

GOVERNMENT NOTIFICATION.—No. 487.

The following despatch from the Right Honourable the Secretary of State for the Colonies, and its enclosure, are published.

By Command,

J. H. STEWART LOCKHART,
Colonial Secretary.

Colonial Secretary's Office, Hongkong, 4th September, 1901.

HONG KONG.

No. 255.

DOWNING STREET,

2nd August, 1901.

SIR,—I have the honour to transmit for your information and guidance two copies of an Order of His Majesty in Council, dated the 24th July, and entitled "The Wei-hai-Wei Order in Council, 1901."

2. I have to call your attention to the fact that under this Order in Council the Supreme Court of Hong Kong is constituted a Court of Appeal from the High Court of Wei-hai-Wei.

I have the honour to be,

Sir,

Your most obedient, humble Servant,

J. CHAMBERLAIN.

Governor

Sir HENRY A. BLAKE, G.C.M.G.,

Sec.

Sec.

Sec.

AT THE COURT AT ST. JAMES'S,

The 24th day of July, 1901.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MARQUESS OF CHOLMONDELEY

VISCOUNT CROMER

LORD CHESHAM

LORD JAMES OF HEREFORD

LORD PAUNCEFOTE

LORD MILNER

MR. CECIL RHODES.

WHEREAS it is expedient to make provision for the exercise of the power and jurisdiction vested by Treaty in His Majesty the King in and over the parts of China within the limits of this Order:

NOW, THEREFORE, His Majesty, by virtue of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," and otherwise in him vested, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

PART I.—PRELIMINARY.

1. The limits of this Order are the Island of Liu Kung, all the islands in the Bay of Wei-hai-Wei, and a belt of land 10 English miles wide along the entire coast line of the Bay of Wei-hai-Wei as has been or shall be hereafter delimited, including the territorial waters of the said islands and coast.

Provided that if, and whensoever, any delimitation of territory is agreed upon between His Majesty's Government and the Government of China, whether the same extends or diminishes such belt of 10 miles, the Commissioner shall by proclamation give public notice thereof, and thereupon the limits described in such proclamation shall be the limits of this Order.

All territories and places within the limits of this Order are in this Order referred to as "the said territories."

2. In this Order :—

- “ Secretary of State ” means one of His Majesty’s Principal Secretaries of State.
- “ Judge ” includes Acting Judge and also the Commissioner or Acting Commissioner, when sitting as Judge.
- “ Supreme Court ” means His Majesty’s Supreme Court for Hong Kong.
- “ Native ” means any person of Chinese birth or parentage, not being a British subject.
- “ Master ” with respect to any ship includes any person (except a pilot), having command or charge of that ship.
- “ Month ” means calendar month.
- “ Oath ” and “ affidavit ” in case of persons for the time being allowed by law to affirm or declare, instead of swearing, include affirmation and declaration, and the expression “ swear ” in like case, includes affirm and declare.
- “ Offence ” includes crime and any act or omission punishable criminally in a summary way or otherwise.
- “ Ship ” includes any vessel used in navigation, however propelled, with her tackle, furniture, and apparel, and any boat or other craft.

Expressions used in any ordinances, rules, regulations, or orders made under this Order shall, unless a contrary intention appears, have the same respective meanings as in this Order.

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

PART II.—ADMINISTRATIVE AND LEGISLATIVE.

3.—(1.) There shall be a Commissioner (hereinafter referred to as the Commissioner) in and over the said territories, and the person who shall fill the said office of Commissioner shall be from time to time appointed by Commission under His Majesty’s Sign Manual and Signet.

(2.) In the event of the death, incapacity, removal, or absence from the said territories of the Commissioner for the time being, all and every the powers and authorities by this Order granted to him shall, until His Majesty’s further pleasure is signified therein, be vested in such person as may be appointed to administer the same by any instrument under His Majesty’s Sign Manual and Signet, or, if there be not in the said territories any person so appointed, then in the Senior Military Officer for the time being in command of His Majesty’s forces within the said territories.

(3.) The Commissioner shall administer the Government of the said territories in the name and on behalf of His Majesty, and shall do and execute in due manner all things that shall belong to the trust thereby reposed in him, according to the several powers and authorities granted or appointed to him by virtue of this Order and of his Commission, and according to such instructions as may from time to time be given to him under His Majesty’s Sign Manual and Signet, or by Order of His Majesty in Council, or by His Majesty through a Secretary of State, and according to such laws as are or shall hereafter be in force in the said territories.

4. The Commissioner shall have an official seal, bearing the style of his office, and such device as a Secretary of State from time to time approves, and such seal shall be deemed the public seal of the said territories, and may be kept and used by the Commissioner for the sealing of all things whatsoever that shall pass the public seal. And, until a public seal shall be provided, the seal of the Commissioner may be used as the public seal.

