

- (1.) Crimes by this Order directed to be tried in a summary way are to be tried by a District Court without a jury or assessors.
- (2.) Crimes which are not punishable with a longer term of imprisonment than three months, nor punishable with fine exceeding 50 £., shall be tried in a summary way by a District Court without a jury or assessors.
- (3.) Crimes other than as aforesaid, and except crimes punishable with death or with penal servitude for seven years or upwards, shall be tried on indictment by a District Court with assessors or a jury. Provided that if the accused person desires to be tried in a summary way, and the Court is of opinion that the case is such that, if proved, it can be adequately punished under the powers of a District Court, the Court may hear and determine the case in a summary way.
- (4.) In every case of crime punishable with death, or with penal servitude for seven years or upwards, the Consul shall direct to what Court the accused person shall be committed for trial. Such Court shall be either the Supreme Court acting in the Straits Settlements, or acting in Brunei, or the Consul acting in Brunei with the powers of the Supreme Court; and the trial shall be by such Court with a jury, if the trial takes place in the Straits Settlements, or if the accused person at the time of his being committed for trial in Brunei so requires; provided that, in case of inability to obtain a jury, or if the accused person does not require a jury, the Court may try the case with assessors.

(5.) Whenever a District Court commits a person for trial, it shall take all proper steps by commitment, bail, or otherwise for securing the attendance of the accused person to take his trial, and by recognizance or otherwise for securing the attendance at the trial of the prosecutor and of the witnesses for the prosecution and for the defence respectively, and shall transmit to the proper Court the depositions and any documents, recognizances, or things necessary for the purpose of the trial, with a certificate under the seal of the District Court specifying the depositions, documents, and things so transmitted. Such certificate shall be *prind facie* evidence of all the matters stated therein to have been done by or before the District Court, and that the depositions transmitted therewith were duly taken.

48. A District Court may impose the punishment of imprisonment for any term not exceeding six months, with or without hard labour, and with or without a fine not exceeding 200 £., or the punishment of a fine not exceeding 200 £., without imprisonment.

49. Every Court and authority in imposing and inflicting punishments under this Order shall have regard, so far as circumstances admit, and subject to the other provisions of this Order, to the punishments imposed by the law of England in like cases, and to the mode in which the same are inflicted in England.

50. Any Court acting under this Order (but, in the case of a District Court held by a Consular officer other than the Consul, subject to the approval of the Consul) may order any person convicted before it of any crime or offence to pay all or any part of the expenses of,

or preliminary to, his trial and of his imprisonment or other punishment.

Where it appears to any Court that any charge made before it is malicious, or is frivolous and vexatious, the Court may order all or any part of the expenses of the prosecution to be paid by the person making the charge.

In either of the two last-mentioned cases the amount ordered to be paid shall be deemed a debt due to the Crown, and may, by virtue of the order, without further proceedings, be levied on the property of the person convicted or making the charge, as the case may be, or may be enforced by imprisonment for not exceeding one month, or until payment.

51.—(1.) A 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 20/.

(2.) Damages so 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.

(3.) Payment of such damages shall be a defence to an action for the assault.

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

He shall not be liable to be afterwards prosecuted for the offence.

(2.) If, on the trial of a person charged with robbery, a Court is of opinion that the

accused committed an assault with intent to rob, but did not commit robbery, he shall not be therefore acquitted, but the Court may find him guilty of the assault, and may adjudge him to be punished as if he had been charged with the assault.

He shall not be liable to be afterwards prosecuted for the assault.

(3.) If, on a trial for any of the following offences, namely, burglary, or stealing in a dwelling-house, or breaking and entering and stealing in a shop, warehouse, or counting-house, or a building within the curtilage of a dwelling-house, or larceny, or feloniously receiving property stolen, embezzled, or otherwise feloniously taken, obtained, or disposed of, the facts proved authorize a conviction for one of those offences, not being the offence charged, the Court may find the accused guilty of that other offence, and may adjudge him to be punished as if he had been charged with that other offence.

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

(4.) If any person procures, or endeavours to procure, or incites any other person to commit a crime or offence, he shall be punishable on conviction in the same manner as if he were convicted of an attempt to commit that crime or offence. If the crime or offence is actually committed in pursuance of the procurement or incitement, both persons may be tried and punished for that crime or offence as principal offenders.

53. Where a person charged with having committed a crime or offence in the district of one Court escapes or removes from that district and is found within the district of another

Court, the Court within the district of which he is found may proceed in the case to examination, indictment, trial, and punishment, or in a summary way (as the case may require), in the same manner as if the crime or offence had been committed in its own district; or may, on the requisition or with the consent of the Court of the district in which the crime or offence is charged to have been committed, send him in custody to that Court, or require him to give security for his surrender to that Court, there to answer the charge and be dealt with according to law.

Where any person is to be sent in custody a warrant shall be issued by the Court within the district of which he is found, and such warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him to, and deliver him up to, the Court of the district within which the crime or offence was committed, according to the warrant.

54. Where any person is charged with the commission of a crime or offence the cognizance whereof appertains to any of Her Majesty's Courts in Brunei, and it is expedient that the crime or offence be inquired of, tried, determined, and punished within Her Majesty's dominions, the accused may, in accordance with "The Foreign Jurisdiction Act, 1890," be sent for trial to a British possession to which, under the next following Article, he could be sent for execution of a sentence of imprisonment.

The Consul may, where it appears expedient, by warrant under his hand and seal, cause the accused to be taken for trial accordingly.

55.—(1.) Sentences of imprisonment shall ordinarily be carried into effect in such prisons within Brunei as the Consul directs, either by any general directions or in any particular case. A warrant of the Consul, or of a Court before which a person is convicted, shall be sufficient authority for the removal of the person to the prison named in the warrant, and for his detention there.

(2.) Where any offender convicted before a Court in Brunei is sentenced to imprisonment in respect of the crime or offence of which he is convicted, and it appears to the Consul to be expedient that the sentence be carried into effect within Her Majesty's dominions, the offender may, in accordance with "The Foreign Jurisdiction Act, 1890," be sent for execution of his sentence as follows:—

(a.) In the case of a prisoner who is, or who appears to the person signing the warrant under the said 5th section to be, a native of Burmah or of any other part of British India, and not of European descent, to Her Majesty's possession of Burmah, or some other part of British India.

(b.) In the case of any other prisoner, to the Colony of the Straits Settlements, or to some other part of Her Majesty's dominions out of the United Kingdom the Government whereof consents that offenders may be sent thither under this Article.

And the Consul shall have authority for the purposes of the said section.

56.—(1.) In cases of murder or manslaughter, if either the death or the criminal act

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

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

(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 described in the first Schedule to that Act, that is to say:—

"The Admiralty Offences (Colonial) Act, 1849."

"The Admiralty Offences (Colonial) Act, 1860."

"The Merchant Shipping Act, 1867," section 11.

And the said enactments shall, so far as they are repeated and adapted by this Article (but not further or otherwise), extend to Brunei.

57. "The Fugitive Offenders Act, 1881," shall apply to Brunei as if Brunei were a British possession, subject to the conditions, exceptions, and qualifications following:—

(i.) The said Act shall apply only in the case of British subjects.

(ii.) The Consul is, for the purposes of the said Act, substituted for the Governor of a British possession, and for a Superior Court, or a Judge thereof, in a British possession, and for a Magistrate or Justice of the Peace in a British possession.

(iii.) So much of the 4th and 5th sections of the said Act as relates to the sending a Report of the issue of a warrant, together with the information, or a copy thereof, or to the sending of a certificate of committal and Report of a case, or to the information to be given by a Magistrate to a fugitive, shall be excepted.

(iv.) So much of the 6th section of the said Act as relates to *habeas corpus*, and as requires the expiration of 15 days before issue of a warrant, shall be excepted.

(v.) The said Consul shall not be bound to return a fugitive offender to a British possession unless satisfied that the proceedings to obtain his return are taken with the consent of the Governor of that possession.

(vi.) For the purposes of Part II of the said Act, Brunei and the Colony of the Straits Settlements shall be deemed to be one group of British possessions.

58. "The Colonial Prisoners Removal Act, 1884," shall apply to Brunei as if Brunei were a British possession, and part of Her Majesty's dominions, subject as follows:—

The Consul shall, in relation to Brunei, be substituted for the Governor of a British possession.

59. The Consul shall, when required by the Secretary of State, send to Secretary of State a Report of the sentence passed in every case heard and determined by him, with a copy of the Minutes of proceedings and notes of evidence, and may send with such Report any observations he thinks fit.

Every Court (other than the Consul) shall forthwith send to the Consul a Report of the sentence passed by it in Brunei in every case not heard and determined in a summary way, with a copy of the Minutes of proceedings and notes of evidence, and with any observations the Court thinks fit. The Consul shall, when required by the Secretary of State, transmit the same to the Secretary of State, and may send therewith any observations he thinks fit.

60.—(1.) Where any person is sentenced in Brunei to suffer the punishment of death, the Court pronouncing the sentence shall forthwith send a Report of the sentence, with a copy of the Minutes of the proceedings and notes of the evidence in the case, and with any observation the Court thinks fit to make, to the Governor in Council of the Straits Settlements.

(2.) The sentence shall not be carried into execution without the order of the Governor of the Straits Settlements in Council.

(3.) In any such case, if the said Governor in Council does not order that the sentence of death be carried into execution, he shall direct what punishment in lieu of the punishment

of death is to be inflicted on the person convicted, and the person convicted shall be punished accordingly.

61. The Governor in Council of the Straits Settlements shall have power, in the name of Her Majesty, to remit or commute in whole or in part any sentence passed by a Court exercising criminal jurisdiction under this Order, and every such Court shall give effect to any such remission.

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

PART VII.—Appeals.

63.—(1.) Where any decision of a District Court, sitting with or without Assessors, or a decision of a Judge of the Supreme Court acting under this Order, with or without Assessors, either in Brunei or in the Straits Settlements, is given in a civil case in respect of a sum or matter at issue of the amount or value of 50 *l.* or upwards, or determines, directly or indirectly, any claim or question respecting property of the amount or value of 50 *l.* or upwards, any party aggrieved by the decision may apply to the Court for leave to appeal to the Supreme Court, and shall be entitled to leave on the terms prescribed by Rules made under this Order, and subject to any restrictions and exceptions therein contained.

In any other case the Court or Judge may, if it seems just and expedient, give leave to appeal on like terms.

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

(2.) In any matter in which an appeal lies, as of right or otherwise, to the Supreme Court, it shall be lawful for the Supreme Court, by special leave, to enlarge the time for appealing, or to permit an appeal to be brought on such terms as to costs or otherwise as it thinks fit, although the time limited for appeal has elapsed, or any other formal requisite for an appeal has not been complied with.

(3.) The said Supreme Court, on the hearing of any appeal, may admit fresh evidence in such cases and on such terms as he or they think just, subject to any rules to be made under this Order.

64.—(1.) Where any final decree or order of the Supreme Court on appeal under this Order is made in a civil case in respect of a sum or matter at issue of the amount or value of 500 *l.* or upwards, or determines, directly or indirectly, any claim or question respecting property of the amount or value of 500 *l.* or upwards, any party aggrieved by the decree or order may, within 15 days after the same is made, apply by motion to the Supreme Court for leave to appeal to Her Majesty in Council.

(2.) If leave to appeal is applied for by a party adjudged to pay money or perform a duty, the Supreme Court shall direct either that the decree or order appealed from be carried into execution, or that the execution thereof be suspended, pending the appeal, as the said Court considers to be in accordance with substantial justice.

(3.) If the said Court directs the decree or order to be carried into execution, the party in whose favour it is made shall, before the execution of it, give security to the satisfaction of the said Court for the due performance of such order as Her Majesty in Council may think fit to make.

(4.) If the said Court directs the execution of the decree or order to be suspended pending the appeal, the party against whom the decree is made shall, before any order for suspension of execution, give security to the satisfaction of the said Court for the due performance of such order as Her Majesty in Council may think fit to make.

(5.) In all cases security shall also be given by the appellant to the satisfaction of the said Court, to an amount not exceeding 500 *l.*, for the prosecution of the appeal, and for payment of all such costs as may be awarded to any respondent on appeal to Her Majesty in Council.

(6.) If the last-mentioned security is given within one month from the filing of the motion paper for leave to appeal, then, and not otherwise, the said Court shall give leave to appeal.

(7.) In any case other than the cases hereinbefore described, the Supreme Court may give leave to appeal on the terms and in the manner aforesaid, if it considers it just or expedient to do so.

(8.) In every case where leave to appeal is given as aforesaid, the appellant shall be at liberty to prefer and prosecute his appeal to Her Majesty in Council according to the rules for

the time being in force respecting appeals to Her Majesty in Council from her Colonies, or such other rules as Her Majesty in Council from time to time thinks fit to make concerning appeals from the Supreme Court.

(9.) Nothing in this Order shall affect the right of Her Majesty at any time, on the humble petition of a party aggrieved by any decision of the Supreme Court, to admit his appeal thereon on such terms and in such manner as Her Majesty in Council may think fit, and to deal with the decision appealed from in such manner as may be just.

65. In any case in which an appeal lies under this Order from a District Court to the Supreme Court as of right, or leave to appeal is given by the District Court, the parties may agree that the appeal shall be to the Consul, and upon any such agreement in writing being filed in the District Court, or upon such agreement being made in open Court and embodied in an order of the District Court, the appeal shall be to the Consul, who shall hear and dispose of the appeal in a summary way in such manner as he thinks fit, and may make any order which could have been made by the District Court, and shall certify his order to the District Court, and that Court shall give effect thereto.

Any such order shall be final, and shall not be subject to any further appeal, either to the Supreme Court or to Her Majesty in Council.

This Article does not apply to cases which are in the first instance heard by the Consul in the exercise of any jurisdiction under this Order.

66.—(1.) Where any person is convicted otherwise than in a summary way of a crime or offence, the Court trying the case may, if it seems fit, upon or without written application by the prosecutor or defendant, reserve for the consideration of the full Supreme Court any question of law arising on the trial.

The Court shall then state a special case, setting out the question reserved, with the facts and circumstances on which it arose, and shall send the case to the Supreme Court.

(2.) Where any person is convicted in a summary way of a crime or offence, and is dissatisfied with the conviction as being erroneous in point of law, the Court trying the case may, on his application in writing, and on compliance by him with any terms prescribed by the rules made under this Order, state a special case, setting out the facts and the grounds of the conviction, for the opinion of the Supreme Court.

(3.) Where a special case is stated, the Court stating it shall, as seems fit, either postpone judgment, on the conviction, or respite execution of the judgment, and either commit the person convicted to prison, or take proper security for him to appear and receive judgment, or to render himself in execution (as the case may require) at an appointed time and place.

(4.) The Supreme Court shall hear and determine the matter, and thereupon shall reverse, affirm, or amend the judgment, conviction, or sentence in question; or set aside the same, and order an entry to be made in the Minutes of proceedings to the effect that, in the judgment of the Supreme Court, the person convicted ought not to have been convicted, or arrest the

judgment, or order judgment to be given at a subsequent sitting of the Court stating the case, or order a new trial, or make such other order as justice requires, and shall also give the necessary and proper consequential directions.

(5.) The judgment of the Supreme Court shall be delivered in open Court after the public hearing of any argument offered on behalf of the prosecution or of the person convicted.

(6.) Before delivering judgment the Supreme Court may, if necessary, cause the special case to be amended by the Court stating it.

(7.) If on an application for a special case the Court refuses to state a case, the Court so refusing shall forthwith send to the Supreme Court a report of the sentence, with a copy of the Minutes of proceedings and notes of evidence, and any observations the Court thinks fit, and with the copy of the application for a special case.

(8.) The Supreme Court shall examine the report and documents so sent, and may, on the application in that behalf of the appellant, if made within one month after the refusal of a special case, proceed to hear and determine the matter according to the foregoing provisions, as nearly as may be, as if a special case had been stated.

(9.) In this Article expressions referring to the Court which tries a case include a District Court or a Judge or Judges of the Supreme Court acting under this Order either in Brunei or in the Straits Settlements, or the Consul acting with the power of the Supreme Court.

PART VIII.—Evidence.

67.—(1.) In any case, criminal or civil, and at any stage thereof, a District Court, either of its own motion, or on the application of any party, may summon a British subject to attend to give evidence, or to produce documents, or to be examined.

(2.) If the person summoned, having reasonable notice of the time and place at which he is required to attend, fails to attend and be sworn, and give evidence, or produce documents, or submit to examination accordingly, and does not excuse his failure to the satisfaction of the Court, he shall be guilty of an offence against this Order.

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

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

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

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

(7.) In civil cases any Court may, where the circumstances appear to justify it, order that the expenses of a witness, on his appearing to give evidence, shall be defrayed by the parties, or any of them.

68.—(1.) Any person appearing before a District Court to give evidence in any case, civil or criminal, may be examined or give evidence on oath in the form or with the ceremony that he declares to be binding on his conscience.

(2.) Any British subject wilfully giving false evidence in any suit or proceeding, civil or criminal, or on any arbitration, or in any affidavit, shall be deemed guilty of wilful and corrupt perjury.

69.—(1.) Judicial notice shall be taken of this Order, and of the commencement thereof, and of the appointment of Consular or other officers, and of the constitution and limits of any jurisdiction, Court, or district, and of Consular seals and signatures, and of any Rules or Regulations made or in force under this Order, and no proof shall be required of any of such matters.

(2.) Every signature or seal affixed to any instrument purporting to be the signature of any Consular officer or person acting under this Order, or to be the seal of any Court, shall, for all purposes under this Order, without any proof thereof, be presumed to be genuine, and shall be taken as genuine until the contrary is proved.

70. A person attending to give evidence before a District Court shall not be compelled or

allowed to give any evidence, or produce any document, if, in the opinion of the Consul, signified by him personally or in writing to the Court, the giving or production thereof would be injurious to Her Majesty's service.

71.—(1.) The provisions of "The Evidence Act, 1851" (14 and 15 Vict., cap. 99), sections 7 and 11, relating to the proof of judicial and other documents, shall extend and be applied for all purposes as if the district were in a British Colony.

(2.) The following Acts, namely:—

"The Foreign Tribunals Evidence Act, 1856;"

"The Evidence by Commission Act, 1859;"

"The Evidence by Commission Act, 1885;"

Or so much thereof as is for the time being in force, and any enactment for the time being in force amending or substituted for the same, are hereby extended to all places and Courts to which this Order applies, with the adaptations following, namely:—

In the said Acts the the Consul is hereby substituted for a Supreme Court, or the Judge of a Court in a Colony.

(3.) The following Acts, namely:—

"The British Law Ascertainment Act, 1859;"

"The Foreign Law Ascertainment Act, 1861;"

Or so much thereof as is for the time being in force, and any enactment for the time

being in force amending or substituted for the same, are hereby extended to all places and Courts to which this Order applies, with the adaptations following, namely:—

In the said Acts the Consul is hereby substituted for a Superior Court in a Colony.

PART IX.—Juries and Assessors.

Juries.

72.—(1.) Every male British subject resident in Brunei, being of the age of 21 years or upwards, being able to speak and read English, having or earning a gross income at the rate of not less than 50% a-year, not having been attainted of treason or felony, or convicted of any crime that is infamous (unless he has obtained a free pardon), and not being under outlawry, shall be qualified to serve on a jury.

(2.) All persons so qualified shall be liable so to serve, except the following:—

Persons in Her Majesty's Diplomatic, Consular, or other Civil Service in actual employment; Officers, clerks, keepers of prisons, messengers, and other persons attached to, or in the service of, any of Her Majesty's Courts;

Officers and others on full pay in Her Majesty's navy or army, or in actual employment in the service of any Department connected therewith;

Clergymen and ministers in the actual discharge of professional duties;

Advocates and attorneys in actual practice;

Physicians, surgeons, and apothecaries in actual practice;

And except persons disabled by mental or bodily infirmity.

73. On or before the 14th day of January in every year each District Court shall make out a list of the persons so qualified and liable resident within its district.

The list shall, on or before the 21st day of the same respective month, be affixed in some conspicuous place in the Court, and shall be there exhibited until the end of that month, with a notice annexed that on a day specified, not being sooner than the 7th or later than the 14th day of the then next month, the Court will hold a special sitting for the revision of the list.

The Court shall hold such special sitting accordingly, and at such sitting, or at some adjournment thereof (of which public notice shall be given), shall revise the list by striking out the name of any person appearing to be not qualified or not liable to serve, and by inserting the name of any person omitted, and appearing to be so qualified and liable, either on the application of the person omitted, or on such notice to him as the Court thinks fit.

The list shall be finally revised and settled not later than the 21st day of February in every year, and when settled shall be affixed in some conspicuous place in the Court, and be there exhibited during not less than two months.

Such list, as settled, shall be brought into use on the 1st day of March, and shall be used as the Jury List of the Court until the 1st day of March next after the time of its being brought into use.

74. Where, in pursuance of this Order, a jury is ordered, the Court before which the trial is to be had shall summon so many of the persons comprised in the Jury List, not fewer than seven, as seems requisite.

Any person failing to attend according to such summons shall be liable to such fine not exceeding 10*l.* as the Court thinks fit to impose.

Any such fine shall not be levied until after the expiration of 14 days. The proper officer of the Court shall forthwith give to the person fined notice in writing of the imposition of the fine, and require him within six days after receipt of the notice to file an affidavit excusing his non-attendance if he desires to do so. The Court shall consider the affidavit, and may, if it seems proper, remit the fine.

75. Where a suit relates to money, goods, or other property, or any matter at issue appearing to the Court to be of the amount or value of 300*l.* or upwards, or is brought for recovery of damages of the amount of 300*l.* or upwards, the suit shall, on the demand of either party, be, under order of the Court before which the trial is to be had, tried with a jury.

In any case a suit may be tried by a jury, if the Court, of its own motion, or on the application of either party, thinks fit so to order.

76.—(1.) The foregoing provisions relating to the preparation of Jury Lists and the summoning of juries shall not, as regards any District Court, come into operation until the Consul so directs by order in writing, published in such manner as he thinks fit.

He may from time to time by any such order, as regards any district, alter the number of jurors to be summoned, or the quorum of a jury.

He may suspend the operation of any such order from time to time, or revoke any order.

(2.) If, in any civil or criminal case where a jury is ordered, or is required by this Order or by any Rules of Procedure, a sufficient jury cannot be obtained, the Court before which the trial is to be had may either hear the case without a jury, or with a jury of less than the proper number, or postpone it in order to obtain a jury or assessors, as the Court thinks just.

77.—(1.) Subject to the other provisions of this Order, the number of the jury shall be five.

(2.) In criminal cases tried with a jury the verdict of the jury must be unanimous. In civil cases the verdict must be unanimous, unless the parties otherwise agree.

(3.) No challenge shall be allowed except for cause shown to the satisfaction of the Court.

(4.) No grand jury shall be summoned.

78. Where a District Court proceeds, in pursuance of this Order, to hear and determine any case, civil or criminal, with assessors, the Court shall nominate and summon as assessors not less than two and not more than four indifferent British subjects of good repute, resident in the district of the Court, or belonging to a British ship.

Where, by reason of local circumstances, the Court is able to obtain the presence of one fit person only as assessor, the Court may sit with him alone as assessor; and where, for like

reasons, the Court is not able to obtain the presence of any fit person as assessor, the Court may (notwithstanding anything in this Order) sit without an assessor; but in every such case the Court shall record in the Minutes of proceedings its reasons for sitting with one assessor only, or without an assessor.

