

PACIFIC ORDER, 1893

1893 No. 78

The Pacific Order, 1893 (a)

[15th March 1893]
[See Art. 145]

Made
Commencement

Am. By

S.I. 1907/542
1908/780
1910/485
1913/483
1914/150
1937/627
1941/305
1953/1909
1955/551
1958/1519
1961/1506
G.N 45/1962
L.N 33/1962
129/1965

(a) This Order was superseded as to the Cook Islands Protectorate by Order in Council of May 13, 1901, including those islands in the Colony of New Zealand.

Whereas by the Second and Sixth Sections of the British Settlements Act, 1887, it is enacted as follows:-

Preamble 50 & 51 Vict. c. 54

"2. It shall be lawful for Her Majesty the Queen in Council from time to time to establish all such laws and institutions, and constitute such courts and officers, and make such provisions and regulations for the proceedings in the said courts and for the administration of justice, as may appear to Her Majesty in Council to be necessary for the peace, order, and good government of Her Majesty's subjects and others within any British settlement.

"6. For the purposes of this Act, the expression 'British possession' means any part of Her Majesty's possessions out of the United Kingdom, and the expression 'British settlement' means any British possession which has not been acquired by cession or conquest, and is not for the time being within the jurisdiction of the Legislature, constituted otherwise than by virtue of this Act or of any Act repealed by this Act, of any British possession":

And whereas there are in the Pacific Ocean certain islands and places which are, or may hereafter become British settlements the meaning of the said Act:

And whereas there are also in the Pacific Ocean certain islands or places which are, or may hereafter come, under the protection of Her Majesty:

And whereas by Treaty, grant, usage, sufferance, or other lawful means Her Majesty has, or may have, power and jurisdiction in the said last-mentioned islands and places:

35 & 36 Vict. c. 19.

And whereas by the Pacific Islanders Protection Act, 1872, provision is made for the prevention and punishment of criminal outrages upon natives of islands in the Pacific Ocean, not being in Her Majesty's dominions nor within the jurisdiction of any civilized power:

38 & 39 Vict. c. 51.

And whereas by the Sixth and Seventh Sections of the Pacific Islanders Protection Act, 1875, it is enacted as follows:-

"6. It shall be lawful for Her Majesty to exercise power and jurisdiction over Her subjects within any islands and places in the Pacific Ocean not being within Her Majesty's dominions, nor within the jurisdiction of any civilized power, in the same as ample a manner as if such power or jurisdiction had been acquired by the cession or conquest of territory, and by Order in Council to create and constitute the office of High Commissioner in, over, and for such islands and places, or some of them, and by the same or any other Order in Council to confer upon such High Commissioner power and authority, in Her name and on Her behalf, to make regulations for the government of Her subjects in such islands and places, and to impose penalties, forfeitures, or imprisonments for the breach of such regulations.

"It shall be lawful for Her Majesty, by Order in Council, to create a court of justice with civil, criminal, and Admiralty jurisdiction over Her Majesty's subjects within the islands and places to which the authority of the said High Commissioner shall extend and with power to take cognisance of all crimes and offences committed by Her Majesty's subjects within any of the said islands and places, or upon the sea, or in any haven, river, creek, or place within the jurisdiction of the Admiralty; and Her Majesty may, by Order in Council, from time to time direct that all the powers and jurisdiction aforesaid, or any part thereof, shall be vested in and may be exercised by the court of any British colony designated in such Order, concurrently with the High Commissioner's court or otherwise, and may provide for the transmission of offenders to any such colony for trial and punishment, and for the admission in evidence on such trial of the depositions of witnesses taken in such islands and places as aforesaid, and for all other matters necessary for carrying out the provisions of such Order in Council.

"It shall also be lawful for Her Majesty, by any Order or Orders in Council, from time to time to ordain for the government of Her Majesty's subjects, being within such islands and places, any law or ordinance which to Her Majesty in Council may seem meet, as fully and effectually as any such law or ordinance could be made by Her

Majesty in Council for the government of Her Majesty's subjects within any territory acquired by cession or conquest.

