

I, C.D., of , make oath and say as follows:—
1. A.B., late of , deceased, died intestate, a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece.
2. I am his lawful cousin german, and one of his next of kin (*this must be altered in accordance with the circumstances of the case*).
3. I will faithfully administer the personal property of the deceased, by paying his just debts, and distributing the residue of his property according to law.
4. I will exhibit an inventory and render an account of my administration whenever lawfully required.
5. The deceased died at , on the day of , 18 .
6. At the time of his death he had his fixed place of abode at within the district of this Court.
7. The whole of his personal property does not amount in value to the sum of pounds, to the best of my knowledge and belief.

C.D.

(Jurat.)

57.

Probate.
(General Heading.)

Be it known, that on the day of , 18 , the last Will (*or the last Will with Codicils*) (a copy whereof is hereto annexed) of A.B., late of , deceased, who died on at the time of his death had his fixed place of abode at within the jurisdiction of this Court, was proved and registered in this Court: and that the administration of the personal property of the said deceased was granted by this Court to C.D., the sole executor (*or as the case may be*) named in the said Will, he having been first duly sworn.

(Seal.)

58.

Letters of Administration with Will Annexed.
(General Heading.)

Be it known, that A.B., late of , deceased, who died on the day of , at , and who had at the time of his death his fixed place of abode at within the district of this Court, made and duly executed his last Will (*or his last Will with Codicils*) thereto, and did therein name (*according to the facts*).
And be it further known that on the day of , 18 , Letters of Administration with the said Will (*and Codicils*) annexed of the personal property of the deceased were granted by this Court to C.D. (*insert the character in which the grant is taken*), he having been first duly sworn.

(Seal.)

59.

Letters of Administration (not with Will Annexed).
(General Heading.)

Be it known, that on the day of , 18 , Letters of Administration of the personal property of A.B., late of , deceased, who died on at the time of his death his fixed place of abode at within the district of this Court, were granted by this Court to C.D. of , the widow (*or as the case may be*) of the said intestate, she having been first duly sworn.

(Seal.)

Sworn under & that the Testator died on or about the day of 18 .
To be written in margin.

60.
Double Probate.
(General Heading.)

Be it known, that on the day of 18, the last Will [with Codicils] of A.B., late of deceased, who died on at, and who at the time of his death had his fixed place of abode at, within the district of this Court, was proved and registered in this Court, and that administration of his personal property, and any way concerning his Will, was granted by this Court to C.D., one of the executors named in the said Will [or Codicil], he having been first duly sworn, power being reserved of making the like grant to E.F., the other executor named in the said Will. And be it further known, that on the day of 18, the said Will of the said deceased was also proved in this Court, and that the like administration was granted by this Court to the said E.F., he having been first duly sworn.

(Seal.)

Former grant, January 18, under the same sum.

61.
Letters of Administration of Goods not already Administered.
(General Heading.)

Be it known, that A.B., late of deceased, died on 18, at, intestate, and had at the time of his death his fixed place of abode at, within the district of this Court, and that since his death, namely, on the day of 18, Letters of Administration of his personal property were granted by this Court to C.D. [insert the relationship or character of administrator] (which Letters of Administration now remain on record in this Court), who, after taking such administration upon him, partly administered the personal property of the deceased, and afterwards, namely, on the day of 18, thereof undistributed, and that on the day of 18, Letters of Administration of the personal property so left undistributed were granted by this Court to, he having been first duly sworn.

(Seal.)

62.
Administration Bond.
(General Heading.)

Know all men by these presents that we, A.B., of C.D., of and E.F., of, are jointly and severally bound unto G.H., Her Britannic Majesty's High Commissioner for the Western Pacific, in the sum of pounds sterling, to be paid to the said G.H., or his successor in office for the time being, for which payment we bind ourselves and each of us, for the whole, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the day of 18.

A.B. (L.S.)
C.D. (L.S.)
E.F. (L.S.)

The condition of the above-written obligation is such, that if the above-named E.F., the intended administrator of the personal property of A.B., late of deceased, who died on the day of 18, undistributed by, do make a true and perfect inventory of the personal property of the deceased (so left undistributed), which has or shall come into [his] possession, or into the possession of any person for [him], and the same so made to exhibit into this Court whenever required by law so to do; and the same personal property and all other the personal property of the deceased, which shall at any time after the making and exhibition of such inventory, come into the possession of the said E.F., or of any person for [him], do well and truly administer according to law; (that is to say) do pay the debts which the deceased owed at [his] death, and all the residue of the said personal property do deliver and pay to such person or persons as shall be entitled thereto; and further, do make a true and just account of [his] administration whenever lawfully required; and in case it shall hereafter appear that any will was made by the deceased, and the executor or executors therein named do exhibit the same for probate, then if the said E.F., being thereunto required, do duly render and deliver up the letters of administration granted to him, then this obligation shall be void, and otherwise shall remain in full force.

