

289. WPHC (G.D. Chamberlain) to Chief Magistrate

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WPHC
(G.D. Chamberlain)
to Chief Magistrate

E.C.
22.6.51.

WESTERN PACIFIC HIGH COMMISSION,
SUVA, FIJI.

No. F. 10/2/1.

22nd June, 1951.

Sir,

I am directed by the High Commissioner to refer to your letter No. 67 of the 13th April regarding the appeals by Floyd McCoy against the two convictions imposed on him.

2. Examination of the proceedings shows that they were not conducted in accordance with the dictates of natural justice or common fairness, and the convictions must therefore be annulled.

I am,

Sir,
Your obedient servant,
G. D. CHAMBERLAIN

Chief Secretary.

The Chief Magistrate,
Pitcairn Island.

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22 June 1951

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 STATUTORY INSTRUMENTS

1952 No. 459

BRITISH SETTLEMENTS

The Pitcairn Order in Council, 1952

10 March 1952

Made - - - - - 10th March, 1952
Laid before Parliament 11th March, 1952
Coming into Operation 1st April, 1952

At the Court at Clarence House, the 10th day of March, 1952

Present

The Queen's Most Excellent Majesty in Council

Whereas provision is made for the government of the Islands of Pitcairn, Henderson, Ducie and Oeno by the Pacific Order in Council, 1893(a) :

And Whereas it is expedient to make other provision for the government of the said Islands :

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by the British Settlements Acts, 1887(b) and 1945(c), 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 :—

1. This Order may be cited as the Pitcairn Order in Council, 1952, and shall come into operation on the first day of April, 1952.

Short title
and com-
mencement.

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

Interpreta-
tion.

“Fiji” means the Colony of Fiji ;

“Governor” means the Governor of Fiji and includes any person for the time being administering the Government of Fiji and, to the extent to which a Deputy for the Governor is authorised to act, that Deputy ;

“High Commissioner” means Her Majesty's High Commissioner for the Western Pacific ;

“the Islands” means the Islands of Pitcairn, Henderson, Ducie and Oeno ;

“Pacific Order in Council” means the Pacific Order in Council, 1893(a), as from time to time amended by Order in Council.

(2) Save as in this Order otherwise provided or required by the context, the Interpretation Act, 1889(d), shall apply in relation to this Order as it applies in relation to an Act of Parliament.

3. Without prejudice to anything lawfully done thereunder, the Pacific Order in Council is hereby revoked in so far as it applies to the Islands :

Revocation
of Pacific
Order in
Council.

Provided that, until the Governor, by law made under the provisions of this Order, provides that the jurisdiction of the High Commissioner's Court in the Islands shall cease, and subject as hereinafter provided—

(a) the High Commissioner's Court, when consisting of a Judicial Commissioner, shall continue to have all the jurisdiction with

(a) S.R. & O. and S.I. Revised, 1948, Vol. VIII, p. 597. (b) 50 & 51 Vict. c. 54.
(c) 9 Geo. 6. c. 7. (d) 52 & 53 Vict. c. 63.

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Council 1952

10 March 1952

respect to causes or matters occurring or arising in the Islands which it would have if the Pacific Order in Council still applied to the Islands ; and

(b) such jurisdiction shall be exercisable upon the principles of, and in conformity with, such law, and according to such procedure and practice, as would be applicable if the Pacific Order in Council still applied as aforesaid ; and

(c) judgments, decrees, orders and sentences of the Court shall be enforced and executed as if the Pacific Order in Council still applied as aforesaid ;

and until the Governor provides as aforesaid, the following provisions shall have effect :—

(i) the Governor may, by law made under the provisions of this Order, make such provision adding to or subtracting from the jurisdiction of the High Commissioner's Court constituted as aforesaid and modifying the law upon the principles of which, and the procedure and practice in accordance with which, such jurisdiction is exercisable, and modifying the manner of enforcement and execution of judgments, decrees, orders and sentences of the Court, and such provision with respect to appeals from the said Court, as he may think fit ; and

(ii) subject to any law made under the provisions of this Order, where under or in pursuance of the provisions of the Pacific Order in Council the High Commissioner has power to make any order or give any direction regarding the exercise of the jurisdiction of the High Commissioner's Court constituted as aforesaid or regarding the enforcement or execution of the judgments, decrees, orders and sentences of the Court, such power shall, in relation to causes or matters occurring or arising in the Islands, be exercised by the Governor.

Governor.

4.—(1) The Governor shall be the Governor of the Islands.

(2) The power of the Governor to appoint a Deputy under Article 7 of the Letters Patent of the Colony of Fiji dated the second day of April, 1937, as from time to time amended, shall apply in relation to the powers and authorities vested in him in respect of the Islands as it applies to the powers and authorities vested in him in respect of Fiji.

(3) The Governor shall do all things belonging to his office and relating to the Islands in accordance with this Order, with such Instructions as may from time to time be given to him under Her Majesty's Sign Manual and Signet or through a Secretary of State and with such Orders in Council and other laws as may from time to time be in force in the Islands.

Power to
make laws.

5.—(1) It shall be lawful for the Governor to make laws for the peace, order and good government of the Islands.