An assessor shall not have voice or vote in the decision of the Court in any case, civil or criminal; but an assessor dissenting in a civil case from any decision of the Court, or in a criminal case from any decision of the Court, or the conviction, or the amount of punishment awarded, may record in the Minutes of proceedings his dissent and the grounds thereof; and an assessor dissenting shall be entitled to receive gratis a certified copy of the Minutes.

79. In civil cases any party who has a right to demand a trial with a jury may, in lieu thereof, demand a trial with assessors, unless a trial with a jury is ordered, and can be had. If no party demands a jury or assessors, the Court before whom the trial is to be had may, if it thinks fit, summon assessors.

80. If any person summoned to act as assessor fails, without lawful excuse, to attend at the trial, or at any adjournment thereof, or to continue to serve throughout the trial, he shall be liable under a summary order of the Court to a fine not exceeding 10/., to be levied by attachment and sale of his goods within the district, and in default of recovery thereby of the fine, to be imprisoned for any time not exceeding six days, if the fine is not sooner paid.

PART X.—Rules of Procedure.

81.—(1.) The Consul, with the approval of the Chief Justice of the Straits Settlements, may from time to time frame rules for any purpose for which it is in this Order expressed or implied that rules of procedure or practice are to be made for the execution of judgments or orders, and for the regulation of appeals in civil and in criminal cases, and of hearings, and generally for the purpose of making any provision proper or necessary for the proper or effectual exercise of the jurisdiction of Courts under this Order, and may thereby impose reasonable penalties, and may provide for the enforcement of any judgment or order by imprisonment for not exceeding one month.

(2.) Rules affecting the conduct of civil suits shall be so framed as to secure, as far as may be, that cases shall be decided on their merits according to substantial justice, without excessive regard to technicalities of pleading or procedure, and without unnecessary delay.

(3.) Rules framed under this Article shall not have effect unless and until they are approved by the Secretary of State, save that in case of urgency declared in any rules framed by the Consul the same shall have effect unless and until they are disapproved by the Secretary of State, and notification of such disapproval is received and published by the Consul.

(4.) Provision may, amongst other things, be made by rules under this Article, authorizing any Court to grant and enforce search warrants, and to enforce awards, and to enforce by distress, or by attachment, or commitment, judgments or orders of any Court, or payment, of

any damages, costs, penalties, fines, or forfeitures, and for the sale of things forfeited, and for garnishee process, and for attachments of property in order to compel appearance or submission to the jurisdiction or process of any Court, and authorizing any Court to compel, by fine, distress, or recognizance, or in default of security by commitment, the attendance of witnesses before any Court, or before a Colonial Court to which a case is sent for trial, and to fix and enforce the fees to be taken in respect of any proceedings under this Order, not exceeding, as regards any matters provided for by the Act of 6 Geo. IV, cap. 87, fees fixed and allowed from time to time by any Order in Council made under that Act, and to take and transmit depositions of witnesses for use at trials in a Colony or in England, and to appoint forms of indictment or charge in criminal proceedings, and for regulating the conditions on which persons may be admitted to practice as barristers, advocates, or solicitors, in proceedings in any Court, and for suspending or excluding such persons from practice in case of misconduct: Provided that the scales of all fees fixed under the provisions of this Order shall have been sanctioned by the Commissioners of Her Majesty's Treasury.

82. A copy of the rules for the time being in force shall be kept exhibited conspicuously in each District Court and Consulate.

Printed copies shall be provided and sold at such reasonable price as the Consul from time to time directs.

No penalty shall be enforced in any District Court for the breach of any rule until the

rule has been so exhibited in the Court for one month, unless the person offending is proved to have had express notice of the rule.

A printed copy of any rule purporting to be certified under the hand of the Consul shall be for all purposes conclusive evidence of the due framing, approval, and publication of the contents thereof.

From and after the commencement of any rules made under this Order, all rules and regulations theretofore in force in the district in respect of any matter in respect whereof rules are made under this Order shall cease to operate.

PART XI.—Treaties and Queen's Regulations.

83. If any British subject violates or fails to observe any stipulation of any Treaty made with, or by, or on behalf of Her Majesty, for the time being in force, in respect of the violation whereof any penalty is stipulated for in the Treaty, he shall be deemed guilty of an offence against the Treaty, and on conviction thereof under this Order shall be liable to a penalty not exceeding the penalty stipulated for in the Treaty.

84.—(1.) The Consul may, from time to time, subject and according to the provisions of this Order, make, on behalf of Her Majesty, such regulations as to him seem fit for the peace, order, and good government of British subjects resident in, or resorting to, Brunei.

(2.) The power aforesaid extends to the making of regulations for securing observance of

the stipulations of Treaties between Her Majesty, her heirs and successors, and the Sultan of Brunei, and for enforcing any local law or customs, whether relating to trade, commerce, revenue, or any other matter, and for maintaining friendly relations between British subjects and native subjects and authorities, and for requiring returns to be made of the nature, quantity, and value of articles exported from or imported into Brunei, by or on account of any British subject or in any British ship, and for prescribing the times and manner at or in which, and the persons by whom, such returns are to be made.

(3.) The Consul may, as he thinks fit, make any regulation under this Order extend throughout Brunei, or to some one or more only of the Consular districts in Brunei.

(4.) The Consul, in the exercise of the powers aforesaid, may, if he thinks fit, join with the Ministers or Representatives of any foreign Powers in amity with Her Majesty in making or adopting regulations for the municipal government of any foreign Concession or Settlement in Brunei; and, as regards British subjects, joint regulations so made shall be as valid and binding as if they related to British subjects only.

(5.) The Consul may, by any regulation made under this Order, repeal or alter any regulation made under any Order in Council relating to Brunei.

(6.) Regulations made under this Order shall not have effect unless and until they are approved by Her Majesty, that approval being signified through the Secretary of State, save that, in case of urgency declared in any such regulations, the same shall take effect before

that approval, and shall continue to have effect unless and until they are disapproved by Her Majesty the Queen, that disapproval being signified through the Secretary of State, and until notification of that disapproval has been received and published by the Consul.

That approval, where given, shall be conclusive, and the validity or regularity of any regulations so approved shall not be called in question in any legal proceeding whatever.

85. Any regulations made under this Order may, if the Consul thinks fit, impose penalties for offences against the same.

Penalties so imposed shall not exceed the following, namely: for any offence, imprisonment for three months, with or without hard labour, and with or without a fine of 100 *l.*, or a fine of 100 *l.* without imprisonment; with or without a further fine, for a continuing offence of 10 *l.* for each day during which the offence continues after the original fine is incurred.

Regulations imposing penalties shall be so framed as to allow in every case of part only of the highest penalty being inflicted.

In addition to or in lieu of penalties, such regulation may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach is committed of such regulations, of any Treaty, or any native Law or Ordinance the observance of which is provided for by such regulations.

86. All regulations made under this Order, whether imposing penalties or not, shall be printed, and a printed copy thereof shall be affixed, and be at all times kept exhibited con-

spicuously in the public offices of each Consulate in Brunei.

Printed copies of the regulations shall be kept on sale at such reasonable price as the Consul from time to time directs.

Where a regulation imposes a penalty or forfeiture, the same shall not be enforceable in any Consular district until a printed copy of the regulation has been affixed in the public office of the Consulate for that district, and has been kept exhibited conspicuously there during one month, unless the person offending is proved to have had express notice of the regulation.

A printed copy of a regulation purporting to be made under this Order, and to be certified under the hand of the Consul, shall be conclusive evidence of the due making of the regulation and of its contents.

87. A charge of an offence against a regulation made under this Order imposing a penalty or forfeiture shall be inquired of, heard, and determined as an ordinary criminal charge under this Order, except that where the regulation is one for securing observance of the stipulations of a Treaty, the charge shall be heard and determined in a summary way, and (where the proceeding is before a district Court) without assessors.

88. The respective powers aforesaid extend to the making of regulations for the governance, visitation, care, and superintendence of prisons in Brunei, and for the infliction of corporal or other punishment on prisoners committing offences against the rules or discipline of a prison; but the provisions of this Order respecting penalties, and respecting the printing, affixing, ex-

hibiting, and sale of regulations, and the mode of trial of charges of offences against regulations, do not apply to regulations respecting prisons and offences of prisoners.

PART XII.—Foreigners and Natives.

89.—(a.) Where a foreigner desires to institute or take a suit or proceeding of a civil nature against a British subject, or a British subject desires to institute or take a suit or proceeding of a civil nature against a foreigner, a District Court may entertain the suit or proceeding, and hear and determine it (and if all parties desire, or the Court directs a trial with a jury or assessors, then with a jury or assessors) at a place where such a trial might be had if all parties were British subjects, and in all other respects according to the ordinary course of the Court.

(b.) Provided that the foreigner (i) first files in the Court his consent to the jurisdiction of the Court; and (ii) also, if required by the Court, obtains and files a certificate in writing from a competent authority of his own Government to the effect that no objection is made by that Government to the foreigner submitting in the particular cause or matter to the jurisdiction of the Court; and (iii) also, if required by the Court, gives security to the satisfaction of the Court, to such reasonable amount as the Court directs, by deposit money or otherwise, to pay fees, costs, damages, and expenses, and to abide by and perform the decision to be given by the Court or on appeal.

(c.) A counter-claim or cross-suit cannot be brought or instituted in the Court against a plaintiff, being a foreigner who has submitted to the jurisdiction, by a defendant, except by leave of the Court first obtained.

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

(e.) Nothing in this Article prevents the defendant from instituting or taking in the Court against the foreigner, after the termination of the suit or proceeding in which the foreigner is plaintiff, any suit or proceeding that the defendant might have instituted or taken in the Court against the foreigner if no provision restraining counter-claims or cross-suits had been inserted in this Order.

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

(g.) Where a plaintiff, being a foreigner, obtains in the Court an order against two or more defendants, being British subjects, jointly, and in another suit one of them is plaintiff and the foreigner is defendant, the Court may, if it thinks fit, on the application of the British

subject, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one suit against any amount ordered to be paid by the other party in the other suit, without prejudice to the right of the British subject to require contribution from his co-defendants under the joint liability.

(h.) Where a foreigner is co-plaintiff in a suit with a British subject who is within the particular jurisdiction, it is not necessary for the foreigner to make deposit or give security for costs unless the Court so directs; but the co-plaintiff British subject is responsible for all fees and costs.

90.—(a.) Where it is shown to a District Court that the attendance of a British subject to give evidence, or for any other purpose connected with the administration of justice, is required in a native Court, or before a judicial officer in Brunei of any State in amity with Her Majesty, the Court may, in cases and under circumstances which would require the attendance of that British subject before one of Her Majesty's Courts in Brunei, and if it seems to the Court just and expedient so to do, make an order for the attendance of the British subject in such Court or before such judicial officer, and for such purpose as aforesaid, but so that a District Court shall not have power to make an order for such attendance of a British subject at any place beyond the particular jurisdiction of the Court.

The order may be made subject to conditions as to payment or tender of expenses or otherwise.

(b.) If the person ordered to attend, having reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the Court, or if he refuses to give evidence, or wilfully gives false evidence, or fails to produce documents which he is properly required to produce, he is, independently of any other liability, guilty of an offence against this Order, and for every such offence, on conviction thereof, by summary trial, is liable to a fine not exceeding 100 l., or to imprisonment for not exceeding one month, in the discretion of the Court.

91. When, pursuant to the Agreement dated the 17th September, 1888, between Her Majesty and the Sultan of Brunei, a civil proceeding is brought by a native against a British subject, an officer appointed by the Government of the Sultan shall be entitled to be present at, and to take part in, the proceedings, but shall have no voice in the decision.

PART XIII.—Deportation and Removal.

92.—(1.) Where it is shown on oath to the satisfaction of a District Court that there is reasonable ground to apprehend that any British subject within the district of such Court is about to commit a breach of the public peace, or that the acts or conduct of any British subject are or is likely to produce or excite to a breach of the public peace, the Court may cause him to be brought before it and require him to give security to the satisfaction of the Court to keep the peace, or for his future good behaviour, as the case may require.

(2.) Where any British subject is convicted under this Order of any crime or offence, a District Court within the jurisdiction whereof he happens to be may require him to give security to the satisfaction of the Court for his future good behaviour.

(3.) In either of these cases, if the person required to give security fails to do so, the Court may order that he be deported from Brunei to such place as the Court directs.

(4.) The place shall be a place in some part of Her Majesty's dominions prescribed by the Secretary of State, or a place the Government whereof consents to the reception therein of persons deported under this Order. The order for deportation may, in any case with reference to which the Secretary of State by any general or special directions so directs, provide for the deportation of the person to whom it refers in the first instance to any place, as above mentioned, and also for his further deportation from that place to any other place to which he could lawfully have been deported in the first instance.

(5.) A District Court shall forthwith report to the Consul any order of deportation made by it, and the grounds thereof.

The Consul may reverse the order, or may confirm it with or without variation, and in case of confirmation shall direct it to be carried into effect.

(6.) The person to be deported shall be detained in custody until a fit time and opportunity for his deportation arrives.

(7.) The Consul shall (and in the case of a person convicted, either after execution of the

sentence, or while it is in course of execution), by warrant, cause the person to be taken to the place of deportation.

(8.) The Consul may order that the person to be deported to pay all or any part of the expenses of, or preliminary to, his deportation.

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

(10.) Where any person is deported to Singapore, he shall, on his arrival there, be delivered, with the warrant under which he is deported, into the custody of the Superintendent of Prisons of Singapore, or other officer of Her Majesty there lawfully acting as such, who, on receipt of the person deported, with the warrant, shall detain him, and shall forthwith report the case to the Governor or person administering the Government of the Straits Settlements, who shall either, by warrant if the person is a native of the United Kingdom and if the circumstances of the case appear to make it expedient, cause the person so deported to be taken to England, and in the meantime to be detained in custody (so that the period of such detention do not exceed three months), or else shall discharge him from custody.

(11.) If any person deported returns to Brunei without the permission of the Secretary of State or of the Consul, in writing under his hand, he shall be guilty of an offence against this Order, and shall be liable, on conviction thereof, to punishment (in the discretion of the Court before which he is convicted) by imprisonment for any term not exceeding one month,

with or without hard labour, and with or without a fine not exceeding 40*l.*, or by a fine not exceeding 40*l.*, without imprisonment, and also to be forthwith again deported in manner hereinbefore provided.

93.—(1.) Whenever under this Order any person is to be taken into custody or otherwise, for trial or imprisonment, or by way of deportation, or for any other purpose, to any place in or out of Brunei, the Court or other authority by this Order authorized to cause him to be so taken may for that purpose (if necessary) cause him to be embarked on board one of Her Majesty's vessels of war, or if there is no such vessel available, then on board any British or other fit vessel, at any port or place whether within or beyond the particular jurisdiction or district of that Court or authority, and in order to such embarkment may (if necessary) cause him to be taken, in custody or otherwise, by land or by water, from any place to the port or place of embarkment.

(2.) The writ, order, or warrant of the Consul, or of a District Court in Brunei, or of the Supreme Court, or the warrant of the Governor or person administering the Government of the Straits Settlements (as the case may be), by virtue whereof any person is to be so taken, shall be sufficient authority to every constable, officer, or other person acting thereunder, and to the commander or master of any vessel of war, or other vessel (whether the constable, officer, or other person, or the vessel or the commander or master thereof, is named therein or not), to receive, detain, take, and deliver up such person, according to the writ, order, or

warrant.

(3.) Where the writ, order, or warrant is executed under the immediate direction of the Court or authority issuing it, the writ, order, or warrant shall be delivered to the constable, officer, or other person acting thereunder, and a duplicate thereof shall be delivered to the commander or master of any vessel in which the person to whom the writ, order, or warrant relates is embarked.

(4.) Where the writ, order, or warrant is made or issued by the Consul, and is executed by a District Court in Brunei, and where the writ, order, or warrant issues from the Supreme Court of the Straits Settlements, and is executed by any of Her Majesty's Courts in Brunei, a copy thereof certified under the seal of the Court executing the same shall be delivered to the constable, officer, or other person acting thereunder, and to the commander or master of any vessel in which the person taken is embarked; and any such copy shall be for all purposes conclusive evidence of the order of which it purports to be a copy.

PART XIV.—Registration.

94.—(1.) Every British subject resident in Brunei, being of the age of 21 years or upwards, or being married, or a widower or widow, though under that age, shall, in the month of January in the year 1891, and every subsequent year, register himself in a register to be kept at the Consulate of the Consular district within which he resides, subject to this quali-

fication, that the registration of a man shall be deemed to include the registration of his wife (unless she is living apart from him), and that the registration of the head of a family, whether male or female, shall be deemed to include the registration of all females, being relatives of the head of the family (in whatever degree of relationship), living under the same roof with the head of the family at the time of his registration.

(2.) Every British subject not so resident arriving after the commencement of this Order at any place in Brunei where a Consular officer is maintained, unless borne on the muster-roll of a British vessel there arriving, shall, within one month after his arrival, register himself in a register to be kept at the Consular office, but so that no such person shall be required to register himself more than once in any year, reckoned from the 1st day of January.

(3.) Any person failing so to register himself, and not excusing his failure to the satisfaction of the Consular officer, shall not be entitled to be recognized or protected as a British subject in Brunei, and shall be liable to a fine not exceeding 2*l.* for each instance of such failure; but he shall, nevertheless, be subject to the jurisdiction of the Courts for all purposes.

(4.) Every person shall, on every registration of himself, pay a fee of 2*s.* 6*d.*

(5.) The Consular officer shall issue to every person so registered a certificate of registration under his hand and Consular seal; and the name of a wife (unless living apart from her husband) shall be indorsed on her husband's certificate; and the names and descriptions of females whose registration is included in that of the head of the family shall be indorsed on the certificate of the head of the family.

PART XV.—Mortgages and Bills of Sale.

95.—(1.) A deed or other instrument of mortgage, legal or equitable, of lands or houses in Brunei, executed by a British subject, may be registered at any time after its execution at the District Court of the district wherein the property mortgaged is situate.

(2.) Registration is made as follows: the original and a copy of the deed or other instrument of mortgage, and an affidavit verifying the execution and place of execution thereof, and verifying the copy, are brought into the Court; and the copy and affidavit are left there.

(3.) If a deed or other instrument of mortgage is not registered at the Court within the respective time following, namely:—

(i.) Within 14 days after its execution, where it is executed in the district wherein the property mortgaged is situate;

(ii.) Within two months after its execution, where it is executed in Brunei elsewhere than in that district;

(iii.) Within six months after its execution, where it is executed elsewhere than in Brunei; Then, and in every such case, the mortgage debt secured by the deed or other instrument, and the interest thereon, shall not have priority over judgment or simple contract debts contracted before the registration of that deed or other instrument.

(4.) Registered deeds or other instruments of mortgage, legal or equitable, of the same lands or houses, have, as among themselves, priority in order of registration.

(5.) The provisions of this Order do not apply to a deed or other instrument of mortgage executed before the commencement of this Order.

96. The power given by this Order for framing rules from time to time is hereby extended to the framing of rules for prescribing and regulating the making and keeping of indexes, and of a general index to the register of mortgages, and searches in those indexes, and other particulars connected with the making, keeping, and using of those registers and indexes, and for authorizing and regulating the removal from the register of any deed or other instrument of mortgage, or the registering of any lease or satisfaction in respect thereof.

97. The provisions of this Order relating to bills of sale—

(i.) Apply only to such bills of sale executed by British subjects as are intended to affect chattels in Brunei;

(ii.) Do not apply to bills of sale given by sheriffs or others under or in execution of process authorizing seizure of chattels.

98.—(a.) Every bill of sale must conform with the following rules, namely:—

(1.) It must state truly the name, description, and address of the grantor.

(2.) It must state truly the consideration for which it is granted.

(3.) It must have annexed thereto or written thereunder an inventory of the chattels intended to be comprised therein.

(4.) Any defeasance, condition, or declaration of trust affecting the bill not contained in

the body of the bill must be written on the same paper as the bill.

- (5.) The execution of the bill must be attested by a credible witness, with his address and description.
- (b.) Otherwise the bill is void to the extent following, but not further, that is to say:—
- (i.) In the case of failure to conform with the rule respecting an inventory, as far as regards chattels omitted from the inventory; and
- (ii.) In any other case, wholly.
- (c.) The inventory, and any defesance, condition, or declaration as aforesaid, respectively, is for all purposes deemed part of the bill.

99. A bill of sale conforming, or appearing to conform, with the foregoing rules may be registered at the Court of the district wherein the chattels are, within the respective time following, and not afterwards, namely:—

- (i.) Within 14 days after its execution, where it is executed in the district wherein the chattels are;
- (ii.) Within two months after its execution, where it is executed in Brunei, elsewhere than in that district;
- (iii.) Within six months after its execution, where it is executed elsewhere than in Brunei.
- 100.—(1.) Registration is made as follows: the original and a copy of the bill of sale, and an affidavit verifying the execution, and the time and place of execution, and the attestation

thereof, and verifying the copy, are brought into the proper office of the Court; and the copy and affidavit are left there.

(2.) If a bill of sale is not registered at a place and within the time by this Order appointed and allowed for registration thereof, it is, from and after the expiration of that time, void to the extent following, but not further, that is to say:—

- (i.) As against trustees or assignees of the estate of the grantor, in or under bankruptcy liquidation, or assignment for benefit of creditors; and
- (ii.) As against all sheriffs and others seizing chattels under process of any Court, and any person on whose behalf the seizure is made; but only
- (iii.) As regards the property in, or right to, the possession of such chattels comprised in the bill as, at or after the filing of the petition for bankruptcy or liquidation, or the execution of the assignment, or the seizure, are in the grantor's possession, or apparent possession.

101. Registered bills of sale affecting the same chattels have, as among themselves, priority in order of registration.

Chattels comprised in a registered bill of sale are not in the possession, order, or disposition of the grantor within the law of bankruptcy.

102. If in any case there is an unregistered bill of sale, and within or on the expiration of the time by this Order allowed for registration thereof a subsequent bill of sale is granted affecting the same or some of the same chattels, for the same or part of the same debt, then

the subsequent bill is, to the extent to which it comprises the same chattels and is for the same debt, absolutely void, unless the Court is satisfied that the subsequent bill is granted in good faith for the purpose of correcting some material error in the prior bill, and not for the purpose of unlawfully evading the operation of this Order.

The registration of a bill of sale must be renewed once at least every 12 months.

103. Renewal of registration is made as follows: An affidavit stating the date of, and parties to the bill of sale, and the date of the original registration, and of the last renewal, and that the bill is still a subsisting security, is brought into the proper office of the Court of original registration, and is left there.

If the registration of a bill of sale is not so renewed in any period of five years, then on and from the expiration of that period the bill cannot be again registered.

104. A transfer or assignment of a registered bill of sale need not be registered, and renewal of registration is not necessary by reason only of such a transfer or assignment.

105.—(1.) Where the time for registration or renewal of registration of a bill of sale expires on a Sunday, or other day on which the office for registration is closed, the registration or renewal is valid if made on the first subsequent day on which the office is open.

(2.) If in any case the Court is satisfied that failure to register or to renew the registration of a bill of sale in due time, or any omission or misstatement connected with registration or renewal, was accidental or inadvertent, the Court may, if it thinks fit, order the failure,

omission, or misstatement to be rectified in such manner and on such terms, if any, respecting security, notice by advertisement, or otherwise, or any other matter, as the Court thinks fit.

(3.) The provisions of this Order do not apply to a bill of sale executed before the commencement of this Order.

106. The power conferred by this Order for framing rules from time to time is hereby extended to the framing of rules for prescribing and regulating the making and keeping of indexes, and of a general index, to the registers of bills of sale, and searches in those indexes, and other particulars connected with the making, keeping, and using of those registers and indexes, and for authorizing and regulating the removal from the register of any bill of sale, or the registering of any release or satisfaction in respect thereof.

