1961 No. 1506

PACIFIC ISLANDS

The Western Pacific (Courts) Order in Council, 1961

Made - - - -	*2nd August*, 1961
Laid before Parliament	*9th August*, 1961
Coming into Operation	*On a day or days to be appointed by the High Commissioner under Section* 1 (4)

At the Court at Buckingham Palace, the 2nd day of August, 1961

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts, 1887 and 1945(a), the Pacific Islanders Protection Acts, 1872 and 1875(b), the Colonial Courts of Admiralty Act, 1890(c), the Foreign Jurisdiction Act, 1890(d), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

PRELIMINARY

Short title, application and commencement.

1.—(1) This Order may be cited as the Western Pacific (Courts) Order in Council, 1961.

(2) The provisions of Articles 4, 5 and 6 of the principal Order, of Article VI of the Gilbert and Ellice Islands Order in Council, 1915(e), and of Article 10 of the New Hebrides Orders in Council, 1922 to 1955(f), shall apply to and in relation to this Order as they apply to and in relation to the principal Order.

(3) The proviso to Article 6 of the principal Order shall apply in relation to the jurisdiction under this Order as it applies in relation to the jurisdiction under that Order.

(4) This Order shall come into operation on a date to be appointed by the High Commissioner by Proclamation, which date shall not be earlier than the day after the day on which this Order shall have been laid before both Houses of Parliament, and different days may be appointed for the coming into operation of different provisions of this Order and for the coming into operation in different territories of any of the said provisions.

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.
(b) 35 & 36 Vict. c. 19 and 38 & 39 Vict. c. 51.
(c) 53 & 54 Vict. c. 27. (d) 53 & 54 Vict. c. 37. (e) Rev. IX, p. 655.
(f) S.R. & O 1922/717, 1923/356 (Rev. VIII, pp. 719, 757: 1922, p. 324; 1923, p. 337); S.I. 1955/553 (1955 II, p. 1700).

Interpretation.

2.—(1) In this Order, unless the context otherwise requires—

"Deputy Commissioner" means a Deputy Commissioner appointed under the provisions of the principal Order;

"High Commissioner" means Her Majesty's High Commissioner for the Western Pacific appointed under the provisions of the principal Order and includes any officer for the time being exercising the powers of the High Commissioner, and also to the extent to which an Assistant High Commissioner is authorised to exercise the powers of the High Commissioner, such Assistant High Commissioner;

"High Commissioner's Court" means Her Majesty's High Commissioner's Court in any territory, as constituted under the provisions of the principal Order, immediately before the date upon which Section 3 of this Order comes into operation in such territory;

"High Court" means the High Court of the Western Pacific for which provision is made by this Order and, save where the context otherwise requires, includes the High Commissioner's Court;

"Judge" means a Judge of the High Court and includes any person for the time being lawfully acting as a Judge;

"judgment" includes decree, order, sentence and decision;

"Judicial Commissioner" means a Judicial Commissioner appointed by or under the provisions of the principal Order;

"jurisdiction" includes powers, authorities and other functions;

"the principal Order" means the Pacific Order in Council, 1893(a), as from time to time amended;

"territory" means the whole or any part of any territory, area or place in or in relation to which jurisdiction is for the time being exercisable under the provisions of this Order.

(2) Save as in this Order otherwise provided or as required by the context, the Interpretation Act, 1889(b), shall apply, with the necessary adaptations, for the purposes of interpreting this Order and otherwise in relation thereto as it applies for the purposes of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

PART II

THE HIGH COURT

Existing Court to continue under new style.

3. Save as provided by Section 26 of this Order, the High Commissioner's Court constituted by the principal Order shall be reconstituted in accordance with the provisions of this Order and shall be styled the High Court of the Western Pacific and, as heretofore, shall be a Superior Court of Record.

Judges of the High Court.

4.—(1) The Judges of the High Court shall consist of a Chief Justice and such number of Puisne Judges as may from time to time be appointed under this Order.