(2) Without prejudice to the generality of the power conferred by subsection (1) of this section, the Governor may, by any such law, constitute a Court in and for the Islands with such jurisdiction, and may make such provisions and regulations for the proceedings in such Court and for the administration of justice, as the Governor may think fit.

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REPRODUCTION
PROHIBITED

10 March 1952

(3) All laws made by the Governor in exercise of the powers conferred by this Order shall be published in such manner and at such place or places in the Islands as the Governor may from time to time direct.

Every such law shall come into operation on the date on which it is published in accordance with the provisions of subsection (3) of this section, unless it shall be provided, either in such law or in some other enactment, that it shall come into operation on some other date, in which case it shall come into operation on that date.

(5) The date on which every such law is published in accordance with the provisions of subsection (3) of this section shall be notified in the Fiji Royal Gazette, and such notification shall be conclusive evidence as to the date and fact of such publication.

6.—(1) Any law made by the Governor in exercise of the powers conferred by this Order may be disallowed by Her Majesty through a Secretary of State. Disallowance of laws.

(2) Whenever any law has been disallowed by Her Majesty, the Governor shall cause notice of such disallowance to be published in such manner and in such place or places in the Islands as the Governor may from time to time direct.

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

7. The Governor may, by law made under the provisions of this Order, confer on the Supreme Court of Fiji such jurisdiction in respect of causes and matters occurring or arising in the Islands as might be conferred by Her Majesty in Council, and may make such provisions and regulations as the Governor may think fit respecting the exercise of any jurisdiction so conferred and respecting the enforcement and execution of the judgments, decrees, orders and sentences of the Supreme Court of Fiji made in the exercise of any such jurisdiction, and respecting appeals therefrom. Power to confer jurisdiction on Supreme Court of Fiji.

8. The Governor may constitute all such judgeships and other offices as he may consider necessary for the purposes of this Order, and may make appointments to any office so constituted and any person so appointed, unless otherwise provided by law, shall hold his office during Her Majesty's pleasure. Governor authorized to appoint officers.

9. The Governor may, subject to the provisions of any law for the time being in force in the Islands and to such Instructions as may from time to time be given to him by Her Majesty through a Secretary of State, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any person appointed by the Governor in exercise of the power conferred by section 8 of this Order, or, subject as aforesaid, may take such other disciplinary action as may seem to him desirable. Disciplinary powers.

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Official
Stamp.

Pardon.

10. There shall be an Official Stamp for the Islands. The Governor shall keep and use the Official Stamp for stamping all such documents as may by law require to be stamped therewith.

11. When any offence has been committed for which an offender may be tried under or by virtue of this Order, the Governor may, he shall see occasion, in Her Majesty's name and on Her Majesty's behalf, grant a pardon to any accomplice in such offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further may grant to any offender convicted of any such offence a pardon, either free or subject to lawful conditions, or any respite, either indefinite or for such period as the Governor may think fit, of the execution of any sentence passed on such offender, and may remit the whole or any part of such sentence or of any penalties or forfeitures otherwise due to Her Majesty.

F. J. Fernau.

EXPLANATORY NOTE

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

The above Order in Council revokes the application of the Pacific Order in Council, 1893, as amended, to the Islands of Pitcairn, Henderson, Ducie and Oeno, subject to certain transitional provisions preserving the jurisdiction of the High Commissioner's Court under that Order in Council. The above Order in Council also makes the Governor of Fiji Governor of the Islands and empowers him to make laws for the peace, order and good government of the Islands, and by such laws to establish a court in and for the Islands and to confer jurisdiction on the Supreme Court of Fiji in respect of causes and matters occurring or arising in the Islands.

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Mr Doughty
H 1952

**PITCAIRN, HENDERSON, DUCIE AND
OENO ISLANDS**

**INSTRUCTIONS passed under the Royal Sign Manual and Signet to
the Governor of Pitcairn, Henderson, Ducie and Oeno Islands.**

Dated 14th March, 1952. *ELIZABETH R.*

INSTRUCTIONS to Our Governor of Pitcairn, Henderson, Ducie and Oeno
Islands or other Officer for the time being administering the
Government thereof.

Whereas by the Pitcairn Order in Council, 1952, it is provided that the
Governor and Commander-in-Chief of Our Colony of Fiji shall be the
Governor of the Islands of Pitcairn, Henderson, Ducie and Oeno:

And Whereas the Governor of the said Islands is thereby empowered
and commanded to do all things belonging to his Office and relating
to the said Islands in accordance with such Instructions as may from
time to time be given to him under Our Sign Manual and Signet:

And Whereas We are minded to issue Instructions under Our Sign
Manual and Signet for the guidance of the Governor or other Officer
administering the Government of the said Islands:

Now, therefore, We do direct and enjoin and declare Our will and
pleasure as follows:—

1. The Governor may, whenever he thinks fit, require any person
in the public service of the Islands to take the Oath of Allegiance,
in the form prescribed by the Fiji Letters Patent, together with such
other oath or oaths as may from time to time be prescribed by any
law in force in the Islands, in the form prescribed by any such law.
The Governor shall administer such oaths or cause them to be
administered by some public officer in the Islands.