PART XVI.—Partners.

107.—(1.) Persons claiming or being liable as partners may sue or be sued in the firm name, if any.

(2.) Where partners sue in the firm name, they must, on demand in writing on behalf of any defendant, forthwith declare the names and addresses of the partners.

(3.) Otherwise, all proceedings in the suit may, on application, be stayed on such terms as the Court thinks fit.

(4.) When the names of the partners are so declared, the suit proceeds in the same manner,

and the same consequences in all respects follow, as if they had been named as the plaintiffs in the petition.

- (5.) All subsequent proceedings, nevertheless, continue in the firm name.
- (6.) Where partners are sued in the firm name, the petition must be served either on one or more of the partners within the jurisdiction, or at the principal place of the partnership business within the jurisdiction, on some person having then and there control or management of the partnership business.
- (7.) Where one person, carrying on business in the name of a firm apparently representing more persons than one, is sued in the firm name, the petition may be served at the principal place of the business within the jurisdiction on some person having then and there control or management of the business.
- (8.) Where partners are sued in the firm name they must appear individually in their own names.
- (9.) All subsequent proceedings, nevertheless, continue in the firm name.
- (10.) Where a person carrying on business in the name of a firm apparently representing more persons than one is sued in the firm name, he must appear in his own name.
- (11.) All subsequent proceedings, nevertheless, continue in the firm name.
- (12.) In any case not hereinbefore provided for, where persons claiming or being liable as partners sue or are sued in the firm name, any party to the suit may, on application to

the Court, obtain a statement of the names of the persons who are partners in the firm, to be furnished and verified on oath or otherwise, as the Court thinks fit.

- (13.) Where a judgment is against partners in the firm name execution may issue—
 - (i.) Against any property of the partners, as such; and
 - (ii.) Against any person who has admitted in the suit that he is a partner, or who has been adjudged to be a partner; and
 - (iii.) Against any person who has been served in the suit as a partner, and has failed to appear.
- (14.) If the party who has obtained judgment claims to be entitled to issue execution against any other person, as being a partner, he may apply to the Court for leave so to do; and the Court, if the liability is not disputed, may give such leave, or if it is disputed, may order that the question of the liability be tried and determined as a question in the suit, in such manner as the Court thinks fit.
- (15.) The provisions of Part XVI may be from time to time varied by rules made under this Order.

PART XVII.—Official.

108. Notwithstanding anything in this Order, a District Court shall not exercise any jurisdiction in any proceeding whatsoever over the Consul, or his official or other residences, or his official or other property.

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

110. Whenever an Acting Consular officer has commenced the hearing of any cause or matter, civil or criminal, he may, unless the Consul otherwise directs, continue and complete the hearing and determination thereof, notwithstanding that his authority to act as such Consular officer has otherwise ceased by reason of the expiration of the time for which he was appointed to act, or by reason of the happening of any event by which his authority is determined.

111. Any suit or proceeding shall not be commenced in any Court in Brunei or the Straits Settlements against any person for anything done, or purporting to be done, or anything omitted in pursuance or execution, or intended execution, of this Order, or of any regulation or rule made under it, unless notice in writing is given by the intended plaintiff or prosecutor to the intended defendant one clear month before the commencement of the suit or proceeding, nor unless it is commenced within three months next after the act or omission complained of, or in case of a continuation of damage within three months next after the doing of such damage has ceased.

The plaintiff in any such suit shall not succeed if tender of sufficient amends is made by the defendant before the commencement thereof; and if no tender is made the defendant may,

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

PART XVIII.—Fees and Expenses.

112. All fees, fines, forfeitures, confiscations, and pecuniary penalties, and all commissions, levied or received under this Order, shall be accounted for, paid, and applied as the Secretary of State, with the concurrence of the Commissioners of Her Majesty's Treasury, from time to time directs.

113. Subject to the other provisions of this Order, all expenses of removal of prisoners and others, and the expenses of deportation and of the sending of any person to England, or to the Straits Settlements, or India, or British Burmah, including expenses of maintenance, shall be defrayed in such manner as the Secretary of State, with the concurrence of the Commissioners of Her Majesty's Treasury, from time to time directs.

PART XIX.—Supplemental.

114. Where by virtue of any Imperial Act or of this Order, or otherwise, any provisions of any Imperial Acts, or of any Law or of any Orders in Council other than this Order, are applicable in Brunei, or any form, regulation, or procedure prescribed or established by or under any such Act, or Law, or Order, are made applicable for any purpose of this Order,

such Act, Law, Order, form, regulation, or procedure shall be deemed applicable, so far only as the constitution and jurisdiction of the Courts and the local circumstances permit; and for the purpose of facilitating application, may be construed or used with such alterations and adaptations as may be necessary, and anything required to be done by or to any Court, Judge, officer, or authority, may be done by or to a Court, Judge, officer, or authority having the like or analogous functions, or by any officer designated by the Secretary of State or by the Court (as the case may require) for that purpose; and the seal of the Court may be substituted for any other seal; and in case any difficulty occurs in the application, it shall be lawful for the Secretary of State to direct by and to whom and in what manner anything is to be done, and such Act, Law, Order, form, regulation, or procedure shall be construed accordingly.

115. Sums of money, fines, forfeitures, penalties, or fees payable under this Order shall be calculated and paid in English money, or, with the consent of the Court, in its equivalent in local currency or produce, or bills of exchange approved by the Court.

PART XX.—Temporary Provisions.

116. This Order shall commence and have effect as follows:—

- (1.) As to the making of any warrant or appointment under this Order, immediately from and after the date of this Order.
- (2.) As to the framing, of Rules of Procedure or Regulations, and the approval thereof

by the Secretary of State, immediately from and after the date of this Order.

(3.) As to all other matters and provisions comprised and contained in this Order, immediately from and after the expiration of one month after this Order is first exhibited in the public office of the Consul; for which purpose he is hereby required forthwith, on receipt by him of a copy of this Order, to affix and exhibit the same conspicuously in his public office, and he is also hereby required to keep the same so affixed and exhibited during one month from the first exhibition thereof; and notice of the time of such first exhibition shall, as soon thereafter as practicable, be published in every Consular district in Brunei, in such manner as the Consul directs, and, notwithstanding anything in this Order, the time of the expiration of the said month shall be deemed to be the time of the commencement of this Order.

(4.) Proof shall not in any proceeding or matter be required that the provisions of this Article have been complied with, nor shall any act or proceeding be invalidated by any failure to comply with any of such provisions.

117. A copy of this Order shall be kept exhibited conspicuously in each Court and Consulate in Brunei.

Printed copies shall be provided and sold at such reasonable price as the Consul directs.

And the Most Honourable the Marquess of Salisbury, the Right Honourable Lord Knutsford, and the Right Honourable Viscount Cross, three of Her Majesty's Principal Secretaries

of State, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein as to them may respectively appertain.

C. L. PEELE.

十一 「ブルネイ」ニ於ケル英國領事ノ裁判權行使ニ關スル
英國勅令

千九百一一年七月二十四日

11. BRITISH ORDER IN COUNCIL, FOR THE EXERCISE OF BRITISH CONSULAR JURISDICTION IN BRUNEI.—LONDON, JULY 24, 1901.

At the Court at St. James's, the 24th day of July, 1901.

PRESENT: THE KING'S MOST EXCELLENT MAJESTY.

Lord President.	Lord James of Hereford.
Marquess of Cholmondeley.	Lord Pauncefote.
Viscount Cromer.	Lord Milner.
Lord Chesham.	M. Cecil Rhodes.

Whereas by Treaty, grant, usage, sufferance, and other lawful means, His Majesty the King has power and jurisdiction within the dominions and territories of the Sultan of Brunei:

Now, therefore, His Majesty, by virtue and in exercise 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:—

1. This Order may be cited as "The Brunei Order in Council, 1901."
2. This Order is divided into Parts as follows:—

Parts.		Articles.
I	General Provisions	3-6
II	Courts	7-14
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PART I.—General Provisions.

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

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

"Prescribed" means prescribed by any Consular instructions, or by any order or notification signed or authorized by the Secretary of State;

The expression "Brunei," or "the limits of this Order," mean the dominions for the time being of the Sultan of Brunei and the islands and territorial waters belonging to the said dominions; provided that the expression "at Brunei" shall be construed as referring to the town or settlement called Brunei;

"Consular officer" includes any person for the time being acting in Brunei by virtue of His

Majesty's Commission, or with the authority or approval of the Secretary of State as Consul-General, Consul, Vice-Consul, or Consular Agent ;

"Consul" means any person for the time being acting as Consul for Brunei ;

"Treaty" includes any Convention, Agreement, or Arrangement made by or on behalf of His Majesty with any State or Government, King, Chief, people, or tribe, and any Regulation appended thereto ;

"Court" means any Court or person exercising jurisdiction under this Order ;

"Governor" means the Governor of the Straits Settlements ;

"Supreme Court" means the Supreme Court of the Straits Settlements ;

"British subject" includes a British-protected person, that is to say, a person who either—

(a.) Is a native of any Protectorate of His Majesty, and is temporarily in Brunei ; or

(b.) By virtue of "The Foreign Jurisdiction Act, 1890," or otherwise, enjoys His Majesty's protection in Brunei ;

"Foreigner" means a person, whether a native or subject of Brunei, or not, who is not a British subject, as above defined ;

"Native" means a native or subject of Brunei ;

"Person" includes a Corporation or Association of persons ;

"Oath" or "affidavit" includes affirmation and declaration ;

"Month" means calendar month ;

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

Expressions referring to print or to writing include either print or writing, or a combination of both.

4.—(1.) The powers conferred by this Order shall extend to the persons and matters following, in so far as by Treaty, grant, usage, sufferance, or other lawful means His Majesty has power or authority in Brunei in relation to such persons and matters, that is to say :—

(a.) British subjects as herein defined ;

(b.) The property and personal and proprietary rights and obligations of British subjects in Brunei (whether such subjects are or are not within Brunei), including British ships, with their boats and the persons and property on board thereof, or belonging thereto ;

(c.) Foreigners as herein defined who submit themselves to the Court in accordance with the provisions of this Order ;

(d.) Foreigners as herein defined with respect to whom any State, King, Chief, or Government, whose subjects or under whose protection they are, has by any Treaty as herein defined or otherwise agreed with His Majesty for or consented to the exercise of power or authority by His Majesty.

(2.) All His Majesty's jurisdiction exercisable in Brunei for the judicial hearing and determination of matters in difference between British subjects, or between foreigners and British

subjects, or for the administration or control of the property or persons of British subjects, or for the repression or punishment of crimes committed by British subjects, or for the maintenance of order among British subjects, shall be exercised under and according to the provisions of this Order and not otherwise.

5. 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 Brunei, 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.

6. Crimes, wrongs, and breaches of contract against or affecting the person, property, or rights of natives of Brunei or other foreigners as herein defined, committed by persons subject to this Order, are punishable or otherwise cognizable under the provisions of this Order, with

the consent of such natives or foreigners, in the same manner as if they were committed against or affected the person, property, or rights of British subjects.

PART II.—Courts.

(1.) Court for Brunei.

7. There shall be and there is hereby established in and for Brunei a Court styled "His Majesty's Court for Brunei," in this Order referred to as "the Court."

The Court shall be held by the Consul or a Consular officer, who in relation to the Court is hereinafter referred to as "the Judge."

The Court shall sit at Brunei, or, as occasion may require, at any other place within the limits of this Order.

The Court shall be a Court of Record.

8. The Secretary of State may appoint a fit person to be Registrar of the Court, but where no other person is appointed to be Registrar the Consul or Consular officer holding the Court shall be the Registrar of the Court.

The Consul may, with the approval of the Secretary of State, appoint such clerks, messengers, or other officers of the Court as may seem fit.

The Registrar and any clerk of the Court designated by the Consul may administer oaths and take affidavits, declarations, and affirmations.

9. In every case, civil or criminal, heard in the Court, proper Minutes of the proceedings shall be drawn up, and shall be signed by the Judge or officer before whom the proceedings are taken, and sealed with the seal of the Court, and shall, where Assessors are present, be open for their inspection, and for their signature if concurred in by them.

The Minutes, with depositions of witnesses and notes of evidence taken at the trial by the Judge or officer, shall be preserved in the public office of the Court.

10. The Consul shall have all the powers and authorities of the Sheriff of a county in England, with all the privileges and immunities of the office, and as such Sheriff shall be charged with the execution of all Decrees, Orders, and sentences made and passed by a Court, on the requisition in that behalf of the Court, he shall not be liable to any action or proceeding for anything done, or purporting to be done, or anything omitted by him as such Sheriff.

11. Where the Court thinks fit to hear and determine any case, civil or criminal, with Assessors, the Court shall nominate and summon as Assessors not less than two and not more than four indifferent British subjects of good repute, resident in Brunei or belonging to a British ship; but where the Court is able to obtain the presence of one fit person only as Assessors, the Court may sit with him alone as Assessor.

An Assessor shall not have voice or vote in the decision of the Court in any case, civil or criminal; but an Assessor dissenting in a civil case from any decision of the Court, or in a criminal case from any conviction, or the amount of punishment awarded, may record in the

Minutes of Proceedings his dissent and the grounds thereof; and an Assessor dissenting shall be entitled to receive gratis a certified copy of the Minutes.

If any person summoned to act as Assessor fails, without lawful excuse, to attend at the trial, or at any adjournment thereof, or to continue to serve throughout the trial, he shall be liable under a summary order of the Court to a fine not exceeding 50 dollars, to be levied by attachment and sale of his goods, and in default of recovery thereby of the fine, to be imprisoned for any time not exceeding six days, if the fine is not sooner paid.

12. No proceeding under this Order shall be invalidated by any informality, mistake, or omission, so long as, in the opinion of the Court, the essential requisites of law and justice have been complied with, or may be met by amendment.

(2.) Supreme Court.

13.—(1.) The Supreme Court shall have appellate jurisdiction under this Order.

The appellate jurisdiction of the Supreme Court shall be exercised by the full Supreme Court sitting in the Straits Settlements in such manner and according to such procedure as, subject to the provisions of this Order, and of any rules made under this Order, the Supreme Court from time to time determines.

Judgments or Orders of the Supreme Court in the exercise of its appellate jurisdiction, shall be certified by the Supreme Court to the Court for Brunei, and (subject to any appeal

to His Majesty in Council) that Court may and shall execute, and give effect to the same in like manner as to its own judgments or Orders.

(2.) The Supreme Court, on petition presented to it in accordance with any rules to be made under this Order, or in such manner as the Supreme Court directs, and alleging that any Order of the Court has the effect of a refusal of justice to any suitor or complainant, may, after such inquiry (if any) as it thinks fit to direct, issue an order directing the Court to take cognizance of the matter, and may, if satisfied that such orders have not been properly complied with, entertain and determine the matter of the suit or complaint, and shall certify its determination to the Court, which shall give effect thereto.

(3.) Except as provided by this Order, the Supreme Court shall not exercise any control over the Court, whether by way of mandamus, prohibition, certiorari, writ of habeas corpus, or otherwise.

14. The Supreme Court shall, for the purposes of this Order, have original jurisdiction as follows:—

(1.) When, under this Order, a person accused of crime is sent for trial to the Straits Settlements, the Supreme Court shall have the like jurisdiction, and may proceed in the same manner as if the crime had been committed in the Straits Settlements, except that the criminality of the act charged and the punishment to be inflicted must be determined according to the law applicable under this Order in Brunei.

(2.) The Supreme Court may exercise in Brunei, in relation to any civil or criminal matter, any original jurisdiction which can be exercised by the Court, and all the provisions of this Order shall apply accordingly, *mutatis mutandis*, and any appeal shall be to the full Supreme Court.

(3.) The Supreme Court may hear and determine at any place within the limits of this Order any criminal case which could under this Order be sent for trial to the Straits Settlements, and for that purpose shall have the like jurisdiction and may proceed in the same manner, as nearly as may be, as if it were trying the same case in the Straits Settlements, or as if it were the Court trying in Brunei a criminal case within the jurisdiction of the Court:

Provided that the powers conferred by sub-Articles (2) and (3) of this Article shall, except in the case of the death, absence, or incapacity of the Consular officer, be exercised only on his request.

(4.) The Supreme Court may hear and determine within the Straits Settlements any civil case arising in Brunei, with the consent of the parties and of the Consul, and for that purpose may adopt any procedure proper either in the Straits Settlements or in Brunei. In such case, any appeal shall be to the full Supreme Court.

(5.) For the purposes of the exercise of original jurisdiction under this Article, such Judge or Judges of the Supreme Court as the Chief Justice of the Straits Settlements from time to time nominate shall exercise the powers of the Supreme Court.

(6.) The Court for Brunei may and shall, according to its powers, execute, enforce, and

give effect to any judgment or order of the Supreme Court in the exercise of its original jurisdiction, and may and shall, for the purposes of anything to be done preliminary to a sitting of the Supreme Court (as, for instance, the summoning of assessors or of witnesses), exercise, *mutatis mutandis*, all the powers which the Court has for any purpose under this Order in a case or matter pending before itself.

PART III.—Criminal Matters.

15.—(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 summons issued to the witnesses, if any.

16.—(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 three months, or with fine not exceeding 50 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, and, if so, whether the case shall be tried before the Court or sent to the Supreme Court.

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

17. 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.

18.—(1.) At the preliminary examination of a case which must be, or may, in the opinion of the Court, require to be, sent for trial to the Supreme 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 Supreme Court.

(2.) At the preliminary examination of a case which may be tried on a charge before the 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.

19.—(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 purpose of the application of any Statute law, a charge framed under the provisions of this Order shall be deemed to be an indictment.

20.—(1.) The Court may, at any stage of the prosecution, in its discretion admit to bail a person charged with any felony (except murder), or with riot, or assault.

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

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

(4.) In no case shall a remand be for more than fourteen days at one time, unless in case of illness of the accused person or other case of necessity.

21. The Court may from time to time postpone or adjourn any trial if it considers it necessary to do so in the interest 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.

22. 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, authorize 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.

23. A warrant for apprehension or a search warrant may be issued and executed on Sunday, Good Friday, or Christmas Day, where the urgency of the matter so requires.

24. The Court may award any such punishment as may be awarded by any Court of criminal jurisdiction in England for the time being.

25. 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.

26. When a person is sentenced to death, the Court shall transmit the Judge's notes and a report on the case to the Governor in Council, and the sentence shall not be carried into effect unless confirmed by the Governor in Council.

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

27. 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.

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

(i.) Where a person is convicted before the Court, and the person so convicted declares his desire to appeal to the Supreme Court on any question or questions of law raised by the person convicted or by the Court; or

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

The Court shall frame a statement setting out the facts, the grounds of the conviction and sentence, the question or questions of law, and any objection alleged by the person convicted.

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

(4.) The Court shall postpone the execution of the sentence pending the appeal, and shall, as on a remand, either (if necessary) commit the person convicted to prison for safe custody, or admit him to bail, 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 Court, and hearing publicly any argument offered on behalf of the prosecution, or of the person convicted.
- (6.) The Supreme Court may require the Court to make any amendment in or addition to 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.
29. 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 Court; or
- (ii.) Of any error or any 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.
30. 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.
31. The Consul may by general order prescribe the manner in which and the prisons in which punishment are to be carried into execution.

32.—(1.) When an offender is sentenced to imprisonment and the Court thinks it expedient that the sentence be carried into effect within His Majesty's dominions, the place shall be either the Straits Settlements 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 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.

33. "The Fugitive Offenders Act, 1881" and "The Colonial Prisoners Removal Act, 1884," shall apply to Brunei as if it were part of His Majesty's dominions, subject as follows:—

(a.) The Consul is hereby substituted for the Governor or Government of a British possession;

(b.) The 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 the Straits Settlements shall be deemed to be one group of British possessions.

34.—(1.) In cases of murder or manslaughter, if either the death, or the criminal act

which wholly or partly caused the death, happened within Brunei, the 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 Brunei.

(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 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.

35. Where the 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,

the 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.

36. Any British subject being in Brunei may be proceeded against, tried, and punished under this Order for the crime of piracy, wherever committed.

37.—(1.) If any British subject does any of the following things without His Majesty's authority, levies war, or takes any part in any operation of war against, or aids or abets any person in carrying on war, insurrection or rebellion against the Sultan of Brunei;

Every person so offending shall be deemed guilty of an offence against this Order, and on conviction thereof shall be liable to be punished by imprisonment for any term not exceeding one year, with or without hard labour, and with or without a fine not exceeding 5,000 dollars, or by a fine not exceeding 5,000 dollars without imprisonment.

In addition to such punishments, every such conviction shall of itself, and without further proceedings, make the person convicted liable to deportation; and the Court may order that he be deported from Brunei to such place as the Court directs.

(2.) If any British subject, without the authority of His Majesty (proof whereof shall lie on the party accused), takes part in any operation of war in the service of the Sultan of Brunei

against any persons engaged in carrying on war, insurrection or rebellion against the Sultan of Brunei, he shall be deemed guilty of an offence against this Order, and on conviction thereof shall be liable to be punished by imprisonment for any term not exceeding one year, with or without hard labour, and with or without a fine not exceeding 5,000 dollars, or by a fine not exceeding 5,000 dollars without imprisonment.

38. If any British subject publicly derides, mocks, or insults any religion established or observed in Brunei, or publicly offers any insult to any religious service, feast, or ceremony established or kept in any part of Brunei, or to any place of worship, tomb, or sanctuary belonging to any such religion, or to the ministers or professors thereof, or wilfully commits any act tending to bring any such religion, 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 deemed guilty of an offence against this Order, and shall be liable, on summary conviction, to imprisonment for any term not exceeding six months, with or without hard labour, and with or without a fine not exceeding 500 dollars, or to a fine not exceeding 500 dollars, without imprisonment.

His Majesty's Consular officers shall take such precautionary measures as seem to them proper and expedient for the prevention of such offences.

39. If any British subject violates or fails to observe any stipulation of any Treaty made with, or by, or on behalf of His Majesty for the time being in force, in respect of the viola-

tion whereof any penalty is stipulated for in the Treaty, he shall be deemed guilty of an offence against this Order, and on conviction thereof under this Order shall be liable to a penalty not exceeding the penalty stipulated for in the Treaty.

40. The Court shall have jurisdiction to make an order requiring a person to contribute, in such manner as the Court directs, to the support of his wife or child, whether legitimate or not, being in the opinion of the Court under the age of 16 years. Any such order may be made in a summary way, as if the neglect to provide for the support of such wife or child were an offence against this Order, and a failure to comply with any such order shall be deemed to be an offence against this Order, and shall be punishable accordingly, and the Court may direct any penalty imposed for such offence to be applied for the support of such wife or child in such manner as the Court thinks fit.

41. Where any act or omission is, by virtue of this Order, or of any Regulation made under this Order, an offence against this Order, and no penalty or punishment is specified in respect thereof, such offence shall be punishable with imprisonment for not exceeding three months, or fine not exceeding 500 dollars, or both.

42. The Consul shall, when required by the Secretary of State, send to the Secretary of State a report of the sentence passed in every case heard and determined by him, with a copy of the Minutes of Proceedings and notes of evidence, and may send with such report any observations he thinks fit.

43. 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.) Where no person is charged with causing the death, the Court shall 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 Supreme Court, together with a report as to the cause of death.

44. The Governor of the Straits Settlements in Council shall have power, in the name of His Majesty, to remit or commute, in whole or in part, any sentence passed by a Court exercising criminal jurisdiction under this Order, and every such Court shall give effect to any such remission.

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

PART IV.—Civil Matters.

45.—(1.) Every civil proceeding in the Court shall be taken by action, and not 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.

46.—(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.