"The person for the time being lawfully acting in the capacity of High Commissioner, and any Deputy Commissioner, duly appointed and empowered under the provisions of any such Order in Council as aforesaid, and acting under the directions of the High Commissioner, shall have and may exercise and perform any power, authority, jurisdiction, and duty vested in or imposed upon any British consular officer by the principal Act or by any other Act having reference to such consular officers, passed either before or after the passing of this Act; and every such Act shall be construed as if the said High Commissioner and Deputy Commissioner were named therein in addition to a British consular officer.

"7. Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty, Her heirs or successors, with any claim or title whatsoever to dominion or sovereignty over such islands or places as aforesaid or to derogate from the rights of the tribes or people inhabiting such islands or places, or of chiefs or rulers thereof, to such sovereignty or dominion":

53 & 54 Vict. c. 37.

And whereas by the Foreign Jurisdiction Act, 1890, and otherwise, Her Majesty has jurisdiction in the aforesaid islands and places not being within Her Majesty's dominions, nor within the jurisdiction of any civilized power:

And whereas by the First, Second, and Fifth Sections of the Foreign Jurisdiction Act, 1890, it is enacted as follows:-

"1. It is, and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has, or may at any time hereafter have, within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory.

"2. Where a foreign country is not subject to any government from whom Her Majesty the Queen might obtain jurisdiction in the manner recited by this Act, Her Majesty shall by virtue of this Act have jurisdiction over Her Majesty's subjects for the time being resident in or resorting to that country, and that jurisdiction shall be jurisdiction of Her Majesty in a foreign country within the meaning of the other provisions of this Act.

"5.-(1) It shall be lawful for Her Majesty the Queen in Council, if she thinks fit, by order to direct that all or any of the enactments described in the First Schedule of this Act, or any enactments for the time being in force amending or substituted for the same, shall extend, with or without any exceptions, adaptations, or modifications in the order mentioned, to any foreign country in which for the time being Her Majesty has jurisdiction.

"(2) Thereupon those enactments shall, to the extent of that jurisdiction, operate as if that country were a British possession, and as if Her Majesty in Council were the legislature of that possession":

And whereas Her Majesty hath power by Order in Council to make laws for the Colony of Fiji:

And whereas the following Orders in Council have been made under the powers by the Pacific Islanders Protection Act, 1875, or otherwise in Her Majesty vested, that is to say:

The Western Pacific Orders in Council of 1877 and 1879.

The Western Pacific Order in Council of 1880.

And whereas it is expedient to amend and consolidate the said Orders in Council, and to make further provision for the purposes in the recited Acts mentioned:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf, by the British Settlements Act, 1887, the Pacific Islanders Protection Acts, and the Foreign Jurisdiction Act, 1890, 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:-

Short title.

1. This Order may be cited as the Pacific Order, 1893.

Division of the Order into parts.

2. This Order is divided into parts as follows:-

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PART I

Interpretation and Application

Am. By

S.I. 1961/1506 Sched. and G.N. 45/1962 S.I. 1937/627.

3. In this Order, unless the subject or context otherwise requires -

"Secretary of State" means one of Her Majesty's Principal Secretaries of State;

"Resident" means having a fixed place of abode in one of the islands or places to which this Order applies;

"Native" means any person not being a British subject or a foreigner;

"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;

"Crime" or "offence" includes any crime or offence, and any act punishable criminally, in a summary way or otherwise;

"Month" means calendar month;

"Pound" means pound of the currency which is legal tender for the time being*;

"Will" means will, codicil, or other testamentary instrument;

"Office copy" means a copy, either made under direction of a court, or produced to the proper officer of a 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;

"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;

"Proved" means shown by evidence on oath, in the form of affidavit, or other form, to the satisfaction of a court, or of the member or officer thereof acting or having jurisdiction in the matter;

"Proof" means the evidence adduced in that behalf;

"Person" includes corporation;

"Vessel" includes a ship or boat;

The plural includes the singular and the singular the plural and the masculine the feminine;

"Prescribed" means prescribed or directed by a Secretary of State or prescribed or directed by any court, authority, or person having power in relation to the matter in respect of which the expression is used, or prescribed or directed by any rules or regulations made under this Order.

* This definition was amended by S.I. 1937/627, but it should be noted that the amendment applied only to the British Solomon Islands Protectorate and the Gilbert and Ellice Islands Colony, (See S.I. 1937/627 Art 2.)

Limits of Order.