Administra-
tion of Oaths.

2.—(1) Whenever there is a subsisting appointment of a Deputy to
the Governor under the Fiji Letters Patent, these Instructions, so far
as they apply to any matter or thing to be done, or any powers or
functions to be exercised or performed, by such Deputy, shall be deemed
to be addressed to, and shall be observed by, such Deputy.

Instructions
to be ob-
served by
Deputy.

(2) Any such Deputy may, if he thinks fit, apply to Us through a
Secretary of State for instructions in any matter; but he shall forthwith
transmit to the Governor a copy of every despatch or other communica-
tion so addressed to Us.

3. In the enacting of laws for the Islands the Governor shall observe,
so far as is practicable, the following rules:—

Rules for the
enactment of
laws.

(1) All laws shall be styled "Ordinances" and the words of enact-
ment shall be "Enacted by the Governor of the Islands of Pitcairn,
Henderson, Ducie and Oeno".

(2) Matters having no proper relation to each other shall not be
provided for by the same law; no law shall contain anything
foreign to what the title of the law imports; and no provision
having indefinite duration shall be included in any law expressed
to have limited duration.

(3) All laws shall be distinguished by titles, and shall be divided into
successive sections consecutively numbered, and to every section
there shall be annexed in the margin a short indication of its
contents.

14 March 1952

Certain laws
not to be
enacted with-
out instruc-
tions.

(4) All laws shall be numbered consecutively in a separate series for each year commencing with the number one and the position of each law in the series shall be determined with reference to the day on which the Governor shall have enacted the same.

4. The Governor shall not, without having previously obtained instructions through a Secretary of State, enact any law within any of the following classes, unless such law contains a clause suspending the operation thereof until the signification of Our pleasure thereon, that is to say:—

- (1) any law for the divorce of married persons ;
- (2) any law whereby any grant of land or money, or other donation or gratuity, may be made to himself ;
- (3) any law affecting the currency of the Islands or relating to the issue of bank notes ;
- (4) any law imposing differential duties ;
- (5) any law the provisions of which shall appear to him to be inconsistent with obligations imposed upon Us by Treaty ;
- (6) any law affecting the discipline or control of Our Forces by land, sea or air ;
- (7) any law of an extraordinary nature and importance whereby Our prerogative, or the rights or property of Our subjects not residing in the Islands, or the trade, transport or communications of any part of Our dominions or any territory under Our protection or any territory in which We may for the time being have jurisdiction may be prejudiced ;
- (8) any law whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions ;
- (9) any law containing provisions which have been disallowed by Us :

Provided that the Governor may, without such instructions as aforesaid and although the law contains no such clause as aforesaid, enact any such law (except a law the provisions of which appear to him to be inconsistent with obligations imposed upon Us by Treaty) if he shall have satisfied himself that an urgent necessity exists requiring that the law be brought into immediate operation ; but in any such case he shall forthwith transmit a copy of the law to Us together with his reasons for so enacting the same.

Laws to be
sent through
a Secretary
of State.

5. When any law shall have been enacted, the Governor shall at the earliest convenient opportunity transmit to Us, through a Secretary of State, for the signification of Our pleasure, a transcript in duplicate of the law, duly authenticated under the Official Stamp of the Islands and by his own signature, together with an explanation of the reasons and occasion for the enactment of the law.

Collection of
laws to be
published
every year.

6. As soon as practicable after the commencement of each year, the Governor shall cause a complete collection to be published, for general information, of all laws enacted for the Islands during the preceding year.

7. Every appointment by the Governor of any person to any office or employment shall, unless otherwise provided by law, be expressed to be during pleasure only.

Appoint-
ments to be
during
pleasure.

14 March 1952

8. Whenever any person shall have been condemned by the sentence of any Court to suffer death for any offence committed in the Islands, the Governor shall call upon the Judge who presided at the trial to make him a written report of the case of such offender, and shall take such report into consideration, and may cause the said Judge to attend upon the Governor and to produce his notes. When the Governor shall pardon or reprove any such offender he shall, as soon as is practicable, transmit to Us through a Secretary of State a report upon the case, giving the reasons for his decision.

Pardon.

9.—(1) In these Instructions, unless the context otherwise requires:—

Interpreta-
tion.

“the Fiji Letters Patent” means the Letters Patent passed under the Great Seal of the Realm, constituting the Office of Governor and Commander-in-Chief of the Colony of Fiji, and providing for the Government thereof, and dated the second day of April, 1937, and any Letters Patent from time to time amending the same;

“the Governor” includes every person for the time being administering the Government of the Islands;

“the Islands” means the Islands of Pitcairn, Henderson, Ducie and Oeno.

(2) Save as in these Instructions otherwise provided or required by the context, the Interpretation Act, 1889, shall apply in relation to these Instructions as it applies in relation to an Act of Parliament.

10. These Instructions shall come into operation on the day upon which the Pitcairn Order in Council, 1952, comes into operation.

Date of com-
ing into
operation.

Given at Our Court at St. James's the fourteenth day of March, 1952, in the First Year of Our Reign.

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