47.—(1.) The sittings of the Court for the hearing of actions shall be held at such places and on such days as the Court shall appoint.

(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, their advisers, and the officers of the Court.

(3.) Public notice of the sittings of the Court shall, as far as practicable, be given at

Brunei, and if the sitting is to be held at any other place, also at that place.

48. 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).

49. The Registrar shall keep a book, called the Action Book, in which all actions brought in 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.

50.—(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 reasons, 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 resealed with the seal of the Court, and a note being made thereof by the Registrar, 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.

51. 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.

52. 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.

53. 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.

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

55.—(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;
 - (iv.) Rehear any case and review its judgments or orders in any case where, in the opinion of the Court, justice so requires.
- (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.
56. 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.
- 57.—(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.

58.—(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 Brunei, 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.

59.—(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.

Bankruptcy.

60.—(1.) The Court shall have, with respect to all British subjects in Brunei all such jurisdiction in bankruptcy as for the time being belongs to the High Court in England.

(2.) 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.

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

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

Lunacy.

61. The Court shall, as far as circumstances admit, have, for and within the said territories, with respect to British subjects, 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, or as may be exercised by a judicial authority under "The Lunacy Act, 1890," or any Act amending the same.

Probate and Administration.

62. The Court shall be a Court of Probate, and, as such, shall, so far as circumstances

admit, have, with respect to the property of British subjects in Brunei, all such jurisdiction as for the time being belongs to the High Court in England in cases of probate and administration of estates.

63. Probate or administration granted by the Court shall have effect over all the property of the deceased in Brunei, and shall effectually discharge persons dealing with an executor or administrator thereunder, notwithstanding that any defect afterwards appears in the grant.

64. Any person having in his possession or under his control any paper or writing of a deceased British subject, being or purporting to be testamentary, shall forthwith deliver the original to the Court.

Any person neglecting to do so for fourteen days after having knowledge of the death of the deceased shall be liable to such penalty, not exceeding 200 dollars as the Court thinks fit to impose.

65. From the death of a British subject, in Brunei, intestate, until administration granted, his personal property in Brunei shall be vested in the Consul.

66. If any person, other than the Consul, takes possession of, or in any manner administers any part of, the personal property of any person deceased without obtaining probate or administration within three months after the death of the deceased, or within one month after the determination of any suit or dispute respecting probate or administration (if there is any such which is not ended within two months after the death of the deceased), he shall be liable

to such penalty, not exceeding 500 dollars, as the Court thinks fit to impose; and in every such case the same fees shall be payable by the person so administering as would have been payable by him if he had obtained probate or administration.

67. Where a British subject, not having at the time of death his fixed place of abode in Brunei, dies there, the Court shall, where the circumstances of the case appear to the Court so to require, forthwith on the death of the deceased, or as soon after as may be, take possession of his personal property within the particular jurisdiction, or put it under the seal of the Court (in either case, if the nature of the property or other circumstances so require, making an inventory), and so keep the property until it can be dealt with according to law.

68. Where it appears to the Court that the value of the property or estate of a deceased person does not exceed 500 dollars, the Court may, without any probate or letters of administration, or other formal proceedings, pay thereout any debts or charges, and pay, remit, or deliver any surplus to such persons in such manner as the Governor in Council may approve, and shall not be liable to any action, suit, or proceedings in respect of anything done, or purporting to be done, under this Article.

Appeal in Civil Cases.

69.—(1.) Where a civil action in the 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 Court, and to such amount as the Court 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 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 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.

70.—(1.) After three months from the date of a decision of the 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 Court, application for leave to appeal against it shall not be entertained by the Supreme Court.

71.—(1.) Where a person ordered to pay money, or to do any other thing, appeals, the Court 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 Court 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 Court for performance of any order to be made on appeal.

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

72.—(1.) The appellant shall file an appeal motion-paper in 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 Court directs.

73.—(1.) A respondent may, within seven days after service, file in the 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 Court to such persons as the Court thinks fit.

74.—(1.) On the expiration of such seven days, the 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.

75.—(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 Court; but any application may be made through the Court.

76.—(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 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 Singapore, or appoint persons there to represent them as their counsel or solicitors in the appeal, and cause the ap-

pearance 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 Court to the parties of the day fixed for the hearing thereof.

77. 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.

78.—(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 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 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 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 Court.

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

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

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 V.—Evidence.

81.—(1.) In any case, criminal or civil, and at any stage thereof, the Court, either of its own motion or on the application of any party, may summon a British subject to attend to give evidence or to produce documents, or to be examined.

(2.) If the person summoned, having reasonable notice of the time and place at which he is required to attend, fails to attend and be sworn, and give evidence, or produce documents,

or submit to examination accordingly, and does not excuse his failure to the satisfaction of the Court, he shall be guilty of an offence against this Order.

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

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

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

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

(7.) In civil cases any Court may, where the circumstances appear to justify it, order that the expenses of a witness, on his appearing to give evidence, shall be defrayed by the parties, or any of them.

(8.) A person attending to give evidence before the Court shall not be compelled or allowed to give any evidence, or produce any document, if, in the opinion of the Consul signified by him personally or in writing to the Court the giving or production thereof would be injurious to His Majesty's service.

82.—(1.) Any person appearing before the Court to give evidence in any case, civil or criminal, may be examined or give evidence on oath in the form or with the ceremony that he declares to be binding on his conscience.

(2.) Any British subject wilfully giving false evidence in any suit or proceeding, civil or criminal, or any arbitration, or in any affidavit, shall be deemed guilty of wilful and corrupt perjury.

83.—(1.) The provisions of "The Evidence Act, 1851" (14 and 15 Vict., cap. 99), sections 7 and 11, relating to the proof of judicial and other documents, shall extend and be applied for all purposes as if Brunei were a British Colony.

(2.) The following Acts, namely:—

"The Foreign Tribunals Evidence Act, 1856;"

"The Evidence by Commission Act, 1859;"

"The Evidence by Commission Act, 1885;"

Or so much thereof as is for the time being in force, and any enactment for the time being in force, amending or substituted for the same, are hereby extended to Brunei and the Court, with the adaptations following, namely:—

In the said Acts, the Consul is hereby substituted for a Supreme Court, or the Judge of a Court in a Colony.

(3.) The following Acts, namely:—

"The British Law Ascertainment Act, 1859;"

"The Foreign Law Ascertainment Act, 1861;"

Or so much thereof as is for the time being in force, and any enactment for the time being in force, amending or substituted for the same, are hereby extended to Brunei and the Court, with the adaptations following namely:—

In the said Acts the Consul is hereby substituted for a Superior Court in a Colony.

PART VI.—Foreigners.

84.—(a.) Where a foreigner desires to institute an action against a British subject, or a British subject desires to institute an action against a foreigner, the Court may hear and determine it in accordance with the provisions of this Order.

(b.) Provided that the foreigner—

(i.) First files in the Court his consent to the jurisdiction of the Court; and

(ii.) Also, if required by the Court, obtains and files a certificate in writing from a competent authority of his own Government to the effect that no objection is made by that Government to the foreigner submitting in the particular cause or matter to the jurisdiction of the Court; and

Also, if required by the Court, gives security, to the satisfaction of the Court, to such reasonable amount as the Court directs by deposit of money or otherwise, to pay fees, costs, damages, and expenses, and to abide by and perform the decision to be given by the Court, or on appeal.

(c.) A counter-claim or cross-suit cannot be brought or instituted in the Court against a plaintiff, being a foreigner.

85. When, pursuant to the Agreement dated the 17th September, 1888, between Her late Majesty Queen Victoria and the Sultan of Brunei, a civil proceeding is brought by a native against a British subject, an officer appointed by the Government of the Sultan shall be entitled to be present at, and to take part in, the proceedings, but shall have no voice in the decision.

PART VII.—Deportation and Removal.

86.—(1.) Where it is shown on oath to the satisfaction of the Court that there is reasonable ground to apprehend that any British subject in Brunei is about to commit or cause a breach of the public peace, the Court may cause him to be brought before it and require him to give security to the satisfaction of the Court to keep the peace, or for his future good behaviour, as the case may require.

(2.) Where any British subject is convicted under this Order of any crime or offence, the Court may require him to give security to the satisfaction of the Court for his future good behaviour.

(3.) In either of these cases, if the person required to give security fails to do so, the Court may order that he be deported from Brunei to such place as the Court directs.

(4.) The place shall be a place in some part of His Majesty's dominions, the Government whereof consents to the reception therein of persons deported under this Order.

(5.) The person to be deported shall be detained in custody until a fit time and opportunity for his deportation arrives.

(6.) The Consul may order that the person to be deported do pay all or any part of the expenses of, or preliminary to, his deportation.

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

(8.) Where any person is deported to Singapore, he shall, on his arrival there, be delivered with the warrant under which he is deported, into the custody of the Superintendent of Prisons of Singapore, who, on receipt of the person deported, with the warrant, shall detain him, and shall forthwith report the case to the Governor, who shall either, by warrant if the person is a native of the United Kingdom, and if the circumstances of the case make it expedient, cause the person so deported to be taken to England, and in the meantime to be detained in custody (so that the period of such detention do not exceed three months), or else shall discharge him from custody.

(9.) If any person deported returns to Brunei without the permission of the Secretary of State, or of the Consul, in writing under his hand, he shall be guilty of an offence against this Order, and shall be liable, on conviction, to imprisonment for any term not exceeding one month, with or without hard labour, and with or without a fine not exceeding 200 dollars, or

to a fine not exceeding 200 dollars, without imprisonment, and also to be forthwith again deported in manner hereinbefore provided.

87.—(1.) Whenever under this Order any person is to be sent, removed, or deported from Brunei, the Court shall for that purpose (if necessary) cause him to be embarked 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.

(2.) The warrant of the Consul or of the Supreme Court (as the case may be), shall be sufficient authority to every constable, officer, or other person acting thereunder, and to the commander or master of any vessel of war, or other vessel (whether the constable, officer, or other person, or the vessel or the commander or master thereof, is named therein or not), to receive, detain, take, and deliver up such person, according to the warrant.

(3.) The warrant shall be delivered to the constable, officer, or other person acting thereunder, and a duplicate thereof shall be delivered to the commander or master of any vessel in which the person to whom the warrant relates is embarked.

PART VIII.—Regulations, Commencement, &c.

88.—(1.) The Consul may, subject to the provisions of this Order, make such regulations, to be called "King's Regulations," as to him seem fit, for the peace, order, and good government of British subjects resident in, or resorting to, Brunei.

(2.) The power aforesaid extends to the making of Regulations for securing observance of the stipulation of Treaties between His Majesty and the Sultan of Brunei, and for enforcing any local law or customs, whether relating to trade, commerce, revenue, or any other matter, and for maintaining friendly relations between British subjects and native subjects and authorities, and for requiring returns to be made of the nature, quantity, and value of articles exported from or imported into Brunei, by or on account of any British subject or in any British ship, and for prescribing the times and manner at or in which, and the person by whom, such returns are to be made.

(3.) Regulations made under this Order shall not have effect unless and until they are approved by the Secretary of State, save that, in case of urgency declared in any such regulations, the same shall take effect before that approval, and shall continue to have effect unless and until they are disapproved by the Secretary of State, and until notification of that disapproval has been received and published by the Consul.

89. Any regulations made under this Order may, if the Consul thinks fit, impose penalties for offences against the same.

Penalties so imposed shall not exceed the following, namely: for any offence, imprisonment for three months, with or without hard labour, and with or without a fine of 500 dollars, or a fine of 50 dollars without imprisonment; with or without a further fine, for a continuing offence, of 50 dollars for each day during which the offence continues after conviction.

In addition to or in lieu of penalties, such regulations may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach is committed of such regulations of any Treaty, or any native law or ordinance the observance of which is provided for by such regulations.

90. All regulations made under this Order, whether imposing penalties or not, shall be printed, and a printed copy thereof shall be affixed, and be at all times kept exhibited conspicuously in the public office of the Consulate at Brunei.

Printed copies of the regulations shall be kept on sale at such reasonable price as the Consul from time to time directs.

91. The respective powers aforesaid extend to the making of regulations for the governance, visitation, care, and superintendence of prisons in Brunei, and for the infliction of corporal or other punishment on prisoners committing offences against the rules or discipline of a prison; but the provisions of this Order respecting penalties, and respecting the printing, affixing, exhibiting, and sale of regulations, and the mode of trial of charges of offences against regulations, do not apply to regulations respecting prisons and offences of prisoners.

92. The Judge may, with the approval of the Chief Justice of the Supreme Court, make Rules of Court and prescribe forms of procedure as to all civil and criminal proceedings and the fees to be taken therein.

The Supreme Court may make Rules of Court and prescribe forms of procedure as to appeals to the Supreme Court under this Order, and may fix the fees to be taken on such appeals.

All such rules shall be transmitted forthwith 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.

93. Not later than the 31st March in each year, the Consul 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 Court, 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.

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

As to the appointment of any officers, 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 at Brunei.

A. W. FITZROY.

十二 逃亡犯罪人ノ相互的規定ノ存スル隣國ヘノ引渡ニ

關スル英國北「ボルネオ」總督宣言

千九百六年一月十六日

12. PROCLAMATION BY THE GOVERNOR OF BRITISH NORTH BORNEO TO
 PROVIDE FOR THE EXTRADITION OF FUGITIVE OFFENDERS TO
 NEIGHBOURING COUNTRIES WITH WHICH RECIPROCAL
 PROVISION EXISTS.—SANDAKAN, JANUARY 16, 1906.

(This Proclamation was approved by the Court of Directors.)

(L.S.) EDWARD PEREGRINE GUERITZ,
 Governor.

(No. 1. of 1906.)

By His Excellency Edward Peregrine Gueritz, Governor and Commander-in-Chief of the State of North Borneo and its Dependencies.

Whereas, by Order in Council of the British Government dated the 19th August, 1889, as amended by Order in Council dated the 26th September, 1901, provision was made for the surrender by the Government of the Straits Settlements of fugitive criminals from, amongst other places, the State of British North Borneo;

And whereas, by Ordinance No. III of 1890 of the Colony of Labuan, and by Ordinance No. III of 1896, of the Colony of Hongkong, and by Treaty between the States of British North Borneo and Sarawak finally executed on the 27th April, 1891, provision was likewise

made for the surrender by the Governments of the Colonies of Labuan and Hongkong and of the State of Sarawak of fugitive criminals from British North Borneo;

And whereas reciprocal legal provision has only, so far, been made in the case of the Colony of Hongkong and it is expedient to make proper legal provision also in the cases of the Colonies of the Straits Settlements and Labuan, and of the State of Sarawak;

And whereas it is expedient to make one law generally applicable to the extradition of fugitive offenders to all countries with which reciprocal provision may be made;

It is hereby enacted as follows:—

1. This Proclamation may be cited as "The Extradition Proclamation, 1906."
2. Proclamation No. II of 1898 "a Proclamation to provide for the extradition of fugitive criminals from the Colony of Hongkong" is repealed.
3. "Extradition Country" shall mean any country outside the limits of British North Borneo with which reciprocal extradition provision shall be made and shall include Colonies of a parent State.

"Governor" shall mean the chief executive officer in administrative charge for the time being of the State or country referred to.

"Extradition Offence" shall mean an offence named in the First Schedule hereto, including abetment of the same, interpreted according to the law of this State in force for the time being.

"Fugitive Offender" shall mean a person accused or convicted of any such offence committed

within the jurisdiction of an "Extradition Country."

4. The Governor, by Order enacted under this Proclamation, shall declare Extradition Countries and the provisions of this Law shall thereupon apply.
5. By similar Order the Governor may, after arrangement with any Extradition Country, direct that any offence shall be added to or expunged from the First Schedule, in the case of that particular country.
6. A fugitive offender shall not be surrendered:—
 - (i) If the extradition offence is of a political character, or it is shown to the satisfaction of the Court or Governor that the requisition for surrender has been made with a view to try or punish the offender for an offence of a political character.
 - (ii) Unless due provision is made by the Extradition Country making the requisition that the offender shall not, until he has been restored to the State, be detained or tried for any offence committed before such surrender, other than that named.
 - (iii) Until he has been discharged from any accusation pending, or from any judicial sentence in force in this State at the time of the receipt of such requisition.
7. Requisition for surrender shall be made under the hand and seal of the Governor of the Extradition Country, and shall be accompanied by duly authenticated documents in support of the same.
8. Pending the receipt of such requisition and the issue of such Order, a Magistrate may,

upon information in Form A hereto, issue a provisional warrant in Form B hereto for the provisional arrest and custody of the offender named in such information: and, on receipt of such Order, he shall issue his Order in Form C hereto and enquire into the case as directed herein.

Provided that any Police Officer not being under the rank of a Sergeant may, on receipt of telegraphic or other information, arrest any person suspected of being a fugitive offender and produce him before a Magistrate within 48 hours, to be dealt with as hereinbefore provided.

9. No person so provisionally arrested shall be detained for a longer period than is reasonably necessary to allow of the receipt of the formal requisition for surrender and the issue of the Governor's Order referred to in section 10 hereof.

10. On receipt of such requisition the Governor may issue his order, in Form D, in the Second Schedule hereto, to a Magistrate, who shall thereupon issue his warrant in Form E hereto and thereafter enquire into the case in the same manner as directed by Chapter XVIII of the Criminal Procedure Code as regards Sessions cases and with the same powers.

11. If at such enquiry and after hearing any evidence adduced by the accused as to the alleged offence or the requisition being of the character described in section 6 (i), or as to the offence being non-extraditable, the Magistrate shall be of opinion that a *prima facie* case has been disclosed sufficient to justify committal under sections 210 and 213 of that Code, had the offence been committed within his jurisdiction he shall commit the accused to gaol in Form F

hereto, and forthwith submit the proceedings, with his report thereon, to the Governor. If he is not of such opinion, he shall discharge the accused subject to reasonable notice of such intention being given to the Governor.

12. On making such committal the Magistrate shall inform the accused that he will not be surrendered until after the expiration of 15 days and that, in the meantime, he can apply to the High Court for a writ of *habeas corpus*.

13. On the expiration of the time named in section 12, or on decision of the application to the High Court referred to therein, the Governor may issue his warrant in Form G hereto for the surrender of the accused. At any time during the procedure under this Proclamation the Governor may issue his Order in Form H hereto for the discharge of the accused.

14. If any fugitive offender committed to prison under this Proclamation shall not be surrendered and conveyed out of the State within two calendar months after such committal, it shall be lawful for any Judge of the High Court, upon application and upon proof of notice of such application having been duly served upon the Governor, to order the fugitive offender to be discharged out of custody unless sufficient cause is shown to the contrary.

15. Documents in support of requisitions for surrender shall be deemed to be duly authenticated and shall be received in evidence if they are certified by the hand and seal of the Judge, Magistrate or Officer before whom they were recorded to be the originals or true copies thereof, and if such hand and seal are authenticated by the oath of some witness or by the official

seal of the Governor of the extradition country; and all Courts shall take judicial notice thereof.

By His Excellency's Command,
A. C. PEARSON, Secretary
to the Governor.

THE FIRST SCHEDULE.

EXTRADITION OFFENCES.

All offences under the Penal Code punishable by imprisonment exceeding six months.

Offences under the Insolvency Law.

Offences under sec. 225 (a) of the British Merchant Shipping Act, 1894, adopted by Proclamation No. XIII of 1903.

Piracy according to international law.

Criminal Breach of Contract of service.

THE SECOND SCHEDULE.

FORMS A TO H.

(Not reprinted here.)

No. 11.—*Order under "The Extradition Proclamation, No. 1 of 1906," Section 4.*

The following are declared "Extradition Countries" under the above Proclamation:—

The Colony of the Straits Settlements.

Do. Hongkong.

Do. Labuan.

The State of Sarawak.

No. 12.—*Extradition Procedure (for securing surrender from Foreign Countries).*

For the guidance of Magistrates, the Secretariat, Police Officers and other persons concerned or interested in procuring the surrender of individuals accused of offences committed in the State, who are believed to have fled to countries with which provision for extradition has been made, the following information is notified and the procedure to be observed indicated, viz.:—

1. The countries with which provision for extradition at present exists are:—

- (i) The Colony of the Straits Settlements (by Queen's Order in Council dated the 19th August, 1889, as amended by Order dated the 26th September, 1901, *vide* Notice 27 of 1902);
- (ii) The Colony of Hongkong (by Ordinance No. III of 1896);
- (iii) The Colony of Labuan (by Ordinance No. III of 1890);
- (iv) The State of Sarawak (by Treaty finally executed on the 27th April, 1891, *vide* Notice 104 of 1900).

The Governor may from time to time declare any other country to be included in this list.

2. The offence of which the fugitive offender is accused must be one of those included in the Schedules of extradition crimes or offences appended to those enactments or to the Extradition Proclamation.

3. Application for procuring surrender must be addressed to the Governor and be made by the private prosecutor or a police officer, according to whether the alleged offence is compoundable or non-compoundable.

4. Each application should state briefly the facts; give detailed information as to the whereabouts of the fugitive and means of tracing and identifying him; and state whether provisional arrest should be asked for by telegram. It should be accompanied by:—

- (i) The original warrant and certified copies of sworn information, statements on oath and other documents material to the case;

- (ii) A description of the accused, sufficient for identification and, if possible, a photograph;
 - (iii) An indemnity for expenses, in compoundable cases, in Form A hereto.
5. The Magistrate and the police officer or prosecutor must take great care that the documents named in section 4 (i) are in due form and duly certified, viz.:—
- (i) The information and statements on oath should be in Form B hereto; and should be complete on material points. Where the original information laid was hastily taken or is defective, it should be retaken for this purpose and a fresh warrant issued.
 - (ii) If copies are forwarded, they must be certified to be true copies of the originals by the signature of the Magistrate and the seal of the Court, as shown.
6. On forwarding the documents to the extradition country, the Governor or Officer administering the Government will authenticate them in Form C hereto.
7. Frequently it is advisable that a police officer be sent to assist the police in the extradition country in tracing the accused. In that event, such police officer must be provided with a letter from the Governor to the chief authority in that country; but he must not himself arrest.
8. If the documentary or other evidence of identification *in situ* is insufficient, it will be necessary for a person to be sent able to prove, before the foreign Court, the identity of the accused.
9. The above procedure is that generally internationally applicable. But, in the event of

extradition provision being made with *bond fide* foreign countries, it will be necessary to bear in mind that surrender by a State of its own native-born or naturalized subjects cannot usually be had, as this is guarded against in almost all Treaties. In such an event, therefore, information on this point would have to be included in the application referred to in section 4 above. The countries named in section 1, and this State, being British or of British origin and protection, such a proviso has not been made in the reciprocal arrangements.

(Forms A—C not reprinted here.)

十三 「ブルネイ」ノ「サルタン」ノ領域ニ於ケル駐劄官任命ニ
關スル英國勅令

千九百六年七月二十八日

13. BRITISH ORDER IN COUNCIL, REGULATING THE APPOINTMENT OF
A RESIDENT IN THE TERRITORIES OF THE SULTAN OF BRUNEI.
—LONDON, JULY 28, 1906.

At the Court at Buckingham Palace, the 28th day of July, 1906.

PRESENT: THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by Treaty, grant, usage, sufferance, or other lawful means, His Majesty The King has power and jurisdiction within the dominions and territories of the Sultan of Brunei.

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

1. This Order may be cited as "The Brunei Order in Council, 1906," and shall be read as one with "The Brunei Order in Council, 1901," hereinafter referred to as the principal Order.
- 2.—(1.) The definition of the term "Governor" in Article 3 of the principal Order is hereby repealed, and all references to the Governor, or to the Governor in Council, or to the Governor of the Straits Settlements in Council, in the principal Order (except in Article 33 of that Order), or in any King's Regulations, Proclamations, Notices, Rules of Court, or other documents issued or made under the principal Order, shall be deemed to be references to the High Commissioner as defined in this Order, and shall be construed accordingly.