(2) The Chief Justice shall be styled the Chief Justice of the Western Pacific and shall be President of the High Court.

(3) The Judges shall be appointed by the High Commissioner by Letters Patent under his seal in pursuance of instructions given by Her Majesty through a Secretary of State.

(a) Rev. VIII, p. 597; S.R. & O. 1893, p. 312). (b) 52 & 53 Vict. c. 63.

(4) (*a*) A person shall not be qualified for appointment as a Judge unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or he is qualified to practise as an advocate in such a court and he has been qualified for not less than five years to practise as an advocate or solicitor in such a court.

(*b*) In computing, for the purposes of this paragraph, the period during which any person has been qualified to practise as an advocate or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

(*c*) The reference in this paragraph to a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth shall be construed as if it included a reference to a court having such jurisdiction in the Republic of Ireland.

(5) A Judge shall ordinarily reside in such territory as the Chief Justice, with the concurrence of the High Commissioner, may direct.

(6) Subject to the provisions of this Order, a Judge shall, if the High Commissioner, with the consent of a Secretary of State, so directs, be in the service of such territory as the High Commissioner shall specify, and accordingly the laws, regulations and instruments from time to time in force in that territory relating to pensions, gratuities and other like benefits or to terms and conditions of service shall apply in relation to him with such variations or modifications as a Secretary of State may from time to time direct.

(7) When the Chief Justice 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, and when two persons are holding the same office by reason of an appointment made pursuant to this subsection then for the purposes of any function conferred upon the holder of the office of Chief Justice the person last appointed to the office shall be deemed to be the Chief Justice.

Acting Judges.

5.—(1) If the office of Chief Justice is vacant, or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such one of the Judges or such other person qualified for appointment as a judge of the High Court as the High Commissioner may appoint to act as Chief Justice.

(2) If a Judge vacates his office or is appointed to act as Chief Justice, or is for any reason unable to perform the functions of his office, or if the High Commissioner, after consultation with the Chief Justice, is satisfied that the state of business in the High Court requires that the number of Judges should be temporarily increased, the High Commissioner, after consultation with the Chief Justice, may appoint a person to act as a Judge.

(3) Without prejudice to the provisions of the following subsection, a person appointed under this Section to act as Chief Justice or as a Judge shall, unless he earlier resigns his acting office or is removed therefrom under Section 6 of this Order, continue so to act until the end of the period for which he was appointed or, if he was not appointed for a specified period, until his appointment is revoked by the High Commissioner, after consultation with the Chief Justice.

(4) Any person appointed to act as a Judge under the provisions of this Section may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a Judge for the purpose of giving judgment or otherwise in relation to any proceeding commenced before him while his appointment was subsisting.

(5) Any appointment of a person to act as the Chief Justice or to act as a Judge under this Section shall be made by instrument under the hand and seal of the High Commissioner except in the case of an appointment of a Judge to perform the functions of the Chief Justice.

Tenure of office of Judges.

6.—(1) Subject to the following provisions of this Section a Judge shall hold office until he attains the age of sixty-two years:

Provided that the High Commissioner may permit a Judge who has attained the age of sixty-two years to remain in office for such fixed period not exceeding three years as may have been agreed between the Judge and the High Commissioner.

(2) A Judge may at any time resign his office by writing under his hand addressed to the High Commissioner.

(3) Nothing done by a Judge shall be invalid by reason only that he has attained the age at which he is required by or under this Section to vacate his office.

(4) The office of a Judge shall not be abolished during his continuance in office.

(5) A Judge may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with the provisions of subsection (6) of this Section.

(6) A Judge shall be removed from office by the High Commissioner by instrument under his hand and seal if the question of the removal of that Judge from office has, at the request of the High Commissioner made in pursuance of subsection (7) of this Section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under Section 4 of the Judicial Committee Act, 1833(a), or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the Judge ought to be removed from office for inability as aforesaid or misbehaviour.