4. The limits of this Order shall be the Pacific Ocean and the islands and places therein, including -

- (a) Islands and places which are for the time being British settlements,
- (b) Islands and places which are for the time being under the protection of Her Majesty,
- (c) Islands and places which are for the time being under no civilised government,

but exclusive (except as in this Order expressly provided in relation to any particular matter) of -

- (1) Any place within any part of Her Majesty's dominions or the territorial waters thereof which is for the time being within the jurisdiction of the legislature of any British possession.
- (2) Any place for the time being within the jurisdiction or protectorate of any civilised power.

Persons subject to this Order.

5. In islands and places which are not British settlements, or under the protection of Her Majesty, jurisdiction under this Order shall be exercised (except only as in this Order otherwise expressly provided) only over Her Majesty's subjects, and any foreigners or natives, in so far as by reason of being, or having been, on board a British ship or otherwise they have come under a duty of allegiance to Her Majesty, and their property and personal and proprietary rights and obligations.

Local application of Order

6. Until otherwise directed by a Secretary of State as hereinafter provided, jurisdiction under this Order shall be exercised only in relation to the following parts of the limits of this Order, that is to say -

- (1) The groups of islands with the dependencies and territorial waters thereof known as -

The Friendly Islands.
The Navigators' Islands.
The Union Islands.
The Phoenix Islands.
The Ellice Islands.
The Gilbert Islands.
The Solomon Islands, so far as they are not within the jurisdiction of the German Empire.
The Santa Cruz Islands.

(2) Any seas, islands, and places which are not excluded by the 4th Article of this Order, and are situate in the Western Pacific Ocean, that is to say, within the following limits -

North, from 140° east longitude by the parallel 12° north latitude to 160° west longitude, thence south to the equator, and thence east to 149° 30' west longitude.

East by the meridian of 149° 30' west longitude.

South by the parallel 30° south latitude.

West by the meridian 140° east longitude.

Provided that the Secretary of State from time to time, by any instructions given to the High Commissioner and published as the Secretary of State thinks fit, may direct that jurisdiction under this Order may be exercised in relation to any part of the limits of this Order not herein specified, or that any part of the limits of this Order shall, until otherwise directed, be excepted from the application of this Order.

Provided also that in relation to the Navigators' Islands, this Order is subject to the provisions of the Final Act of the Conference on the Affairs of Samoa, signed at Berlin, the 14th June, 1889. (a)

PART II

*Constitution of Courts*and High Commission*

High Commissioner.

7.-(1) The office of High Commissioner created and constituted by the recited Orders in Council shall continue, and the High Commissioner shall continue to be styled Her Britannic Majesty's High Commissioner for the Western Pacific, and shall have an official seal as heretofore.

(2) The High Commissioner shall be appointed by Commission under the Sign Manual. He may be suspended by the Secretary of State by writing under his hand.

Am. by S.I. 1953/1909 Art. 2.

(3) During a vacancy in the office of the High Commissioner, or during suspension of the High Commissioner, or in case of his incapacity by reason of illness or otherwise, all the powers of the High Commissioner shall be vested in such person as Her Majesty appoints

under Her Sign Manual. (*See Dormant Commission of Chief Secretary to the High Commission. 1950 W.P.H.C. Gaz. p. 3.*)

Am. by S.I. 1961/1596 and G.N. 45/1962.

(4) Subject to any direction by the Secretary of State, the High Commissioner may exercise any of his powers, including his powers for making orders of prohibition and removal, although at the time of exercising them he is not within the limits of this Order.

(a) Printed in "Hertslet's Treaties", Vol. 18, p.1068

* References in this order to the Court now refer to the High Court of the Western Pacific. See s.3 of S.I. 1961/1506 at p. 20.

Special Commissioner.

(5) Her Majesty may from time to time appoint by Commission under the Sign Manual any person to be Her Majesty's Special Commissioner for the Western Pacific. Subject to any restrictions contained in his Commission a Special Commissioner shall have and exercise, during Her Majesty's pleasure, the powers and jurisdiction of the High Commissioner within such part of the limits of this Order as is specified in his Commission. The appointment of a Special Commissioner shall not limit or affect any power or jurisdiction of the High Commissioner.

Assistant High Commissioner

Am. by S.I. 1961/1506. Sched. and G.N. 45/1962.