(2.) In the principal Order, and in this Order, the term "High Commissioner" means any person appointed or acting as His Majesty's High Commissioner for Brunei by virtue of His Majesty's Commission.

3. The High Commissioner may, by writing, appoint a fit person to reside in the territories of the Sultan of Brunei, under the designation of Resident, or such other designation as the High Commissioner thinks fit, and the person so appointed is hereinafter referred to as the "Resident."
4. All functions hitherto discharged, and power, authority and jurisdiction hitherto exercised in Brunei by the Consul shall, from and after the commencement of this Order, be exercised by the Resident, and all references to the Consul in the principal Order, or in any King's Regulations, Proclamations, Notices, Rules of Court, or other documents issued or made under the principal Order shall be deemed to be references to the Resident, and shall be construed accordingly.
5. During a vacancy in the office of Resident, or in case of the illness or incapacity of the Resident, or of his absence from Brunei, the High Commissioner may appoint a fit person to act as Resident. An Acting Resident shall, during the continuance of his appointment, have all the power, authority, and jurisdiction of the Resident.
6. The Resident shall hold office during the pleasure of His Majesty.
7. In Article 86 of the principal Order the words "High Commissioner" are substituted for the words "Secretary of State," wherever the same occur.

8. This Order shall, except as to the making of any appointment, take effect on such day as the High Commissioner shall by public notification appoint, and such day is in this Order referred to as the commencement of this Order, and as to the making of any appointment this Order shall take effect forthwith.

And the Right Honourable the Earl of Elgin, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

A. W. FITZROY.

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十四 「チモール」及「ソロル」群島ニ於ケル「オランダ」國及

「ポルトガル」國屬地ノ境界ニ關スル「オランダ」國「ポルトガル」國間條約

千八百五十九年（安政六年）四月二十八日「リスボン」ニ於テ署名
千八百六十年八月二十一日「リスボン」ニ於テ批准書交換

「オランダ」國皇帝陛下竝ニ「ポルトガル」國及「アルガルヴ」皇帝陛下ハ「チモール」及「ソロル」群島ニ於ケル「オランダ」國屬地及「ポルトガル」國屬地間ノ境界ニ關シ現存スル不明確ヲ除去スルヲ有益ナリト認メ且不明確ニ定メラレタル境界ト數多ノ飛地ヨリ生ズルコトアルベキ一切ノ誤解ヲ永久ニ防止センコトヲ希望シ茲ニ互ニ諒解ヲ遂ゲンガ爲左ノ如ク各其ノ全權委員ヲ任命セリ

「オランダ」國皇帝陛下

「ポルトガル」國駐劄「オランダ」國代理公使「シュヴァリエ、ド、ロルドル、ド、ラ、クローロ
ンヌ、ド、シニス、エ、ド、ラ、レジョン、ドヌール」「モーリス、ジュアン、ルイ、ジャック、
アンリ、アントアヌ、ヘルデヴィヤー」

「ポルトガル」國及「アルガルヴ」皇帝陛下

宮中顧問官、海外評議委員、工兵大尉、公使、内務大臣「シュヴァリエ、ド、ランシヤン、エ、トレー、ノブル、オールドル、ド、ラ、ツール、エ、ド、レベ、ド、ラ、ヴァール、ド、ラ、ロワイヨール、エ、デ、メリット、ド、サン、ブノア、ダヴィ、ディサベラ、ラ、カトリック、グラン、クロア、ド、ロルドル、ド、レオボルド、ド、ベルジック、エ、ド、ロルドル、ド、シャルル、トロア、デスバーニユ」「アントニオ、マリア、ド、フォンテス、ペレイラ、ド、メロ」

因テ各全權委員ハ互ニ其ノ委任狀ヲ示シ之ガ良好妥當ナルヲ認メタル後左ノ諸條ヲ包含スル國境劃定及領土交換ニ關スル條約ノ締結ヲ協定セリ

第一條

「チモール」島ニ於ケル「オランダ」國屬地及「ポルトガル」國屬地間ノ境界左ノ如シ

北部ニ於テハ「ジュアニロ」ト「コヴァ」トヲ劃スル境界線

南部ニ於テハ「ラケキューヌ」ト「シ、アイ」トヲ劃スル境界線

前記二點間ニ於ケル兩國屬地ノ限界ハ接壤スル「オランダ」國領及「ポルトガル」國領土侯國ノ境界ニ同ジ前記ノ土侯國ハ左ノ如シ

「オランダ」國統治下ニ在ル接壤土侯國

「ポルトガル」國統治下ニ在ル接壤土侯國

「ジァアニロ」

「シラワング」

「ファイアララング」(「ファイアララ」)

「ラマクサヌル」

「ラマカネ」

「ナイチム」(「ナルチム」)

「マンデン」

「ディルマ」

「ラケキューヌ」

「コヴァ」

「バリボ」

「ラマキツ」

「タファカイユ」(「タカイユ」)

「タツメア」

「ランケン」

「ダコロ」

「タミル・エウララング」(「エウララング」)

「スアイ」

第二條

「オランダ」國ハ前記所定ノ境界線ノ東部ニ存在スル一切ノ土侯國ニ對シ「ポルトガル」國ノ主權ヲ認ム但シ「ポルトガル」領「ラマキツ」、「タンテリヌ」、「フォラフェイクス」(「フォレフェイト」)及「スアイ」土侯國內ニ飛地トシテ存在スル「オランダ」領土侯國「マウカタル」即チ「カルニネーヌ」(「コルニネーヌ」)ヲ除ク

「ポルトガル」國ハ前記境界線ノ西部ニ存在スル一切ノ土侯國ニ對シ「オランダ」國ノ主權ヲ認ム但

シ從來通「ポルトガル」國領タル「オイコウッシ」飛地ヲ除ク

第三條

「オイコウッシ」飛地ハ「ポルトガル」國旗ノ掲揚セラルル「アムベヌ」土侯國全部、「オイコウッシ」土侯國及「ノイムチ」土侯國ナリ

前記飛地ノ境界ハ西部ニ於テハ「アムベヌ」ト「アムフオアング」トノ境界線ヲ以テシ東部ニ於テハ「インヤナ」ト「レボキ」(「ベボキ」)トノ境界線ヲ以テシ南部ニ於テハ「ソソネベイト」(「アマコノ」ヲ含ム)ト「ツネバラ」(「チメバラ」)トノ境界線ヲ以テス

第四條

仍テ「ポルトガル」國ハ「チモール」島ニ於テ「アマラッシ」、「ビビコ」(「トライユニコ」、「ワイユニコ」)「ブボク」(「レボキ」)、「デリマ」(「ディルマ」)、「フィアララ」(「フィアララング」)、「ラマカネ」、「ニラ」(「リダク」)、「ジエアニコ」、「メナ」及「フルガリテ」即チ「フオウルガリタ」(「ハルネン」)ノ土侯國ノ附屬地)ノ諸土侯國ニ對シ「オランダ」國ノ主權ヲ認ム

第五條

「オランダ」國ハ「ポルトガル」國ニ對シ「モウバラ」(「マウバラ」)王國及「アムベヌ」即チ「アムベノ」ノ一部ニシテ數年來「ポルトガル」國旗ヲ掲揚シ居ル部分ヲ讓渡ス

「オランダ」國皇帝陛下及「ポルトガル」國皇帝陛下ニ依リ本條約ノ批准書ノ交換ノ行ハレタル後直ニ「オランダ」國政府ハ蘭領「インド」ノ上級官憲ニ對シ「モウバラ」(「マウバラ」)王國ヲ「チモール」、「デリ」ノ「ポルトガル」國上級官憲ニ引渡スベキ命令ヲ發スベシ

第六條

「オランダ」國ハ「デリ」北方ノ「カムビング」(「プロ、カムビング」)島ニ對スル一切ノ主張ヲ拋棄シ同島ニ對スル「ポルトガル」國ノ主權ヲ認ム

第七條

「ポルトガル」國ハ「オランダ」國ニ對シ左ノ屬地ヲ讓渡ス

「フロレス」島ノ「ラランツカ」、「シッカ」及「バガ」土侯國並ニ其ノ各ノ附屬地

「アデナラ」島ノ「ボウレ」土侯國

「ソロル」島ノ「バマングカジュ」土侯國

「ポルトガル」國ハ前記諸島又ハ「ロムブレン」、「バンタル」及「オムバイユ」諸島内ノ他ノ土侯國又ハ場所ニ對シ右土侯國ガ「オランダ」國旗ヲ掲グルト「ポルトガル」國旗ヲ掲グルトヲ問ハズ其ノ爲スコトヲ得ベカリシ一切ノ主張ヲ拋棄ス

第八條

前條ノ規定ニ依リ「オランダ」國ハ「チモール」北方ニ位スル諸島ノ全部即チ「フレレス」、「アデナラ」、「ソロール」、「ロムブレン」、「バンタル」(「クワンタル」)及「オムバイユ」ノ諸島(「ソロール」群島ニ屬スル周圍ノ小諸島ヲ含ム)ニ對シ完全ニシテ分割セラレザル領有權ヲ取得ス

第九條

「ポルトガル」國ガ前記各屬地交換ノ爲被ムルコトアルベキ喪失ニ對スル補償トシテ「オランダ」國政府ハ

- 一 「ポルトガル」國政府ニ對シ千八百五十一年「チモール」群島ノ「ポルトガル」屬領政廳ガ蘭領「インド」政廳ヨリ借入レタル八〇、〇〇〇「フローリン」ノ額ノ完全ナル免除ヲ爲スベシ
 - 二 前記ノ外「ポルトガル」國政府ニ對シ蘭貨一〇、〇〇〇「フローリン」ヲ交付スベシ
- 前記ノ額ハ本條約批准書交換後一月ニシテ拂込マルベシ

第十條

信教ノ自由ハ本條約ニ依リ交換セラルル領域住民ニ對シ相互ニ之ヲ保障ス

第十一條

本條約ハ「オランダ」及「ポルトガル」兩王國ノ現行基本法規所定ノ規則ニ從ヒ立法機關ノ認可ヲ經ベク、批准セラレ且其ノ批准書ハ「リスボン」ニ於テ署名ヨリ八月ノ期間内ニ又ハ能ク限リ速ニ行ハル

ベキモノトス

右證據トシテ各全權委員ハ本條約ニ署名調印セリ

千八百五十九年四月二十八日「リスボン」ニ於テ作成ス

エ、エム、ド、フォンテス、ベレイラ、ド、メロ (印)
 エ、ム、ヘ、ル、デ、ヴィヤ、ー (印)

14. TREATY BETWEEN THE NETHERLANDS AND PORTUGAL, REGULATING
THE LIMITS OF THE NETHERLANDS AND PORTUGUESE POSSESSIONS
IN THE ARCHIPELAGO OF TIMOR AND SOLOR.—SIGNED

AT LISBON, APRIL 28, 1859.

(Ratifications échangées à Lisbonne, le 21 Août, 1860.)

Sa Majesté le Roi des Pays-Bas et Sa Majesté le Roi de Portugal et des Algarves, ayant jugé utile de mettre fin aux incertitudes existantes relativement aux limites des possessions Néerlandaises et Portugaises dans l'Archipel de Timor et Solor, et voulant prévenir à jamais tout malentendu, que pourraient provoquer des limites mal définies et des enclaves trop multipliées, ont muni afin de s'entendre à cet égard, de leurs pleins pouvoirs, savoir :

Sa Majesté le Roi des Pays-Bas, le Sieur Maurice Jean Louis Jacques Henri Antoine Heldewier, Chevalier de l'Ordre de la Couronne de Chêne et de la Légion d'Honneur, Chargé d'Affaires des Pays-Bas près le Gouvernement de Sa Majesté Très-Fidèle ; et

Sa Majesté le Roi de Portugal et des Algarves, le Sieur Antonio Maria de Fontes Pereira de Mello, Chevalier de l'Ancien et Très Noble Ordre de la Tour et de l'Épée, de la Valeur, de la Loyauté et du Mérite, de Saint Benoît d'Aviz, d'Isabella la Catholique, Grand-Croix de l'Ordre de Léopold de Belgique et de l'Ordre de Charles III d'Espagne, du Conseil de Sa Majesté Très-Fidèle, Membre du Conseil d'Outre-Mer, Capitaine du Génie et Ministre et Secrétaire d'Etat de l'Intérieur, &c.

Lesquels, après s'être communiqués les dits pleins pouvoirs, trouvés en bonne et dûe forme, sont convenus de conclure un Traité de démarcation et d'échange, contenant les Articles, suivants :

Art. I. Les limites entre les possessions Néerlandaises et Portugaises sur l'île de Timor seront : au nord, les frontières qui séparent Cova de Juanilo ; et au sud, celles qui séparent Suai de Lakecune.

Entre ces deux points les limites des deux possessions sont les mêmes que celles des Etats limitrophes Néerlandais et Portugais.

Ces Etats sont les suivants :

Etats limitrophes sous la domination de la Néerlande :	Etats limitrophes sous la domination du Portugal :
Juanilo,	Cova,
Silawang,	Balibo,
Fialarang (Fialara),	Lamakitu,
Lamaksanulu,	Tafakaj or Takaj,
Lamakanée,	Tatunna,
Naitimu (Nartimu),	Lanken,
Manden,	Dacolo,
Dirma,	Tamiru Eulalang (Eulaleng),
Lakecune.	Suai.

II. La Néerlande reconnaît la souveraineté de Portugal sur tous les Etats qui se trouvent à l'est des limites ainsi circonscrites, à l'exception de l'Etat Néerlandais de Maucatar ou Caluminène (Columinène), qui se trouve enclavé dans les Etats Portugais de Lamakitu, de Tantine, de Follafaix (Follefait) et du Suai.

Le Portugal reconnaît la souveraineté de la Néerlande sur tous les Etats qui se trouvent à l'ouest de ces limites, à l'exception de l'enclave d'Oikoussi, qui demeure Portugaise.

Art. III. L'enclave d'Oikoussi comprend l'Etat d'Ambenu partout où y est arboré le pavillon Portugais, l'Etat d'Oikoussi proprement dit, et celui de Noimuti.

Les limites de cette enclave sont les frontières entre Ambenu et Amfoang à l'ouest, d'Insana et Reboki (Beboki), y compris Cicale à l'est, et Sonrebait, y compris Amakono et Tunebaba (Timebaba) au sud.

Art. IV. Sur l'île de Timor le Portugal reconnaît donc la souveraineté de la Néerlande sur les Etats d'Amarassi, de Bibico (Trajinico, Wajniko), de Buboque (Reboki), de Derima (Dirma), de Fialara (Fialarang), de Lamakanée, de Nira (Lidak), de Juanilo, de Mena et de Fulgarite ou Foulgarita (dépendances de l'Etat de Harnenno).

Art. V. La Néerlande cède au Portugal le Royaume de Moubara (Maubara) et cette partie d'Ambenu ou d'Ambeno (Sutrana) qui, depuis plusieurs années, a arboré le pavillon Portugais.

Immédiatement après que l'échange des ratifications de ce Traité par leurs Majestés le

Roi des Pays-Bas et le Roi de Portugal aura eu lieu, le Gouvernement des Pays-Bas donnera l'ordre à l'autorité supérieure des Indes Néerlandaises de remettre le royaume de Moubara (Maubara) à l'autorité supérieure Portugaise de Timor Dilly.

Art. VI. La Néerlande se désiste de toute prétention sur l'île de Kambing (Pulo Kambing), au nord de Dilly, et reconnaît la souveraineté du Portugal sur cette île.

Art. VII. Le Portugal cède à la Néerlande les possessions suivantes :

Sur l'île Flores, les Etats de Larantuca, Sicca et Paga, avec leurs dépendances :

Sur l'île d'Adenara, l'Etat de Wouré ;

Sur l'île de Solor, l'Etat de Pamangkaju.

Le Portugal se désiste de toutes les prétentions que, peut-être, il aurait pu faire valoir sur d'autres Etats ou endroits situés sur les îles ci-dessus nommées, ou sur celles de Lomblen, de Pantar et d'Ombaij, que ces Etats portent le pavillon Néerlandais ou Portugais.

Art. VIII. En vertu des dispositions de l'Article précédent, la Néerlande obtient la possession entière et non-partagée de toutes les îles situées au nord de Timor, savoir : celle de Flores, d'Adenara, de Solor, de Lomblen, de Pantar (Quantar), et d'Ombaij, avec les petites îles environnantes appartenant à l'Archipel de Solor.

Art. IX. En compensation de ce que le Portugal pourrait perdre à l'échange des possessions respectives ci-dessus mentionnées, le Gouvernement des Pays-Bas :

1. Donnera au Gouvernement Portugais quittance complète de la somme de 80,000 florins,

empruntée en 1851 par le Gouvernement des possessions Portugaises dans l'Archipel de Timor au Gouvernement des Indes Néerlandaises ;

2. Remettra en outre au Gouvernement Portugais une somme de 120,000 florins des Pays-Bas.

Cette somme sera versée un mois après l'échange des ratifications du présent Traité.

Art. X. La liberté des cultes est garantie de part et d'autre aux habitants des territoires échangés par le présent Traité.

Art. XI. Le présent Traité, qui sera soumis à la sanction des pouvoirs législatifs en conformité des règles prescrites par les lois fondamentales en vigueur dans les Royaumes des Pays-Bas et du Portugal, sera ratifié et les ratifications seront échangées à Lisbonne, dans le délai de 8 mois, à partir de sa signature, ou plutôt, si faire se peut.

En foi de quoi les Plénipotentiaires respectifs ont signé le présent Traité, et y ont apposé le sceau de leurs armes.

Fait à Lisbonne, le 28 Avril, 1859.

(L.S.) A. M. DE FONTES PEREIRA DE MELLO.
(L.S.) M. HELDEWIJER.

十五 「ナモール」及「ソロル」群島ニ於ケル各自ノ屬地ニ

關スル通商(火器其ノ他ノ貿易)、航海、國境及相互先買

權ニ關スル「ポルトガル」國「オランダ」國間條約

千八百九十三年六月十日「リスボン」ニ於テ署名
千八百九十四年一月三十一日「リスボン」ニ於テ批准書交換

「オランダ」國皇帝陛下及同皇帝陛下ノ名ヲ以テスル攝政皇后陛下竝ニ「ポルトガル」國及「アルガルヴ」皇帝陛下ハ「ナモール」及「ソロル」群島ニ於ケル其ノ屬地間ニ存在スル利益ノ共通性ヲ認め且相互ノ一致和合ノ精神ニ依リ前記屬地ニ於ケル文化及通商ノ増進ノ爲ニ最モ適スル條件ヲ規定センコトヲ欲シ特別條約ヲ締結スルニ決シ之ガ爲左ノ如ク其ノ全權委員ヲ任命セリ

「オランダ」國皇帝陛下及同皇帝陛下ノ名ヲ以テスル攝政皇后陛下

「オランダ」國駐在辦理公使「ヤコブ、ディルク、カレル、バロン、デ、ヘーケレン、デ、ケル」
「ポルトガル」國及「アルガルヴ」皇帝陛下

宮中顧問官、參議院議員、內閣議長、外務大臣「クリスト」大綬章「エルネスト、ロドリフ、オ、インチ、リベイロ」

右各全權委員ハ互ニ其ノ全權委任狀ヲ示シ之ガ良好妥當ナルヲ認メタル後左ノ諸條ヲ協定セリ

第一條

兩國ノ主權ノ行使ヲ容易ナラシムル爲ニ兩締約國ハ「チモール」島ニ於ケル兩國屬地ノ境界線劃定ヲ一層明瞭且正確ナラシムル様規定シ以テ現存スル諸飛地ヲ無カラシムルハ時宜ニ適シタルモノナルコトヲ信ズ

第二條

兩締約國ハ之ガ爲前記島嶼ニ於ケル新境界線ヲ決定シ今後ノ條約締結ノ基礎ト成シ得ベキ提案ノ作成ヲ命ゼラルベキ專門委員會ヲ任命スベシ

前記條約ハ兩國議會ノ協贊ヲ經ベキモノトス

第三條

「チモール」島ニ於テハ兩締約國ノ各ノ臣民ニ屬スル漁船並ニ其ノ乗組員ニ對シテハ各自ノ臣民ガ享有スル保護ト同様ノ保護ヲ兩國官憲ヨリ賦與セララルベシ

兩國ノ通商、工業及航海ニ付テハ兩締約國ニ依リ土侯國ニ夫々賦與セラレタル特殊待遇ヲ除キ最惠國民待遇ヲ享有スベキモノトス

第四條

兩締約國ハ「チモール」及「ソロール」群島ノ兩國ノ屬地ニ在リテハ總テノ火器（完製セルト分解セラレタルトヲ問ハズ）、其ノ藥莖、雷管又ハ其ノ他ノ彈藥ニシテ之ニ裝填セララルベキモノハ之ガ輸入及輸出ヲ禁ズ

公ノ兵力ノ武備及其ノ防衛編成上兩國政府ニ依リ直接執ララル諸措置ノ外ニ兩國ノ歐洲人臣民ニ對シテハ之ガ交付ヲ受クベキ武器及彈藥ハ第三者ニ讓渡又ハ賣却セザルベキコトノ充分ナル保證ヲ提出セシメテ又外國人旅行者ニ對シテハ武器及彈藥ハ專ラ其ノ護身用ニ充當セララルモノナルコトヲ證明シタル當該政府ノ證明書ヲ携帶スル者ニ對シテ除外例ヲ許サルルコトヲ得ベシ

第五條

尤モ「チモール」島ノ「オランダ」領及「ポルトガル」領ノ、上級官憲ハ合意ニ依リ毎年同年中ニ輸入セラレ得ベキ完製セラレザル火器ノ數及品質、彈藥ノ數量並ニ右輸入ノ許可セラレ得ベキ條件ヲ決定スルノ權能ヲ賦與セララルベシ

但シ該輸入ハ之ニ付兩國ノ上級行政官廳ノ特別認可ヲ受ケタル同島ニ居住スル或種ノ人又ハ商社ヲ經由スルニ非ザレバ之ヲ爲スコトヲ得ザラルベシ

右認可ハ濫用ノ場合ハ直ニ取消サルベク且更新スルヲ得ザラルベシ

第六條

「オランダ」國政府ハ其ノ善隣關係ヲ強固ナラシメントスル 同國ノ希望ノ證據ヲ與ヘンコトヲ欲シ千八百八十九年ヨリ千八百九十二年迄ニ蘭領「インド」ノ漁夫ガ「ポルトガル」領「チモール」ノ官憲側ヨリ受ケタル或種ノ待遇ニ付テ同國ガ權利アリト主張スル賠償ヲ拋棄スルコトヲ宣言ス

第七條

「チモール」及「ソロール」群島ニ於ケル兩國殖民地間ノ關係又ハ本條約ノ解釋ニ關シ何等カノ困難生ズルコトアルベキ場合ニ於テハ兩締約國ハ仲裁委員會ノ決定ニ委ヌベキコトヲ約定ス
前記委員會ハ兩締約國ノ選定スル同數ノ仲裁裁判官及右仲裁裁判官ノ任命スル一名ノ仲裁裁判官ヲ以テ構成セラルベシ

第八條

本條約ハ批准セラルベク且批准書ハ「リスボン」ニ於テ交換セラルベシ
右證據トシテ全權委員ハ本條約ニ署名調印セリ

カレ、ル、フ、ァ、ン、ヘ、ト、ケ、レ、ン (印)
エルネスト、ロドルフ、オ、インチニ、リベイロ (印)

宣言

千八百九十三年七月一日「リスボン」ニ於テ署名

千八百九十三年六月十日ノ條約ノ署名者タル兩國政府ノ下記全權委員ハ左ノ宣言ヲ協定セリ
兩國民ノ通商及工業ヲ安全及安定ノ保障ニ依リ特ニ獎勵スルコトヲ目的トスル兩國ノ共同動作ノ結果ヲ確保スル爲兩締約國ハ兩國ガ「チモール」及「ソロール」群島ニ於ケル其ノ領土又ハ其ノ主權ノ一部又ハ全部ヲ讓渡スル場合ハ提供セラレタル條件ト同様又ハ同等ノ條件ニ於テ先取得權ヲ相互ニ認ムベキコトヲ宣言ス右條件ニ關シ意見一致セザル場合ハ等シク前記條約第七條ノ適用ヲ受クルモノトス
本宣言ハ千八百九十三年六月十日「リスボン」ニ於テ締結セラレタル條約ト同時ニ批准セラルベク右條約ト一體ヲ成スモノト見做サルベク且同様ノ效力ヲ有スベシ
右證據トシテ各全權委員ハ本宣言ニ署名調印セリ
千八百九十三年七月一日「リスボン」ニ於テ本書ニ通テ作成ス

カレ、ル、フ、ァ、ン、ヘ、ト、ケ、レ、ン (印)
エルネスト、ロドルフ、オ、インチニ、リベイロ (印)

15. CONVENTION BETWEEN PORTUGAL AND THE NETHERLANDS, RELATIVE
TO COMMERCE (TRADE IN FIRE-ARMS, &c.), NAVIGATION, BOUNDARIES,
AND MUTUAL RIGHT OF PRE-EMPTION AS REGARDS THEIR
RESPECTIVE POSSESSIONS IN THE TIMOR AND SOLOER
ARCHIPELAGO.—SIGNED AT LISBON, JUNE 10, 1893.