5. The Commissioner may make and execute in His Majesty’s name and on his behalf, under the public seal, grants and dispositions of any lands which may be lawfully granted or disposed of by His Majesty within the said territories.

6. The Commissioner may, as he shall see occasion, in His Majesty’s name and on his behalf, grant to any offender convicted of any crime in any Court or before any Judge or Magistrate within the said territories, a free and unconditional pardon, or a pardon subject to such conditions as may be lawfully thereunto annexed, or any respite of the execution of the sentence of any such offender for such period as to him may seem fit.

7. The Commissioner may, as he shall see occasion, in His Majesty’s name and on his behalf, remit any fines, penalties, or forfeitures which may accrue or become payable to His Majesty.

8. A Secretary of State or the Commissioner, subject to the directions of a Secretary of State, may, on behalf of His Majesty, appoint for the administration of the said territories, such public officers under such designations as he may think fit, and may prescribe their duties.

The Commissioner may, upon sufficient cause to him appearing, suspend from the exercise of his office within the said territories any person exercising the same, which suspension shall continue and have effect only until His Majesty’s pleasure therein shall be made known and signified to the Commissioner. And in proceeding to any such suspension, he shall observe the directions in that behalf given to him by such instructions as may hereafter be addressed to him by a Secretary of State.

9.—(1.) The Commissioner may make and proclaim Ordinances for the peace, order and good government of the said territories and of all persons within the same.

(2.) Under this Article any of the Laws and Ordinances of Hong Kong may be applied to the said territories with such modifications and adaptations as circumstances may require.

(3.) Every such Ordinance shall forthwith be transmitted to the Secretary of State unless it has been previously approved by him.

(4.) Every such Ordinance shall, from and after the Proclamation thereof, or such other date as may be fixed by the Ordinance, have the force of law, unless the disallowance of such Ordinance by His Majesty shall, within the space of one year after such Proclamation, be signified to the Commissioner by the Secretary of State.

(5.) Every Ordinance which shall be disallowed by His Majesty shall cease to be of any force or effect so soon as the disallowance thereof shall be published by the Commissioner.

10. Every Ordinance Proclamation or other public Notification under this Order shall be published in such manner as the Commissioner may direct.

11. Anything in this Order to the contrary notwithstanding, all natives resident within the walled city of Wei-hai-Wei shall continue to be under the jurisdiction of Chinese officials except so far as such jurisdiction may be inconsistent with the naval and military requirements of His Majesty, or with the peace, order, and good government of the said territories.

PART III.—JUDICIAL.

12. There shall be and there is hereby established in and for the said territories a Court styled His Majesty's High Court of Wei-hai-Wei, in this Order referred to as "the Court."

Until a Judge is appointed the High Court shall be held and constituted by the Commissioner, and thereafter by the Commissioner or the Judge, or by both sitting together.

The High Court shall be a Court of Record.

13. His Majesty may from time to time appoint a Judge under His sign manual.

He shall be a member of the Bar of England, Scotland, or Ireland.

In case of the illness of the Judge, or of his absence from the said territories or from the place where the High Court usually sits, or in any other emergency, the Commissioner may temporarily appoint a person who has held judicial office in His Majesty's service, or otherwise has legal knowledge and experience, to be Acting Judge.

14.—(1.) The Secretary of State may appoint for any district or districts of the said territories a Magistrate or Magistrates, each of whom shall hold a Court.

(2.) The Court of a Magistrate is in this Order included in the term "the Court," unless the context implies a reference to the High Court only.

15. Subject to the directions of the Secretary of State, and to the provisions of this Order, the Commissioner may from time to time appoint such and so many persons to be registrars, clerks, bailiffs, interpreters, and other officers of the Court as he thinks fit, and may prescribe their duties, and may remove from office any person so appointed.

16. All jurisdiction, criminal and civil, over all persons and in all cases respectively being and arising within the territories, shall, subject to and according to the provisions of this Order, be vested in the High Court.

17. The High Court may sit at any place in the said territories as occasion requires.

18. The whole or any part of the jurisdiction and authority of the High Court for or in respect of any district may, subject to the provisions of this Order, and of any Ordinance made thereunder, be exercised by the Magistrate (if any) appointed to act for that district and being therein.

Provided as follows:—

(1.) The High Court shall have concurrent jurisdiction in every such district, and may order any case, civil or criminal, pending before a Magistrate to be removed into the High Court, whether sitting in the district or elsewhere.

(2.) A Magistrate, unless he is a European British subject, shall not have jurisdiction to hear or determine any case in which any accused person or defendant is not a native.

19. Subject to the other provisions of this Order the criminal and civil jurisdiction of the Court shall, as far as circumstances admit, be exercised on the principles of and in conformity with the Statute Law and other law for the time being in force in England, and with the procedure and practice of Courts of Justice and Justices of the Peace in England, according to their respective jurisdiction and authority.

For the purpose of facilitating the application of such Statute Law, the Court may construe any enactment with such alterations and modifications not affecting the substance as may be necessary to meet the circumstances of the said territories.

