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TO THE

NEW ZEALAND GAZETTE

OF

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THE SAMOA CONSTITUTION ORDER, 1920.

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SAMOA CONSTITUTION ORDER, 1920.

LIVERPOOL, Governor-General.

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this first day of April, 1920.

Present :

THE RIGHT HONOURABLE W. F. MASSEY, P.C., PRESIDING IN COUNCIL.

WHEREAS the Territory of Western Samoa as defined in the First Schedule to this Order has during the late war with Germany been in the military occupation of His Majesty's Forces : And whereas by a Treaty of Peace signed on behalf of His Majesty at Versailles on the twenty-eighth day of June, nineteen hundred and nineteen, the Government of Germany has renounced all right and title to that Territory in favour of the Principal Allied and Associated Powers being parties to that treaty : And whereas it has been agreed between the said Principal Allied and Associated Powers that the said Territory shall be administered by His Majesty in his Government of the Dominion of New Zealand : And whereas by Order in Council intituled the Western Samoa Order in Council, 1920, and made on the eleventh day of March, nineteen hundred and twenty, in pursuance of the Imperial Act known as the Foreign Jurisdiction Act, 1890, His Majesty, with the advice of His Privy Council, has been pleased accordingly to authorize and empower the Parliament of New Zealand to make laws for the peace, order, and good government of the said Territory, and has been further pleased to provide that, subject to the authority so conferred upon the Parliament of New Zealand, and until that Parliament has otherwise provided, the Executive Government of New Zealand may by Order in Council exercise the like authority to make laws for the peace, order, and good government of the said Territory : And whereas by the Treaties of Peace Act, 1919, the Parliament of New Zealand has approved and authorized the exercise by the said Executive Government of any authority which may be so conferred by His Majesty, and has further empowered the said Executive Government to make by Order in Council such provisions as may be thought necessary in New Zealand for the due and effective exercise of the authority so conferred for the government of the said Territory, and has enacted that all such provisions so made shall have the force of law in New Zealand : And whereas it is expedient that laws should now be made accordingly by the Executive Government of New Zealand for the peace, order, and good government of the said Territory of Western Samoa :

Now, THEREFORE, I, Arthur William de Brito Savile, Earl of Liverpool, the Governor-General of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council of that Dominion, and in pursuance of the Western Samoa Order in Council, 1920, hereinbefore recited, and in pursuance of the Treaties of Peace Act, 1919, and of all other powers and authorities enabling me in that behalf, do hereby order as follows :—

1. This Order in Council may be cited as the Samoa Constitution Order, 1920.
2. Save so far as other provision is expressly made herein, this Order shall come into operation on the first day of May, nineteen hundred and twenty.

Application.

3. Except so far as a contrary intention appears, this Order shall apply to Samoa only, and not to New Zealand.

Interpretation.

4. In this Order, and in every other Order in Council or Ordinance which may be made for the government of Samoa, except where a contrary intention appears,—

- "Administrator" means the Administrator of Western Samoa appointed under this Order :
- "Constable" means an officer of police of any rank in the Samoan Public Service :
- "Enactment" includes any Act, Ordinance, or regulation :
- "European" means any person other than a Samoan :
- "High Court" means the High Court of Western Samoa :
- "Judgment" includes any judicial decree, order, or determination, whether in an action or in any other judicial proceeding, whether civil or criminal :
- "Medical Officer" means a Chief Medical Officer or an Assistant Medical Officer under this Order :
- "Minister" means the Minister of External Affairs :
- "New Zealand Public Service" means the service of His Majesty in respect of the government of New Zealand, including service in New Zealand in respect of Samoa :
- "Ordinance" means an Ordinance made with the advice and consent of the Legislative Council of Western Samoa under the authority of this Order :
- "Polynesian" includes Melanesian, Micronesian, and Maori :
- "Public place" means any road, any place of public resort open to or used by the public as of right, any wharf or jetty, any church or other building where Divine service is being publicly held, any hall or room in which any public entertainment is being held, and any market-place :
- "Regulations" means regulations made by the Governor-General in Council :
- "Rules of Court" means rules or regulations governing the practice or procedure of the Court in question, and made by the proper authority in that behalf :
- "Samoa" or "the Territory" means the Territory of Western Samoa as defined in the First Schedule to this Order :
- "Samoan" means a person belonging to the Polynesian race, whether by pure or mixed descent ; but does not include—
- (a.) Persons registered as Europeans in accordance with any regulations or Ordinance in force in Samoa ; or
- (b.) The legitimate children of a father who is a European either by birth or by registration as aforesaid :
- "Samoan Public Service" means the service of His Majesty in respect of the government of Samoa other than service in New Zealand :
- "Superannuation Acts" means the Acts by which the superannuation funds are established and regulated :
- "Superannuation funds" means the Public Service Superannuation Fund, the Government Railways Superannuation Fund, the Teachers' Superannuation Fund, and any other like fund which may hereafter be established in respect of the New Zealand Public Service.

PART I.

THE EXECUTIVE GOVERNMENT OF SAMOA.

Executive govern-
ment vested in the

5. The executive government of Samoa is hereby declared to be vested in His Majesty the King in the same manner as if the Territory

6. There shall be an Administrator of Western Samoa, who shall be appointed by the Governor-General, and shall be stationed at Apia, and shall, subject to the control of the Minister of External Affairs, be charged with the administration of the executive government of the Territory, save so far as other provision is made in that behalf by this Order.

Administrator of
Western Samoa.

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7. (1.) The Chief Judge of the High Court shall *ex officio* be the Deputy Administrator of Western Samoa.

Deputy Adminis-
trator of Western
Samoa.

(2.) While the office of Administrator is vacant the Deputy shall, without further authority or appointment, assume and exercise all the powers of the Administrator, and all the provisions of this Order or of any other enactment with respect to the Administrator shall extend and apply to the Deputy accordingly.

(3.) The authority of the Deputy so to act as aforesaid shall continue until a new Administrator has been appointed and has assumed the duties of his office in Samoa.

8. (1.) If at any time the Administrator is incapable by reason of sickness or otherwise of performing the duties of his office, or is or proposes to be absent from the Territory, he may by warrant under the seal of Samoa authorize the Deputy Administrator to act as Acting Administrator during the period of such incapacity or absence.

Acting
Administrator.

(2.) Any such warrant may limit, in such manner as the Administrator thinks fit, the authority of the Deputy with respect to the matters to which such authority extends.

(3.) Subject to any limitations so expressed in the warrant, the Deputy so authorized may exercise all the powers of the Administrator both in respect of his office as such and in respect of any other offices held by him concurrently with his office as Administrator.

(4.) Any such authority may be at any time revoked by the Administrator.

(5.) No such warrant of authority, and no act done in pursuance thereof by the Deputy, shall be questioned or invalidated on the ground that the occasion for such warrant or for the exercise of the powers of the Deputy had not arisen or had ceased, and no act done by the Administrator shall be questioned or invalidated on the ground that any such warrant of authority was still in force.

9. If at any time the Administrator is certified by a Medical Officer to be incapable by reason of sickness of executing any such warrant of authority, the Deputy Administrator may, without further authority or appointment, assume and exercise all the powers of the Administrator (both in respect of his office as such and in respect of any other office held by him concurrently with his office as Administrator) until notified by the Administrator in writing that he has resumed the execution of his office; but no act done at any time by the Administrator shall be invalidated by the fact that the powers of the Deputy had not been lawfully determined in manner aforesaid.

Incapacity of
Administrator by
reason of sickness.

The Samoan Public Service.

10. (1.) The Minister of External Affairs may appoint to the Samoan Public Service, to hold office during his pleasure, such other officers as he thinks necessary for the government of the Territory.

Samoan Public
Service.

(2.) No person shall be qualified for appointment to any office in the Samoan Public Service unless he is either a natural-born British subject, or a Samoan, or was born in Samoa.

11. (1.) The Minister of External Affairs may, if and so far as he thinks fit, delegate to the Administrator the power of making appointments to offices in the Samoan Public Service, and all persons so appointed shall hold office at the pleasure of the person who for the time being has the power of making such appointment.

Delegation of power
of appointment to
Administrator.

(2.) Any such delegation may at any time be revoked by the Minister.

Regulations as to
Samoan Public
Service.

12. (1.) The pay, allowances, control, discipline, and management of the Samoan Public Service shall be in accordance with such regulations as may from time to time be made by the Governor-General, in Council in that behalf.

(2.) Subject to any such regulations, officers of the Samoan Public Service shall receive such pay and allowances as the Minister thinks fit, or, in the case of officers appointed by the Administrator, such pay and allowances as the Administrator thinks fit.

Payment from
Samoan Treasury.

13. The pay and allowances of officers of the Samoan Public Service shall be paid out of the Samoan Treasury and shall be a first charge thereon.

Appointment of
acting officers by
Administrator.