(7) If the High Commissioner considers that the question of removing a Judge from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(*a*) the High Commissioner shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the High Commissioner from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters, in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

(a) 3 & 4 Will. 4. c. 41.

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the High Commissioner and recommend to the High Commissioner whether he should request that the question of the removal of that Judge should be referred by Her Majesty to the Judicial Committee; and

(*c*) if the tribunal so recommends, the High Commissioner shall request that the question should be referred accordingly.

(8) The provisions of Section 7 and Section 8 (other than the words "not inconsistent with the terms of their commission") Sections 9, 10 and 11 and subsections (1) and (2) of Section 13 of the Commissions of Inquiry Ordinance of the British Solomon Islands Protectorate(a), as in force on the 1st day of January, 1961, shall apply in relation to a tribunal appointed under subsection (7) of this Section as they apply in relation to Commissions appointed under that Ordinance and for that purpose those provisions shall have effect as if they formed part of this Order.

(9) The remuneration of any member of or of the Secretary to a tribunal appointed under subsection (7) of this Section and all the expenses of any inquiry held by such a tribunal shall be deemed to be expenses of the High Court.

(10) If the question of removing a Judge from his office has been referred to a tribunal under subsection (7) of this Section, the High Commissioner may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the High Commissioner and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the High Commissioner that he should not request that the question of the removal of the Judge from office should be referred by Her Majesty to the Judicial Committee; or

(*b*) if the Judicial Committee advises Her Majesty that the Judge ought not to be removed from office.

(11) The provisions of subsection (1) of this Section shall not apply to a person who is a Judge by virtue only of an acting appointment.

Salaries of Judges.

7.—(1) There shall be paid to the Judges such salaries as may be prescribed by the High Commissioner by Order:

Provided that the salary of a Judge, the enactments and instruments relating to pensions, gratuities or other like benefits and his other terms of service, other than allowances, shall not be altered to his disadvantage during his continuance in office.

(2) Where a Judge is entitled to exercise an option in relation to his salary or the matters referred to in the proviso to subsection (1) of this Section, the option as exercised by him shall be deemed for the purposes of that proviso to be to his advantage.

Commissioners of the High Court.

8.—(1) Whenever he is satisfied that no Judge is available to attend to the business of the High Court in any territory, the High Commissioner, upon the recommendation of the Chief Justice, may by instrument under his hand and seal appoint some person to perform within such territory—

(a) Laws of the British Solomon Islands Protectorate, Cap. 36.

(*a*) all or any of the functions of a Judge, either generally or in respect of any particular case or class of cases; or

(*b*) such functions of a Judge as it shall appear to that person require to be performed without delay,

subject to such limitations and conditions, if any, as may be specified in such instrument.

(2) Any person appointed under the provisions of subsection (1) of this Section shall be styled a Commissioner of the High Court; all things done by him in accordance with the terms of his appointment shall have the same validity and effect as if they had been done by a Judge; in respect thereof he shall have the same powers and enjoy the same immunities as if he had been a Judge; and the provisions of subsection (4) of Section 5 of this Order shall apply to him as if he had been appointed to act as a Judge.

Constitution of High Court.

9. Save as otherwise provided by any law for the time being in force in any territory, every civil or criminal proceeding in the High Court and all business arising thereout in any territory may be heard and disposed of before a Judge sitting alone:

Provided that in any civil or criminal proceedings in the High Court, the Judge may, on his own motion or at the request of any of the parties thereto, if he thinks fit, call in the assistance of one or more suitable persons as assessors and shall in such case record the opinion of such assessor or assessors on all matters on which such opinion is asked, but the decision on such matters shall be vested exclusively in the Judge.

Powers and privileges of High Court Judges and officers.

10. The High Court and all Judges thereof shall have in all respects the same powers in relation to contempt of court, and the Judges and all officers of the High Court shall have and enjoy the same immunities from legal proceedings as, by the law of England, are for the time being had and enjoyed by the Supreme Court of Judicature in England or the Judges or corresponding officers thereof.