Except as regards acts which are or may be made offences by this or any other Order in Council applying to the said territories, or by any laws or regulations made thereunder, such acts only as would be offences if committed in England shall be deemed to be offences rendering the person committing the same liable to punishment.

Provided that in civil cases between natives the Court shall be guided by Chinese or other native law and custom, so far as any such law or custom is not repugnant to justice and morality.

Subject to the provisions of this Order and of any Ordinance made under this Order, the High Court may make rules of Court with respect to procedure in all criminal and civil matters in the High Court and in Magistrates' Courts.

20.—(1.) When a native is a party to any case, criminal or civil, the Court, if it thinks fit, may try the case with two assessors.

(2.) An assessor shall be a native, having a competent knowledge of Chinese law and custom, nominated and summoned or requested by the Court to act as assessor.

(3.) An assessor shall not have any voice in the decision of the Court, but his opinion, whether consenting or dissenting, shall be recorded in the Minutes.

PART IV.—CRIMINAL MATTERS.

21.—(1.) The High Court may award any such punishment as may be awarded by any Court of criminal jurisdiction in England for the time being.

(2.) Subject to the maximum penalties provided by law, a Magistrate shall not award imprisonment, with or without hard labour, exceeding a term of twelve months, nor any fine exceeding 400 dollars.

(3.) A Magistrate shall not try any of the following offences: Treason, murder, rape, forgery, and perjury; nor, except by direction of the High Court in writing, any offence punishable with penal servitude for seven years or upwards. Such direction may be given in any case after the accused is committed for trial before the High Court, if the High Court is of opinion that the offence will be adequately punished with such punishment as the Magistrate has power to award.

22.—(1.) A criminal prosecution is commenced by a complaint made to the Court, or by the issue of a summons or warrant by the Court of its own motion.

(2.) For the issue of a summons the complaint need not be on oath, unless the Court so requires.

(3.) A warrant may be issued if the complaint is in writing and on oath, or if the accused person does not appear on a summons, and it is proved that the summons has been served or cannot be served.

(4.) On receiving a complaint, whether on oath or not, the Court may, if it is of opinion that the complaint discloses no offence, or is otherwise unsubstantial, decline to issue any summons or warrant.

(5.) An accused person arrested on warrant shall be brought before the Court within forty-eight hours after arrest unless exceptional circumstances prevent his being so brought, and the complaint shall be heard as soon thereafter as circumstances reasonably admit. Due notice of the time and place of hearing shall be given to the prosecutor (if any), and summonses issued to the witnesses, if any.

23.—(1.) When the accused is before the Court, and the prosecutor has had notice of the time and place appointed for the hearing of the complaint, but does not appear, the Court, unless it thinks fit to adjourn the hearing, shall dismiss the complaint;

(2.) If both parties are present the Court shall proceed to hear the complaint; and

(a.) If the offence is legally punishable, or if the Court thinks it would be adequately punished, with imprisonment not exceeding six months, or with fine not exceeding 100 dollars, the case shall be tried summarily on the complaint;

(b.) Otherwise, the Court shall take the depositions of the prosecutor and witnesses with a view to determining whether the accused shall be tried on a charge.

(3.) The following offences are not triable summarily, that is to say: treason, murder, rape, arson, housebreaking, robbery with violence, forgery, and perjury.

24. At a summary trial the substance of the complaint shall be stated to the accused, and he shall be asked if he admits or denies the truth of the complaint. If he admits, the Court may convict him and award punishment, but may first take further evidence if it think fit. If he denies, the Court shall hear the evidence of the prosecutor and witnesses, and of the witnesses, if any, for the accused, and either discharge the accused or convict him and award punishment.

25.—(1.) At the preliminary examination of a case which must be, or may in the opinion of the Magistrate require to be, sent for trial to another Court, the procedure shall be as follows:—

(a.) The Court shall, in the presence of the accused, take the depositions on oath of those who know the facts and put them in writing;

(b.) The accused may cross-examine each witness for the prosecution, and the witness' answers shall form part of his deposition;

- (c.) The deposition of each witness shall be read over to the witness and signed by him ;
- (d.) After the evidence of the witnesses for the prosecution has been taken, the Court shall ask the accused if he wishes to make any statement or has any witnesses to call, or other evidence to adduce in his defence, and the Court shall then take his statement and the evidence of his witnesses (if any) ;
- (e.) The accused shall be informed that any statement he may make may be used against him at the trial, and also that he may be sworn as a witness himself ;
- (f.) The Court having heard all the evidence, shall consider the whole matter, and if it thinks that a *prima facie* case is made out against the accused, shall cause a charge, on which the accused is to be put on his trial, to be framed, and read over to the accused ;
- (g.) The Court shall bind by recognizance the prosecutor and every witness to appear at the trial and give evidence ;
- (h.) If a person refuses to enter into a recognizance, the Court may send him to prison, there to remain till the trial, unless in the meantime he enters into a recognizance ;
- (i.) Until the trial the Court shall either admit the accused to bail or send him to prison for safe keeping ;
- (j.) The accused shall be entitled to a copy of the charge on which he is to be tried ;
- (k.) The complaint (if any), the depositions, the statement of the accused (if any), the charge on which the Court orders him to be tried, and the recognizances shall be carefully transmitted to the Court before which the trial is to take place.