14. When an officer of the Samoan Public Service, other than a Judge of the High Court, is absent from the Territory, or is suspended from his office, or is in the opinion of the Administrator incapable by reason of sickness or otherwise of performing the duties of his office, or when his office is vacant, the Administrator may appoint any other fit person to execute that office temporarily during such absence, suspension, incapacity, or vacancy.

Suspension of
officers.

15. (1.) The Administrator may, for misconduct or any other sufficient cause, suspend from the execution of his office any officer of the Samoan Public Service, other than a Judge of the High Court.

(2.) The Administrator shall forthwith report such suspension, together with the reason therefor, to the Minister, who may either continue or terminate such suspension.

(3.) If an officer while remaining so suspended is dismissed from or resigns his office he shall not, unless the Minister otherwise directs, be entitled to receive any salary in respect of the period of his suspension.

Appointment of
New Zealand
officers to Samoan
Public Service.

16. (1.) The holder of an office in the New Zealand Public Service may be appointed to an office in the Samoan Public Service, and both offices may be held by him concurrently.

(2.) No officer of the New Zealand Public Service shall be first appointed to the Samoan Public Service without the consent of the Public Service Commissioner, in the case of officers who are subject to the Public Service Act, 1912, or in any other case without the consent of the Minister in charge of the Department of the New Zealand Public Service to which the officer belongs.

Status of officers
belonging to both
services.

17. When an officer so holds concurrent offices in both services, his status, rights, and liabilities in each service shall be unaffected by the fact that he holds office in the other service; and in respect of each office he shall be subject to the laws governing the service to which that office belongs irrespective of his tenure of an office in the other service; and he shall in respect of each service be qualified for promotion, increase of salary, and appointment to any other office in the same manner as if he held no office in the other service.

18. So long as an officer so holds concurrent offices in both services he shall be deemed to be absent on leave without pay from his duty as an officer of the New Zealand Public Service.

New Zealand officers
in Samoa to be
deemed absent on
leave.

Contributions to
superannuation
fund.

19. So long as an officer so holds concurrent offices in both services and is a contributor to any superannuation fund in respect of his office in the New Zealand Public Service the salary received by him in respect of his office in the Samoan Public Service (exclusive of any tropical or other special allowance received by him in respect of his residence in Samoa) shall be deemed to be his salary for the purposes of the Superannuation Act by which that superannuation fund is governed, and his contributions shall be payable and his retiring-allowance shall be computed accordingly.

Transfer from New
Zealand Service
to Samoan Service.

20. When an officer of the New Zealand Public Service is appointed to an office in the Samoan Public Service, and then or thereafter ceases to hold office in the New Zealand Public Service, he shall not be deemed for that reason to have retired from the New Zealand Public Service, but shall become a supernumerary officer of that service attached to the Department in which he formerly held office, and shall so remain so long as he continues to hold any office in the Samoan Public Service.

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21. Such supernumerary officers shall receive no pay in respect of the New Zealand Public Service, but shall for all other purposes be deemed to remain officers of that service and of the Department thereof to which they are so attached.

Pay of supernumerary officers.

22. Any such supernumerary officer shall, so long as he remains an officer of the Samoan Public Service, be qualified for appointment to any office in the New Zealand Public Service for which he would have been qualified had he remained an active member of that service, and on receiving such appointment he shall cease to be an officer of the Samoan Public Service.

Appointment of supernumerary officers to New Zealand Service.

23. When any officer is, at the time when he becomes a supernumerary officer as aforesaid, a contributor to any superannuation fund, the salary which he receives as an officer of the Samoan Public Service (exclusive of any tropical or other special allowance received by him in respect of his residence in Samoa) shall be deemed to be his salary for the purposes of that fund, and contributions thereto shall continue to be made by him accordingly.

Contributions of supernumerary officers to superannuation fund.

24. In computing for the purposes of any Superannuation Act the length of service of any officer who is or has been a supernumerary officer of the New Zealand Public Service, or who holds or has held offices concurrently in that service and in the Samoan Public Service, every complete continuous year of his service, after the commencement of this Order, in the Samoan Public Service shall be computed as one year and a half.

Computation of length of service in Samoa.

25. The Public Service Act, 1912, shall have no application to the Samoan Public Service or to officers of the New Zealand Public Service in their capacity as officers of the Samoan Public Service.

Public Service Act, 1912, not applicable.

26. Save as expressly provided by this Order, the Superannuation Acts shall have no application to the Samoan Public Service.

Superannuation Acts not applicable.

27. An appointment to an office in the Samoan Public Service may be made to take effect at a future date, not being later than one month after the date of appointment, notwithstanding the fact that the office is not yet vacant at the date of appointment.

Appointments in anticipation of vacancies.

The Samoan Treasury.

28. The Public revenues of Samoa shall consist of--

Moneys forming part of Samoan revenue.

- (a.) Revenues of Customs collected in the Territory;
- (b.) Court and other fees received in the Territory;
- (c.) Taxes imposed by any Act, Ordinance, or regulation
- (d.) Rents and profits of Crown lands in the Territory, save where otherwise provided by Order in Council;
- (e.) Revenues derived from the Post and Telegraph service in the Territory;
- (f.) All other revenues derived by the Crown from the Territory; and
- (g.) Moneys issued from the Public Account by way of loan to the Samoan Treasury in accordance with the provisions of this Order in that behalf.

29. The public revenues of Samoa shall constitute a single fund to be known as the Samoan Treasury.

Samoan Treasury.

30. There shall be an officer of the Samoan Public Service, to be called the Treasurer of Western Samoa, who shall be charged with the receipt, custody, accounts, and expenditure of the moneys of the Samoan Treasury.

Treasurer of Samoa.

31. All expenditure in respect of Samoa shall be payable out of the Samoan Treasury, except so far as any such expenditure is otherwise provided for by Parliament as payable out of the public revenues of New Zealand.

Expenditure of Samoa.

32. The collection, expenditure, and control of the public revenues of Samoa and the audit of the accounts of the Samoan Treasury shall be in accordance with such regulations as may from time to time be made by the Governor-General in Council in that behalf.

Regulations as to revenue and expenditure.

Expenditure by
Administrator.

33. Subject to such regulations and to the control of the Minister of External Affairs, all moneys in the Samoan Treasury may be expended by the Administrator for such public purposes in Samoa as he thinks fit.

Loans to Samoan
Treasury.

34. (1.) Out of moneys appropriated by Parliament for that purpose the Minister of Finance may from time to time, under the authority of and in accordance with an authorizing Order in Council, issue out of the Public Account and pay into the Samoan Treasury by way of loan such sums as may be required by way of capital expenditure for the provision of public buildings, roads, harbour-works, water-supply, drainage, and other public works or purposes in Samoa.

(2.) Every such authorizing Order in Council shall specify the amount of the loan, the rate of interest payable, and the terms of repayment, and shall provide for the establishment and maintenance by the Samoan Treasury of a sinking fund under the control of the New Zealand Treasury sufficient to pay off the loan within a period not longer than thirty years.

(3.) For the purpose of enabling the Samoan Treasury to meet emergent necessities the Minister of Finance may from time to time, on the recommendation of the Controller and Auditor-General, make temporary advances to the Samoan Treasury out of moneys available in the Public Account for the unauthorized expenditure of the New Zealand Treasury, but all advances so made shall be repaid by the Samoan Treasury within six months after the making thereof.

(4.) All moneys payable by the Samoan Treasury in pursuance of this section shall be a first charge on the Samoan revenues after payment of the salaries and allowances of the Samoan Public Service.

Public Health.

Chief Medical
Officer of
Samoa.

35. (1.) There shall be an officer of the Samoan Public Service to be called the Chief Medical Officer of Western Samoa.

(2.) Such officer shall be charged, subject to the control of the Administrator, with the administration of all laws relating to public health, quarantine, lunacy, hospitals, and medical aid.

Assistant Medical
Officers.

36. The Minister may appoint such Assistant Medical Officers as he may think necessary to assist the Chief Medical Officer in the execution of his duty.

Qualification of
Medical Officers.

37. No person shall be qualified for appointment as a Medical Officer unless he is duly registered in New Zealand as a medical practitioner under the laws there in force in that behalf.

Duties of Medical
Officers.

38. (1.) It shall be the duty of the Medical Officers to provide for all persons in Samoa such medical and surgical aid and attendance as may be reasonably required and is reasonably practicable.

(2.) Such medical and surgical aid and attendance shall be subject to the payment of such fees (if any) as may be prescribed by the Administrator; and all such fees shall form part of the public revenues of Samoa.

(3.) No liability shall be incurred by His Majesty in respect of any neglect to provide such medical or surgical aid or attendance, or in respect of any negligence of a Medical Officer in the execution of his office.

Hospitals and
other institutions
of public health.

39. The Administrator shall establish and maintain in Samoa such hospitals and other institutions as he may deem necessary for the public health, and all institutions so established shall be under the control of the Chief Medical Officer.

Prisons and Police.

Establishment of
prisons.