Signed, sealed, and delivered before this Court.

(Seal of Court.)

63.
Administration Bond for Administrator with Will Annexed.
(General Heading.)

Know all men by these presents that we, A.B., of C.D., of and E.F., of, are jointly and severally bound unto G.H., Her Britannic Majesty's High Commissioner for the Western Pacific, in the sum of pounds sterling, to be paid to the said G.H., or his successor in office for the time being, for which payment we bind ourselves and each of us, for the whole, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the day of 18.

A.B. (L.S.)
C.D. (L.S.)
E.F. (L.S.)

The condition of the above-written obligation is such that if the above-named E.F., the intended administrator with will annexed of the personal property of A.B., late of deceased, who died on the day of 18, do make a true and perfect inventory of the personal property of the deceased (left undistributed by), which has or shall come into [his] possession, or into the possession of any person for [him], and the same so made to exhibit into this Court whenever required by law so to do; and the same personal property (so left undistributed) and all other the personal property of the deceased, which shall at any time after the making and exhibition of such inventory, come into the possession of the said E.F., or of any person for [him], do well and truly administer (that is to say), do pay the debts which the deceased owed at [his] death, and then the legacies given by the said will annexed to the said Letters of Administration, as far as such personal property will extend, and the law bind [him], and all the residue of the said personal property shall deliver and pay unto such person or persons as shall be by law entitled thereto, and further, do make a true and just account of [his] said administration whenever lawfully required, then this obligation shall be void, and otherwise shall remain in full force.

Signed, sealed, and delivered before this Court.

(Seal of Court.)

64.
Declaration of the Personal Property of a Testator or an Intestate.
(General Heading.)

A true declaration of all the personal property of A.B., late of deceased, who died on the day of 18, at, and had at the time of his death his fixed place of abode at, within the district of this Court, which have at any time since his death come to the possession or knowledge of C.D., the administrator, with the will annexed of the said A.B. (or administrator, as the case may be), made and exhibited upon and by virtue of the oath [or solemn affirmation] of the said C.D., as follows:—

First, I declare that the deceased was at the time of his death possessed of or entitled to ...

[The details of the deceased's property must be here inserted and the value inserted opposite to each particular.]

Lastly, I say that no personal property of the deceased has at any time since his death come to my possession or knowledge, save as is hereinbefore set forth.

On the day of 18, the said C.D. was duly sworn to [or solemnly affirmed] the truth of the above-written inventory.
Before me [person authorised to administer oaths].

65.
Justification of Sureties.
(General Heading.)

We, C.D., of, and E.F., of, severally make oath and say that we are the proposed sureties in the penal sum of pounds, on behalf of G.H., the intended administrator of the personal property of A.B., late of deceased, for his faithful administration thereof; and I, the said C.D., for myself, make oath and say, that I am, after payment of all my debts, well and truly worth in money and effects the sum of pounds, and I, the said E.F., for myself, make oath and say, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Sworn by the deponents, C.D., and E.F., at, this day of 18.
Before me, G.H.

A.B.
C.D.

66.
Renunciation of Probate and Administration with Will annexed.
(General Heading.)

Whereas A.B., late of deceased, died on the day of 18, at, having at the time of his death his fixed place of abode at, within the district of this Court; and whereas he made and duly executed his last will, dated the day of 18, * and thereof appointed C.D. executor and residuary legatee in trust [or as the case may be].

Now, I the said C.D., do hereby declare, that I have not intermeddled in the personal property of the deceased, and will not hereafter intermeddle therein, with intent to defraud creditors, or any person interested in the administration or distribution of the property of the deceased, and further do hereby expressly renounce all right to probate of the said Will [and Codicils, if any], and to administration with the said Will [and Codicils, if any] annexed, of the personal property of the deceased.

In witness whereof I have hereto set my hand and seal, the day above written.

Signed, sealed, and delivered by the above-named C.D., in the presence of C.D. (L.S.)

G.H.

* If there are codicils, their dates should be also inserted.