(2.) At the preliminary examination of a case which may be tried on a charge before the same Court, the procedure above described may be varied as follows :—

After hearing so much evidence as is in the opinion of the Court sufficient to raise a strong presumption against the accused and to enable the Court to frame a charge, the Court may proceed to frame a charge and appoint a day for the trial.

(3.) When an accused person is arrested in one district in respect of an offence committed in another district, the preliminary examination may be commenced in the district in which the accused is arrested. In this case any depositions taken shall be transmitted, with the accused, to the Court of the district in which the offence was committed.

26.—(1.) The charge upon which an accused person is tried shall state the offence, with such particulars as to the time and place of the alleged offence, and the person (if any) against whom or the thing (if any) in respect of which it was committed; as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2.) There shall be a separate charge for each offence, and every charge shall be tried separately, but if the acts form one transaction, or if the offences are of the same kind, the charges may be tried together, if the Court thinks fit.

(3.) When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or where one is accused of committing an offence and another with abetting, or attempting to commit that offence, they may be charged and tried together or separately, as the Court thinks fit.

(4.) The Court may alter any charge at any time, but if the alteration is likely to prejudice the accused or the prosecutor, the Court may adjourn the trial for such time as may be necessary.

(5.) No error or omission in stating the offence or the particulars shall be regarded as material unless the accused was misled by the error or omission.

(6.) When a person is charged with an offence, and the evidence proves either the commission of a minor offence or an attempt to commit the offence charged, he may be convicted of the minor offence or the attempt.

(7.) For the purposes of the application of any statute law, a charge framed under the provisions of this Order shall be deemed to be an indictment.

27. The Court may, at any stage of the prosecution, in its discretion admit to bail a person charged with any felony, riot, or assault, but a person charged with murder shall not be admitted to bail except by or by direction of the High Court.

In all other cases the Court shall admit the accused to bail unless the Court sees good reason to the contrary.

The High Court may admit a person to bail although a Magistrate has not thought fit to do so.

28. 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 50 dollars.

Damages ordered to be paid may be either in addition to or in lieu of a fine, and shall be recoverable in like manner as a fine.

Where such damages are ordered an action cannot be brought for the assault.

29. The Court may from time to time postpone or adjourn any trial if it considers it necessary to do so in the interests of justice.

During the postponement or adjournment the accused may be committed to prison for safe custody, or admitted to bail, or suffered to go at large, as the Court thinks fit.

30. Where there is reasonable cause to suspect that anything, by or in respect of which any offence cognizable by the Court has been committed, is in any house or place within the jurisdiction of the Court, the Court may, by a search warrant, authorise an officer of the Court to search the house or place, and if anything searched for be found, to seize it and bring it before the Court for adjudication.

31. A warrant for apprehension or a search warrant may be issued and executed on any day at any time.

32. A sentence of death shall not be carried into effect unless confirmed by the Commissioner.

For this purpose, when the trial has been held by the Judge, he shall transmit his notes, or a copy thereof, and a report on the case to the Commissioner.

The Commissioner may commute the sentence to such punishment as he thinks proper in the circumstances or may pardon the convict.

33. The Court may order a person convicted before it to pay all or a part of the expenses of the prosecution, the amount to be specified in the order.

The Court may, when it thinks a prosecution is vexatious or frivolous, order the complainant to pay all or a part of the expenses of the prosecution and of the accused, the amount being specified in the order.

In both cases the Court may order that the whole or such portion as the Court thinks fit of the expenses so paid be paid over to the complainant or the accused, as the case may be.

34.—(1.) When a person is convicted before a Magistrate and the punishment imposed is a fine of 100 dollars or upwards or imprisonment for three months or upwards, he may appeal to the High Court.

(2.) The Magistrate shall postpone the execution of the sentence pending the appeal and shall, as on a remand, either commit the person convicted to prison for safe custody or admit him to bail, or take security for the payment of the fine (if any).

(3.) The Magistrate 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, and transmit the same, together with the notes of the evidence and any documents adduced in evidence, to the High Court.

(4.) The High Court shall either affirm or annul the conviction or amend it, or affirm or annul the sentence or vary it, or rehear the case itself or order a rehearing before the Magistrate, giving all necessary and proper directions.