(Ratifications exchanged at Lisbon, January 31, 1894.)

Sa Majesté la Reine des Pays-Bas et en son nom Sa Majesté la Reine-Régente du Royaume, et Sa Majesté le Roi de Portugal et des Algarves, reconnaissant la communauté d'intérêts qui existe entre leurs possessions dans l'Archipel de Timor et Solor, et voulant régler dans un esprit de bonne entente mutuelle les conditions les plus favorables au développement de la civilisation et du commerce dans leurs dites possessions, ont résolu de conclure une Convention spéciale et ont nommé à cet effet pour leurs Plénipotentiaires, savoir :

Sa Majesté la Reine des Pays-Bas et en son nom Sa Majesté la Reine-Régente du Royaume, le Sieur Jacob Dirk Carrel Baron de Heeckeren de Kell, son Ministre-Résident près Sa Majesté Très-Fidèle ;

Sa Majesté le Roi de Portugal et des Algarves, le Sieur Ernesto Rodolpho Hintze Ribeiro, du Conseil de Sa Majesté Très-Fidèle et Conseiller d'État, Grand-Cordon de l'Ordre du Christ, &c., Président du Conseil et Ministre et Secrétaire d'État au Département des Affaires Étrangères ;

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus des Articles suivants :—

Art. I. Afin de faciliter l'exercice de leurs droits de souveraineté, les Hautes Parties Contractantes estiment qu'il y a lieu d'établir d'une façon plus claire et plus exacte la démarcation de leurs possessions à l'Île de Timor et de faire disparaître les enclaves actuellement existantes.

Art. II. Les Hautes Parties Contractantes nommeront à cet effet une Commission d'experts qui sera chargée de formuler une proposition pouvant servir de base à la conclusion d'une Convention ultérieure, déterminant la nouvelle ligne de démarcation dans la dite île.

Cette Convention sera soumise à l'approbation de la Législature des deux pays.

Art. III. Il sera accordé à l'Île de Timor aux bateaux pêcheurs appartenant aux sujets de chacune des Hautes Parties Contractantes, ainsi qu'à leurs équipages, la même protection de la part des autorités respectives que celle dont jouiront les sujets respectifs.

Le commerce, l'industrie, et la navigation des deux pays y jouiront du traitement de la nation étrangère la plus favorisée, sauf le traitement spécial accordé respectivement par les Hautes Parties Contractantes aux États indigènes.

Art. IV. Les Hautes Parties Contractantes décident que l'importation et l'exportation de toutes armes à feu entières ou en pièces détachées, de leurs cartouches, des capsules, ou d'autres munitions, destinées à les approvisionner, sont interdites dans leurs possessions de l'Archipel de Timor et Solor.

Indépendamment des mesures prises directement par les Gouvernements pour l'armement de la force publique et l'organisation de leur défense, des exceptions pourront être admises à titre individuel pour leurs sujets Européens, offrant une garantie suffisante que l'arme et les munitions qui leur seraient délivrées ne seront pas cédées ou vendues à des tiers, et pour des voyageurs étrangers, munis d'une déclaration de leurs Gouvernements constatant que l'arme et les munitions sont exclusivement destinées à leur défense personnelle.

Art. V. Toutefois les autorités supérieures de la partie Néerlandaise et de la partie Portugaise de l'Île de Timor seront autorisées à fixer annuellement, d'un commun accord, le nombre et la qualité des armes à feu non perfectionnées et la quantité de munition qui pourront être introduites dans le courant de la même année, ainsi que les conditions dans lesquelles cette importation pourra être accordée.

Cette importation cependant ne pourra se faire que par l'intermédiaire de certaines personnes ou agents qui résident à l'Île même, et qui auront obtenu à cet égard une autorisation spéciale de l'Administration supérieure respective.

En cas d'abus cette autorisation sera immédiatement retirée et ne pourra être renouvelée.

Art. VI. Le Gouvernement Néerlandais, voulant donner une preuve de son désir de consolider ses rapports de bon voisinage, déclare renoncer à l'indemnité à laquelle il prétend avoir droit du chef de certains traitements que des pêcheurs Néerlandais-Indiens ont subi de 1889 à 1892 de la part des autorités du Timor-Portugais.

Art. VII. Dans le cas où quelque difficulté surgirait par rapport à leurs relations inter-coloniales dans l'Archipel de Timor et Solor ou au sujet de l'interprétation de la présente Convention, les Hautes Parties Contractantes s'engagent à se soumettre à la décision d'une Commission d'Arbitres.

Cette Commission sera composée d'un nombre égal d'arbitres choisis par les Hautes Parties Contractantes et d'un Arbitre désigné par ces Arbitres.

Art. VIII. La présente Convention sera ratifiée, et les ratifications en seront échangées à Lisbonne.

En foi de quoi les Plénipotentiaires l'ont signé et y ont apposé leurs cachets.

Fait à Lisbonne, en double expédition, le 10 Juin, 1893.

(L.S.) CAREL van HECKKEREN.

(L.S.) ERNESTO RODOLPHO HINTZE RIBEIRO.

DÉCLARATION.—SIGNÉE À LISBONNE, LE 1^{er} JUILLET, 1893.

Les soussignés Plénipotentiaires des Gouvernements Signataires de la Convention du 10 Juin, 1893, sont convenus de la Déclaration suivante :—

Afin d'assurer le résultat de leur action commune qui tend surtout à encourager le com-

merce et l'industrie de leurs nationaux par des garanties de sécurité et de stabilité, les Hautes Parties Contractantes déclarent qu'elles se reconnaissent réciproquement, en cas de cession, soit en partie soit en totalité, de leurs territoires ou de leurs droits de souveraineté dans l'Archipel de Timor et Soler, le droit de préférence à des conditions similaires ou équivalentes à celles qui auront été offertes. Les cas de désaccord sur ces conditions tombent également sous l'application de l'Article VII de la Convention précitée.

La présente Déclaration, qui sera ratifiée en même temps que la Convention conclu à Lisbonne le 10 Juin, 1893, sera considérée comme faisant partie intégrante de cette Convention et aura la même force et valeur.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Déclaration et y ont apposé leurs cachets.

Fait à Lisbonne, en double expédition, le 1^{er} Juillet, 1893.

(L.S.) CAREL van HEECKEREN.

(L.S.) ERNESTO RODOLPHO HINTZE RIBEIRO.

十六 「チモール」島ニ於ケル「オランダ」國及「ポルトガル」國
屬地ノ境界確定ニ關スル「オランダ」國「ポルトガル」國間
條約

千九百四年十月 一日「ヘーグ」ニ於テ署名
千九百八年十月二十九日「ヘーグ」ニ於テ批准書交換

「ポルトガル」國及「アルガルヴ」皇帝陛下及「オランダ」國皇帝陛下ハ「チモール」及「ソロール」群島内ノ兩國屬地間ニ現存スル利害ノ共通ナルヲ認メ且千八百九十三年六月十日「リスボン」ニ於テ締約國間ニ締結セラレタル條約第二條ニ基キ兩國政府ノ設立セル「チモール」島内「オランダ」國及「ポルトガル」國屬地間境界確定混合委員會ノ業蹟ヲ検討シタル後「チモール」島内ノ兩國屬地ニ付明瞭正確ナル境界ヲ確定センコトヲ欲シ之ガ爲條約ヲ締結スルコトニ決シ左ノ如ク其ノ全權委員ヲ任命セリ
「ポルトガル」國及「アルガルヴ」皇帝陛下

「オランダ」國駐劄特命全權公使、伯爵「デ、セリル」

「オランダ」國皇帝陛下

外務大臣、男爵「アール、メルヴィル、デ、リンデン」

右各全權委員ハ相互ニ其ノ全權委任狀ヲ示シ之ガ良好妥當ナルヲ認メタル後左ノ通協定セリ

第一條

「オランダ」國ハ「ポルトガル」國ニ對シ「マウカタル」ヲ讓渡ス

第二條

「ポルトガル」國ハ「オランダ」國ニ對シ「ノイムティ」、「タバカイ」及「タミル、アイララ」ヲ讓渡ス

第三條

- 一 「チモール」島ニ於ケル「ポルトガル」國所屬ノ「オクッシ、アムベヌ」ト「オランダ」屬地トノ境界ハ左ノ線ヲ以テ之ヲ定ムベシ
- 一 北西三十度四十七分ノ方位ニ於テ「ブル(島)、バテク」ノ山頂ヲ眺望シ得ル「ノエール(河)、ベシ」河口ノ地點ヲ起點トシ「ノエール、ベシ」、「ノエール、ニエマ」及「ビド、ジャエル、スナン」ノ河線ニ沿ヒテ其ノ水源地ニ至リ
- 二 同地點ヨリ「ビドジャエル、スナン」山頂ニ昇リ「ノエール、ミユー、マヴオ」ノ河線ニ沿ヒ「オーベン」部落ノ西南ニ位スル地點ニ降下シ
- 三 同地點ヨリ前記部落ノ西方ヲ通過シ「バナト」及「キタ」兩山頂ヲ經テ「ニヴオ、ヌン、ポー」山

頂ニ至リ、同地點ヨリ「ノノ、ボニ」及「ノエール、バサブ」兩河ノ河線ニ沿ヒ其ノ支流タル「ノノ、スス」河ニ至リ且「ノノ、スス」河ヲ遡リ其ノ水源地ニ達シ

四 「クルス」(Krus, Cus)ヲ通過シ「アバニ」ト「ナイ、ポッポ」トノ境界線ガ「ファツ、バシン」河ト交叉スル地點ニ至リ且同地點ヨリ「スピナ」ト稱スル地點ニ至リ

五 次デ「ファツ、バシン」ノ河線ニ沿ヒ「ケー、アン」ニ降下シ同地ヨリ「ナイ、ナエ」ニ至リ

六 「ナイ、ナエ」ヲ通過シ「ツト、ノニエ」ニ降下シテ「ツト、ノニエ」ノ河線ニ沿ヒ「ノエール、ニカン」ニ達シ

七 「ノエール、エカン」ノ河線ニ沿ヒ其ノ支流「ツナウ」河ニ至リ同支流ノ河線ニ沿ヒ其ノ水源地ニ至リ之ヨリ「ニヴオ、ノノ」河ニ達シ

八 同河ノ河線ニ沿ヒ其ノ水源地ニ至リ更ニ「オホエーバキ」ト稱スル地點ヲ通過シテ「ノノ、バレナ」河ノ水源地迄昇リ

九 同河、「ノノ、ニゼー」河及「ノエール、ピロミ」河ノ河線ニ沿ヒ「ノエール、ピロミ」ノ支流「オエー、スナン」河ニ至リ

十 境界線ハ同地點ヨリ「オエー、スナン」ノ河線ニ沿ヒテ能フ限リ「ニバニ」及「ケラリ」(「ケリ」)ヲ横斷シ「ノエール、メト」河ノ水源地ニ至リ且同河線ニ沿ヒテ其ノ河口ニ達ス

第三條第十項ニ定ムル「オクシシアムベヌ」ト「オランダ」國屬地トノ境界ノ箇所ハ能フ限リ短期間内ニ土地ヲ測定シ且標識ヲ設クベシ
 右箇所ノ測定ト該地ニ於ケル標識トハ二通作成スベキ覺書及附屬地圖ニ依リ確認セラレ各締約國ノ承認ヲ經ベキモノトス其ノ承認後右文書ハ兩國政府ノ名ニ於テ署名セララルベシ
 右文書署名ノ後ニ非ザレバ締約國ハ第一條及第二條ニ記セル地方ノ主權ヲ取得スルニ至ラザルベシ

第五條

「チモール」島西部ノ「オランダ」國屬地及同島東部ノ「ポルトガル」國屬地トノ境界ハ北方ヨリ南方ニ至ル左ノ線ニ依ル即チ
 一 「モタ、ビク」(「シラバ」)ノ河口ヲ起點トシ同河ノ河線ニ沿ヒテ其ノ支流「ウエ、ベダイ」ニ至リ、「ウエ、ベダイ」ノ河線ニ沿ヒテ「モタ、アスタエト」(「アッスダット」)ニ至リ同河ノ河線ニ沿ヒ其ノ水源地ニ至リ且同地ニ於テ北方ヨリ南方ニ向ヒ「クレエク、テルイン」(「クリン、テルイン」)丘及「ベレーニス」(「ビレーニス」)カコツン」丘ニ至リ
 二 次デ「ムダ、ソルン」河ニ至リ同河ノ河線ト「ツアー、ナルク」河ノ河線ニ沿ヒテ「テラウ」(「タラウ」)河ニ至リ

三 「テラウ」ノ河線ニ沿ヒ「マリバカ」河ニ至リ同河ノ河線、「マウティル」及「ベビエス」河ノ河線ニ沿ヒ「ブル、フル」(「ブル、ブル」)山ニ至リ

四 同山ヨリ「カラワ、コツン」ニ至リ「カラワ、コツン」ヨリ「マレエス」(「ロル」)河ノ河線ニ沿ヒ「タフアラ」河ニ至リ同河ノ河線ニ沿ヒ「モタ、チボロク」(「チボル」)ト稱スル其ノ水源地ニ達シ同地ヨリ「ダト、ミエト」山頂ニ昇リ「モタ、アルン」ニ降下シ

五 「モタ、アルン」、「モタ、スカエル」(「スカル」)及「モタ、バウカマ」ノ河線ニ沿ヒテ「カラ、フィーハン」ト稱スル「モタ、バウカマ」ノ支流ニ至リ

六 「タヒ、フェフ」山、「ファツ、スタ」山、「ファツ、ルサ」山、「ハリフェア」ト稱スル大木、「ウアス、ルリク」山頂ヲ通過シ次デ「ウエ、メラク」河ヲ其ノ支流「ウエ、ヌ」河ト合流スル地點ニ於テ横斷シ次デ「ファツ、ロコン」ト稱スル大岩石、「フヒツン、モヌ」、「デブ、カサバウク」、「アイニン、マタン」及「ラク、フィン」ノ各山頂ヲ通過シ

七 「ラク、フィン」ヨリ「ハリ、ソブク」ガ「モタ、ハリボイ」ニ注グ地點ニ至リ且同河ノ河線ニ沿ヒ其ノ水源地ニ至リ

八 右水源地ヨリ「モタ、ベブル」河ノ水源地ニ至リ同河ノ河線ニ沿ヒ「ウエ、ディエク」ニ至リ「アイ、カカル」及「タキス」ノ山頂ニ昇リ「モタ、マシ」ニ降下シ且「モタ、マシ」河ノ河線ト

「モタ、タラス」ト稱スル其ノ河口ノ線ニ沿ヒ降下ス

二六六

第六條

第四條ノ諸規定ヲ除キ第三條及第五條ニ定ムル境界ハ本條約ノ附屬地圖上ニ之ヲ描キ且各全權委員ニ依リ署名セラルベシ

第七條

相互ニ讓渡セラレタル地域ハ撤退セラレ且其ノ行政權ハ第四條ニ規定セル覺書承認ノ後六月内ニ當該官憲ニ移管セラルベシ

第八條

讓渡地域ニ關スル記録地圖及其ノ他ノ文書ハ同地域ト同時ニ新官憲ニ之ヲ移讓スベシ

第九條

境界ヲ成ス諸河川ニ於ケル運航ハ武器及彈藥ノ運輸ヲ除キ兩締約國臣民ニ對シ自由タルベシ

第十條

讓渡地域移管ノ際本條約ノ年號ノ記載ニ適當ナル形體ト大サノ國境標石ニ右年號ヲ記シ下記諸河川ノ河口ニ近キ沿岸ノ適當ナル場所ニ嚴肅ニ之ヲ設置スベシ、「オランダ」國ノ國境標識ハ「モタ、ビク」河及「モタ、マシン」河ノ西岸ニ又「ポルトガル」國ノ國境標識ハ之等河川ノ東岸ニ之ヲ設置スベシ、

四個ノ國境標石ハ兩國政府ノ費用ニ於テ「オランダ」國政府之ヲ供給スベク「オランダ」國政府ハ讓渡地域ノ嚴肅ナル移管並ニ國境標識ノ設立ノ爲「オランダ」國軍艦ヲ兩國官憲ノ自由使用下ニ置クベシ

右ノ外國境ガ自然の境界ニ依リ形成セラレザル所ニ於テハ國境ハ合議ニ依リ現地ニ於テ地方官憲之ヲ劃定スベシ

第十一條

第四條ノ規定ヲ除キ地域ノ讓渡及國境標識ノ設置ヲ實證スル爲「フランス」語ノ覺書ヲ作成スベシ右覺書ハ二通作成シ、兩國官憲之ニ署名スベシ

第十二條

信教ノ自由ハ本條約ニ依リ交換セラルル地域ノ住民ニ對シ相互ニ之ヲ保障ス

第十三條

兩締約國ハ「チモール」及「ソロル」群島ニ於ケル兩國ノ地域又ハ主權ノ讓渡ガ部分的タルト全體的タルトヲ問ハズ將來提供セラルルコトアルベキ條件ト同様又ハ同等ノ條件ニ於テ相互ニ優先權ヲ認ムベシ

第十四條

二六七

本條約ノ解釋又ハ實施ニ關スル一切ノ疑義又ハ紛争ニシテ友好的ニ調整シ能ハザル場合ニハ國際紛争ノ平和的處理ノ爲ノ千八百九十九年七月二十九日ノ國際條約第二章ニ規定セララルル諸規定ニ基キ常設仲裁裁判所ニ之ヲ付託スベシ

第十五條

本條約ハ批准セララルベク且其ノ批准書ハ兩國立法機關ノ承認後能フ限リ速ニ交換セララルベシ
右證據トシテ各全權委員ハ本條約ニ署名調印セリ
千九百四年十月一日「ヘーグ」ニ於テ本書ニ通ヲ作成ス

伯爵 デ、セ、リ、ル (印)
男爵 メルヴィル、デ、リンデン (印)
イ、デ、ン、ブルグ (印)

16. CONVENTION BETWEEN THE GOVERNMENTS OF THE NETHERLANDS
AND PORTUGAL FOR THE SETTLEMENT OF THE BOUNDARY
BETWEEN THEIR POSSESSIONS IN THE ISLAND OF
TIMOR.—SIGNED AT THE HAGUE,
OCTOBER 1, 1904.

(Ratifications exchanged at The Hague, October 29, 1908.)

Sa Majesté le Roi de Portugal et des Algarves, &c., et Sa Majesté la Reine des Pays-Bas, reconnaissant la communauté d'intérêts qui existe entre leurs possessions dans l'Archipel de Timor et de Solor, et désirant arriver à une démarcation claire et exacte de ces possessions dans l'île de Timor, après avoir pris connaissance du résultat des travaux de la Commission mixte pour la régularisation des frontières néerlandaises et portugaises dans l'île de Timor, instituée par les Gouvernements respectifs en vertu de l'article II de la Convention conclue entre les hautes parties à Lisbonne le 10 juin, 1893, ont résolu de conclure une convention à cet effet et ont nommé pour leurs Plénipotentiaires :

Sa Majesté le Roi de Portugal et des Algarves, &c. : M. le Comte de Sélir, son Envoyé extraordinaire et Ministre plénipotentiaire près Sa Majesté la Reine des Pays-Bas ;

Sa Majesté la Reine des Pays-Bas : MM. le Baron R. Melvil de Lynden, son Ministre des Affaires Etrangères ; et A. W. F. Idenburg, son Minisire des Colonies ;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit :—

ART. I. Les Pays-Bas cèdent le Maucatar au Portugal.

II. Le Portugal cède aux Pays-Bas le Noimuti, le Tahakay et le Tamiru Ailala.

III. La limite entre O'Kussi-Ambenu, appartenant au Portugal et les possessions néerlandaises dans l'île de Timor est formée par une ligne :

1. Partant du point à l'embouchure de la Noël (rivière) Besi d'où le point culminant de Pulu-(île) Batek se voit sous un azimut astronomique de 30°47' nord-ouest, suivant le thalweg de la Noël Besi, celui de la Noël Nierna et celui de la Bidjael Sunan jusqu'à sa source ;
2. Montant de là jusqu'au sommet Bidjael Sunan, et descendant par le thalweg de la Noël Miu Mavo jusqu'au point situé au sud-ouest du village Oben ;
3. De là passant à l'ouest de ce village par les sommets Banat et Kita jusqu'au sommet Nivo Nun Po ; de là suivant le thalweg des rivières la Nono Boni et la Noël Pasab jusqu'à son affluent le Nono Susu, et montant le Nono Susu jusqu'à sa source ;
4. Passant le Klus (Crus) jusqu'au point où la frontière entre Abani et Nai Bobbo croise la rivière la Fatu Basin, et de là au point nommé Subina ;
5. Descendant ensuite par le thalweg de la Fatu Basin jusqu'à la Kè An ; de là jusqu'au Nai Naö ;
6. Passant le Nai Naö et descendant dans la Tut Nonie, par le thalweg de la Tut Nonie jusqu'à la Noël Elkan ;

7. Suivant le thalweg de la Noël Elkan jusqu'à l'affluent le Sonau, par le thalweg de cet affluent jusqu'à sa source et de là à la rivière Nivo Nono ;

8. Montant par le thalweg de cette rivière jusqu'à sa source, pour aboutir, en passant le point nommé Ohoè Baki, à la source de la Nono Balena ;

9. Suivant le thalweg de cette rivière, celui de la Nono Nisé et celui de la Noël Bilomi jusqu'à l'affluent de celle-ci le Oè Sunan ;

10. A partir de ce point la limite suit le thalweg de l'Oè Sunan, traverse autant que possible Nipani et Kelali (Keili), gagne la source de la Noël Meto et suit le thalweg de cette rivière jusqu'à son embouchure.

IV. La partie de la limite entre O'Kussi-Ambenu et les possessions néerlandaises, visée à l'article III, 10, sera arpentée et indiquée sur le terrain dans le plus court délai possible.