67.
Renunciation of Administration.
(General Heading.)

Whereas A.B., late of deceased, died on the day of 18, at, intestate, a widower, having had at the time of his death his fixed place of abode at, within the jurisdiction of this Court; and whereas I, C.D., of, am his lawful child, and his only next of kin [or as the case may be];

Now I, the said C.D., do hereby declare that I have not intermeddled in the personal property of the deceased, and further do hereby expressly renounce all right to administration thereof.

In witness whereof I have hereto set my hand and seal, the day above written. C.D. (L.S.)

G.H.

68.
Order to a Person to bring in a Paper purporting to be Testamentary.
(General Heading.)

To C.D., of
Whereas it appears by an affidavit filed in this Court on the day of 18, and made by of, that a certain original paper, being or purporting to be testamentary, namely [here describe the paper], bearing date the day of 18, is now in your possession or under your control;

Now this is to command you, in the name of Her Majesty Queen Victoria, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in this Court the said original paper, or in case the said original paper be not in your possession or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in this Court an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said paper.

(Seal.)

69.
Affidavit of handwriting.
General Heading.

I, A.B., of, make oath and say, I knew and was well acquainted with C.D., late of deceased, who died on the day of 18, at, for many years before and down to his death, and that during that time I have frequently seen him write and sign his name, whereby I have become well acquainted with his handwriting and signature, and having now with care and attention inspected the paper writing hereto annexed, purporting to be the last Will of the said C.D., beginning thus, ending thus, dated the day of 18, and signed thus, C.D., I say that I believe (the whole body and contents of the said Will, together with) the signature C.D. thereto, to be of the handwriting of the said C.D., deceased.

(Jurat.)

A.B.

70.
Affidavit of Finding and Condition of Will.
General Heading.

I, G.H., of, make oath and say as follows:

1. I am the sole executor named in the paper writing hereto annexed, purporting to be the last Will of E.F., late of deceased (who died on the day of 18, and had at his death his fixed place of abode at, within the jurisdiction of this Court), the said Will bearing date the day of 18, beginning thus, ending thus, and being signed thus, E.F.

2. (Here describe the finding of the Will, and the various obliterations, interlineations, erasures, and alterations—if any,—and the general condition of the Will, and state any other matters requiring to be accounted for, and clearly trace the Will from the possession of the deceased in his lifetime up to the time of the making of this Affidavit.)

3. The same paper writing is now in all respects in the same condition as when found, (or as the case may be).

(Jurat.)

G.H.

71.

Affidavit of Search.
General Heading.

I, E.F., of _____, make oath and say as follows :
1. I am the sole executor named in the paper writing hereto annexed, purporting to be the last Will of C.D., late of _____ deceased (who died on the _____ day of _____ 18____, at _____, and had at the time of his death his fixed place of abode at _____ within the district of this Court), the said Will beginning thus _____ ending thus _____, and being signed thus, C.D.
2. Referring particularly to the fact that the blank spaces originally left in the said Will for the insertion of the day and the month of the date thereof have never been supplied (or that the said Will is without date, or as the case may be), I further say that I have made inquiry of (E.F., the solicitor of the said deceased), and that I have also made diligent and careful search in all places where the deceased usually kept his papers of moment, in order to ascertain whether he had or had not left any other Will, but that I have been unable to discover any other Will.
3. I believe that the deceased died without having left any Will, Codicil, or Testamentary Paper whatever other than the said Will by me hereinbefore deposed to.
(Jurat.) E.F.
This form of affidavit is to be used when it is shown by affidavit that neither the subscribing witnesses nor any other person can depose to the precise time of the execution of the Will.

72.

Notice to Prohibit Grant of Probate or Administration.
General Heading.

To _____
Let nothing be done in the matter of A.B., late of _____ deceased, who died on the _____ day of _____, at _____, and had at the time of his death his fixed place of abode at _____ within the district of this Court, without warning being given to C.D., of _____, (or to E.F., of _____ the Solicitor of G.H., of _____).
(Seal.)

73.

Warning to Persons filing Notice to Prohibit Grant.
General Heading.

To C.D., of _____, (or to E.F., of _____, Solicitor G.H., of _____).
You are hereby warned, within six days after the service of this warning upon you, inclusive of the day of such service, to come to this Court, and to file therein an affidavit setting forth your (or your client's) interest in this matter; and in default of your so doing this Court will proceed to all such acts and things as shall be needful to be done in this matter.
NOTE.—This warning is issued at the instance of R.S., of _____ (here state what interest R.S. has, and, if under a will or codicil, state its date).
(Seal.)

74.
List of Probates and Administrations.
General Heading.
The (1st) day of (August) 18 (78).
List of Probates and Administrations granted by this Court up to the 1st day of July 18 (78), and not included in any previous List.