40. The Administrator shall by warrant under his hand and the seal of Samoa appoint as prisons such buildings or places in the Territory as he thinks suitable for that purpose.

41. Any person in lawful custody in Samoa may be detained in any such prison, and may from time to time be removed by order of the Administrator or of a Judge of the High Court from one prison to another.

Detention, and removal from one prison to another.

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42. Any person in lawful custody in Samoa may, if it is inconvenient or impracticable immediately to take him to any prison for confinement therein, be temporarily detained in any other suitable place of security.

Temporary confinement elsewhere than in prison.

43. The Minister may appoint such persons as he thinks fit as officers of police or officers of prisons in Samoa.

Appointment of officers of police and prisons.

Education.

44. (1.) The Administrator may establish and maintain such public schools in Samoa as he deems necessary for the education of the Samoan or other inhabitants thereof.

Establishment of public schools.

(2.) The Minister may appoint such teachers and other officers as may be deemed necessary for such schools.

(3.) When any teacher or other officer so appointed is at the time of his appointment a contributor to the Teachers' Superannuation Fund his service in Samoa shall be deemed to be education service for the purposes of that fund, and he shall continue to be a contributor thereto accordingly, but his salary for the purposes of that fund shall not be deemed to include any tropical or other special allowance received by him in respect to his residence in Samoa.

(4.) In computing for the purposes of that fund the length of service of any such contributor every complete continuous year of his service, after the commencement of this Act, in the Samoan Public Service shall be computed as one year and a half.

The Seal of Samoa.

45. (1.) There shall be a public seal of the Territory of Western Samoa, to be in such form or form as the Minister from time to time approves.

The Seal of Western Samoa.

(2.) Such seal shall be in the custody respectively of the Minister and of the Administrator.

(3.) Such seal may be used for the authentication of any public document in relation to the government of Samoa, or for the execution of any document required by law to be executed under the seal of the Territory.

(4.) Judicial notice shall be taken of such seal in all Courts in Samoa and in New Zealand.

PART II.

THE LEGISLATIVE GOVERNMENT OF SAMOA.

46. The Administrator, acting with the advice and consent of the Legislative Council of Western Samoa, may make laws (to be known as Ordinances) for the peace, order, and good government of the Territory not being repugnant to this Order or to any Act of the Parliament of New Zealand or of the United Kingdom in force in the Territory or to any regulations there in force.

Administrator may make Ordinances.

47. There is hereby established in and for Samoa a Legislative Council, to be called the Legislative Council of Western Samoa.

Legislative Council of Western Samoa.

48. (1.) The Legislative Council shall consist of—

Membership of Legislative Council.

(a.) Official members (not less than four in number) being the holders for the time being of such offices in the Samoan Public Service as the Governor-General from time to time appoints as entitling the holders thereof to sit in the Legislative Council:

(b.) Unofficial members (not more in number than the official members) being such other persons (if any) as the Governor-General appoints to hold office during his pleasure as members of the Legislative Council.

(2.) No person shall be qualified for appointment to the Legislative Council unless he is either a natural-born British subject, or a Samoan, or was born in Samoa.

(3.) Unofficial members of the Legislative Council may receive from the Samoan Treasury such remuneration or allowances (if any) as may be prescribed by regulations.

(4.) The powers of the Legislative Council shall not be affected by any vacancy in the membership thereof.

(5.) Every person who executes the office of an official member of the Council during a vacancy in that office or during the absence or incapacity of the holder thereof shall while so acting be entitled to sit and act as a member of the Legislative Council in the place of that official member.

Meetings of
Legislative Council.

49. The Legislative Council shall meet at such times and at such places as the Administrator determines.

Administrator to
preside at meetings
of Council.

50. The Administrator shall be entitled to preside over every meeting of the Council; but if he is not present at any meeting the members of the Council there present may elect one of their number to preside over that meeting, who shall nevertheless be entitled to vote in the same manner as any other member.

Quorum.

51. No business shall be transacted at any meeting of the Council if the number of members present is less than one-half of the total number of the members of the Council.

Rules of procedure.

52. The Legislative Council may make rules regulating the procedure at the meetings thereof.

Clerk of Legislative
Council.

53. There shall be an officer of the Samoan Public Service, to be called the Clerk of the Legislative Council, who shall keep the records of the Council and perform with respect to the Council such secretarial and other functions as may be required.

Assent of
Administrator.

54. (1.) The assent of the Administrator to an Ordinance shall be testified by signing a printed copy of the Ordinance and sealing the same with the seal of Samoa.

(2.) The Administrator shall at the same time enter upon the copy so signed and sealed the date of his assent thereto.

Commencement of
Ordinances
so assented to.

55. Every Ordinance so assented to by the Administrator shall come into operation either on the day on which it is so assented to, or at any later date specified in that behalf in the Ordinance.

Transmission to
Minister of
Ordinances so
assented to.

56. When the Administrator assents to an Ordinance he shall forthwith transmit a printed copy thereof to the Minister of External Affairs.

Disallowance of
Ordinances.

57. (1.) At any time within one year after the assent of the Administrator has been so given to an Ordinance the Governor-General may, by notice published in the *New Zealand Gazette*, disallow that Ordinance either wholly or in part.

(2.) On any such disallowance the Ordinance shall, to the extent to which it is so disallowed, become wholly void as if it had been then repealed.

(3.) Any such disallowance shall take effect as aforesaid either on the day of the publication of the notice of disallowance in the *New Zealand Gazette* or at such later date as is specified in that behalf in the notice.

Language of
Ordinances.

58. Every Ordinance may be passed either in the English language alone, or both in the English language and in the Native language of Samoa; but if, in the latter case, there is any conflict between the English and the Native version of the Ordinance, the English version shall prevail.

Publication in
*Western Samoa
Gazette*.

59. All Ordinances, together with such regulations, Orders in Council, Proclamations, warrants, appointments, and other instruments and acts relative to the government of Samoa as the Administrator thinks fit, shall be published in Samoa in an official gazette, to be known as the *Western Samoa Gazette*, and issued at such times and intervals as the Administrator may direct.

60. If any Ordinance is in part repugnant to any Act or regulation or is otherwise in part *ultra vires*, such Ordinance shall nevertheless be valid as to the residue thereof, if and so far as the residue is in substance and effect severable from the part which is so repugnant or *ultra vires*. farthest validity of Ordinances.

61. It shall not be lawful or competent by any Ordinance— Scope of Ordinances.
(a.) To affect the prerogative of the Crown or the title of His Majesty to any land.

(b.) To impose duties of Customs or export duties on goods imported into or exported from Samoa:

(c.) To establish any body corporate:

(d.) To establish any form of municipal or local government, possessed of rating, taxing, or legislative authority:

(e.) To establish any form of paper currency:

(f.) To provide as the penalty for an offence a term of imprisonment exceeding one year, or a pecuniary fine or penalty exceeding one hundred pounds.

62. It shall not be lawful or competent for the Legislative or Executive Government of Samoa— Limitation of powers of Legislative or Executive Government of Samoa.

(a.) To establish or maintain any military or naval base or any fortifications in Samoa:

(b.) To provide for the military training or service (otherwise than for the purposes of police) of the inhabitants of Samoa other than Europeans:

(c.) To borrow money otherwise than from the New Zealand Treasury in accordance with the express provision of this Order in that behalf.

PART III.

THE HIGH COURT OF WESTERN SAMOA.

63. There is hereby constituted and established in and for Samoa a Court of record, to be called the High Court of Western Samoa, for the administration of justice in the Territory. High Court established.

64. The High Court shall consist of one Judge, to be called the Chief Judge, and of such other Judges and Commissioners (if any) as the Minister of External Affairs may from time to time think necessary. Judges and Commissioners of the High Court.

65. The Judges and Commissioners of the High Court shall be appointed by the Minister and shall hold office during his pleasure, and shall receive out of the Samoan Treasury such salaries and allowances as he determines. Tenure and salaries of Judges and Commissioners.

66. Each Judge of the High Court, or any two or more Judges, may in any part of Samoa, and at any time or place, exercise all the powers of the High Court. Powers of Judges.

67. A Commissioner of the High Court shall possess and may exercise the jurisdiction of the High Court in the same manner as a Judge of that Court, with such exceptions and restrictions as may be prescribed by rules of Court. Commissioners of the High Court.

68. (1.) There shall be a Registrar of the High Court, to be appointed by the Minister and to hold office during his pleasure. Registrar of the High Court.

(2.) The Registrar shall keep the records of the High Court, and shall perform all such administrative duties in respect of that Court as the Chief Judge may from time to time direct.

69. The Minister may also appoint such Deputy Registrars of the High Court as he thinks necessary, who shall hold office during his pleasure, and who shall, subject to the control of the Registrar, possess, exercise, and perform the same powers, functions, and duties as the Registrar; and every reference in this Order to the Registrar of the High Court shall, so far as applicable, extend and apply to a Deputy Registrar accordingly. Deputy Registrars.