35.—(1.) In each of the following cases, namely:—

(i.) Where a person is convicted before the High Court or his conviction before a Magistrate is affirmed by the High Court, and the person so convicted declares his desire to appeal to the Supreme Court, on any question of law affecting the conviction or sentence; or

(ii.) Where the High Court thinks fit to reserve for the judgment of the Supreme Court any question of law arising on the trial,—

the High Court shall frame a statement setting out the facts, and the grounds of the conviction and sentence, and the question or questions of law raised by the person convicted or by the High Court.

(2.) The High Court shall annex to that statement certified copies of the summons, indictment (if any), and proceedings, and of all documentary evidence admitted or tendered, and appearing to that Court to be material, and the depositions, the notes of the oral testimony, any statement or objections to the conviction or sentence made by the person convicted, and any argument thereon that he desires to submit to the Supreme Court, and a note of the reasons why any tendered evidence which is not transmitted appears to the Court to be immaterial.

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

(4.) The High 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, with or without security, by recognizance, deposit money, or otherwise.

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

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

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

(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, and shall give all necessary and proper consequential directions.

36. 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, in the opinion of the Supreme Court, have been properly met by amendment by the High Court; or
- (ii.) Of any error or informality which, in the opinion of the Supreme Court, did not affect the substance of the case or subject the Appellant to any undue prejudice.

37. There shall be no appeal in a criminal case to His Majesty the King in Council from a decision of the Supreme Court, except by special leave of His Majesty in Council.

38. The Commissioner may by general order prescribe the manner in which and the prisons in which punishments are to be carried into execution, and may make rules for the government of the prisons and of all persons therein.

39.—(1.) When an offender is sentenced to imprisonment and the High Court thinks it expedient that the sentence be carried into effect within His Majesty's dominions, the place shall be either Hong Kong or a place in some other part of His Majesty's dominions the Government whereof consents that offenders may be sent thither under this Article.

(2.) The High Court may, by warrant under the hand of the Judge, cause the offender to be sent to such place as aforesaid, in order that the sentence may be carried into effect accordingly.

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

40. "The Fugitive Offenders Act, 1881" and "The Colonial Prisoners Removal Act, 1884" shall apply to the said territories as if they were part of His Majesty's dominions, subject as follows:—

- (a.) The Commissioner is hereby substituted for the Governor or Government of a British possession;
- (b.) The High Court is hereby substituted for a Superior Court, and for a Magistrate of a British possession;
- (c.) For the purposes of the said Act of 1881, and of this Article in relation thereto, the said territories and Hong Kong shall be deemed to be one group of British possessions.

41.—(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 said territories, the High Court shall have the like jurisdiction over any person 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 the criminal act and the death had happened within that jurisdiction.

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

(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," of the following enactments, that is to say:—

- "The Admiralty Offences (Colonial) Act, 1849."
- "The Admiralty Offences (Colonial) Act, 1860."
- "The Merchant Shipping Act, 1894," Section 686."

42. When a British subject, being within the said territories, is accused of having committed any offence on board a British or Chinese ship at a distance of not more than 100 miles from the coast of China, or on board a ship not lawfully entitled to claim the protection of the flag of any State at such a distance as aforesaid, he may be apprehended, charged, and tried, in like manner as if the offence had been committed within the said territories.

The High Court, on receiving satisfactory information that any soldier, sailor, marine, or other person belonging to any of His Majesty's naval or military forces has deserted therefrom, and has concealed himself in any British ship at such distance as aforesaid, may issue a warrant for the search for and apprehension of such deserter, and, on being satisfied on investigation that any person so apprehended is such a deserter, shall cause him to be, with all convenient speed, taken and delivered over to the officer in command of a vessel of war of His Majesty, or to the nearest military station of His Majesty's forces.

43. Where the High Court issues a summons or warrant against any person on a charge of an offence committed on board of or in relation to any ship, other than a ship enjoying immunity from civil process, then, if it appears to the Court that the interests of public justice so require, that Court may issue a warrant or order for the detention of the ship, and may cause the ship to be detained accordingly, until the charge is heard and determined, and the order of the Court thereon is fully executed, or for such shorter time as the Court thinks fit; and the Court shall have power to make all such orders as appear to it necessary or proper for carrying this provision into effect.

44. If any person—

- (i.) Publicly derides, mocks, or insults any religion established or observed within the said territories; or
- (ii.) Publicly offers insult to any religious service, feast, or ceremony, or to any place of worship, tomb, or sanctuary belonging to any religion established or observed within the said territories, or belonging to the ministers or professors thereof; or,
- (iii.) Publicly and wilfully commits any act tending to bring any religion established or observed within the said territories, or its ceremonies, mode of worship, or observances, into hatred, ridicule, or contempt, and thereby to provoke a breach of the public peace; he shall be guilty of an offence, and on conviction thereof, liable to imprisonment not exceeding two years, with or without hard labour, and with or without a fine not exceeding 500 dollars, or to a fine alone not exceeding 500 dollars.