(6) Subject to any restrictions contained in his Commission or prescribed from time to time by the Secretary of State, the High Commissioner may from time to time, by writing under his hand and seal, appoint a Deputy Commissioner to represent him in the exercise of any of his powers, or during his absence from the limits of this Order or from Fiji, with or without any limitations or conditions, and the Commissioner so appointed shall, for the purposes for which he is appointed, have and exercise the powers of the High Commissioner, and shall be styled Assistant High Commissioner. Any such appointment may be revoked by the High Commissioner, by writing under his hand and seal. The appointment of an Assistant High Commissioner shall not limit or affect any power or jurisdiction of the High Commissioner.

An Assistant High Commissioner shall not exercise any of his powers except within the limits of this Order or in Fiji.

(Article 8 ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

Deputy Commissioner.

9.-(1) There shall be such number of deputies of the High Commissioner, each of whom shall be styled one of Her Majesty's Deputy Commissioners for the Western Pacific, as a Secretary of State from time to time directs.

(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 seal.

(3) Where, in the opinion of the High Commissioner, the attendance of a Deputy Commissioner appointed as aforesaid is impracticable, or would be inconvenient, the High Commissioner may from time to time in the name and on behalf of Her Majesty, by writing under his hand and seal, appoint any officer holding Her Majesty's Commission or any other person a Deputy Commissioner for a particular purpose, or for a particular time and district.

(4) A Deputy Commissioner shall be liable to be suspended or removed by the High Commissioner by writing, under his hand and seal, stating the grounds of suspension or removal, and the same shall be reported forthwith to the Secretary of State.

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

Definition.

Am. by S.I. 1961/1506 Sched. and G.N. 45/1962.

10. Except as otherwise expressed in this Order, expressions referring to a Commissioner, include the High Commissioner, and any Special Commissioner, and any Deputy Commissioner, and any expression referring to a High Commissioner, or a Deputy Commissioner respectively includes a person lawfully acting as such, whether assistant, or deputy, or under any special or local appointment or otherwise, and any expression referring to a High Commissioner includes a Special Commissioner.

Concurrent appointments.

Replaced by S.I. 1955/551 Art 2.

11.- (1) When a holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office, it shall be lawful for another person to be appointed substantively to the same office.

(2) Where two or more persons are holding the same office by reason of an appointment made pursuant to paragraph (1) of this Article, then for the purposes of any function conferred upon the holder of that office the person last appointed to the office shall be deemed to be the holder of the office.

(Articles 12-23 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

PART IV

General Powers of Court and General Procedure

(Article 24 revoked by S.R. & O. 1913 No. 483.)

(Article 25 ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

(Articles 26 to 30 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. Part III.)

(Articles 31 to 37 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

(Articles 38 to 46 (inclusive) repealed in relation to the British Solomon Islands Protectorate and the Gilbert and Ellice Islands Colony by S.I. 1914/150. See page 47.)

(Articles 47 to 49 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

PART VI

Criminal Law and Procedure

Acts to be punishable both as crimes under English law and as offences against this Order.

50. In case an act or omission is punishable both as a crime under the law in force in England and as an offence against this Order, the accused person may be tried and punished for such act or omission either as a crime as aforesaid or as an offence against this Order, but he shall not be liable to be tried or punished in both ways.

(Article 51 ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

(Article 52 ceased to apply with effect from 4th August 1965. S.I. 1961/1506 Sched. and L.N. 126/1965.)

(Articles 53 to 60 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

(Articles 61 to 65 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. Part III.)

(Articles 66 to 70 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

(Articles 71 to 77 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. Part III.)

(Articles 78 and 79 ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G. N. 45/1962.)

Confirmation, remission, and review of sentences by High Commissioner.

80. *The High Commissioner may remit or commute, in whole or in part, any sentence of the Court, and may suspend the execution of any sentence.

In every case of sentence of death the minutes of the trial shall be transmitted to the High Commissioner, and the sentence shall not be carried into effect until confirmed by him.

Am. by S.I. 1953/1909 Art. 3 1962/1506 Sched. Parts II and III.

(Articles 81 to 82 (inclusive) ceased to apply with effect from 9th April 1962 S.I. 1961/1506 Sched. Part III.)