Administrative
officers.

70. There shall be appointed in respect of the High Court such Sheriffs, bailiffs, clerks, interpreters, or other administrative officers as the Minister deems necessary.

Seal of the High
Court.

71. The High Court shall have in the custody of each Judge, Commissioner, Registrar, and Deputy Registrar a seal of the Court, in such form or forms as the Chief Judge approves, for the sealing of all orders, warrants, records, and other instruments requiring to be sealed.

Records of the
High Court.

72. The Registrar of the High Court shall keep proper books in which shall be entered minutes of all proceedings in the Court, whether in its civil or criminal jurisdiction.

Jurisdiction of the
High Court.

73. (1.) The High Court shall, except so far as exclusive jurisdiction is conferred upon any other Court by any regulation or Ordinance, have all jurisdiction, whether civil or criminal, which may be necessary to administer the laws of Samoa, including jurisdiction to give declaratory judgments as to the rights of the parties in civil proceedings, although no consequential relief is or could be claimed in such proceedings.

(2.) Where in any civil proceeding the amount claimed does not exceed twenty pounds the Court shall be at liberty to give such judgment between the parties as it finds to stand with equity and good conscience.

Rules and pro-
cedure of Court.

74. (1.) The rules of Court determining the practice, procedure, and powers of the High Court, whether in its civil or criminal jurisdiction, shall be such as may be made in that behalf by the Governor-General by Order in Council.

(2.) Subject to the provisions of this Order and of rules of Court, the practice and procedure of the High Court in the exercise of its civil and criminal jurisdiction shall be such as the Court thinks in each case to be most consistent with natural justice and convenience.

Memorials and
execution of
judgments.

75. (1.) Any person in whose favour any judgment whereby any sum of money is made payable has been obtained in civil proceedings in the High Court of Western Samoa may cause a memorial thereof, authenticated by the seal of the High Court, to be filed in any office of the Supreme Court of New Zealand.

(2.) Judicial notice may be taken by the Supreme Court of the seal of the High Court so affixed to any such memorial.

(3.) Every such memorial shall set forth the names and additions of the parties to the proceeding in which such judgment was given, the form or nature of the proceeding, the date on which the judgment was given, and the amount payable thereunder.

(4.) Every such memorial being so filed shall thenceforth be a record of such judgment, and execution may issue thereon with the leave of the Supreme Court, in the same manner as if the like judgment had been given by the Supreme Court, subject, however, to such terms and conditions as the Supreme Court may think fit to impose.

(5.) Leave to issue such execution may be given by the Supreme Court on the application of the party by whom the memorial was filed, and either *ex parte* or on notice to the party against whom execution is to be issued, as the Supreme Court thinks fit.

(6.) Such leave shall not be granted unless the Supreme Court is satisfied, by affidavit or otherwise,—

(a.) That the person against whom execution is to be issued was resident or present in Samoa at the commencement of the proceedings in which the judgment was given; or

(b.) That the cause of action in such proceedings or some material part of that cause of action arose in Samoa.

(7.) Every such affidavit shall, if made in Samoa, be sworn before a Judge or Commissioner of the High Court.

Contempt of Court
defined.

76. Every person is guilty of contempt of the High Court who—

(a.) Disobeys any judgment or order of that Court, or of any Judge or Commissioner thereof, otherwise than by making default in the payment of a sum of money (other than a penalty) payable under such judgment or order; or

- (b.) Uses any abusive, insulting, offensive, or threatening words or behaviour in the presence or hearing of the Court; or
- (c.) Assaults, resists, or obstructs, or incites any other person to assault, resist, or obstruct, any constable or officer of the Court in serving any process of the Court, or executing any warrant of the Court or a Judge or Commissioner thereof, or executing any judgment or order of the Court or of a Judge or Commissioner thereof; or
- (d.) By any words or behaviour obstructs in any manner the proper and orderly administration of justice in the Court; or
- (e.) Does any other thing which elsewhere in this Order or by any Ordinance or regulation is declared to be a contempt of the High Court; or
- (f.) Aids, abets, counsels, procures, or incites any other person to commit a contempt of the High Court.

77. Every person who commits a contempt of the High Court shall be liable to a fine of fifty pounds or to imprisonment for six months. Punishment of contempt.

78. (1.) The offence of contempt of the High Court shall be punishable by the High Court either— Jurisdiction of Court in offences of contempt.

(a.) In the ordinary course of the criminal jurisdiction of that Court; or

(b.) In accordance with the following provisions of this clause.

(2.) If the contempt is committed in the presence or hearing of the Court, any Judge or Commissioner then and there sitting in Court may, without order or warrant, direct any constable, officer of the Court, or other person to arrest the person so guilty of contempt and to bring him before the Court.

(3.) The Court may thereupon, after giving the person so arrested a reasonable opportunity of being heard in his defence, either order him to pay a fine not exceeding fifty pounds or commit him to prison for a period not exceeding six months.

79. A person imprisoned for contempt, or for default in payment of a fine imposed upon him for contempt, may be at any time discharged, and any fine so imposed may be at any time remitted in whole or in part, either by order of the Court or by warrant under the hand of the Administrator. Discharge of persons in contempt.

PART IV.

THE SUPREME COURT OF NEW ZEALAND.

Jurisdiction of the Supreme Court in Samoa.

80. (1.) The civil jurisdiction of the Supreme Court of New Zealand shall extend to Samoa, and may be exercised in New Zealand in respect of the Territory, in the same manner in all respects as if it was part of New Zealand. Civil jurisdiction of Supreme Court extends to Samoa.

(2.) Any action or other civil proceeding in the Supreme Court which relates in any manner to Samoa and which might have been instituted in the High Court may, on the application of any party thereto, be stayed by the Supreme Court in its discretion, on such terms as the Court thinks fit, if in the opinion of that Court, having regard to the interest of all parties thereto, the action or other proceeding could more conveniently be instituted in the High Court.

(3.) No writ of summons or other originating civil process in the Supreme Court shall be served in Samoa without the leave of a Judge of that Court, and the order by which such leave is granted may determine the time within and the place at which a defendant is to file his statement of defence, and the sittings of the Court at which the action is to be heard, or may give such other directions with respect to the procedure on such writ or process as may be appropriate to the case.

Criminal jurisdiction of Supreme Court in respect of Samoa.

81. (1.) The criminal jurisdiction of the Supreme Court of New Zealand shall extend to offences committed in Samoa against the laws of the Territory, and may be exercised in New Zealand in respect of such offences in the same manner as if they were indictable offences committed in New Zealand.

(2.) Such jurisdiction shall be exercised only over offenders found in New Zealand.

(3.) In respect of any offence which is within the jurisdiction of the Supreme Court under this section the like preliminary proceedings before Justices of the Peace or a Stipendiary Magistrate may be taken in New Zealand as in the case of indictable offences committed in New Zealand.

(4.) The punishment to be imposed by the Supreme Court for any such offence shall be that which is provided for that offence by the laws of Samoa. Any person so liable to be imprisoned may be sentenced to imprisonment with or without hard labour as the Supreme Court thinks fit.

(5.) No prosecution in New Zealand for an offence committed in Samoa shall be commenced without the leave of the Attorney-General.

Cases stated by the High Court.

High Court may state a case for the Supreme Court.

82. (1.) The High Court may in any proceeding pending before it, whether civil or criminal, either on the application of any party or of its own motion, state a case on any question of law for determination by the Supreme Court of New Zealand.

(2.) The determination by the Supreme Court of any case so stated shall be binding on the High Court.

(3.) There shall be no appeal from any such determination to the Court of Appeal.

(4.) Every case so stated shall be under the seal of the High Court, and shall be filed by the Registrar of that Court in the office of the Supreme Court at Wellington.

(5.) The Registrar of the Supreme Court shall thereupon set down the case for hearing at some convenient sitting of the Supreme Court.

(6.) The determination of the Supreme Court shall be embodied in an order, and a duplicate of that order under the seal of the Court shall be transmitted by the Registrar of that Court to the Registrar of the High Court.

(7.) In and by such order the Supreme Court may fix and award the costs of the argument and determination of the special case, and the High Court shall by judgment or order give effect to the order so made by the Supreme Court.

(8.) The Supreme Court may send back for amendment any case so stated by the High Court.

Appeals from the High Court.

Jurisdiction of Supreme Court on appeal from the High Court.

83. Subject to the provisions of this Order, an appeal shall lie to the Supreme Court of New Zealand from any final judgment of the High Court, whether in its civil or criminal jurisdiction,—

- (a.) As of right, from any conviction by the High Court in the exercise of its criminal jurisdiction whereby the appellant has been sentenced to imprisonment for a term exceeding six months or to a fine not less than one hundred pounds;
- (b.) As of right, when the matter in dispute on the appeal amounts to or is of the value of two hundred pounds or upwards; and
- (c.) At the discretion of the High Court in any other case, if in the opinion of that Court the question involved in the appeal is one which by reason of its general or public importance, or of the magnitude of the interests affected, or for any other reason, ought to be submitted to the Supreme Court of New Zealand for decision.