45. If any person—

- (i.) Does any act calculated to excite tumult or disorder, or to excite enmity between British subjects, Chinese subjects, and foreign subjects, or any of them, or to excite opposition to the lawful authority of His Majesty within the said territories; or,
- (ii.) Without His Majesty's authority levies war, or takes part in any operation of war, or aids or abets any person in carrying on war, insurrection, or rebellion against the Emperor of China, or against any Government exercising authority in any part of the dominions of the Emperor of China, he shall on conviction be liable to imprisonment for any term not exceeding two years, with or without hard labour, or to a fine not exceeding five thousand dollars, or to both imprisonment and fine.

46.—(1.) Where a person has been convicted under the last preceding article, he shall in addition to the punishments therein mentioned, and without further proceedings, be liable to deportation; and the Court may order that he be deported to such place as the Commissioner may direct, but every such order shall be subject to confirmation by the Commissioner.

(2.) The place shall be a place the Government thereof consents to the reception therein of the person to be deported.

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

(4.) He shall, as soon as is practicable, and either after execution of the sentence or while it is in course of execution, be embarked in custody under the warrant of the Commissioner on board one of His 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.

(5.) 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.

(6.) If any master of a British ship, after a reasonable remuneration for the conveyance of a deported person has been tendered or paid to him, refuses or fails to carry such person to the place named, he shall be liable to a penalty not exceeding 500 dollars.

(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 in such manner as the Secretary of State, with the concurrence of the Treasury, may direct.

(8.) The Commissioner shall forthwith report to the Secretary of State any order of deportation made or confirmed by him, and the grounds thereof.

(9.) If any person deported under this Order returns to the said territories without permission in writing of the Secretary of State (which permission the Secretary of State may give), he shall be liable to a fine not exceeding one thousand dollars; and he shall also be liable to be forthwith again deported.

47. The Court shall have all the powers appertaining to the office of Coroner in England, provided as follows:—

(a.) Where a person is charged with causing the death, the Court may proceed forthwith with the preliminary examination;

(b.) When no person is charged with causing the death, the Court shall, without any jury, hold an inquest, taking the depositions of those who know the facts. If, during or after the inquest, any person is so charged, the depositions shall be read over in the presence of the witnesses and of the accused, who shall be entitled to cross-examine each witness, and the procedure shall be as in other cases of preliminary examination. If after the inquest the Court does not see fit to cause any person to be charged, the Court shall send a copy of the depositions to the Commissioner, together with a report as to the cause of the death.

PART V.—CIVIL MATTERS.

48.—(1.) Every civil proceeding in the Court shall be taken by action, and or otherwise, and shall be designated an action.

(2.) For the purposes of any statutory 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 to any civil proceeding, howsoever required by any such enactment or provision to be instituted or carried on.

49.—(1.) Every action shall be heard and determined in a summary way.

(2.) Every 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, or the Rules of Court otherwise provide.

(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, and times may be extended, by the Court in its discretion, and on such terms as the Court thinks just.

50.—(1.) The sittings of the Court for the hearing of actions shall, where the amount of business so requires, be held on stated days.

(2.) The sittings shall ordinarily be public, but the Court may, for reasons recorded in the Minutes, hear any particular case in the presence only of the parties and their legal advisers and the officers of the Court.

51. Every action shall commence by a summons, issued from the Court, on the application of the Plaintiff, and served on the Defendant (in this Order referred to as an original summons).

52. In each Court there shall be kept a book, called the Action Book, in which all actions brought in the Court 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.

53.—(1.) An original 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 therein is not served therewith, the Plaintiff may, before the end of the twelve months, apply to the Court for renewal thereof.

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

(4.) The summons shall be renewed by being re-sealed with the seal of the Court, and a note being made thereon by the Court or its officer, stating the renewal and the date thereof.

(5.) A summons 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 summons.

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

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

55. 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.

56. 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.

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

58.—(1.) Notwithstanding anything in this Order, the Court (for reasons recorded in the Minutes) may at any time do any of the following things as the Court thinks just:—

- (i.) Defer or adjourn the hearing or determination of any action, proceeding, or application;
- (ii.) Order or allow any amendment of any pleading or other document;
- (iii.) Appoint or allow a time for, or enlarge or abridge the time appointed or allowed for, or allow further time for, the doing of any act or the taking of any proceeding.

(2.) Any Order within the discretion of the Court may be made on such terms respecting time, costs, and other matters, as the Court thinks fit.

59. Subject to the provisions of this Order and any Rules of Court, the costs of and incident to all proceedings in the Court shall be in the discretion of the Court.

60.—(1.) All orders of the Court shall, if not made in writing, be drawn up in writing and filed with the papers in the action.

(2.) The seal of the Court shall be affixed to every order, which shall then be part of the record in the action.

(3.) The order shall bear the date of the day of the delivery of the decision on which the order is founded.