Precedence of Judges.

11. The Chief Justice shall take precedence of all other Judges; the other Judges shall take precedence as between themselves according to such instructions as may from time to time be given by a Secretary of State or in the absence of such instructions in accordance with the dates of their respective appointments as Judges:

Provided that substantive Judges shall take precedence before persons acting as Judges.

Seal of the High Court.

12. The High Court shall have, and use as occasion requires, seals bearing the style of the Court and such device as a Secretary of State shall approve:

Provided that until a seal is provided and approved in accordance with the provisions of this Order, stamps bearing the words "The High Court of the Western Pacific" and countersigned by a Judge or a Registrar of the High Court may be used instead of such seals.

PART III

JURISDICTION OF THE HIGH COURT

Territorial jurisdiction of High Court.

13.—(1) The High Court shall have such jurisdiction in and in relation to the territories as is conferred by this Order and as may be conferred by or under any law for the time being in force in the territories.

(2) Subject to any rules of court, any process of the High Court shall run, and any judgment shall have full force and effect and may be executed and enforced, in any territory.

High Court to have jurisdiction similar to High Court in England.

14.—(1) Subject to the provisions of this Order, and to any law for the time being in force in any territory, the High Court shall possess and may exercise all the jurisdiction which is vested in or is capable of being exercised by Her Majesty's High Court of Justice in England.

(2) In pursuance of Section 12 of the Colonial Courts of Admiralty Act, 1890, it is directed that, in those territories which are out of Her Majesty's dominions, that Act shall apply to the High Court for the exercise of jurisdiction and within those territories the High Court shall be a Court of Admiralty and may exercise Admiralty jurisdiction in all matters arising upon the high seas or elsewhere or otherwise relating to ships and shipping.

(3) The following enactments of the Colonial Courts of Admiralty Act, 1890, that is to say, subsections 2 to 4 of Section 2, Sections 5 and 6 and subsection 3 of Section 16 shall, in relation to any of those territories which are out of Her Majesty's dominions, apply to the High Court as if in the said Sections the High Court were mentioned in lieu of a Colonial Court of Admiralty and those territories which are out of Her Majesty's dominions were referred to in lieu of a British possession.

Application of law of England.

15.—(1) Subject to the provisions of this Order and any rules made thereunder and to any law for the time being in force in any territory, the civil and criminal jurisdiction of the High Court shall, so far as circumstances admit, be exercised upon the principles of and in conformity with—

(*a*) the statutes of general application in force in England on the 1st day of January, 1961, and

(*b*) the substance of the English common law and doctrines of equity,

and with the powers vested in and according to the course of procedure and practice observed by and before Courts of Justice in England, according to their respective jurisdictions and authorities:

Provided that the said common law, doctrines of equity and statutes of general application shall be in force so far only as the circumstances of any particular territory and its inhabitants and the limits of Her Majesty's jurisdiction permit and subject to such qualifications as local circumstances render necessary.

(2) For the avoidance of doubt it is hereby declared that the following enactments, that is to say—

The Evidence Act, 1851(a) (Sections 7 and 11),
The Foreign Tribunals Evidence Act, 1856(b),
The Evidence by Commission Act, 1859(c),
The British Law Ascertainment Act, 1859(d),
The Foreign Law Ascertainment Act, 1861(e),
The Evidence by Commission Act, 1885(f),

shall extend and apply to the High Court and to all the territories, and references to the Governor of a Colony, to a Supreme Court or a judge of a Court of a Colony or to a Superior Court in a Colony shall be construed as references to the High Commissioner, the High Court or a Judge, as the case may be.

(a) 14 & 15 Vict. c. 99. (b) 19 & 20 Vict. c. 113. (c) 22 Vict. c. 20.
(d) 22 & 23 Vict. c. 63. (e) 24 & 25 Vict. c. 11. (f) 48 & 49 Vict. c. 74.