Date of Grant.	Name in full of Deceased.	His or her Business, Profession, or other Description.	Place of his or her Death.	Time of his or her Death.	Name and Description of each Executor or Administrator, or Administration.	Value of the Personal Estate and Property.

Signed _____ A.B.,
One of Her Britannic Majesty's Deputy Commissioners for the Western Pacific.

Seal.

WESTERN AUSTRALIA.

CIRCULAR.

Downing Street,

24th September, 1879.

SIR,—I have the honor to transmit to you for your information copies of an order of Her Majesty in Council, dated the 14th day of August, 1879, amending the Western Pacific Order in Council of the 13th of August, 1877, a copy of which accompanied my Circular Despatch of the 18th of June last.

2. It will be observed that the present Order, which is to be read as if it were part of the original Order in Council, does not commence and have effect, except when it is expressed to operate from its making, until proclaimed under the hand and official seal of the High Commissioner for the Western Pacific, and that such Proclamation is to be published in the *Royal Gazette* of Fiji.

I have accordingly instructed Sir A. Gordon to inform you of the date of the issue of his Proclamation bringing the amending Order into full operation.

3. I take this opportunity of suggesting that, with the views of making widely known the scope and power of the High Commissioner, the original Order should be published in full, if this has not already been done in the Colony under your Government, and that the amending Order in Council should be similarly published.

4. It may possibly be convenient to defer the publication until you are informed by Sir A. Gordon that the Proclamation bringing the amending Order into full operation has been issued.

I have, &c.,

M. E. HICKS BEACH.

Governor Sir H. St. George Ord,

K.C.M.G., C.B., &c., &c., &c.

[ENCLOSURE.]

AT THE COURT AT OSBORNE HOUSE,
ISLE OF WIGHT,

The 14th day of August, 1879.

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL.

WHEREAS by the Western Pacific Order in Council of 1877, Her Majesty the Queen was pleased to create and constitute the office of High Commissioner in, over, and for certain islands and places in the Western Pacific Ocean, which islands and places are in the said Order more particularly described, and are therein and in this Order referred to as the Western Pacific Islands, with such powers and jurisdiction as are in the said Order set forth :

And whereas it is expedient to extend and amend in various respects the said Order :

Now, THEREFORE, Her Majesty, by virtue and in exercise of the powers in this behalf by the Pacific Islanders Protection Acts, 1872 and 1875, and by the Foreign Jurisdiction Acts, 1843 to 1878, or otherwise, in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :

Preliminary.

1. This Order may be cited as the Western Pacific Order in Council of 1879: and the Western Pacific Order in Council of 1877 and this Order may be cited together as the Western Pacific Orders in Council of 1877 and 1879.

2. This Order shall be read as if it were part of the Western Pacific Order in Council of 1877 (which Order is herein referred to as the Principal Order).

Successor or Representative of High Commissioner.

3. In the event of the death or incapacity of the High Commissioner, or in any such other event as may be from time to time provided for by Commission under the Sign Manual and Signet of Her Majesty, all the powers and authorities of the High Commissioner shall be transferred to and vested in such person as Her Majesty shall at any time after the making of this Order think fit by such Commission to appoint or designate to succeed temporarily to the office of High Commissioner and to exercise the powers and authorities thereof, or if there be no person so appointed, then to and in the Chief Justice of Fiji.

4. (1.) Whenever the High Commissioner has occasion to leave his ordinary place of official residence in order to visit any distant places within which he has jurisdiction as High Commissioner, he may, by an instrument under his hand and official seal, appoint a Judicial Commissioner, or some one of Her Majesty's Deputy Commissioners for the Western Pacific, to represent him during his absence; and the person so appointed shall be styled the Assistant High Commissioner, and may, so long as his appointment remains in force, exercise all the powers and authorities of the High Commissioner, or so much thereof as is specified in the instrument appointing him.

(2.) The High Commissioner may revoke any such appointment by a similar instrument; and every such appointment shall cease on the return of the High Commissioner to his ordinary place of official residence.

(3.) Such appointment shall not affect the right of the High Commissioner to exercise his full power and authority in any place within his jurisdiction.

5. In this Order, and in the Principal Order, unless inconsistent with the context, the High Commissioner includes the person for the time being exercising any of the powers and authorities of High Commissioner under the foregoing provisions of this Order.

Proceedings before Deputy Commissioners.

6. All instruments relating to proceedings before a Deputy Commissioner, which under the Principal Order would require to be sealed

with the seal of the Court, shall be sufficient without such seal if signed by a Deputy Commissioner.