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

61.—(1.) On proof of great urgency or other peculiar circumstances, after an action is brought, the Court may, if it thinks fit, on the application of a plaintiff, or of its own motion, make an order for stopping the clearance of, or for the arrest and detention of, a ship about to leave the said territories, other than a ship enjoying immunity from civil process.

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

62.—(1.) Any agreement in writing between any persons to submit present or future differences to arbitration, whether an arbitrator is named therein or not, may be filed in the Court by any party thereto, and unless a contrary intention is expressed therein, shall be irrevocable, and shall have the same effect as an order of the Court.

(2.) Every such agreement is in this Order referred to as a submission.

(3.) If any action is commenced in respect of any matter covered by a submission, the Court, on the application of any party to the action, may by order stay the action.

63.—(1.) The High Court shall have, with respect to all persons within the said territories, all such jurisdiction in bankruptcy as for the time being belongs to the High Court in England.

(2.) Magistrates may exercise such jurisdiction in bankruptcy as may be prescribed by Ordinances, and subject thereto by Rules of Court: provided that a Magistrate shall not exercise any bankruptcy jurisdiction unless he is so authorised by the Commissioner.

(3.) Proceedings in bankruptcy shall be originated by a summons to the debtor to show cause why he should not be adjudicated bankrupt, or by a summons issued by the debtor himself to his creditor, or any of his creditors, to show cause why he, the debtor, should not be adjudicated bankrupt.

(4.) On or after the issue of such summons, the High Court may stay any proceedings pending in any Court in respect of any debt provable in bankruptcy, or may allow the proceedings to continue on such terms as the High Court thinks fit.

(5.) On or after the issue of such summons, the High Court may appoint a receiver or manager of the property or business of the debtor.

64.—(1.) The High Court shall have Admiralty jurisdiction for and within the said territories, and over vessels and persons coming within the same.

(2.) The following enactments of "The Colonial Courts of Admiralty Act, 1890," that is to say, section 2, sub-sections (2) to (4); sections 5 and 6; section 16, sub-section (3); shall apply to the High Court as if that Court were a Colonial Court of Admiralty, and as if the said territories were a British possession; and for the purpose of this application the expressions "judgment" and "appeal" shall in the enactments so applied have the same respective meanings as are assigned thereto in section 15 of the said Act.

65.—(1.) The High Court shall, as far as circumstances admit, have, for and within the said territories, all such jurisdiction relative to the custody and management of the persons and estates of lunatics, as for the time being belongs to the Lord Chancellor or other Judge or Judges in England intrusted by virtue of His Majesty's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics.

66.—(1.) The High Court shall, as far as circumstances admit, have for and within the said territories 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 in England.

(2.) The High Court shall have the like jurisdiction in relation to native marriages as would be exercised by any Chinese Court if His Majesty had not acquired power and jurisdiction in the said territories, and subject to the provisions of any Ordinance, may exercise the same in accordance with Chinese law and custom so far as consistent with justice and morality, observing, nevertheless, the procedure of the High Court, so far as is practicable.

67.—(1.) The High Court shall be a Court of Probate, and, as such, shall, so far as circumstances admit, have all such jurisdiction as for the time being belongs to the High Court in England in cases of probate and administration of estates.

(2.) The Commissioner may by Ordinance confer on Magistrates or on any Magistrate named or designated in the Ordinance in this behalf, jurisdiction in cases of probate and administration.

(3.) In all cases where the deceased was a native effect shall be given to Chinese law and custom so far as the same are consistent with justice.

Appeal in Civil Cases.

68.—(1.) Where a civil action in the High Court involves the amount or value of 500 dollars or upwards, any party aggrieved by any decision of the Court in the action shall have the right to appeal to the Supreme Court against the same on the following conditions, namely—

- (i.) The appellant shall give security to the satisfaction of the Judge, and to such amount as the Judge thinks reasonable, not exceeding 2,000 dollars, for prosecution of the appeal, and for payment of any costs that may be ordered by the Supreme Court on the appeal to be paid by the appellant to any person.
- (ii.) The appellant shall pay to the High Court such sum as the Judge thinks reasonable, to defray the expense of the making up and transmission to the Supreme Court of the record.

(2.) In any civil case the High Court may, if it thinks fit, give leave to appeal on the conditions aforesaid.

(3.) In any civil case the Supreme Court may give leave to appeal on such terms as it thinks fit.

69.—(1.) After three months from the date of a decision of the High Court, an appeal against it shall not lie except by leave of the Supreme Court.

(2.) After six months from the date of a decision of the High Court, application for leave to appeal against it shall not be entertained by the Supreme Court.

70.—(1.) When a person ordered to pay money, or to do any other thing, appeals, the Judge shall direct either that the decision appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as he thinks fit.

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

(3.) If the Judge 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 Judge for performance of such order as shall be made on appeal.

71.—(1.) The appellant shall file an appeal motion-paper in the High Court.

(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 High Court directs.