(Article 83 ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G. N. 45/1962.)

*** See also s. 5 of British Solomon Islands Order 1970 S.I. 1970/482.**

Murder and manslaughter.

84.-(1) In cases of murder or manslaughter, if either the death or the criminal act which wholly or partly caused the death happened within the jurisdiction of a Court acting under this Order, such Court shall have the like jurisdiction over any person subject to the jurisdiction of the Court who is charged either as the principal offender or as accessory before the fact to murder, or as accessory after the fact to murder or manslaughter, as if both such criminal act and the death had happened within such jurisdiction.

Crimes on the high seas, or within Admiralty jurisdiction.

(2) In the case of any crime committed on the high seas, or within the Admiralty jurisdiction, by any person on board a British ship, or any British subject on board a foreign ship to which he did not belong, a Court acting under this Order shall have jurisdiction as if the crime had been committed within the district of such Court. In cases tried under this provision no different sentence can be passed from the sentence which could be passed in England if the crime were tried there.

53 & 54 Vict. c. 37. Application of the Admiralty Offences (Colonial) Acts, 1849, 1860, and of the Merchant Shipping Act, 1867. 12 & 13 Vict. c. 96. 23 & 24 Vict. c. 122. 30 & 31 Vict. c. 124.

(3) The foregoing provisions of this Article shall be deemed to be adaptations for the purposes of this Order and of the Foreign Jurisdiction Act, 1890, or any Act substituted for the same, of the following enactments described in the First Schedule to that Act (that is to say):-

The Admiralty Offences (Colonial) Act, 1849.

The Admiralty Offences (Colonial) Act, 1860.

The Merchant Shipping Act, 1867, Section 11.

And the said enactments shall, so far as they are repeated and adapted by this Article (but not further or otherwise), extend to all places within the limits of this Order.

(Article 85 ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

Application of the Colonial Prisoners Removal Act, 1884.

86. The Colonial Prisoners Removal Act, 1884, shall apply to the limits of this Order as if the same were a British possession and part of Her Majesty's dominions, subject as follows:-

The High Commissioner shall be substituted for the Governor of a British possession.

Prerogative of pardon.

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

(Articles 88-107 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

PART XI

Treaties and Queen's Regulations

Power of High Commissioner to make regulations and disallowance of such regulations.

108†.-(1) Subject to the provisions of this Order, the High Commissioner shall have power to make regulations (to be called Queen's Regulations) for the peace, order and good government of the British Solomon Islands Protectorate and of the Central and Southern Line Islands, that is to say, Malden, Starbuck, Vostock, Caroline and Flint Islands.

Replaced by S.I. 1958/1519 Art3.*

(2) Without prejudice to the generality of the power conferred by paragraph (1) of this Article, such regulations may establish courts inferior to the Court and other authorities for the exercise of judicial functions and make provision with respect to their jurisdiction and powers, the conduct of proceedings in or before the same and the execution of their judgments and orders and with respect to appeals therefrom.

(3) Any regulations made under this Article may be disallowed by a Secretary of State, and whenever any regulations have been so disallowed the High Commissioner shall cause notice of such disallowance to be published in the Western Pacific High Commission Gazette.

(4) Any regulations so disallowed shall cease to have effect as soon as notice of disallowance has been published as aforesaid; and thereupon any regulations or other enactment repealed or amended by, or in pursuance of, the regulations so disallowed shall have effect as if such regulations had not been made; and, subject thereto, the provisions of subsection (2) of section 38 of the Interpretation Act, 1889(f), shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

(Articles 109 to 110 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

(Article III ceased to apply with effect from 4th August 1965. S.L 1961/1506 Sched, and L.N. 126/1965.)

(Articles 112 to 114 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

*** NOTE. S.I. 1958/1519 also contains certain validating provisions in respect of any regulations purported to have been made under Art. 108 prior to this amendment. These provisions have had effect and have been omitted from this volume.**

† See also s.33 of British Solomon Islands Order 1970, with respect to power to legislate for the Protectorate.

PART XV

Births, Marriages, and Deaths

Past Marriages

Certain marriages before commencement of this Order declared valid.