(3) For the purposes of facilitating the application of any statute, common law or doctrine of equity under the provisions of subsection (1) of this Section any provision may be construed or used with such alterations and adaptations as may be necessary and anything required to be done by or in relation to any Court, Judge, officer or authority, may be done by or in relation to the High Court, or a Judge, officer or authority having the like or analogous functions or by any officer designated by a Secretary of State or by the High Court (as the case may require) for that purpose, and the seal of the High Court may be substituted for any other seal; and in case any difficulty occurs in such application, a Secretary of State may direct by, and to whom, and in what manner anything is to be done, and such statute, common law or doctrine of equity shall be construed or applied accordingly.

Application of the Fugitive Offenders Act, 1881.

16.—(1) Subject to the provisions of this Order, the Fugitive Offenders Act, 1881(a), shall apply to the territories as if the British Solomon Islands Protectorate, the New Hebrides to the extent of Her Majesty's jurisdiction and the other territories out of Her Majesty's dominions were British possessions.

(2) For the purposes of its application under the provisions of this Order the Fugitive Offenders Act, 1881, shall be construed subject to the following qualifications—

(*a*) references to "Governor" shall, when the context and circumstances require, be construed as references to "High Commissioner";

(*b*) the jurisdiction, under Part I of the said Act, to hear a case and commit a fugitive to prison to await his return may be exercised in any territory by a Judge or by any person having in the territory in which the fugitive is, authority under any law in force in that territory to issue a warrant for the apprehension of persons accused of crime and to commit such persons for trial;

(*c*) for the purposes of Part II of the said Act the whole of the limits to which this Order applies, the Colony of Fiji, Tonga and the Islands of Pitcairn, Henderson, Ducie and Oeno shall be deemed to be one group of British possessions, and the British Solomon Islands Protectorate shall be deemed to be one British possession in such group:

Provided that the provisions of this paragraph in relation to Tonga shall be subject to the provisions of any Order in Council, for the time being in force, applying the Fugitive Offenders Act, 1881, to Tonga;

(*d*) the expression "offence punishable on indictment" in the said Act includes any offence for which imprisonment for six months or upwards can be inflicted under any law in force in the territory in which the fugitive concerned is apprehended.

Removal for trial in cases committed to the High Court.

17. In the case of a person committed for trial before the High Court, a Judge may, if he is satisfied that it is necessary in order to bring such person expeditiously to trial and in the interests of justice, order that such person, if he is not already in custody be arrested and, be removed in custody from the place where he then is to any territory specified in such order and there to be tried, and such person shall be deemed to be in lawful custody while being so removed and while awaiting trial in the territory specified in the order.

(a) 44 & 45 Vict. c. 69.

PART IV

APPEALS

Appeals from subordinate Courts to High Court.

18. The High Court shall have jurisdiction to hear and determine such appeals from the judgments (including reserved questions of law and cases stated) of any other Courts established by Her Majesty in any territory and for that purpose to exercise such powers and authorities as may be prescribed by or under any law for the time being in force in any such territory; and subject to the provisions of any such law for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, the High Court shall have the power, authority and jurisdiction vested in the Court from which the appeal is brought.

Appeals from the High Court to Court of Appeal.

19.—(1) Subject to any provision contained in any law which applies to the cause or matter concerned, an appeal shall lie, in accordance with rules of court made under Section 22 of this Order, from a judgment of the High Court, whether in the exercise of original or appellate jurisdiction, in any civil or criminal cause or matter, to the Fiji Court of Appeal constituted under the Court of Appeal Ordinance of the Colony of Fiji(a), and, subject to the provisions of any such law for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction under this Section, the Fiji Court of Appeal shall have the power, authority and jurisdiction vested in the High Court.

(2) In the exercise of appellate jurisdiction under this Section, the process of the Fiji Court of Appeal shall run and any judgment of the Court shall have full force and effect in any territory to which this Order applies, and may be executed and enforced in like manner as if it were an original judgment of the Court from which the appeal is brought.