L'arpentage de cette partie et l'indication sur le terrain seront certifiés par un procès-verbal avec une carte à dresser en deux exemplaires, qui seront soumis à l'approbation des hautes parties contractantes ; après leur approbation, ces documents seront signés au nom des Gouvernements respectifs.

Ce n'est qu'après la signature de ces documents que les hautes parties contractantes acquerront la souveraineté des régions mentionnées aux articles I et II.

V. La limite entre les possessions des Pays-Bas dans la partie occidentale et du Portugal dans la partie orientale de l'île de Timor suivra du nord au sud une ligne :

1. Partant de l'embouchure de la Mota Biku (Silaba) par le thalweg de cette rivière jusqu'à son affluent le We Bedain, par le thalweg du We Bedain, jusqu'à la Mota Asudaät (As-sudat), par le thalweg de cette rivière jusqu'à sa source, et suivant de là dans la direction du nord au sud les coteaux du Kleek Teruin (Klin Teruin) et du Berënis (Birënis) Kakótun ;
2. Puis jusqu'à la rivière Muda Sorun, suivant le thalweg de cette rivière et celui de la Tuah Naruk jusqu'à la rivière la Telau (Talaü) ;
3. Suivant le thalweg de la Telau jusqu'à la rivière la Malibaka, par le thalweg de cette rivière, celui de la Mautilu, et celui de la Pepies jusqu'à la montagne Bulu Hulu (Bulu Bulu) ;
4. De là jusqu'au Karawa Kotun, du Karawa Kotun par le thalweg de la rivière la Marees (Lolu) jusqu'à la rivière la Tafara, par le thalweg de cette rivière jusqu'à sa source appelée la Mota Tiborok (Tibor), et montant de là au sommet Dato Miet et descendant à la Mota Alun ;
5. Par le thalweg de la Mota Alun, celui de la Mota Sukaër (Sukar), et celui de la Mota Baukama, jusqu'à l'affluent de celle-ci, appelé Kalan-Fëhan ;
6. Passant les montagnes Tahi Fëhu, Fatu Suta, Fatu Rusa, le grand arbre nommé Hali-fëa, le sommet Uas Lullik, puis traversant la rivière la We Merak où elle reçoit son affluent We Nu, puis passant la grande pierre nommée Fatu Rokon, les sommets Fitun Monu, Debu Kasabauk, Ainin Matan et Lak Fuin ;
7. Du Lak Fuin jusqu'au point où la Hali Sobuk se jette dans la Mota Haliboï et par le thalweg de cette rivière jusqu'à sa source ;

8. De cette source jusqu'à celle de la Mota Bebulu, par le thalweg de cette rivière jusqu'à la We Diek, montant aux sommets Ai Kakar et Takis, descendant dans la Mota Masin et suivant le thalweg de la Moto Masin et de son embouchure nommée Mota Talas.

VI. Sauf les dispositions de l'article IV, les limites décrites aux articles III et V sont tracées sur les cartes annexées à la présente Convention et signées par les Plénipotentiaires respectifs.

VII. Les territoires respectivement cédés seront évacués et l'administration en sera remise aux autorités compétentes dans les six mois après l'approbation du procès-verbal visé à l'article IV.

VIII. Les archives cartes, et autres documents relatifs aux territoires cédés, seront remis aux nouvelles autorités en même temps que les territoires mêmes.

IX. La navigation sur les rivières formant limite sera libre aux sujets des deux hautes parties contractantes à l'exception du transport d'armes et de munitions.

X. Lors de la remise des territoires cédés, des bornes en pierre indiquant l'année de la présente Convention, d'une forme et d'une dimension convenables au but qu'elles sont destinées à remplir, seront plantées avec solennité à un endroit convenable de la côte près de l'embouchure des rivières nommées ci-après. Les bornes néerlandaises seront plantées sur les rives occidentales de la Mota Biku et de la Mota Masin et les bornes portugaises sur les rives orientales de ces rivières. Les quatre bornes en pierre seront fournies par le Gouvernement néerlandais aux

frais des deux Gouvernements, et le Gouvernement néerlandais mettra un bâtiment de la marine royale à la disposition des autorités respectives pour la remise solennelle des territoires cédés et la plantation des bornes.

En outre la frontière, où elle n'est pas formée par des limites naturelles, sera d'un commun accord démarquée sur le terrain par les autorités locales.

XI. Sauf les dispositions de l'article IV il sera dressé procès-verbal en langue française constatant la cession des territoires et la plantation des bornes.

Les procès-verbaux seront dressés en doubles exemplaires et signés par les autorités respectives des deux days.

XII. La liberté des cultes est garantie de part et d'autre aux habitants des territoires échangés par la présente Convention.

XIII. Les hautes parties contractantes se reconnaissent réciproquement, en cas de cession soit en partie soit en totalité de leurs territoires ou de leurs droits de souveraineté dans l'Archipel de Timor et Solor, le droit de préférence à des conditions similaires ou équivalentes à celles qui auraient été offertes.

XIV. Toutes questions ou tous différends sur l'interprétation ou l'exécution de la présente Convention, s'ils ne peuvent être réglés à l'amiable, seront soumis à la Cour permanente d'Arbitrage conformément aux dispositions prévues au chapitre II de la Convention internationale du 29 juillet, 1899, pour la solution pacifique des conflits internationaux.

XV. La présente Convention sera ratifiée et les ratifications en seront échangées aussitôt que possible après l'approbation de la Législature des deux pays.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention et y ont apposé leurs cachets.

Fait, en double expédition, à la Haye, le 1^{er} octobre, 1904.

(L. S.) CONDE DE SÉLIR.

(L. S.) BN. MELVIL DE LYNDEN.

(L. S.) IDENBURG.

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十七 「ニュー、ギニア」ノ一部及其ノ附近島嶼ニ對スル保護領
設定ニ關スル英國宣言

千八百八十四年十一月六日

17. BRITISH PROCLAMATION, ESTABLISHING A PROTECTORATE OVER A
 PORTION OF NEW GUINEA AND THE ISLANDS ADJACENT
 THERETO.—PORT MORESBY, NOVEMBER 6, 1884.

Proclamation on behalf of Her Most Gracious Majesty Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India, establishing a Protectorate of Her Most Gracious Majesty over a portion of New Guinea and the islands adjacent thereto.

To all to whom these presents shall come, greeting :

Whereas it has become essential for the protection of the lives and properties of the native inhabitants of New Guinea, and for the purpose of preventing the occupation of portions of that country by persons whose proceedings, unsanctioned by any lawful authority, might tend to injustice, strife, and bloodshed, and who, under the pretence of legitimate trade and intercourse, might endanger the liberties, and possess themselves of the lands, of such native inhabitants, that a British Protectorate should be established over a certain portion of such country and the islands adjacent thereto :

And whereas Her Majesty, having taken into her gracious consideration the urgent necessity of her protection to such inhabitants, has directed me to proclaim such protection in a formal manner at this place : Now, I, James Elphinstone Erskine, Captain in the Royal Navy and Commodore of the Australian Station, one of Her Majesty's Naval Aides-de-camp,

do hereby, in the name of Her Most Gracious Majesty, declare and proclaim the establishment of such Protectorate over such portions of the coast and the adjacent islands as is more particularly described in the Schedule hereunto annexed.

And I hereby proclaim and declare that no acquisition of land, whensoever or howsoever acquired, within the limits of the Protectorate hereby established, will be recognized by Her Majesty : And I do hereby, on behalf of Her Majesty, command and enjoin all persons whom it may concern to take notice of this Proclamation.

SCHEDULE.

All that portion of the southern shores of New Guinea commencing from the boundary of that portion of the country claimed by the Government of the Netherlands on the 141st meridian of east longitude to East Cape, with all islands adjacent thereto south of East Cape to Kosmann Island inclusive, together with the islands in the Goschen Straits, and also the D'Entrecasteaux Group, and smaller islands adjacent.

Given on board Her Majesty's ship *Nelson*, at the harbour of Port Moresby, on the 6th day of November, 1884.

JAMES ELPHINSTONE ERSKINE,
 Commodore.

God save the Queen !

十八 「ニュー、ギニア」「サモア」等ニ關スル英國及獨國間往復文書

一八八五、一、一三—二、一六

18. CORRESPONDENCE BETWEEN GREAT BRITAIN AND GERMANY,
RESPECTING NEW GUINEA, SAMOA, &c.—1885.

No. 131.—Earl Granville to Sir E. Malet.

Foreign Office, January 13, 1885.

Sir,

I transmit to your Excellency herewith translation of a letter from the German Ambassador at this Court, notifying officially to Her Majesty's Government that the German flag has been hoisted in token of annexation on the north coast of New Guinea, and on the islands of the New Britain archipelago.

Prince Bismarck, as your Excellency informed me by telegraph on the 19th ultimo, has already apprised you of this fact.

Her Majesty's Government were quite unprepared for such an announcement, for the recent negotiations with the German Government, which I will briefly recapitulate, had led them to believe that a friendly understanding had been arrived at between the two Governments, in virtue of which neither Power would make fresh acquisitions in the Pacific Ocean pending the meeting of the Anglo-German Commission which had been agreed upon.

On the 8th August last the German Ambassador intimated to me the wish of his Government to come to a friendly understanding with Her Majesty's Government as to general principles to be observed for the protection of the subjects of the two countries in the islands of the South

Sea archipelago, and also as to the limits of the islands and territories in which either country was most interested.

While recognizing as natural the wish of the Australian Colonies to be paramount in the part of New Guinea opposite their coast, his Excellency said that his Government were of opinion that there were parts of the wild country on the north coast of New Guinea which might be available as a field for German enterprise.

I pointed out to his Excellency, however, that Germany had as yet founded no establishments there, adding that the German Government already knew that communications had taken place between the Home and Colonial Governments respecting New Guinea, and I mentioned in confidence that these communications were nearer a conclusion than the public yet knew.

On the following day, after consultation with my colleagues, I informed Count Münster that Her Majesty's Government had no desire to oppose the extension of German colonization in the islands of the South Seas which were unoccupied by any civilized Powers, but I warned him that the extension of some form of British authority in New Guinea would be shortly announced, explaining, however, that it would only embrace that part of the island which specially interested the Australian Colonies, without prejudice to any territorial questions beyond those limits.

On the 19th September Mr. Scott, Her Majesty's Chargé d'Affaires at Berlin, informed the German Government that, in consequence of the communications which had lately taken place

between the Home and Colonial Governments, Her Majesty's Government proposed to proclaim and establish the Queen's Protectorate over all the coasts of New Guinea not occupied by the Netherlands, except that portion of the northern coast comprised between the 145th degree of east longitude and the eastern Dutch boundary.

It was at the same time explained that the British Protectorate would include the small islands immediately adjacent to those portions of the coast over which it was established, and that the 145th degree of east longitude had been fixed as the western British limit on the northern coast, in order that it might embrace the territory owned by the natives on the Macclay coast, whose claim for British protection had long been under the consideration of Her Majesty's Government.

On the 27th September, Baron Plessen, the German Chargé d'Affaires in this country, made a communication from his Government to the effect that the proposed extension of the British Protectorate to the north and north-east of New Guinea was unexpected, and that his Government wished temporarily to reserve the attitude to be taken up by them; and it was added that, according to the conception of the Imperial Government, the delimitation of the areas which interest both sides on that stretch of coast should be the object of a friendly understanding by means of a Commission.

On the 9th October, Mr. Scott, Her Majesty's Chargé d'Affaires at Berlin, informed the German Government that Her Majesty's Government, having carefully considered the above

communication, had decided that they would limit their Protectorate to the whole of the southern coast, including the islands contiguous to it, but without prejudice to any territorial question beyond these limits. Mr. Scott expressed the satisfaction of Her Majesty's Government at having come to an arrangement as to which they found themselves in perfect accord with Germany, and added that in their opinion, if any questions should arise as to those districts which lie beyond the limit described, it would be better to deal with them diplomatically than to refer them to the Commission which it was proposed to appoint with regard to the islands of the Pacific.

On the 15th October, Baron Plessen expressed the satisfaction of his Government at the limitation of the British Protectorate, and suggested that the discussion of the points connected with English and German interests in the South Seas should take place in London.

After consulting Her Majesty's Secretary of State for the Colonies, I informed the German Ambassador at this Court, on the 19th November, that Her Majesty's Government agreed to the proposals of the German Government, and that they would appoint a Commissioner to meet the German Commissioner, Dr. Krauel.

On the 5th December, your Excellency, in giving assurances to the German Government respecting the Islands of Samoa and Tonga, added that Her Majesty's Government did not contemplate any fresh arrangements in the Pacific Ocean pending the result of the negotiation agreed to between the two Governments.

On the 15th December the German Ambassador expressed the satisfaction of his Government at these assurances.

As regards the South Sea Islands, his Excellency observed at the same time that the Australian Colonies laid claim to them, that the annexation of a portion of New Guinea had placed Germany at some disadvantage, but that his Government took note of the assurance of Her Majesty's Government that no further annexations would take place until after the proposed discussion respecting British and German interests in the South Seas had taken place.

On the 19th December, only four days later, your Excellency informed me by telegraph that you had received an intimation from Prince Bismarck that the German flag had been hoisted at three places on the north coast of New Guinea, and at ten places in New Britain, New Ireland, and Sable Land; and on the 26th I received an official communication from the German Ambassador to the same effect.

His Excellency has further informed me, as you will have learnt from my despatch of the 31st ultimo, that he is instructed to state that his Government do not consider the establishment by them of this Protectorate to be prejudicial to the proposed Commission any more than the establishment of the British Protectorate on the south-east coast can be so considered.

You will have learnt from my despatch of the 3rd instant that I have since had a further communication from the German Ambassador in explanation of the course pursued by his Government, and that I have informed his Excellency that Her Majesty's Government cannot

acquiesce in the interpretation which the German Government put upon the negotiations which have passed between the two Governments on the subject of New Guinea.

In view of the action of the German Government, instructions have been sent to the Commodore on the Australian station desiring him to proclaim the Queen's Protectorate in New Guinea from East Cape to the Gulf of Huon, which is understood to be the limit of the German annexations, and over the Louisiade and Woodlark groups of islands. The D'Entrecasteaux Islands are included in the previous Proclamation.

I have now to request your Excellency to notify to the German Government the steps taken by Her Majesty's Government to extend Her Majesty's Protectorate in New Guinea. In doing so your Excellency will explain the view taken by Her Majesty's Government of the late negotiations, adding that the recent action of Her Majesty's Government has been prompted in a great measure by the desire to obviate all the inconveniences that might arise from an absence of jurisdiction on the coast of New Guinea between the limits of the British and German Protectorates.

You are, moreover, empowered to say that, should the German Government still desire it, Her Majesty's Government are ready, with a view to clearing up the question, and removing chances of differences between the two Governments, to proceed with the proposed Commission for the consideration of questions affecting British and German interests in the Pacific.

Her Majesty's Government have recently received reports that a Treaty has been signed

between the Representatives of Germany and the King of Samoa, and you will inform the German Government, with reference to these proceedings, that Her Majesty's Government fully rely on the assurances which have been exchanged between the two Governments in regard to the independence of Samoa and Tonga, and anticipate that any Treaty which may have been signed will not be ratified, so far as it may be inconsistent with those assurances.

It is desirable that your Excellency should endeavour to ascertain more precisely the extent of the territory which has been occupied by Germany on the coast of New Guinea.

Sir E. Malet.

I am, &c.,

GRANVILLE.

No. 135.—Earl Granville to Sir E. Malet.

Foreign Office, January 14, 1885.

Sir,

The German Ambassador called to-day at this Office, and left an *aide-memoire* on the subject of New Guinea, a translation of which is inclosed for your Excellency's information.

Count Münster at the same time communicated verbally the contents of a despatch which he had received from his Government to the following effect.

His Excellency was instructed to say that there was a misunderstanding as to the import

of Mr. Scott's note of the 9th October.

The German Government understood from that note, which was supplementary to that of the 19th September, that Her Majesty's Government had limited their Protectorate to the south-east coast of New Guinea, and that Germany was free to establish a Protectorate on the north-east coast, which would in no way conflict with British interests and projects.

His Excellency was moreover instructed to point out that his Government had previously intimated that the north-east coast of New Guinea would be a suitable place for the development of German interests.

Sir E. Malet.

I am, &c.,

GRANVILLE.

(Inclasure.)—Aide-mémoire respecting the Negotiations between England and Germany relating to New Guinea.

(Translation.)

As early as June of last year, an Association of German subjects intimated to the Imperial Government that they were about to carry out on the north-east coast of New Guinea, and in the archipelago of New Britain, an undertaking which had been already in contempla-

tion in the year 1880, but had been deferred under the impression produced by the refusal of the Samoa proposals.

They coupled therewith an application that the protection of the Imperial Government might be granted them for their undertaking to the same extent as is accorded to German enterprizes in West Africa. This application was complied with on the part of the Imperial Government; the German Consular officers and Naval Commanders in the South Sea were, even at this early stage, empowered to place under the protection of His Majesty the Emperor the independent territories on the north coast of New Guinea, eastward from the Dutch frontier, as well as those in the archipelago of New Britain where German Settlements existed, or where acquisitions of land had been effected by German subjects.

By means of an instruction to the Imperial Ambassador in London, of the 2nd August, the Imperial Government expressed to the Government of Great Britain the wish to come to an understanding with it respecting a delimitation of the sphere of jurisdiction of both Powers throughout the South Sea, and respecting the principles to be made applicable by each party to the subjects of the other party. With regard to New Guinea, it was expressly observed that the Imperial Government regarded, it is true, the wish of the Australians to possess the independent portion of the southern coast of the island, situated opposite the Colony of Queensland, as justified, but held a similar pretension to the north-east coast as not justified.

In an abstract point of view, the independent portions of New Guinea might with equal

justice become the objects of either German or English enterprizes. The Imperial Government contemplated, as was the case in West Africa, and also in the South Sea, placing under the protection of the Empire such territories as through the predominating extension of German trade, or in consequence of preparations for the same, should appear suitable for such a purpose.

According to the Report of the Imperial Ambassador in London of the 9th August of last year, reporting his execution of the above instructions, Lord Granville had consented to the suggestion of the Imperial Government for a friendly discussion. With regard to New Guinea, he intimated confidentially that the negotiations between the English Government and the Australian Colony (Queensland), respecting the annexation of the southern portion of New Guinea, were near conclusion:

Lord Granville further acknowledged that upon various islands the influence of Germany, on others that of England, was predominant; that, however, there were also islands where the interests of both countries seemed to be equally balanced. It was specially desirable that these should be the subject of a thorough joint examination and understanding.

A simultaneous communication from Lord Granville of the 9th August, forwarded by the Imperial Ambassador, stated "the extension of some form of British authority in New Guinea, which will be shortly announced, will only embrace that part of the island which specially interests the Australian Colonies, without any prejudice to any territorial questions beyond these limits."

By a despatch of the 31st August the Imperial Government communicated its assent to Lord Granville's suggestion to make the question of the interests of both parties in the South Sea the subject of examination by a Commission. The Imperial Government nominated Dr. Krauel, the Consul-General in Sydney, and the Councillor of Legation, Dr. Stübel, the Consular representative in Apia, as its Commissioners, and recommended Levuka as the seat of the Commission, since Dr. Krauel was already under instructions to proceed to that place as Commissioner for the adjustment of the Fiji claims.

In a note of the 19th September the British Chargé d'Affaires in Berlin, on behalf of his Government, informed the Imperial Government, to its surprise, that Her Majesty's Government were about to proclaim a Protectorate over the entire coast-line of New Guinea not subject to Dutch sovereignty, with the single exception of the strip of the north coast lying between the Dutch frontier and the 145th degree of east longitude.

This communication was in contradiction to the proposals made by the Imperial Government in August for an Agreement, and to the above-mentioned communications of Lord Granville. Baron Plessen was therefore directed, by instruction of the 25th September of last year, to inform the Government of Great Britain that, in view of the explanations hitherto exchanged, the contemplated extension of the English Protectorate in the north and north-east of New Guinea came unexpectedly upon the Imperial Government, and that they must reserve their attitude with regard to the same. For the rest, in the view of the Imperial Govern-

ment, the discussion by the Commission might also include the delimitation of either party's sphere of interest with relation to that stretch of coast.

Baron von Plessen forwarded, under date of the 27th September, a communication from Lord Granville of the 25th of the same month, wherein the wish was expressed that the deliberations of the Commission in which it was intended to discuss the smaller islands of the South Sea, should be held in Europe rather than in the immediate vicinity of Australia. In consequence of this, the Consul-General, Dr. Krauel, was summoned to Berlin from Sydney.

The note presented by the English Chargé d'Affaires in Berlin on the 9th October contains the express declaration that the English Government, after careful consideration of the communication made by Baron von Plessen respecting the boundary of the English Protectorate in New Guinea, had resolved to limit this Protectorate to the southern coast, with inclusion of the adjacent islands, instead of giving to it the extension at first contemplated. This would be done without prejudice to any territorial question beyond those boundaries.

The note further expressed the wish that any questions which might arise respecting the districts of New Guinea lying outside the indicated boundaries should be settled diplomatically rather than be referred to the Commission which it was in contemplation to institute respecting the islands in the South Sea.

Under date of the 8th October, Baron Plessen reported that Lord Granville had expressly reminded him that the Imperial Government recognized as justified the wish of the Australians to guard against the establishment of a foreign Power on the southern coast of New Guinea.

Under date of the 11th October, Baron von Plessen transmitted the substance of the English Proclamation, according to which the British Protectorate was proclaimed over the southern coast of New Guinea, eastwards from the 141st degree of east longitude, and over the islands lying off this stretch of coast.

In reply to a question put in Parliament on the 23rd October respecting the area covered by the British Protectorate in New Guinea, the Under-Secretary of State for the Colonies, Mr. Ashley, stated that this Protectorate had been proclaimed only over the south coast and over the adjacent islands, and that it was not at present possible to define the inland boundaries of the English Protectorate, which would extend as far as the local conditions might require. The Blue Book "New Guinea and the Western Pacific Islands" (C.—4217), contains a Map which limits with clear lines the frontiers of the English Protectorate in New Guinea to the south coast between the Dutch boundary and East Cape, including the small islands immediately adjacent to this coast.

London, January 1885.

No. 136.—Sir E. Malet to Earl Granville.

Berlin, January 17, 1885.

My Lord,

I have the honour to acknowledge the receipt of your Lordship's despatch of the 13th

instant, and to inclose copies of a note which, in accordance with the instructions conveyed therein, I have to-day addressed to Count von Hatzfeldt, recapitulating the recent negotiations between the Governments of the Queen and of the Emperor with regard to New Guinea and the South Sea Islands, and notifying to the Imperial Government the steps taken by Her Majesty's Government to extend the Queen's Protectorate in New Guinea, and at the same time informing his Excellency of the readiness of Her Majesty's Government to proceed with the proposed Commission for the consideration of the questions affecting British and German interests in the Pacific.

I also informed his Excellency of the reliance placed by Her Majesty's Government in the assurances exchanged between the two Governments with regard to the independence of Samoa and Tonga.

In a further note, copy of which I have the honour to inclose, I requested his Excellency to be good enough to give more precise details as to the extent of the territory recently occupied by Germany on the north coast of New Guinea.

I have, &c.,

Earl Granville.

EDWARD E. MALET.

No. 148.—Sir E. Malet to Earl Granville.

Berlin, January 24, 1885.

My Lord,

With reference to my despatch of to-day's date, I have the honour to inform your Lordship that after I had finished reading to Prince Bismarck your Lordship's despatch of the 20th instant, he spoke to me at length on the circumstances leading to the present political estrangement between the two countries.