115. All marriages (between persons who would, if in England, be legally competent to contract marriage, and of whom one at least is a British subject) solemnized within the limits of this Order before the commencement of this Order by any minister of religion of any denomination of Christians duly appointed or ordained, or reputed to be duly appointed or ordained, shall be as valid in law as if the same had been solemnized within Her Majesty's dominions with a due observance of all forms required by law.

Certificate of such marriage receivable as evidence.

116. A certificate of the marriage, purporting to be signed by any minister of religion as aforesaid who solemnized the same, or a certified copy of such certificate, shall be received in all courts of law as evidence of such marriage at the date set forth in the said certificate.

Such marriages may be registered.

Extract from register receivable as evidence.

117. Any such marriage may be registered by producing the certificate of the minister of religion aforesaid to the High Commissioner at any time within two years after the commencement of this Order; and the High Commissioner shall register the same, and shall add the date when solemnized, together with the words "valid from the date of solemnization under the Pacific Order in Council, 1893"; and an extract from the register, signed by the High Commissioner, shall be received in all courts of law as evidence of the marriage as of the date so set forth in the register.

Celebration of Marriages

Registration of ministers for marriages.

Am. by S.I.1907/542 Art. 1.

118.-(1) The High Commissioner, upon receiving a requisition from any minister of religion ordinarily officiating as such, or from the head of the denomination to which such minister belongs stating that he is a British subject, specifying the religious denomination of such minister and his designation and usual place of residence together with the place where he officiates, and desiring that he may be registered as a minister for celebrating marriages in the Western Pacific, may if he shall think fit register the name of such minister with the

foregoing particulars in a register-book to be kept for that purpose. No fee shall be payable in respect of any such registration.

(2) The High Commissioner may at any time if he shall think fit to do so, remove the name of any minister from the register, and a minister whose name is removed shall not after the notification thereof in the Fiji Government Gazette have authority to celebrate marriages under the provisions of this Order.

Certificates.

119. The High Commissioner shall from time to time furnish every minister so registered with a sufficient number of forms of the marriage certificate hereinafter mentioned.

Persons pretending to be ministers.

120. If any person shall cause his name to be registered as a minister of religion ordinarily officiating as such, he being at the time not such a minister, he shall be deemed guilty of an offence against this Order.

Marriages may be celebrated by certain ministers of religion if registered.

121. Within the limits of this Order marriages between persons who would, if in England, be legally competent to contract marriages, and of whom one at least is a British subject, may be celebrated by minister of religion ordinarily officiating as such, if he be a British subject, and if his name, designation, and usual place of residence, together with the place where he officiates, is at the time of the celebration of the marriage registered in the office of the High Commissioner.

Removal of minister's name from register.

122. If any minister so registered die or depart permanently from the limits of this Order, or cease to officiate within the said limits, or be by competent authority deprived of his office of minister, the High Commissioner, upon being satisfied of the facts, shall remove the name of such minister from the register.

Notice of registration or removal.

123. The High Commissioner shall notify in the Fiji Government Gazette, or in some other public manner, the registration of every minister and the removal of the name of any minister from the register.

Declaration precedent to marriage.

124. No marriage shall be celebrated until each of the parties to the marriage shall have made the following declaration before the minister celebrating the marriage:

"I, *A.B.*, of , do solemnly and sincerely declare that I believe there is no impediment or lawful objection, by reason of any kindred or relationship, any former marriage, or want of consent of parents or guardians, or any other lawful cause, to my being married, to *C.D.*, of , daughter of *E.F.*, of .

(Signature of A.B.)

"And I, the said C. D., do solemnly and sincerely declare that I believe there is no impediment or lawful objection by any such reason or other lawful cause as aforesaid to my being married to the said A.B."

(Signature of C.D.)

Declared by both the parties above
named atthis
day of ,19
before me,
(Signature and designation of
minister).

}

False declaration.

125. Any person who shall wilfully make any false statement in any such declaration shall be deemed guilty of an offence against this Order.

Essentials for valid marriage.

126. Every marriage celebrated by any such minister after declaration so made shall be as valid in law as if the same had been solemnized within Her Majesty's dominions with a due observance of all forms required by law.

Provision for special cases.

127. No marriage, in fact, shall be avoided by reason only of the same having been celebrated by a person not being a duly registered minister if either of the parties to the marriage *bona fide* believes at the time that he was a duly registered minister.

Witnesses and certificate.