84. (1.) No such appeal shall be brought except in pursuance of an order of the High Court granting leave to appeal. Order granting leave to appeal.

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(2.) Application to the Court for leave to appeal shall be made at the time when judgment is given or within twenty-one days thereafter.

(3.) Such leave shall be granted only on condition that the appellant within a period to be fixed by the Court, not exceeding two months from the date of the hearing of the application, gives security to the satisfaction of the Court or the Registrar thereof in a sum not exceeding one hundred pounds for the payment of the costs of the appeal.

(4.) The order granting leave to appeal shall not be sealed until such security has been duly given.

85. On the sealing of the order granting leave to appeal, a copy of the record of the proceedings in which the judgment appealed against was given (including the reasons for the judgment, and, where necessary, a statement of the facts or of the evidence) shall be prepared by the appellant and transmitted by the Registrar of the High Court under the seal of that Court to the Registrar of the Supreme Court of New Zealand at Wellington. Transmission of record.

86. If the appellant does not prosecute his appeal with due diligence, the respondent may apply either to the High Court or to the Supreme Court for an order dismissing the appeal for non-prosecution; and if such order is made by either Court the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as that Court may direct. Dismissal of appeal for non-prosecution.

87. The procedure on the hearing of any such appeal and in all matters incidental to any such appeal, whether in the High Court or in the Supreme Court, shall be determined by regulations, and in default of such regulations, or so far as they do not extend, shall be determined in such manner as the Court thinks fit. Procedure on appeal.

88. (1.) Subject to any regulations which may be made in that behalf, the Supreme Court of New Zealand may, in any case in which it thinks fit and at any time, grant special leave to appeal to that Court from any final judgment of the High Court. Special leave to appeal may be granted by the Supreme Court.

(2.) Such leave may be granted subject to such conditions as to security for costs and otherwise as the Supreme Court thinks fit.

(3.) All the provisions of this Part of this Order shall, so far as applicable, apply to appeals in pursuance of such special leave.

89. On any appeal from the High Court the Supreme Court may affirm, reverse, or vary the judgment appealed from, or may order a new trial, or may make any such order with respect to the appeal as the Court thinks fit, and may award such costs as it thinks fit to or against any party to the appeal. Powers of Supreme Court on appeal.

90. Every such appeal shall, so far as it relates to any question of fact, be determined by the Supreme Court by reference to the evidence heard at the trial as certified to the Supreme Court under the seal of the High Court, and no further evidence shall without the leave of the Supreme Court, be heard or admitted. Evidence on appeal.

91. An appeal to the Supreme Court of New Zealand shall not operate as a stay of execution unless the High Court or the Supreme Court otherwise orders. Stay of execution.

92. (1.) When leave to appeal to the Supreme Court of New Zealand from any conviction is granted by the High Court the High Court may, if it thinks fit, release the appellant from custody on bail pending the determination of the appeal. Release of appellant from custody.

(2.) Any person so released on bail may be at any time, and for any reason which the High Court thinks sufficient, arrested by warrant and committed to prison, there to undergo his sentence.

(3.) Any period during which an appellant has been so at large on bail shall not be computed as part of the term of imprisonment to which he has been sentenced.

93. No judgment of the High Court shall, on appeal to the Supreme Court of New Zealand, be set aside on the ground of any error or irregularity in the proceedings of such Court, unless the Supreme Court otherwise orders. Appeal not to be allowed for irregularities in procedure.

Court is of opinion that the proceedings of the High Court were not in conformity with natural justice or that a substantial miscarriage of justice has taken place.

Right of audience on appeal.

94. On every case stated for the Supreme Court of New Zealand, and in every appeal to that Court, the parties may either appear in person or be represented by a barrister of the Supreme Court, or may submit their arguments to the Supreme Court in writing.

Transmission of order of Supreme Court on appeal.

95. The determination of the Supreme Court on an appeal from the High Court shall be transmitted to the Registrar of the High Court by the Registrar of the Supreme Court under the seal of that Court, and judgment shall thereupon be entered in the High Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the High Court as are required by such determination.

No appeal to the Court of Appeal.

96. There shall be no appeal to the Court of Appeal from any decision of the Supreme Court of New Zealand on an appeal from the High Court.

Certiorari, mandamus, and prohibition taken away.

97. The Supreme Court shall not exercise control over any Court in Samoa (whether in respect of want of jurisdiction or otherwise) by way of certiorari, mandamus, or prohibition, or in any other manner save by way of appeal in accordance with the provisions of this Order in that behalf.

Enforcement in Samoa of Judgments of New Zealand Courts.

Judgments of Supreme Court or Magistrate's Court in New Zealand may be enforced by the High Court.

98. (1.) Any person in whose favour any judgment whereby any sum of money is made payable has been obtained in the Supreme Court of New Zealand or in a Magistrate's Court in New Zealand in civil proceedings may cause a memorial thereof, authenticated by the seal of the Supreme Court or of the Magistrate's Court, as the case may be, to be filed in the High Court of Western Samoa.

(2.) Judicial notice may be taken by the High Court of the seal of the Supreme Court or Magistrate's Court so affixed to any such memorial.

(3.) Every such memorial shall set forth the names and additions of the parties to the proceeding in which the judgment was given, the form or nature of the proceeding, the date on which the judgment was given, and the amount payable thereunder.

(4.) Every such memorial being so filed shall thenceforth be a record of such judgment, and execution may issue thereon with the leave of the High Court in the same manner as if the like judgment had been given by the High Court, subject, however, to such terms and conditions as the High Court may think fit to impose.

(5.) Leave to issue such execution may be given by the High Court on the application of the party by whom the memorial was filed and either *ex parte* or on notice to the party against whom execution is to be issued, as the High Court thinks fit.

Enforcement of judgments of Supreme Court by High Court by way of proceedings for contempt.

99. (1.) When by any judgment of the Supreme Court of New Zealand any person has been ordered to do or abstain from doing any act in Samoa, other than the payment of money, the Supreme Court may then or any time thereafter direct a memorial of such judgment under the seal of the Court to be filed in the High Court of Western Samoa.

(2.) On the filing of such memorial any disobedience to such judgment, whether before or after the filing of the memorial, shall be deemed to be a contempt of the High Court, and may be dealt with by that Court accordingly.

PART V.

CRIMINAL OFFENCES.

Treason.

100. Every one is guilty of treason, and is liable on conviction thereof to suffer death, who—

(a.) Levies war against His Majesty;

(b.) Conspires to levy war against His Majesty;

(c.) Instigates any foreigner with force to invade the Territory or

(d.) Assists by any means whatever any public enemy at war with His Majesty.

101. Every one is liable to imprisonment for life who for any traitorous or unlawful purpose endeavours to seduce any person serving in His Majesty's Forces by sea or land from his duty or allegiance to His Majesty, or to incite any such person to commit any traitorous or mutinous act. *Inciting to mutiny.*

102. (1.) A seditious intention is an intention to excite disaffection against His Majesty or against the Parliament or Government of the United Kingdom, or against the Parliament or Government of New Zealand, or against the Government of Samoa, or to excite such hostility or ill-will between different classes of the inhabitants of Samoa as may be injurious to the public welfare, or to incite, encourage, or procure lawlessness, violence, or disorder in Samoa, or to procure otherwise than by lawful means the alteration of any matter affecting the laws, government, or constitution of Samoa. *Seditious offences.*

(2.) Seditious words are words expressive of a seditious intention.

(3.) A seditious libel is a libel expressive of a seditious intention.

(4.) A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

(5.) Every one is liable to two years' imprisonment who speaks any seditious words or publishes a seditious libel, or is a party to a seditious conspiracy.

103. (1.) He who with malice aforethought and without lawful justification causes by any act or omission the death of any person is guilty of murder, and shall on conviction be sentenced to death. *Murder.*

(2.) "Malice aforethought" means—

(a.) An intention to cause the death either of the person killed or of any other person; or

(b.) An intention to cause grievous bodily harm either to the person killed or to any other person.