(3) Any decision of the Fiji Court of Appeal therein shall be subject to appeal to Her Majesty in Council, in the same manner and on the same conditions as to the amount involved and otherwise as any other decision of the Court.

PART V

GENERAL

Officers of the High Court

20.—(1) There shall be such registrars and other officers of the High Court as the High Commissioner, subject to any law in force in any territory, may appoint for such territory, and every such registrar or other officer shall discharge such duties as may be prescribed by law or by rules of court or as a Judge may direct:

Provided that a Judge may, subject to any directions given by the High Commissioner, appoint a person temporarily to discharge, in relation to any case or matter, the duties of a registrar or other officer, and such person shall discharge such duties accordingly.

(2) Any appointment made under the provisions of subsection (1) of this Section may, at any time, be determined by the High Commissioner.

(3) Subject to the provisions of this Order, every such registrar or other officer of the High Court shall be in the public service of the

(a) Laws of Fiji. Revised Edition, 1955, cap. 3.

territory for which he is appointed; and accordingly the laws, regulations and instruments from time to time in force in that territory relating to pensions, gratuities and other like benefits or to terms and conditions of service shall apply in relation to him with such variations and modifications as a Secretary of State may from time to time direct.

Financial provisions.

21.—(1) The expenses of the High Court and the expenses relating to the disposal of appeals from the judgments of the High Court in accordance with the provisions of this Order shall be borne by the territories in such proportions, and fees payable under rules of court and fines shall be applied and dealt with in such manner, as may from time to time be determined by the High Commissioner.

(2) Emoluments, allowances and other like expenses and the cost of provision of premises for use of the Courts and of residences for Judges and officers shall be included in the expenses referred to in subsection (1) of this Section to such extent only as the High Commissioner may determine.

(3) Where by reason of a direction given under subsection (6) of Section 4 of this Order or of the provisions of subsection (3) of Section 20 of this Order, any emoluments, pensions, gratuities or other like benefits or any other sums are payable by any territory, such emoluments, pensions, gratuities, benefits and other sums shall be charged on and paid out of the revenue or other funds of that territory; and the Governments of the other territories shall pay to the Government of that territory in respect thereof such contributions as shall from time to time be determined by the High Commissioner.

(4) The sums representing the contributions payable by any territory under the provisions of this Section shall be charged upon and paid out of the revenue or other funds of the territory.

Rules of court.

22.—(1) There shall be a Rules Committee, consisting of the Chief Justice and the Attorney-General of the British Solomon Islands Protectorate (who shall constitute a quorum) and such other persons, not exceeding two in number, as the High Commissioner may appoint, which may make rules of court regulating the practice and procedure of the High Court, the admission of legal practitioners to practise as barristers and solicitors or in either of these capacities, prescribing the fees to be paid in respect of any proceeding and generally for making provision for the proper or effectual exercise of the jurisdiction of the High Court under this Order, including the procedure for the making and hearing of appeals to the High Court from subordinate Courts and, with the concurrence of the President of the Fiji Court of Appeal, for the making of appeals from the High Court in accordance with the provisions of this Order:

Provided that rules prescribing or affecting the amount of any fees or the recovery thereof shall not come into operation unless approved, either before or after being made, by the High Commissioner.

(2) Rules of court made under this Section may provide that any law or rule of court relating to practice, procedure or fees in the High Commissioner's Court including rules relating to appeals to the Fiji Court of Appeal under Article 88 of the principal Order shall cease to apply in any territory or shall apply in any such territory as amended by such rules of court.

PART VI

REPEAL SAVING AND TRANSITIONAL

Present practice and procedure.