128. The presence of two witnesses at the least is requisite for the due celebration of a marriage, and the minister, the parties to the marriage, and the witnesses shall sign in duplicate a certificate in the following form:-

I [*minister*] being [*designation*] certify that I have this day at [*place*] duly celebrated marriage between [*name, designation, and residence of husband*] and [*name, designation, and residence of wife*], after declaration duly made as required by the Pacific Order, 1893.

Dated this day of ,19

A.B. [minister officiating at]

Signature of parties.

C. D.

E.F.

Signature of witnesses.

G. H.

L.M.

The minister shall, immediately after the marriage, deliver one certificate to one of the parties to the marriage, and within one month thereafter, or by the first opportunity, shall transmit the other certificate to the High Commissioner.

Any such certificate purporting to be signed by the minister who solemnized the marriage shall be received in all courts of law as *prima facie* evidence of such marriage at the date set forth in the certificate.

Offences by ministers.

129. If any minister -

(a) celebrates a marriage knowing that he is not duly registered;

(b) fails to transmit to the High Commissioner the certificate of any marriage celebrated by him;

he shall be deemed guilty of an offence against this Order.

Registration of Births, Marriages, and Deaths

High Commissioner to keep registers of births, marriages, and deaths.

130. The High Commissioner shall keep books for the registry therein of births, marriages, and deaths of British subjects occurring within the limits of this Order, and shall, as soon as possible after being informed of any such birth, marriage, or death, enter the same respectively in the books, in such manner as, subject to any direction of a Secretary of State, he may think convenient.

In the case of a death the High Commissioner shall, if possible, also enter the date and place of burial.

Copies of entries to be *prima facie* evidence.

131. A copy of the entry of any birth, marriage, or death, signed by the High Commissioner, shall be received in all courts of law as *prima facie* evidence of the fact of such birth, marriage, or death. But no registry of any death shall be received as evidence of the fact of such death unless the burial of the person named be also registered.

Search and copies.

132. Every person, on payment of the fees hereunder mentioned, and on stating in writing the particular entry which he desires to find, shall be entitled, at reasonable hours to be fixed by the High Commissioner, to search the books for such entry, and to have a copy of any such entry certified by the High Commissioner.

Fees

133. Every search (to be paid beforehand) five shillings.
Every certified copy of any entry, two shillings and sixpence.

Notice of births and deaths.

134. In every case of the birth of any child of a British subject within the limits of this Order, one of the parents shall, within 60 days thereafter and in every case of the death of any British subject within the said limits the occupier of the house or place where the death occurred shall within 30 days thereafter, transmit to the High Commissioner a statement of the fact and date of such birth or death; giving also, in the case of a birth, the names, and, as far as possible, particulars of the name, age, and birthplace of each parent, and the name of the child; and, in the case of a death, the name, age, and parentage (if known) of the deceased, stating also, as far as known, whether the deceased was married, and to whom, and at what place, together with the names and ages of any children left by the deceased.

The statement of a death must also include the date and place of burial of the deceased, verified, if possible, by the signatures of two witnesses present at the burial.

Correctional of accidental errors.

135. Upon the discovery of any error in the form or substance of any such entry, the High Commissioner shall correct the error by making and signing a new entry in the margin, without altering the original entry, adding the date of the correction, and every certified copy of such entry shall show the original entry and the correction.

Offences.

136. If any person -

(a) refuses or neglects to give any notice or information required by this part of this Order;

(b) wilfully makes or causes to be made, for the purpose of being inserted in any register under this part of this Order, any false statement touching any of the particulars hereby required to be registered;

he deemed guilty of an offence against this Order.

PART XVI

Official

General official powers.

137. Except as in this Order expressly provided, nothing in this Order shall preclude any of Her Majesty's officers from performing any act, not of a judicial character, which Her Majesty's officers might by law or by virtue of usage or sufferance, or otherwise, have performed if this Order had not been made.

(Article 138 ceased to apply with effect from 9th March 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

Suits, etc., for things done under Order.

139. Any suit or proceeding shall not be commenced in any of Her Majesty's Courts against any person for anything done or omitted in pursuance or execution or intended execution of this Order, or of any regulation or rule made under it, unless notice in writing is given by the intending plaintiff or prosecutor to the intended defendant one clear month before the commencement of the suit or 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 doing of such damage has ceased.