Regulations by High Commissioner.

7.—(1.) The High Commissioner shall, by virtue of this Order, have power and authority to make from time to time in the name and on behalf of Her Majesty, by writing under his hand and official seal, such Regulations as to him seem fit for the Government of British subjects in the Western Pacific Islands, and for securing the maintenance (as far as regards the conduct of British subjects) of friendly relations between British subjects and all kings, chiefs, and other authorities in those islands, and persons subject to them.

(2.) The Regulations may define offences against the same; and acts thereby defined to be offences are hereby declared to be offences against the Principal Order; and the Regulations may impose a punishment for any such offence, as follows :

- (i.) Imprisonment for any term not exceeding three months, with or without hard labour, and with or without a fine not exceeding ten pounds; or
- (ii.) a fine alone, not exceeding ten pounds, without any imprisonment: and
- (iii.) in case of a continuing offence,—in addition to any such punishment by imprisonment or a fine, or both, as aforesaid,—a further fine, not exceeding in any case ten shillings for each day during which the offence continues after the day of the commission of the original offence.

(3.) The Regulations shall be so framed as to allow that less than the highest punishment imposed by the Regulations may be adjudged in any case; and the Regulations shall not be so framed as to impose a fixed punishment in any case, or to prevent the Court from adjudging in any case as low a punishment as the Court in its discretion may think fit.

(4.) The Regulations shall be affixed, and, as far as practicable, at all times kept exhibited, at each Court-house, or at some other public place in each district.

(5.) Copies of the Regulations shall be sold at such price as the High Commissioner directs.

(6.) The Regulations shall, as soon as practicable, be published in the Royal Gazette of Fiji, and be printed separately.

(7.) The High Commissioner on making Regulations shall forthwith report them to the Secretary of State.

(8.) Every Regulation shall, unless approved by the Secretary of State, cease to be in force at the expiration of eighteen months from the making thereof, except as regards things done and rights and liabilities accrued and incurred thereunder before the expiration of that time, and the institution and prosecution thereafter of any proceeding, civil or criminal, in respect of any such thing, right, or liability.

(9.) The High Commissioner may at any time, in manner aforesaid, revoke or alter any Regulation; and the Secretary of State may at any time direct the revocation of any Regulation.

8.—(1.) The last foregoing Article is hereby substituted for Article 24 of the Principal Order.

(2.) But all Regulations made under Article 24 of the Principal Order, before the commencement of this Order, shall remain in force as if this Order had not been passed, subject to be revoked or altered by the High Commissioner, and so that they shall, unless approved by the Secretary of State before or after the commencement of this Order, cease to be in force at the expiration of twelve months from the commencement of this Order, except as regards things done and rights and liabilities accrued and incurred thereunder before the expiration of that time, and the institution and prosecution thereafter of any proceeding, civil or criminal, in respect of any such thing, right, or liability.

Deportation.

9. Article 26 of the Principal Order shall be read and have effect as if the words "from the Western Pacific Islands" were omitted from the first paragraph thereof.

Extension of judicial power of High Commissioner.

10.—(1.) Notwithstanding anything in the Principal Order, the High Commissioner may, when at a place distant from his ordinary place of official residence, and in a case being, in his opinion, a case of urgency, and in the absence of a Judicial Commissioner, exercise so much of the jurisdiction and authority of the Court as is by Articles 27 and 28 of the Principal Order confined to a Judicial Commissioner.

(2.) The High Commissioner shall forthwith make a special report to the Secretary of State in every case in which he exercises such jurisdiction and authority, setting forth therein the reasons for his proceedings.

(3.) If in any case the sentence passed by the High Commissioner, under the authority of this Article, is a sentence of death, it shall not be executed unless and until the High Commissioner has referred the minutes and notes of evidence in the case to the Chief Justice of Fiji, or if, in the opinion of the High Commissioner, by reason of the remoteness of the place or otherwise, a reference to the Chief Justice would be inconvenient, then to another Judicial Commissioner, being a barrister of ten years standing, and the Chief Justice or that other Judicial Commissioner has certified in writing to the High Commissioner his concurrence in the sentence.

(4.) In every such case the High Commissioner shall postpone the execution of the sentence pending such reference, and shall commit the person convicted to prison for safe custody, or shall cause him to be detained in custody, and to be removed to any part of the Western Pacific Islands, or to Fiji, and to be there detained in custody pending such reference.

(5.) Nothing in this Article shall affect the right of appeal or the power of the Court to reserve for the judgment of the Supreme Court any question of law or fact arising on a trial.