104. He who negligently and without malice aforethought by any act or omission causes the death of any person is guilty of manslaughter, and is liable to imprisonment for life. *Manslaughter.*

105. In the two last preceding clauses the term "omission" means an omission to perform a legal duty, whether undertaken by contract or imposed by law, and whether owing to the person killed or to any other person. *"Omission" defined.*

106. Every one who undertakes, whether by a legally binding contract or otherwise, to do any act the omission of which is or may be dangerous to life is under a legal duty to do that act, and is criminally responsible accordingly for any death caused by such omission. *Omission dangerous to life.*

107. Every one who has in any manner whatever the charge of any other person unable by reason either of detention, youth, age, sickness, insanity, or any other cause to withdraw himself from such charge is under a legal duty to supply that person with the necessaries of life, and is criminally responsible accordingly if the death of that person is caused by an omission so to supply him with the necessaries of life. *Omission to supply the necessaries of life.*

108. Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes, or maintains anything whatever, which in the absence of precaution or care may endanger human life is under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger, and is criminally responsible accordingly for any death caused by an omission to perform that duty. *Liability of persons having charge of dangerous things.*

109. He who hastens the death of any person from any disease or disorder from which he is already suffering shall be deemed to have caused the death of that person. *Hastening death.*

110. He whose act or omission results in the death of any person shall be deemed to have caused his death, although the immediate cause of death is the act or omission of some other person or some other independent intervening event. *Indirect cause of death.*

111. Every one who attempts to commit murder shall be liable to imprisonment for life. *Attempted murder.*

- Conspiracy and inciting to murder. 112. Every one is liable to ten years' imprisonment who—
 (a.) Conspires with any person to murder any person; or
 (b.) Incites any person to commit murder.
- Attempted suicide. 113. Every one who attempts to commit suicide is liable to imprisonment for six months.
- Counselling suicide. 114. Every one is liable to imprisonment for life who counsels or procures any person to commit suicide, if that person actually commits suicide in consequence, or who aids or abets any person in the commission of suicide.
- Concealment of birth. 115. Every one is liable to two years' imprisonment who disposes of the dead body of any child in any manner with intent to conceal the fact that its mother was delivered of it, whether the child died before, during, or after birth.
- Grievous bodily harm. 116. Every one who wilfully and without lawful justification causes grievous bodily harm to any person is liable to seven years' imprisonment.
- Actual bodily harm. 117. Every one who wilfully and without lawful justification causes actual bodily harm to any person is liable to two years' imprisonment.
- Acts or omissions causing bodily harm under circumstances that if death had been caused would have made person causing harm guilty of manslaughter. 118. Every one is liable to two years' imprisonment who by any act or omission causes bodily harm to any person under such circumstances that, if death had been caused, he would have been guilty of manslaughter.
- Indecent assault. Assault. 119. Every one who indecently assaults any female person is liable to five years' imprisonment.
- Rape. 120. Every one who commits an assault on any person is liable to one year's imprisonment.
121. (1.) Rape is the act of a male person having carnal knowledge of a woman or girl who is not his wife—
 (a.) Without her consent; or
 (b.) With consent extorted by threats or fear of bodily harm; or
 (c.) With consent obtained by personating her husband; or
 (d.) With consent obtained by false and fraudulent representations as to the nature and quality of the act.
 (2.) In the case of this and every other offence in which carnal knowledge is an element, the offence is complete upon penetration.
 (3.) Every one who commits rape is liable to imprisonment for life.
 (4.) Every one is liable to ten years' imprisonment who attempts to commit rape, or who assaults any person with intent to commit rape.
- Carnal knowledge of girl under twelve years of age. 122. (1.) Every one is liable to ten years' imprisonment who carnally knows, or attempts carnally to know, or assaults with intent to carnally know, any girl under the age of twelve years, whether he believes her to be of or over that age or not.
 (2.) It shall be no defence to a charge under this clause that the girl consented to the offence.
- Carnal knowledge of idiots or lunatics. 123. Every one is liable to two years' imprisonment who has or attempts to have unlawful carnal knowledge of any woman or girl known by him to be an idiot, imbecile, or lunatic.
- Adultery by married persons. 124. Every married person who commits adultery shall be liable to imprisonment for six months or to a fine of fifty pounds.
- Adultery with married woman. 125. Every man who commits adultery with a woman whom he knows to be married shall be liable to imprisonment for six months or to a fine of fifty pounds.
- Procuring miscarriage of woman or girl. 126. Every one is liable to two years' imprisonment who, with intent to procure the miscarriage of any woman or girl, unlawfully administers to or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent.
- Act of woman or girl procuring her own miscarriage. 127. Every woman or girl is liable to one year's imprisonment who, whether with child or not, unlawfully administers to herself or permits to be administered to her any poison or other noxious thing,

128. Every one is liable to two years' imprisonment who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used with intent to procure the miscarriage of any woman or girl. Supplying means of miscarriage.

129. (1.) Every one who commits bigamy is liable to five years' imprisonment. Bigamy

(2.) Bigamy is—

- (a.) The act of a person who being married goes through a valid form of marriage with any other person; or
- (b.) The act of a person who goes through a valid form of marriage with any person whom he or she knows to be married.
- (3.) The fact that the parties would, if unmarried, have been incompetent to contract marriage is not a defence upon a prosecution for bigamy.

(4.) Every form of marriage shall for the purposes of this section be deemed valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form.

130. (1.) Every one is liable to imprisonment for ten years who commits buggery either with a human being or with any other living creature. Buggery.

(2.) This offence is complete upon penetration.

131. (1.) Every one is liable to imprisonment for five years who— Attempted buggery and indecent assault on males.

- (a.) Attempts to commit buggery; or
- (b.) Assaults any person with intent to commit buggery; or
- (c.) Being a male, indecently assaults any other male person.

(2.) It is no defence to a charge of indecent assault on a male person of any age that he consented to the act of indecency.

132. (1.) Incest means carnal connection between— Incest

- (a.) Father and daughter; or
- (b.) Brother and sister, whether of the whole or the half blood; or
- (c.) Son and mother; or
- (d.) Grandfather and granddaughter.

(2.) Every one who commits incest is liable to seven years' imprisonment.

133. Every one is liable to six months' imprisonment who wilfully does any indecent act in any public place or within the view of any person being in any public place. Indecent acts.

134. Every one is liable to six months' imprisonment who knowingly and without lawful justification or excuse— Indecent documents.

- (a.) Sells or exposes for sale or to public view any obscene or indecent book, picture, photograph, document, or other object tending to corrupt morals; or
- (b.) Publicly exhibits any obscene or indecent show tending to corrupt morals.

135. (1.) Every one who keeps a brothel is liable to one year's imprisonment. Brothels.

(2.) A brothel is a house, room, or place of any kind whatever kept or used for purposes of prostitution.

(3.) Any one who acts as a person having the management, care, or control of a brothel shall be deemed to be a keeper thereof whether he is in fact a keeper thereof or not.

(4.) The owner or occupier of any house, room, or place who knowingly permits the same to be used as a brothel shall be deemed to be a keeper thereof whether he is in fact a keeper thereof or not.

136. (1.) Every one who keeps a gaming-house is liable to one year's imprisonment. Gaming-houses.

(2.) A gaming-house is a house, room, or place of any kind whatever kept or used as a place of resort for gambling.

(3.) "Gambling" means playing for money or other valuable thing at any game of chance, or playing for excessive stakes or otherwise to the injury of public morals at any game of mixed chance and skill.

(4.) Any one who acts as a person having the management, care, or control of a gaming-house shall be deemed to be a keeper thereof whether he is in fact a keeper thereof or not.

(5.) The owner or occupier of any house, room, or place who knowingly permits the same to be used as a gaming-house shall be deemed to be a keeper thereof whether he is in fact a keeper thereof or not.

Gaming.

137. Every person who plays for money or other valuable thing at any game of chance shall be liable to a fine of five pounds.

Stealing children.

138. (1.) Every one is liable to two years' imprisonment who, with intent to deprive any parent or guardian or other person having the lawful charge of any child under the age of fourteen years of the possession of that child, unlawfully—

- (a.) Takes or entices away or detains such child; or
(b.) Receives such child knowing it to have been so dealt with.

(2.) Nothing in this clause shall extend to any one who gets possession of any child claiming in good faith a right to the possession of the child.

Riot.

139. (1.) Every one who takes part in a riot is liable to imprisonment for two years.

(2.) A riot is an assembly of three or more persons who, with intent to carry out any common purpose, disturb the peace tumultuously.

Forcible entry.

140. Every one is liable to six months' imprisonment who, by force or threats of force, enters on land then in the actual and peaceable possession of another for the purpose of taking possession thereof, whether he who so enters is entitled to the possession thereof or not.

Affrays.

141. (1.) Every one who, without lawful justification or excuse, takes part in an affray is liable to one year's imprisonment.

(2.) An affray is the act of fighting in a public highway or in any other public place.

Official corruption.

142. Every one commits the offence of official corruption and is liable to five years' imprisonment who—

- (a.) Being the holder of any office, whether judicial or otherwise, in the service of His Majesty, corruptly accepts or obtains, or agrees to accept or attempts to obtain, for himself or any other person any bribe—that is to say, any money or valuable consideration whatever—on account of anything done or to be afterwards done by him in his official capacity; or
(b.) Corruptly gives or offers to any person holding any such office or to any other person any such bribe as aforesaid on account of any such act.

Perjury.

143. (1.) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his evidence upon oath or affirmation, whether such evidence is given in open Court or by affidavit or otherwise, such assertion being known to the witness to be false.

(2.) Every proceeding is judicial within the meaning of this section which is held before any Court, or before any judicial officer or other person having power to take evidence on oath or affirmation.