He said that at every point at which Geamany had endeavoured to found a Colony England had closed in, making new acquisitions, so as to restrict Germany's power of expansion. He proceeded to the question of New Guinea, and he asserted that he had understood from Mr. Scott's note of the 9th October that we had accorded him free hand with regard to the north; that, to his understanding, the words "without prejudice to any territorial question beyond these limits" gave him such liberty.

I argued with the Prince on both points to the effect that we had not extended our Protectorates in the order stated; that we had, on the contrary, been going even to the Cameroons before we were in any way aware that Germany intended to establish a Protectorate there; that, in regard to New Guinea, when first Count Münster had spoken about it, your Lordship had informed him that steps towards annexation had already gone further than was known; as to the words "without prejudice" conveying such a meaning as the Prince attached

to them, I assured him that the only meaning which could be attached to them in the English language was that the question with regard to the rest of New Guinea remained as it was before, and that, in any case, the words were followed by the statement of opinion that question regarding territories beyond those which we had annexed should be dealt with diplomatically. The Prince persisted that he had understood the words in an entirely different sense, and had considered that he was free to annex that which we had not annexed.

He proceeded to say that in order to show me how different were our relations only a year ago, and how much he had desired that the good relations then subsisting should continue, he would read me a despatch which he had addressed to Count Münster on the 5th of last May.

He must believe that Her Majesty's Government had entirely failed to appreciate the importance which his Government attached to the Colonial question, as he could not suppose that, if your Lordship had understood it, the successive annoyances to which Germany had been exposed would not have been averted.

This despatch of the 5th May to Count Münster was a very remarkable one.

It stated the great importance which the Prince attached to the Colonial question, and also to the friendship of Germany and England.

It pointed out that in the commencement of German colonial enterprise England might

render signal service to Germany, and said that for such service Germany would use her best endeavours in England's behalf in questions affecting her interests nearer home. It pressed these considerations with arguments to show the mutual advantage which such understanding would produce, and it then proceeded to instruct Count Münster to say if it could not be effected the result would be that Germany would seek from France the assistance which she had failed to obtain from England, and would draw closer to her on the same lines on which she now endeavoured to meet England. The despatch was a long one, and the Prince read it to me in German, but the above was the gist of it.

Prince Bismarck went on to say that, not being satisfied with the result, and attributing it in part to the Ambassador not having stated the points with precision, he sent his son, Count Herbert Bismarck, to England, in the hope that he might succeed where Count Münster had failed; but that he, unfortunately, had only succeeded in obtaining those general friendly assurances of goodwill which were of little value in the face of subsequent occurrences.

The Prince then read to me a draft of a despatch which he is now sending to Count Münster, in which he takes up a remark, which his Excellency attributes to your Lordship, in a Report on the Egyptian question, to the effect that the attitude of Germany on the Colonial question makes it difficult for your Lordship to be conciliatory on other points.

The Prince next reverted to what he termed our closing-up system, and he mentioned Zululand, observing that the Boers claimed a cession dating from 1840 with King Panda.

I said that I feared the Prince's good faith had been imposed upon, as no such State as the Transvaal had existed at that date, and that the only Boers who could have obtained a cession of territory, if such existed, were our own subjects.

The Prince replied that it was not a question which a lawsuit would settle.

I then said to the Prince that the whole situation was undoubtedly a very unsatisfactory one, and that it gave me great pain, as it had been my hope and endeavour, under instructions from your Lordship, to bring about a more cordial understanding between the two Powers; that I knew that it had never been the intention of Her Majesty's Government to thwart the colonial aspirations of Germany, and that, in my opinion, our action had repeatedly shown this desire; but I said that it would be impossible for us to act so as to meet his wishes, even where it was easy for to do so, unless we knew what those wishes were, and I therefore begged him to tell me what now, at this moment, he wanted; was it the parts of New Guinea which we were now annexing? Was it Zululand? I said that the knowledge of his wishes, whatever they might be, was better than that we should go on mutually acting in the dark, and consequently running against each other.

The Prince replied that the understanding which he had arrived at with France, in consequence of his failure to come to one with us, put it out of his power to take up the question now, as he had expounded it to us in May. The long conversation came to an end by his saying that he had been anxious to explain to me the series of circumstances that had

preceded the present phase of the political relations between the two countries, which he was sure I must regret as much as he did.

I have, &c.,

Earl Granville.

EDWARD B. MALET.

No. 164.—Count Münster to Earl Granville.

German Embassy, January 28, 1885.

(Translation.)

Since the Undersigned had the honour of informing the Royal British Government, by note of the 26th December last, that the German Settlements on the north coast of New Guinea and in the New Britain Archipelago had been placed under the protection of His Majesty the Emperor, Sir E. Malet has addressed a note to His Majesty's Government, under date of the 17th instant, to inform them that the Commodore on the Australian station had received instructions to proclaim the Protectorate of Her Majesty in New Guinea, from East Cape to the Gulf of Huon, which it was understood may be looked upon as the boundary of the German annexations, and also over the Louisiade and Woodlark groups of islands.

It is at the same time observed in the note that the D'Entrecasteaux Islands were included in the earlier Proclamation.

The Undersigned is instructed to answer that note as follows:—

After the negotiations which had been carried on between the two Cabinets on this subject since the beginning of August last, the Royal British Government cannot have been less prepared for the announcement of the German annexation than were the Government of His Majesty the Emperor in October last for the news that England had taken possession by Proclamation of the whole of the south coast of New Guinea and of the adjacent islands.

By instructions sent to his by his Government on the 2nd August last, the Undersigned was enabled to inform Her Majesty's Secretary for Foreign Affairs on the 8th of the same month that the Imperial Government intended to place under the direct protection of the Empire, as had been done in West Africa, so now also in the South Sea, those districts in which German commerce had become predominant, or to which expeditions, whose justification can be denied by no one, were about to be undertaken. At the same time the Undersigned expressed the wish of his Government to come to an understanding with the Royal British Government about the geographical delimitation of the districts in the South Sea under the sovereignty or protection of either party, and generally concerning the principles to be applied within these districts by the one party to the subjects of the other party.

That by this understanding concerning the boundaries of impending annexations was meant

follows from the fact that, at that time, districts under German sovereignty did not yet exist in the South Sea, but only districts in which German commerce predominated, or whither "expeditions had been dispatched."

As far as regards New Guinea, the Undersigned designated the claim to the whole of that part of the island not under Dutch dominion, which had found loud expression in Australia since the appearance of a German newspaper article in 1883, recommending it for German colonization, as totally unjustifiable. He made the observation that England had, as yet, made no legal annexation in New Guinea, and that there, as also in the Angra Pequena affair, the principle which had been successfully maintained in common with England against Spain ten years before, in the affair of the Caroline, Pelew, and Sulu Islands, was still considered in force by the Government of His Majesty the Emperor; according to this, only such titles to sovereignty are to be recognized as are actually enforced.

Although by this, in the abstract, the whole independent portion of New Guinea formed in principle quite as justifiable an object of German as of English undertakings, the Imperial Government desired nevertheless to recognize as justified the wish of the Australians that no foreign Power should settle on the south coast of New Guinea in the region of the Torres Straits opposite Queensland.

As the Imperial Government contests in principle a natural right of the Australians to New Guinea and the other independent island districts of the South Sea, this step could not

by any means indicate an intention of seeking the approval of the British Government for the contemplated acquisitions.

The object of that step was rather the wish to avoid the possibility of collisions.

After that the expedition to New Guinea and the New Britain Archipelago which had been taken in hand in the spring of last year, and was under Imperial protection, had become known in Australia in consequence of revelations and attacks against the Imperial policy in the Budget Commission of the German Reichstag of the 26th June, it was to be feared that English subjects would endeavour to put difficulties in the way of this undertaking, and to provide against this was the object of the German action.

An exchange of views followed the conversation of the 8th August last, which terminated, as the Imperial Government has up till now understood the matter, with a distinct promise from the Royal British Government that they would limit their intended Protectorate Protectorate in New Guinea to the south coast opposite Australia, and to the islands adjacent to that coast.

The Imperial Government has been, therefore, more painfully surprised by the contents of Sir E. Malet's note of the 17th instant than the English Government could be by any step taken by this Government.

In the first place the Undersigned has to protest against the assumption that, in the conversation of the 8th August last with Lord Granville, he limited the pretensions of Ger-

many to the north coast of New Guinea to this, "that there were parts of the wild country on this coast which might be available as a field for German colonial enterprise."

On the contrary, he described the whole independent part of the north coast as the subject of a German colonial undertaking already in course of being carried out.

It is true that Lord Granville remarked at the time that Germany, at least up till then, had founded no Settlements in New Guinea.

His Excellency could not, however, forbear observing, on his side, that there were absolutely no English Settlements there.

The Secretary of State then remarked to the Undersigned confidentially that negotiations were proceeding about New Guinea with the Australian Colonies, and that their conclusion in the sense of an annexation of the southern portion of the island was imminent.

A doubt as to the geographical extent of this territory was the less likely to occur to the Undersigned, as Lord Granville, after having discussed the matter with the other English Ministers, on the 9th August made the following communication in writing:—

"The extension of some form of British authority in New Guinea, which will be shortly announced, will only embrace that part of the island which specially interests the Australian Colonies, without any prejudice to any territorial questions beyond those limits."

The concluding words of this note, "without prejudice," &c., could not be otherwise understood, after the discussion which had taken place with the Undersigned and his Government,

than as implying that the English occupation would not be extended along the coasts beyond these limits, but rather that the *status quo ante* should remain in forth with regard to this coast, according to which it was legally *res nullius*.

The Imperial Government would have been, therefore, fully justified in at once issuing the order to take possession of the whole north coast as far as East Cape. This, however, was not done, because it was assumed by Germany that the proposed Commission for the settlement of the geographical delimitation of the respective territories in the South Sea was to deal with the interior limits of the island as far as New Guinea was concerned. But the latter might offer more difficulties in the narrow eastern promontory than westwards towards the interior.

The Imperial Government were, therefore, all the more surprised when they received the note of the 19th September from Her Majesty's Chargé d'Affaires in Berlin, in which it was notified, in contradiction of Lord Granville's communication of the 9th August, that the English Government intended to proclaim a Protectorate over all the coasts of New Guinea not occupied by the Netherlands, that is, over all the southern coasts, and over the northern coasts besides, with the exception of that portion of those coasts lying between the Netherlands boundary and the 145th degree of east longitude.

The observation in the note of the 19th September, to which reference was made lately in Sir E. Malet's note of the 17th of this month, and which runs as follows: "The 145th

degree of east longitude has been fixed as the western British limit on the northern coast, in order that it should embrace the territory owned by the natives on the Maclay Coast, whose claim for British protection has long been under the consideration of Her Majesty's Government, and was one of the Principal reasons which determined the Cabinet to advise the Queen to assume the responsibility of establishing a Protectorate in New Guinea," was no convincing reason for the Imperial Government to withdraw all claim to the fulfilment of the promise made to them by England on the 9th August. Many petitions have been laid before the Imperial Government, since the formation of the Empire, to occupy unclaimed territories, without their having decided, as is well known, till two years ago, to comply with some of these wishes.

The Undersigned has already had occasion to communicate to Her Majesty's Government that this very expedition to the north coast of New Guinea was already projected in 1880, and since then has formed a matter of consideration for the Government of His Imperial Majesty the Emperor.

On the other hand, the English Blue Books show that the Petitions which the English Government wish now to lay stress upon have formerly been repeatedly rejected.

After the experience which the Imperial Government have undergone in Angra Pequena, on the Gold Coast, and lately also in Zululand, it would appear as if the possession, too, of New Guinea had become an object of desire for England from the time that Germany turned

her eyes in that direction. That it is a necessity for the Australian Colonies cannot be maintained in face of the fact that their population, notably that of Queensland, is not yet sufficient to colonize even the coast-line of the Australian Continent.

The Imperial Chargé d'Affaires, Baron von Plessen, was accordingly instructed on the 25th September last to call attention to the contradiction existing between the contents of Mr. Scott's note of the 19th September and Lord Granville's promise of the 9th August. Hereupon the Imperial Government received to their satisfaction, in a note from Mr. Scott, dated the 9th October, the following declaration, which was in harmony with the promise made on the 9th August: "That Her Majesty's Government have carefully considered the communication which Baron von Plessen was instructed to make on the proposed limit of this Protectorate, and have decided that the declaration to be made shall limit the British Protectorate to the whole of the southern coast, including the islands contiguous to it, instead of that which they had at first proposed. This will be done without prejudice to any territorial question beyond those limits."

A few days afterwards the English Government published a Proclamation exactly answering to the above declaration, together with a Map showing the extent of the English Protectorate.

The Imperial Government was accordingly justified in assuming that the unoccupied northern coast of the island was not only considered as no-man's-land, but also that it remained

open to the German Government to annex it with the full consent of the English Government, and that it only remained to fix the boundaries on either side in the interior of the island. The possibility of a misunderstanding or conflict of interests would thus be excluded. All formal obstacles seemed to them also now to be removed which might have stood in the way of the taking possession on their part of the coast-line from Huon Bay to East Cape. This view was confirmed by the following passage in Mr. Scott's note of the 9th October, quoted in Sir E. Malet's note of the 17th instant:—

“It is with great satisfaction that Her Majesty's Government have come to an arrangement in which they find themselves in perfect accord with Germany.”

It is all the more surprising to the Imperial Government to find, in spite of the above, that Baron Plessen's observation, contained in his communication of the 27th September, to the effect that, in the opinion of the Imperial Government, a friendly agreement on the subject of the delimitation of the regions in which the two Powers are interested on that coast might be arrived at by means of settlement by a Commission, is now interpreted as if Germany, in the hope of the issue of the proposed negotiations by Commission being favourable to her, had bound herself for an indefinite period, even if the negotiations lasted for years, not to take possession of any land in any part of New Guinea or elsewhere, while England considered herself justified in occupying the whole south coast of New Guinea, including the coast-line on the eastern extremity. This assumption is contrary to the first postulate of the

friendly Agreement proposed by the Imperial Government, that is, the principle that both nations have equal rights.

Then the Imperial Government were only lately made aware of the fact that such an expectation could seriously be laid before the Imperial Government on behalf of England, through Mr. Meade, English Delegate at the Berlin Conference, the object of whose proposals was to entirely exclude Germany from New Guinea. The opinion entertained by the Imperial Government of these proposals was communicated to Her Majesty's Government by the Under-signed in consequence of the instructions forwarded to him on the 29th December of last year and on the 10th instant.

Mr. Scott's note of the 9th October contained the following passage:—

“In case any questions should arise as to those districts” (of New Guinea) “which lie beyond the limit described, Her Majesty's Government are of opinion that it would better to deal with them diplomatically than to refer them to the Commission which it is proposed to appoint with regard to the islands in the Pacific.”

If Her Majesty's Government held the view that until the termination of the diplomatic negotiations no annexation was to take place in New Guinea, then it is they who, by proclaiming the English Protectorate over the whole south coast, including the easternmost portion of New Guinea, after themselves making this declaration, first acted in contradiction to their declaration. The Imperial Government had given orders for the hoisting of their flag so far back as August of last year, directly after the receipt of Lord Granville's declaration of the 9th of

that month, and protest on their part against the reproach of having acted in contravention of an undertaking entered into by them.

It appears clearly from the declarations of Her Majesty's Government, and from the English official Map already mentioned, that the English Protectorate was to be limited to the south of East Cape by a line coinciding with the 152nd degree of east longitude (of Greenwich).

The statement made in Sir E. Malet's note of the 17th instant to the effect that the D'Entrecasteaux Islands, off the north coast, were already included in the Proclamation of a Protectorate made by England on the 6th November of last year, is equally at variance with the assurances given to the Imperial Government by Her Majesty's Government on the 9th August and 9th October of last year, as well as with the text of the Proclamation and the boundary clearly marked on the officially published Map.

This also disposes of Sir E. Malet's inquiry, contained in a second note of the 17th instant addressed to the Imperial Government, as to the extent of the German Protectorate.

For the Imperial Government intended from the first to place under their protection the whole northern coast, from the Netherlands frontier to East Cape, with the adjacent islands.

It is not conclusive of the question, on how many spots on the north coast the Imperial flag has been hoisted as visible proof of the German Protectorate. This question on the part of the English Government is all the more remarkable, since, as is well known, the whole of the south coast of the island was in the same way placed under the protection of Her Majesty

the Queen of England only by means of the symbolical act of hoisting the flag, which was performed at only a few places.

The title of Germany to the whole of the north coast could not, therefore, be confuted, even if, in opposition to the understanding come to between the two Governments in August and in October, the English flag should now have been hoisted, to the regret of the Imperial Government, on isolated portions of the north coast, and on the islands contiguous.

To allege as a motive of the action resolved upon by the English Government the desire to avoid any disputes which might arise from an absence of jurisdiction on the coast of New Guinea cannot be regarded by the Government of His Majesty the Emperor as sufficient; since already, in the course of the exchange of views which took place in August of last year, the question of the creation of a sufficient jurisdiction in the districts of the Protectorates of both countries was raised by the Undersigned. In the absence of any English Settlement there can be no pressing necessity on this point on the side of England.

As regards the islands in the Archipelago of New Britain, the Undersigned remarks that there was never any intention on the part of the Imperial Government to make the occupation of these islands the subject of negotiation between Germany and England.

For on these groups of islands there have existed, as was remarked already by the Undersigned in his conversation of the 8th August, for some time past, exclusively German Settlements, and that, too, to an extent of which the tenth part would have formed sufficient pretext

to the English Government for long since taking possession of this archipelago.

It is should be objected on the English side that the Imperial Government ought to have come to an understanding with the British Government before this annexation concerning possible interests of England or her Colonies there, such an objection is not in harmony with the attitude of England towards Germany on the coast of Africa.

For the first news of certain German acquisitions there sufficed to bring it about that on the part of England, and that, too, after the invitation to the West African Conference had been sent, measures were taken or were approved which had for their object to cut off from the German acquisitions, by means of taking possession of large stretches of coast such as those between Bimbia and Lagos, even the possibility of a further extension in the Gulf of Guinea.

After these experiences the Imperial Government might possibly now also have to expect the news of the planting of the English flag in the New Britain Archipelago, had they not placed the Settlements there under their protection in time.

The Undersigned is instructed to enter a protest against the Proclamation of the Protectorate of Her Majesty the Queen of Great Britain and Ireland (announced in Sir E. Malet's note of the 17th instant, and according to a telegraphic announcement from Melbourne, already put into execution) over the part of the north coast of New Guinea between East Cape and Huon Bay, as also over the D'Entrecasteaux, Woodlark, and other islands adjacent to the north coast, as contrary to the promise of the English Government given to the Imperial Government in official despatches.

The Imperial Government wish, however, on their side also to guard against any cause of differences between the two Governments by coming to an understanding with the British Government, by means of the above-mentioned Commission, respecting the inland boundaries of the Protectorates of both parties in New Guinea, and more especially in the east corner of the island, to which reference has so frequently been made, and also respecting the independent islands of the South Sea, where the interests of the one or of the other predominate, and respecting the principles to be observed on both sides.

The Undersigned has already had the honour to announce to his Excellency Lord Granville, on the 29th December last, the arrival from Sydney for this purpose of the Imperial Consul-General, Dr. Krauel.

The closing remark of Sir E. Malet's note respecting a Treaty concluded by the Imperial Consul-General at Apia with the King of Samoa will be answered by the Undersigned in a separate note.

The Undersigned avails, &c.,

Earl Granville.

MUNSTER.

No. 165.—Count Münster to Earl Granville.

(Translation.)

German Embassy, January 28, 1885.

The note which the British Ambassador at Berlin addressed on the 17th instant to the

Imperial Secretary of State for Foreign Affairs with regard to New Guinea concludes with the information that the British Government have recently received reports concerning the conclusion of a Treaty between the Representatives of Germany and the King of Samoa, and presupposes that this Treaty will not be ratified so far as the stipulations do not harmonize with the explanations previously exchanged between Germany and England with regard to the maintenance of the independence of Samoa.

The Undersigned is directed to reply in a separate note upon this point, which is not in direct connection with the New Guinea question, and has accordingly the honour, by command of his Government, to give the following information to his Excellency Earl Granville.

The Government of His Majesty the Emperor presumes that the present communication from the British Government with regard to the conclusion of a German-Samoan Treaty refers to the Agreement which was signed in execution of Article VII of the German-Samoan Treaty of Friendship of the 24th January, 1879, on the 10th November last, at Apia, between the Imperial Representative in Samoa, Consul-General Dr. Stuebel, and the Government of that country.

While the Undersigned has the honour of inclosing, for the information of Her Majesty's Government, the annexed German translation of this Agreement, he expresses the hope of his Government that the British Government will be convinced that the points agreed upon are within the limits of the German Treaty with Samoa, and encroach neither on the independence

of this group of islands nor on the rights acquired there by other nations.

The advantages of greater legal security and of an improved penal administration in Samoa, the institution of which is the object of the above Agreement, will benefit likewise the settlers who belong to the other Treaty Powers, while the Germans interested will alone be liable under Article VII for the cost of the arrangements agreed upon.

The Imperial Government has the intention of ratifying this Agreement, subject to a closer examination of details, taking care that its stipulations shall also be strictly observed on the part of the Samoanese.

They count on their exertions to bring about a condition of order in these islands not being thwarted from other quarters.

The Undersigned is instructed, with reference to this subject, to revert to the Petitions which were addressed, on the 5th November of last year, by the Kings and Chiefs of Samoa to Her Majesty the Queen of England, and to the Governor and Ministers of the Colony of New Zealand.

The text of these Petitions is now in the possession of the Imperial Government, and confirms the supposition which had been expressed some time previously that they were drawn up by English subjects, and signed under the influence of the deception that Germany was contemplating an act of violence against the independence of Samoa.

It appears, moreover, that the King of Samoa, at the commencement of last year, had

already, by means of a similar Petition, secretary offered the sovereignty over his country to the British Government.

The absence at the time of any disapproval of the conduct of those who had induced the King to take this step has clearly contributed to encourage further attempts in this direction. The Imperial Government expect with confidence that the instructions now contemplated by the British Government will also have the result of putting an end to the agitation for the same object which is instigated from New Zealand.

The Undersigned avails, &c.,

Earl Granville.

MÜNSTER.

(Inclosure.)—Agreement between Germany and Samoa.—Signed at

Apia, November 10, 1884.

No. 176.—Earl Granville to Sir E. Malet.

Foreign Office, February 7, 1885.

Sir,

I have received your Excellency's despatch of the 24th ultimo, and I have read with

interest the account which it contains of the important conversation which you had with Prince Bismarck at your interview of the 24th, when you read to him my despatch of the 20th ultimo.

The Prince on that occasion spoke on the circumstances leading to the present political estrangement between England and Germany, and proceeded to explain its causes from the German point of view.

He stated that, in his opinion, Her Majesty's Government had entirely failed to appreciate the importance which his Government attached to their projects of colonization, and the value which they set upon the friendship of England; for he could not suppose, had it been otherwise, that the successive annoyances to which Germany had been exposed would not have been averted. He laid much stress on an important despatch which he appears to have addressed on the 5th May last to the German Ambassador in London, and in which Count Münster was instructed to point out to Her Majesty's Government the service which England could render to Germany at the commencement of her colonial enterprise; that in return for such service Germany would support the interests of England nearer home, and that such an understanding would be productive of mutual advantage. The Prince added that he had sent his son, Count Herbert Bismarck, to England, in the hope that he might be able to promote the object in view, but neither his son nor Count Münster had succeeded in obtaining more than general assurances of good-will, which were of little value in the face of subsequent events. The Prince complained