72.—(1.) A respondent may, within seven days after service, file in the High Court a motion-paper of cross appeal (if any), and such argument as he desires to submit to the Supreme Court on the appeal and cross appeal (if any).

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

73.—(1.) On the expiration of such seven days, the High Court 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, all written and documentary evidence admitted or tendered, or a certified copy thereof, and the notes of the oral evidence, the appeal and cross 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 Judge, and be forthwith forwarded by him to the Supreme Court.

(3.) The Judge shall not, except for some special cause, take on himself 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.

74.—(1.) 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 High Court: but any application may be made through the High Court.

75.—(1.) 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 High Court 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 separate parties to an appeal appear in person at Hong Kong, 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 Supreme Court may dispose of the appeal, without being required to give notice through the High Court to the parties to the appeal, of the day fixed for the hearing thereof.

76. 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.

77.—(1.) 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, and may enlarge the time for any proceeding except as otherwise by this Order expressly provided.

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

(3.) 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 High Court; and those powers may be exercised in favour of all or any of the parties to the action, although they have not appealed from, or complained of, the decision.

(4.) 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.

(5.) The Supreme Court may, if it thinks fit, remit the action to the High Court, to be reheard, or to be otherwise dealt with as the Supreme Court directs.

(6.) The appeal shall be determined by the Supreme Court according to the law to be administered under this Order by the High Court.

78.—(1.) Notwithstanding anything in this Order, an appeal to the Supreme Court shall not lie from an order of the High Court, made on the application of one party without notice to the other party.

(2.) But, if any person thinks himself aggrieved by such an order, he may, on notice to the other party, apply to the High Court to vary or discharge the order, and an appeal shall lie from the decision on that application.

79. Subject to the provisions of this Order and of any Ordinance made under this Order, the Supreme Court may, with the consent of the Commissioner and with the approval of the Secretary of State, make rules of Court with respect to the hearing of appeals under this Order.

80. For purposes of appeal in civil cases to His Majesty the King in Council, a decision of the Supreme Court on appeal under this Order shall have the effect of a decision of that Court under its ordinary primary jurisdiction.

PART VI.—MISCELLANEOUS.

81. A Land Commission is hereby constituted for the said territories, consisting of the Judge and one other Commissioner who shall be appointed and may be removed by His Majesty's Commissioner.

The Land Commission shall deal with such questions relating to the titles, tenures, occupancy, and assessment of lands in the said territories as may be assigned for their determination by any Ordinance, which may also prescribe the powers, duties, and proceedings of the Commission.

82.—(1.) All the water area included within the lines hereinafter described shall be deemed to be Admiralty waters and shall be solely under the control of the Naval Authorities, that is to say:—

A line from the Eastern Point of the Hu An Lok Rocks to Itau; thence in the direction of Flagstaff Point, until the Eastern Point of Weigall Cove bears North "true"; thence to within a cable's length of the shore at that point; thence following the direction of the coast line and islands at a distance of one cable until Outer Island bears North by West; thence to Kwoa Pu, the northern point of Liu Kung Tau; thence along the shore of Liu Kung Tau to the westward and southward to the Eastern Point of the Hu An Lok Rocks.

(2.) The Lords Commissioners of the Admiralty may from time to time, with the concurrence of the Secretary of State for the Colonies, alter the limits of the Admiralty waters, and such alteration shall be carried into effect by Ordinance as provided by Article 9 of this Order in Council.

(3.) The Naval Commander-in-Chief will make such regulations as will permit of the use of Admiralty waters by mercantile vessels, so far as is necessary.

83. The Commissioner may make Rules of Court and prescribe forms of procedure as to all civil and criminal proceedings and the fees to be taken therein.

All such Rules shall be transmitted by the Commissioner to the Secretary of State, for his approval, and, so far as they relate to fees, for the approval of the Treasury, and until disallowance by him shall have full force and effect.

84. Not later than the 31st March in each year, the Commissioner shall transmit to the Secretary of State a report on the operation of this Order so far as relates to judicial affairs for the year ending the 31st December then last, showing the number and nature of the proceedings, criminal and civil, taken in the Courts under this Order, and the result thereof, and the number and amount of fees received, and such other information, and being in such form, as the Secretary of State from time to time directs.

85. From and after the commencement of this Order, the Orders in Council relating to the exercise of His Majesty's jurisdiction in China shall cease to have any effect in the territories within the limits of this Order, with such savings and exceptions (if any) as may be made by any Proclamation issued by the Commissioner before the commencement of this Order.

86. This Order shall commence and take effect as follows:—

As to the appointment of the Commissioner or other officer, the making of Ordinances or Rules, and the issue of any instructions, proclamations or notifications, immediately from and after the passing of this Order.

As to all other matters and provisions comprised and contained in this Order, from and after the expiration of one month after this Order is first publicly exhibited in the said territories.

87. This Order may be cited as "The Wei-hai-Wei Order in Council, 1901.

A. W. FITZROY.

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