(3.) Subornation of perjury is the act of counselling or procuring a person to commit any perjury that is actually committed.

(4.) Every one is liable to five years' imprisonment who commits perjury or subornation of perjury.

Fabricating evidence.

144. Every one is liable to three years' imprisonment who, with intent to mislead any Court of justice or any judicial officer in the exercise of his functions as such, fabricates evidence by any means other than perjury or subornation of perjury.

Conspiracy to pervert justice.

145. Every one is liable to three years' imprisonment who conspires or attempts to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter, civil or criminal.

Breaking prison.

146. Every one is liable to imprisonment for five years who by force breaks any prison with intent to set at liberty himself or any other person confined therein.

Escape.

147. Every one is liable to imprisonment for two years who, being in lawful custody, whether in a prison or elsewhere, escapes therefrom.

148. Every one is liable to imprisonment for two years who rescues Rescues. any person from lawful custody, whether in a prison or elsewhere, or who assists any person to escape from such custody.

149. (1.) Every one who publishes a defamatory libel is liable to Defamatory libel. six months' imprisonment.

(2.) To publish a defamatory libel means to do any act which confers upon the person defamed a right of action for damages for libel.

(3.) In a prosecution under this clause the burden of proof shall be determined by the same rules as in an action for damages for libel.

(4.) In a prosecution under this clause it shall be no defence that the libel is true unless the publication thereof was for the public benefit.

150. Every person who uses threatening, abusive, or insulting Threatening, abusive, or insulting words or behaviour towards or in respect of officials. words or behaviour towards or in respect of any officer of the Samoan Public Service or any member of the Legislative Council shall be liable to a fine of fifty pounds or to imprisonment for three months.

151. (1.) Every one who commits theft is liable—

Punishment of theft.

(a.) To three months' imprisonment if the value of the property stolen does not exceed two pounds:

(b.) To one year's imprisonment if the value of the property stolen exceeds two pounds but does not exceed fifty pounds:

(c.) To five year's imprisonment if the value of the property stolen exceeds fifty pounds.

(2.) In computing for the purposes of this clause the value of the property stolen, where several thefts are charged in the same information against the same person, the aggregate value of all such property shall be computed, and the sentence shall be determined accordingly, and cumulative sentences in respect of the several thefts so charged shall not be imposed.

(3.) For the purposes of this clause a valuable security shall be deemed to be of the same value as the property or proprietary right to which it relates, and postage stamps or revenue stamps shall be deemed to be of a value equal to the denomination thereof.

(4.) Here and elsewhere in this Order the term "valuable security" means any document which constitutes a title to or is evidence of title to any property or proprietary right of any kind whatever.

152. (1.) Theft or stealing is the act of fraudulently or dishonestly Definition of theft taking, or converting to the use of any person, or misappropriating, or disposing of, or dealing in any other manner with, anything capable of being stolen, with intent to deprive the owner or any person having any property or interest therein of such thing or of such property or interest, whether permanently or temporarily, or with intent to defraud or injure the owner or any such other person in any other manner.

(2.) Every animate or inanimate thing whatever which is the property of any person, and is movable, is capable of being stolen.

(3.) Every thing whatever which is the property of any person and is capable of being made movable is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

153. Without in any way limiting the generality of the foregoing Ineffectual defences to charge of theft. definition of theft, a person shall be deemed guilty of theft notwithstanding the fact—

(a.) That at the time of the theft he was in lawful possession of the property stolen; or

(b.) That he had himself a lawful interest in the property stolen, whether as a partner, co-owner, bailee, bailor, mortgagee, mortgagor, or otherwise howsoever; or

(c.) That he was a trustee of the property stolen; or

(d.) That the property stolen was vested in him as an executor or administrator.

154. Without in any way limiting the generality of the foregoing Extended definition of theft. definition of theft, every person shall be deemed guilty of theft who holds, receives, or obtains any money, valuable security, or other thing whatsoever capable of being stolen, subject to any obligation (whether arising from an express or implied trust, or from an express or implied contract, or from any other source whatsoever) to deal with

- such moneys, valuable security, or thing in any manner, and who fraudulently or dishonestly deals with it in any other manner or fails to deal with it in accordance with such obligation.
- Obtaining money or goods by false pretences to be deemed theft.** 155. Every one who by means of any fraud or false pretence dishonestly obtains for himself or for any other person (whether directly or through the medium of any contract procured by such fraud or false pretence) anything capable of being stolen is guilty of stealing the thing so obtained, and shall be liable accordingly.
- Stealing documents.** 156. (1.) Every one who destroys, cancels, conceals, or obliterates in whole or in part any document for any fraudulent or dishonest purpose is guilty of having stolen that document, and is liable to three years' imprisonment.
- (2.) Every one who in this or any other manner steals a testamentary instrument is liable to ten years' imprisonment.
- Receiving stolen property.** 157. Every one who receives any stolen property knowing it to have been stolen is guilty of having stolen such property, and is liable accordingly.
- Robbery.** 158. (1.) Robbery is theft accompanied by violence or threats of violence to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.
- (2.) Every one who commits robbery is liable to ten years' imprisonment.
- (3.) Every one who assaults any person with intent to rob him is liable to five years' imprisonment.
- Breach of trust.** 159. (1.) Every trustee who with intent to defraud, and in violation of his trust, converts anything of which he is a trustee to any use not authorized by the trust is guilty of criminal breach of trust, and is liable to five years' imprisonment.
- (2.) For the purpose of this clause an executor or administrator shall be deemed to be a trustee of the property subject to his administration.
- (3.) Nothing in this clause shall be so construed as in any manner to limit the foregoing definition of the offence of theft, and if any act of a trustee is both theft and a criminal breach of trust he may be convicted of either of those offences.
- Menaces.** 160. Every one is liable to two years' imprisonment who with menaces demands from any person, either for himself or for any other person, anything capable of being stolen, with intent to steal it.
- Witchcraft.** 161. Every one is liable to six months' imprisonment who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes.
- Obtaining credit by fraud.** 162. Every one is liable to six months' imprisonment who in incurring any debt or liability obtains credit by means of any fraud.
- Accusation of criminal offences.** 163. Every one is liable to five years' imprisonment who,—
- (a.) With intent to extort or gain anything from any person, accuses or threatens to accuse either that person or any other person of any criminal offence, whether the person accused or threatened with accusation is guilty of that offence or not; or
- (b.) With such intent as aforesaid, threatens that any person shall be so accused by any person; or
- (c.) Causes any person to receive a document containing such accusation or threat, knowing the contents thereof.
- Conspiracy to defraud.** 164. Every one is liable to three years' imprisonment who conspires with any other person by deceit or falsehood or other fraudulent means to defraud the public or any person ascertained or unascertained.
- Obtaining execution of valuable securities by fraud.** 165. Every one is liable to three years' imprisonment who by any false pretence causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of any valuable security.
- Burglary.** 166. (1.) Every one is guilty of burglary and is liable to five years' imprisonment who by day or night breaks and enters a building with intent to commit a criminal offence therein.
- (2.) "To break" means to break any part, internal or external, of a building, or to open by any means whatever any door, window,

or other thing intended to cover any opening to the building or any passage from one part of it to another.

167. (1.) Forgery is the making of a false document with intent to defraud or deceive any person, whether ascertained or unascertained.

(2.) Every one who commits forgery is liable to five years' imprisonment.

(3.) Every one who, knowing a document to be forged, uses, deals with, or acts upon it, or attempts to use, deal with, or act upon it, or causes or attempts to cause any person to use, deal with, or act upon it as if it were genuine, is liable to five years' imprisonment, and it is immaterial whether the document was forged in Samoa or elsewhere.

(4.) A false document is—

(a.) A document the whole or some material part whereof purports to be made by or on behalf of any person who did not make or authorize the making thereof, or which, though made by or by the authority of the person who purports to make it, is falsely dated as to time or place of making, where either is material; or

(b.) A document the whole or some material part whereof purports to be made by or on behalf of some person who did not in fact exist; or

(c.) A document made in the name of an existing person, either by that person or by his authority, with the intention that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it.

(5.) Making a false document includes altering a genuine document in any material part, or making any material addition to it, or adding to it any false date, attestation, seal, or other thing that is material, or making any material alteration in it either by erasure, obliteration, removal, or otherwise.

(6.) Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be valid in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine.

168. Every one who procures the execution of any document by any person by falsely pretending that the contents thereof are different from what they really are is guilty of forging that document, and is liable accordingly.

169. Every one is liable to seven years' imprisonment who makes or begins to make counterfeit coin of His Majesty or of any foreign prince or State, or who has in his possession any dies or other instruments or materials intended to be used in the making of such counterfeit coin.

170. Every one is liable to two years' imprisonment who diminishes or lightens any coin, whether of His Majesty or of any foreign prince or State, with intent that when so dealt with it shall pass as current coin either in His Majesty's dominions or elsewhere.