23.—(1) All laws or rules of court relating to practice, procedure and fees in the High Commissioner's Court, including rules relating to appeals to the Fiji Court of Appeal under Article 88 of the principal Order, in force on the first day of August, 1961, except insofar as they may be inconsistent with the provisions of this Order or of any rules of court made under Section 22 of this Order, or may in respect of any territory be amended or revoked, shall remain in force in respect of proceedings in the High Court or in respect of appeals from the High Court but shall be construed subject to such modifications as may be necessary to bring them into conformity with the provisions of this Order or of any rules of court made thereunder.

(2) The provisions of the principal Order relating to the laws in force and the procedure to be followed applicable to any proceedings before a Deputy Commissioner in force on the first day of August, 1961, shall continue in force in respect of any such proceedings permitted to be continued or commenced under the provisions of Section 26 of this Order.

Adaptation of existing law.

24. Subject to the provisions of this Order, as from the date that Section 3 of this Order comes into operation in any territory, references in any law in force on that date or in any instrument or document made before that date to the High Commissioner's Court or to a Judicial Commissioner, judge or officer thereof, shall in its application to such territory, unless the context or the interests of justice otherwise require, be construed as references to the High Court or to Judges or officers of the High Court, as the case may require.

Pending proceedings before a Judicial Commissioner.

25.—(1) As from the date that Section 3 of this Order comes into operation in any territory, proceedings pending before a Judicial Commissioner in the High Commissioner's Court in such territory may be carried on in the High Court and enforced in like manner, as nearly as may be, as if the High Court were the Court in which such proceedings were commenced; and any such proceedings may be amended, by order of any Judge or under any rules of court, in such manner as may appear necessary or proper in consequence of the provisions of this Order; and any such Judicial Commissioner shall be deemed, for the purpose of the determination of such proceedings, to be a Judge unless in any particular case the High Commissioner or the Chief Justice shall otherwise direct.

(2) The provisions of the preceding subsection, so far as applicable, shall apply to the enforcement of judgments of the High Commissioner's Court given in any territory before Section 3 of this Order comes into operation in such territory, but not satisfied before that date.

(3) Where, in any proceedings in the High Commissioner's Court commenced in any territory before the date on which Section 3 of this Order comes into operation in such territory, an appeal from any judgment given therein would have lain to the Fiji Court of Appeal under the provisions of Article 88 of the principal Order, an appeal shall continue to lie thereto subject to any rules made under the provisions of Article 101 of the principal Order or to any rules of court made under the provisions of this Order.

Transitional jurisdiction of Deputy Commissioners.

26.—(1) Subject to the provisions of this Order and notwithstanding the reconstitution of the High Commissioner's Court as the High Court and the cessation of application of certain provisions of the principal Order under the provisions of this Order, all the powers and jurisdiction of Deputy Commissioners as members of the High Commissioner's Court under the principal Order shall continue.

(2) The High Commissioner, if he is satisfied as regards any territory that proper provision has otherwise been made for the performance of any judicial functions of Deputy Commissioners under the principal Order, may by order direct that, on a day to be specified in such order, such judicial functions of Deputy Commissioners shall cease in that territory, on such conditions and subject to such exceptions and qualifications as may be prescribed in the order to enable pending proceedings to be continued and completed.

(3) Any person who, after the date on which Section 3 of this Order comes into operation in any territory, is charged before a Deputy Commissioner in such territory and is required under the provisions of the principal Order to be removed elsewhere for trial or committed for trial before another Deputy Commissioner or a Judicial Commissioner, shall be committed for trial before the High Court.

(4) The powers of review under Article 80 of the principal Order and to give instructions as to findings of fact or law or as to the mitigation, alteration or suspension of any sentence or for the granting of bail or the taking of security under Article 81 of the principal Order conferred upon a Judicial Commissioner, shall be vested in and only exercisable by the Chief Justice or by a Judge appointed by him for that purpose either generally or in respect of a particular case or class of cases defined by a reference to a particular territory or otherwise.

(5) The powers of the High Commissioner under Article 27 of the principal Order to order the rehearing of a case shall be vested in and may be exercised only by the Chief Justice or a Judge appointed by him for that purpose either generally or in respect of cases heard in a particular territory.