(6.) Where there is such an appeal or reservation, a reference under this Article to the Chief Justice of Fiji or another Judicial Commissioner shall not be made.

Confirmation of Sentence.

11. Article 47 of the Principal Order shall be read and have effect as if the following two

paragraphs were therein substituted for paragraph (2) thereof:

(a.) Where a sentence of a Judicial Commissioner is a sentence of death,—and where a sentence of a Deputy Commissioner comprises imprisonment for nine months, or upwards, or a fine of twenty-five pounds, or upwards,—the sentence shall not be executed without the direction of the High Commissioner, by writing under his hand and official seal.

(b.) In every such case the Court shall postpone the execution of the sentence pending the submission thereof to the High Commissioner, and shall, if necessary, commit the person convicted to prison for safe custody, or shall admit him to bail, and shall take security by recognisance, deposit of money, or otherwise, for his payment of any fine.

(c.) In case there is, under Article 54 of the Principal Order, an appeal to the Supreme Court, or a reservation for the judgment of the Supreme Court of a question of law or fact arising on the trial, the sentence (if any) of the Supreme Court shall, for the purposes of this Article, be deemed to be the sentence of the Judicial Commissioner, or Deputy Commissioner, before whom the trial was had.

Mitigation or Remission of Punishment; Pardon.

12.—(1.) The High Commissioner, or the Secretary of State may, if he thinks fit, mitigate or remit any punishment adjudged by the Court.

(2.) Nothing in the Principal Order, or this Order, shall be deemed to affect Her Majesty's prerogative of pardon.

(3.) This Article is hereby substituted for Article 48 of the Principal Order.

Appeal.

13. Article 54 of the Principal Order, relating to appeals to the Supreme Court in criminal cases, and to the reservation for the judgment of the Supreme Court of questions of law or fact arising on criminal trials, shall not apply where the trial is had before the Chief Justice of Fiji as a Judicial Commissioner, if and as long as there is no Judge of the Supreme Court other than the Chief Justice.

Indemnity.

14. Where, after the commencement of the Principal Order, and before the commencement of this Order, any person has been erroneously tried and sentenced to imprisonment, or other punishment, for an offence committed before the commencement of the Principal Order, and the punishment has been discontinued as soon as practicable after the discovery of the error, all persons are hereby indemnified against, and discharged from, all actions, suits, indictments, and proceedings whatever in respect of such trial, sentence, and punishment, and in respect of any act precedent to, or consequent thereon, done in good faith.

Fugitive Offenders.

15.—(1.) The Fugitive Offenders Act, 1843, or so much thereof as is for the time being in force, and any enactment for the time being in force amending or substituted for the same, are hereby extended, with reference to British subjects, to the Western Pacific Islands, with the adaptations following, namely:

- (a.) In sections two and six of the Fugitive Offenders Act, 1843, the High Commissioner's Court by a Judicial Commissioner shall be deemed to be substituted for a judge of a superior court in a colony:
- (b.) In sections three, five, six, and seven of that Act the High Commissioner shall be deemed to be substituted for the Governor of a Colony.
- (2.) This Article is hereby substituted for Article 50 of the Principal Order.

Offences out of Jurisdiction.

16. The Admiralty Offences Colonial Act, 1849, or so much thereof as is for the time being in force, and any enactment for the time being in force amending or substituted for the same, are hereby extended with reference to British subjects charged with offences, to the Western Pacific Islands, with the adaptation following, namely:

In the Admiralty Offences Colonial Act, 1849, the High Commissioner shall be deemed to be substituted for the Governor of a colony.

17. The Admiralty Offences Colonial Act, 1860, is hereby extended to the Western Pacific Islands, with such adaptations and modifications that it will read as follows, namely:

Where a person, being feloniously stricken, poisoned, or otherwise hurt, in the Western Pacific Islands, dies of such stroke, poisoning, or hurt, on the sea, or out of the Western Pacific Islands, then every offence committed by a British subject in respect of any such case whether amounting to murder, or to manslaughter, or to the being accessory before the fact of the murder, or after the fact to murder or to manslaughter, may be dealt with, inquired of, tried, determined, and punished, in the Western Pacific Islands in all respects as if such offence had been wholly committed in the Western Pacific Islands.

18. Section eleven of the Merchant Shipping Act, 1867, is hereby extended to the Western Pacific Islands, with such adaptations and modifications that it will read as follows, namely:

If, out of the waters mentioned in Article 5 of the Principal Order, a British subject commits an offence on board a British ship, or on board a foreign ship to which he does not belong, the High Commissioner's Court, by a Judicial Commissioner, shall have jurisdiction to hear and determine the case, as if the offence had been committed on board a British ship in those waters.