The plaintiff in any such suit 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, by leave of the Court at any time, pay into Court such sum of money as he thinks fit, whereupon such proceeding and order shall be had and made in and by the Court as may be had and made on the payment of money into Court in an ordinary suit.

(Articles 140 to 142 (inclusive) ceased to apply with effect from 9th April 1962. S.I. 1961/1506 Sched. and G.N. 45/1962.)

PART XIX

Commencement, Publication, Repeals, and Temporary Provisions

Orders repealed by this Order.

143. From the commencement of this Order the recited Orders in Council shall be repealed, but this repeal shall not affect the past operation of those Orders, or any existing right, title, obligation, or liability, or the validity of any rules or regulations, or general orders or directions of a Secretary of State or High Commissioner made, given, or confirmed under those Orders, or revive anything thereby repealed, or affect the existence of any office or Court created by those Orders and continued by this Order, and any such rules, regulations, general orders, or directions in force at the commencement of this Order shall continue in force and have effect *mutatis mutandis*, except so far as they are inconsistent with this Order, until they are revoked or are superseded by new rules, regulations, general orders, or directions under this Order.

Provided that anything done before the commencement of this Order, which would have been valid if this Order had been in force, shall for all purposes be of the same validity as if it had been done within the Western Pacific Islands, as defined by the recited Orders in Council.

Pending proceedings.

144. Nothing in this Order, or in any rules made under it, shall apply to, or in any manner affect, any suit or proceeding, either of a civil or of a criminal nature, pending at the commencement of this Order either with reference to the original proceedings therein or with reference to any appeal therein, or otherwise, subject, nevertheless, as follows:-

In any suit or proceeding, whether of a civil or of a criminal nature, the Court before which the same is pending at the commencement of this Order, after hearing the parties, or of its own motion, or on the application of either party, or by consent, may, if it sees fit, from time to time direct that the procedure and practice prescribed by this Order or by any rule made under it be followed in any respect.

Commencement.

145. This Order shall commence and have effect as follows:-

- (1) As to the making of any warrant or appointment under this Order, immediately from and after the date of this Order.
- (2) As to the framing of rules of procedure or regulations and the approval thereof by one of Her Majesty's Principal Secretaries of State, immediately from and after the date of this Order.
- (3) As to the repeal of former Orders, and as to all other matters and provisions comprised and contained in this Order, immediately from and after the expiration of one month after this Order is first exhibited in the public office of the High Commissioner; for which purpose he is hereby required forthwith, on receipt by him of a copy of this Order, to affix and exhibit the same conspicuously in his public office, and he is also hereby required to keep the same so affixed and exhibited during one month from the first exhibition thereof; and, notwithstanding anything in this Order, the time of the expiration of the said month shall be deemed to be the time of the commencement of this Order.
- (4) Proof shall not in any proceeding or matter be required that the provisions of this Article have been complied with, either with respect to the publication of this Order, or with respect to the publication of Queen's Regulations, nor shall any act or proceeding be invalidated by any failure to comply with any of such provisions.

Publication and sale of Order.

146. A copy of this Order shall be kept exhibited conspicuously in each place where any Court sits under the provisions of this Order.

Printed copies shall be provided and sold at such reasonable price as the High Commissioner may fix.

SCHEDULE

The Schedule to the Order, which contained Rules and Regulations for procedure in Civil and Criminal Cases and a Scale of Fees, has been omitted. The Schedule has been partially replaced in respect of the Protectorate by the High Court (Civil Procedure) Rules (G.N. 87/1965). Certain Rules were also revoked by the Civil Procedure (Revocation) Rules 1957 (G.N. 173/1957). It is also intended that new provision will be made shortly for remaining matters relating to Probate and Administration.

So far as concerns Criminal matters, see now the subsidiary legislation under the Magistrates' Courts Ordinance (Cap. 3) and the criminal Procedure Code (Cap. 4) in Vol. I of the Laws of the Protectorate (Rev. 1969).

THE PACIFIC ORDER 1893

Subsidiary Legislation

Art. 7 (3) Dormant Commission of Chief Secretary to the Western Pacific High Commission
... .. 1950 W.P.H.C.

Gazette p.3.