Revocation and amendment of certain provisions of the principal Order.

27.—(1) Subject to the provisions of this Order, upon a date to be appointed by the High Commissioner by proclamation—

(*a*) the provisions of the principal Order set out in Part I of the Schedule to this Order shall cease to apply to the whole of the limits to which this Order applies;

Schedule Part I and Part II.

(*b*) the provisions of the principal Order set out in Part II of the Schedule to this Order shall, in their application to the territories to which this Order applies, have effect subject to the amendments set out in the second column thereof,

and different days may be appointed in respect of different provisions and in respect of different territories.

(2) Upon the date upon which any order made under the provisions of Section 26 of this Order comes into operation in any particular territory, but subject to any conditions, exceptions or qualifications as may be prescribed in any order made under subsection (2) of that Section, the provisions of the principal Order set out in Part III of the Schedule to this Order shall cease to apply to such territory.

Schedule Part III.

(3) Nothing in this Section shall affect the validity of anything lawfully done, any judgment given, immunity or right conferred or any process or warrant issued under any of the provisions of the principal Order, which are amended or which cease to apply under the provisions of this Section, prior to the date of such amendment or cessation of application, as the case may be.

Revocation of the Pacific (Barristers and Solicitors) Order in Council, 1913.

28. The Pacific (Barristers and Solicitors) Order in Council, 1913(a), shall cease to apply to the whole of the limits to which this Order applies:

Provided that, until such time as rules relating to the admission of legal practitioners to practise before the High Court have been made under the provisions of section 22 of this Order, the rules made under the provisions of the Pacific (Barristers and Solicitors) Order in Council, 1913, shall be deemed to have continued in force and any person who at the date of commencement of this Order was entitled so to practise shall continue to be so entitled.

Removal of difficulties.

29. If any difficulty shall arise in bringing into operation any of the provisions of this Order or in giving effect to the purposes thereof a Secretary of State may, by order, make such provision as may seem to him necessary or expedient for the purpose of removing such difficulty:

Provided that no order under this Section shall be made later than the 31st day of December, 1962.

W. G. Agnew.

SCHEDULE

PART I

Article 8.
Articles 12-23 (inclusive).
Article 25.
Articles 31-37 (inclusive).
Articles 47-49 (inclusive).
Articles 51-60 (inclusive).
Articles 66-70 (inclusive).
Articles 78 and 79.
Article 83.
Article 85.
Articles 88-107 (inclusive).
Articles 109-114 (inclusive).
Article 138.
Articles 140-142 (inclusive).

(a) S.R. & O. 1913/483 (Rev. VIII, p. 689: 1913, p. 281).

PART II

Article	*Amendment*
3	The definitions of the following expressions are deleted—"Supreme Court"; "Chief Justice"; "Prosecutor".
7 (4)	The words and comma "to the provisions of this Order as to the places at which Courts are to be held, and subject" are deleted.
7 (6)	The words "a Judicial Commissioner or" are deleted.
10	The words and commas "and any Judicial Commissioner," and "or a Judicial Commissioner," are deleted.
80	In the first sentence the words "other than of the Court when held before a Judicial Commissioner" are deleted.

PART III

Articles 26-30 (inclusive).

Articles 61-65 (inclusive).

Articles 71-77 (inclusive).

The third sentence of Article 80.

Articles 81-82 (inclusive).

EXPLANATORY NOTE

(*This Note is not part of the Order, but is intended to indicate its general purport.*)

This Order provides for the continuation and reconstitution of Her Majesty's High Commissioner's Court for the Western Pacific under the new style of the High Court of the Western Pacific with the powers and jurisdiction appropriate to a Superior Court of Record. The summary jurisdiction of Deputy Commissioners under the former constitution of the Court are retained, under the provisions of this Order, until such time as legislation is enacted in the territories concerned for the constitution of magistrates' courts with civil and summary criminal jurisdiction.