19. Article 31 of the Principal Order shall be read and have effect as if the following words in the first clause thereof, (that is to say) "on a charge for an offence committed within the Western Pacific Islands, and not within the jurisdiction of the Admiralty," were omitted therefrom; and Article 21 of the Principal Order shall have effect as if the reference in clause (2.) thereof to Article 31 were omitted therefrom.

Local Criminal Jurisdiction.

20. For the purposes of criminal jurisdiction, every offence and cause of complaint

committed or arising in the Western Pacific Islands shall be deemed to have been committed or to have arisen either in the place where the same actually was committed or arose, or in any place in the Western Pacific Islands where the person charged or complained of happens to be at the time of the institution or commencement of the charge or complaint.

Probate and Administration.

21.—(1.) Where probate, administration, or confirmation is granted in England, Ireland, or Scotland, and therein, or by a memorandum thereon signed by an officer of the Court granting the same, the testator or intestate is stated to have died domiciled in England, Ireland, or Scotland (as the case may be), and the probate, administration, or confirmation, is produced to, and a copy thereof is deposited with the High Commissioner's Court, the Court, by a Judicial Commissioner, shall write thereon a certificate of that production and deposit; and thereupon, notwithstanding anything in the Principal Order, the probate, administration, or confirmation shall, in respect of the personal property in the Western Pacific Islands of the testator or intestate, have the like effect as if he had been resident in the Western Pacific Islands at his death and probate or administration to his personal property there had been granted by the High Commissioner's Court.

(2.) Any person who, in reliance on an instrument purporting to be a probate, administration, or confirmation granted in England, Ireland, or Scotland, and to bear such certificate of the High Commissioner's Court as in this Article prescribed, makes or permits any payment or transfer, in good faith, shall be, by virtue of this Order, indemnified and protected in respect thereof, in the Western Pacific Islands, notwithstanding anything affecting the validity of the probate, administration, or confirmation.

22. Section fifty-one of the Conveyancing (Scotland) Act, 1874, and any enactment for the time being in force amending or substituted for the same are hereby extended to the Western Pacific Islands with the adaptation following, namely:

In that section the High Commissioner's Court by a Judicial Commissioner shall be deemed to be substituted for a Court of Probate in a Colony.

Evidence.

23. A document purporting to be executed in the presence of any person, or to be attested by a witness or witnesses, whether required by law to be so executed or attested or not, may be proved by any person able to give evidence touching the requisite facts, without the production or evidence of any person in whose presence the document was executed or any attesting witness; but nothing in this Article applies to probate of wills.

24. Sections seven and eleven of the Evidence Act, 1851, are hereby extended to the Western Pacific Islands.

25. The following Acts, namely:

The Foreign Tribunals Evidence Act, 1856,
The Evidence by Commission Act, 1859,
or so much thereof as is for the time being in

force, and any enactment for the time being in force amending or substituted for the same, are hereby extended to the Western Pacific Islands, with the adaptation following, namely :

In those Acts the High Commissioner's Court by a Judicial Commissioner shall be deemed to be substituted for a Supreme Court in a Colony.

26.—(1.) Any person who, by reason of any defect of religious knowledge or belief is incapable of comprehending the nature of an oath, or on whose conscience the Court is satisfied that the taking of an oath would have no binding effect, shall, in any criminal or civil proceeding, instead of taking an oath be permitted to make an affirmation or declaration to the effect that he will in that proceeding tell the truth, the whole truth, and nothing but the truth.

(2.) Nothing in this Article shall prevent any person from being sworn according to the ceremonies of his own religion, or in such manner as he deems binding on his conscience.

(3.) If a British subject, who so affirms, declares, or is sworn, wilfully and corruptly gives false evidence, he shall be guilty of perjury.

Ascertainment of Law.

27. The following Acts, namely :

The British Law Ascertainment Act, 1859,

The Foreign Law Ascertainment Act, 1861,

or so much thereof as is for the time being in force, amending or substituted for the same, are hereby extended to the Western Pacific Islands, with the adaptation following, namely :

In those Acts the High Commissioner's Court by a Judicial Commissioner shall be deemed to be substituted for a Superior Court in a Colony.

Plaintiff out of jurisdiction of Court.

28.—(1.) Where a person bringing an action, either alone or jointly with another, is out of the Western Pacific Islands, or is only temporarily therein, he shall file in the Court, at or before the commencement of the action, a written statement of a fit place within the district where notices and other papers in the action may be served on him.

(2.) He shall also give security for costs in the action by deposit of such sum not exceeding 50*l.*, or by such bond, with or without such surety or sureties, for securing such sum, not exceeding 50*l.*, as the Court thinks fit.

(3.) The Court may at any time during an action, either of its own motion or on the application of any defendant, order a plaintiff, being out of the Western Pacific Islands, or only temporarily therein, to give security, or further or better security, for costs, to such amount as aforesaid, and may direct the proceedings in the action to be stayed until the same is given.

Counsel, Solicitors, and Agents.

29. The following paragraph is hereby added to Article 159 of the Principal Order (that is to say) :—

(5.) Where the counsel, solicitor, attorney, procurator, or agent is not a British subject, he shall, before doing any act or taking any

proceeding, obtain, and file in the proper office of the Court, the consent in writing of the competent authority on behalf of his own nation to his submitting himself, and shall submit himself, for the purposes of the intending or pending action or proceeding, to the authority of the Court; and thereupon he shall be subject to the authority of the Court, in all respects as if he were a British subject.

Orders in Shipping Cases.

30. Where money ordered by the Court to be paid is due for seamen's wages, or is other money recoverable under the Merchant Shipping Acts or other law relating to ships, and the person ordered to pay is master or owner of a ship, and the money is not paid as ordered, the Court, in addition to other powers for compelling payment, shall have power to direct that the amount unpaid be levied by seizure and sale of that ship.

Form in Probate cases.

31. The following form is hereby added to the Appendix of Forms to the Schedule to the Principal Order (that is to say) :—

Certificate, to be written on Probate, Administration, or Confirmation, of production thereof and of deposit of copy.

(GENERAL HEADING.)

This Probate has [or these letters of Administration have or this confirmation has] been produced to this Court, and a copy thereof has been deposited with this Court.

(Seal.)

Judicial Notice.

32. Judicial notice shall be taken of the Principal Order, and of this Order, and of any Regulations made by, and of any proclamation issued by, the High Commissioner thereunder, and of any Rules made and lists of fees prescribed thereunder, and of all appointments thereunder, and of the signatures of all Commissioners and others acting thereunder, and of all seals used thereunder; and no proof thereof shall be necessary.

Commencement.

33. This Order (except where it is expressed to operate from its making) shall commence and have effect on a day fixed by proclamation, under the hand and official seal of the High Commissioner, published in the *Royal Gazette* of Fiji.

And the Most Honourable the Marquess of Salisbury, and the Right Honourable Sir Michael Edward Hicks-Beach, Baronet, two of Her Majesty's Principal Secretaries of State, and the Lords Commissioners of the Treasury, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein as to them may respectively appertain.

C. L. PEEL.

Nasova, Fiji,

10th November, 1879.

SIR,—I have the honor to enclose, for Your Excellency's information, a copy of an * Order of the Queen in Council, extending and amending in various respects the Western Pacific Order in Council of 1877.

Considerable inconvenience arose last year from the fact that the Order in Council of 1877, although communicated by me to the Governors of all Australian Colonies in accordance with directions to that effect from the Secretary of State, was in some of those Colonies allowed to remain unpublished, and Your Excellency will therefore, I am sure, forgive me, if I now venture to prefer a special request that the present Order in Council may be published in the *Government Gazette*, together with an intimation that it was brought into effect and operation on the 8th inst. by proclamation under my hand and seal, as provided in the 33rd section of the Order itself.

Your Excellency will perceive that by this Order

1. Provision is made for the performance of the duties of the High Commissioner in his absence from the Pacific.

2. Power is given to the High Commissioner to make regulations, having the force of law, for the Government of British subjects within the Western Pacific.

3. The High Commissioner is empowered, in cases of urgency, to exercise all the Judicial Functions usually exercised by the Judicial Commissioner, excepting that no sentence of death pronounced by him is to be carried into execution without the concurrence of a Judicial Commissioner.

4. A power of remitting any punishment inflicted by the High Commissioner's Court is conferred on the High Commissioner.

These are the principal modifications made in the Original Order: but various other useful provisions deserving attention have been introduced to render its working easier, and to remove practical difficulties which had arisen.

I have, &c.,

A. GORDON.

His Excellency Major-General Sir Harry St. G.
Ord, K.C.M.G., C.B., &c., &c., &c.

* See Enclosure to Secretary of State's Circular Despatch of 24th September, 1879.