171. Every one who fraudulently utters any counterfeit coin is liable to six months' imprisonment.

172. (1.) Arson is the offence of wilfully, and without lawful justification, and without *bona fide* claim of right, setting fire to any building, ship, crop, chattel, or other thing whatsoever, whether attached to the soil or not.

(2.) Where the person accused has an interest in the thing to which he so sets fire, the existence of such interest, if partial, shall not prevent his act from amounting to the offence of arson; and, if total, shall not prevent his act from amounting to such offence if done with intent to defraud.

(3.) Every one who commits the offence of arson shall be liable to five years' imprisonment.

173. (1.) Every one is guilty of an offence who wilfully and without lawful justification and without *bona fide* claim of right destroys or damages any property whether movable or immovable,

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Forgery.

Extended definition of forgery.

Making counterfeit coin.

Lightening coin.

Uttering counterfeit coin.

Arson.

Wilful mischief to property.

(2.) Where the person accused has an interest in the property so damaged or destroyed the existence of such interest, if partial, shall not prevent his act from amounting to an offence under this clause; and, if total, shall not prevent his act from amounting to such offence, if done with intent to defraud.

(3.) Every person who commits an offence against this clause shall be liable to three years' imprisonment if the damage done or intended to be done by him amounts to ten pounds or more, and shall in other cases be liable to six months' imprisonment.

Provoking breach of the peace.

174. Every one is liable to a fine of five pounds who uses any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.

Disorderly conduct in public places.

175. Every one is liable to a fine of five pounds who is guilty of any disorderly conduct in any public place to the annoyance of persons there present.

Furious driving.

176. Every one is liable to a fine of five pounds who furiously or negligently rides or drives any animal or vehicle in a public place.

Cattle trespass.

177. Every one is liable to a fine of five pounds who permits any horse, sheep, pig, goat, or cattle to wander or be at large in any public place or to trespass upon any land.

Obstructing public place.

178. Every one is liable to a fine of five pounds who without lawful justification obstructs any public place, or creates any source of danger therein, or otherwise commits any public nuisance therein.

Drunkenness.

179. Every one is liable to imprisonment for one month or to a fine of ten pounds who is found drunk in any public place.

Prostitution.

180. Any common prostitute who loiters and importunes passengers or other persons in any public place for the purpose of prostitution is liable to imprisonment for one month or to a fine of five pounds.

Laying poison.

181. Every one is liable to a fine of five pounds who without lawful justification places any poison in any place so as to be a source of danger to human beings or to animals.

Polluting water.

182. Every one is liable to imprisonment for six months or to a fine of fifty pounds who throws any offensive matter into or otherwise pollutes any river, watercourse, well, cistern, or other place whence the supply of water for the use of the inhabitants is obtained.

Sale of unwholesome provisions.

183. Every one is liable to imprisonment for one month or to a fine of twenty pounds who sells, or exposes for sale, or has in his possession with intent to sell, any food or drink which he knows or might by the exercise of reasonable care have known to be unwholesome.

Insanitary premises.

184. Every one is liable to a fine of ten pounds who permits any premises in his occupation or belonging to him to be in an insanitary or offensive condition to the danger or annoyance of the public or of his neighbours.

Wilful trespass.

185. Every one is liable to a fine of five pounds who wilfully trespasses on land in the occupation of any other person.

Cruelty to animals.

186. (1.) Every one is liable to imprisonment for one month or to a fine of ten pounds who cruelly beats, overdrives, overloads, abuses, tortures, or otherwise ill-treats any animal, or who, being the owner or having the charge of any animal, omits to supply it with proper and sufficient food, water, or shelter.

(2.) In this clause the term "animal" means any beast or bird of any species whatever.

Falsely trading as an incorporated company.

187. Every one is liable to a fine of one hundred pounds who uses in connection with his trade or business any name, design, device, or other representation indicating or calculated to lead other persons to believe contrary to the fact that such trade or business is that of an incorporated company, and in any prosecution for an offence against this clause the burden of proving that such incorporated company exists and that the trade or business so carried on is the trade or business of that company shall be upon the accused.

Conspiracy.

188. Every one who conspires with any other person to commit any offence punishable by imprisonment is liable to imprisonment for one-half of the longest term to which a person committing the said

189. (1.) Every person who attempts to commit any offence is liable to imprisonment for one-half of the term to which a person committing the offence may be sentenced.

Attempts.

(2.) Every person who attempts to commit any offence punishable by fine shall be liable to a fine of one-half of the maximum fine appointed for that offence.

190. (1.) Every person who incites any person, whether ascertained or unascertained, to commit any offence punishable by imprisonment shall be liable to imprisonment for one-half of the longest term to which a person committing the said offence may be sentenced.

Inciting.

(2.) If the offence to which any person is so incited is actually committed by him, the person so inciting him shall be liable, on a charge of inciting, to the same punishment as if he had himself committed the offence, or he may be charged and convicted as a party to the offence so procured by him.

191. Every one is a party to and guilty of an offence who—

Parties to offences.

(a.) Actually commits the offence; or

(b.) Does or omits any act for the purpose of aiding any person to commit the offence; or

(c.) Counsels or procures any person to commit the offence.

192. If several persons form a common intention to prosecute any unlawful purpose and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was or ought to have been known to be a probable consequence of the prosecution of such common purpose.

Common criminal purpose.

193. (1.) Every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was counselled.

Counselling or procuring.

(2.) Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring.

194. All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force with respect to all offences constituted by this or any other enactment, except so far as inconsistent with this or any other enactment.

Common law defences.

195. No person shall be proceeded against for any offence at common law.

Common law offences.

196. (1.) When any person is condemned to death the sentence shall be that such person shall be taken to the place of execution, and there hanged by the neck until he is dead.

Sentence of death.

(2.) No sentence of death shall be carried into execution until the Governor-General has issued his warrant in that behalf, or otherwise than in accordance with the terms of that warrant and under the direction of the officer to whom it is addressed.

197. Except where otherwise expressly provided, every one liable to imprisonment for any term for any offence may be sentenced to imprisonment for any shorter term, or may be sentenced to pay a fine not exceeding one hundred pounds in addition to or instead of imprisonment, and every one liable to a fine of any amount may be sentenced to pay a fine of any less amount.

Maximum fines and terms of imprisonment.

198. (1.) Every fine imposed upon any person by the High Court shall constitute a judgment debt due by that person to the Crown, and payment thereof shall be enforceable and recoverable accordingly by civil process of execution in the same manner in all respects as if such debt had been recovered in civil proceedings at the suit of the Crown.

Enforcement of fines.

(2.) Any person upon whom any such fine has been imposed may, by warrant under the seal of the High Court, be committed to prison by a Judge or Commissioner of that Court for a period not exceeding six months, but shall be entitled to be discharged from such imprisonment on payment of the fine.

(3.) When any person has been so committed to prison no proceedings or further proceedings shall thereafter be taken for the enforcement of the fine by way of civil process under this clause.

Imprisonment in Samoa.

199. Save so far as herein otherwise provided, every sentence of imprisonment and every committal to prison shall be carried into effect in some prison in Samoa.

Imprisonment and hard labour.

200. (1.) Every person sentenced to imprisonment or committed to prison shall be subject to imprisonment with hard labour unless the contrary is expressed in the sentence, order, or warrant.

(2.) Hard labour means such labour, within or without the limits of the prison, as may be approved by the Administrator.

Transfer of prisoners to New Zealand.

201. (1.) Every person sentenced to imprisonment, or committed to prison, for six months or more may, by warrant under the hand of the Administrator and the Seal of Samoa, be transferred to some prison in New Zealand named or described in the warrant.

(2.) In pursuance of such warrant the prisoner shall thereupon be taken in custody from Samoa to New Zealand by any ship belonging to His Majesty or by any British ship and there forthwith delivered to the Gaoler of the prison named or described in the warrant.

(3.) The warrant shall be delivered to the said Gaoler together with a certificate under the hand of a Judge of the High Court and the seal of that Court setting forth the fact of the conviction or commitment of the prisoner, the offence of which he was convicted or the reason of his commitment, and the term for which he has been so sentenced or committed.

(4.) The period during which the prisoner has been in custody since he left Samoa until his delivery to the Gaoler in New Zealand shall for all purposes be computed as part of the term of his imprisonment.

(5.) Every prisoner so brought to New Zealand shall be imprisoned in New Zealand in the same manner in all respects and shall be subject in all respects to the same laws, so far as applicable, as if he had been sentenced by the Supreme Court of New Zealand to imprisonment with hard labour for the like offence, or committed to prison by that Court on the like grounds, for the residue of the term of his sentence or commitment commencing on the day of his delivery to the Gaoler of a prison in New Zealand under the aforesaid warrant.

(6.) Every such prisoner may, so soon as he is entitled to his discharge or so soon thereafter as may be, unless he is under sentence of exile therefrom, be deported to Samoa in pursuance of a warrant signed by the Minister of Justice, and in the meantime may be detained in custody in some prison in New Zealand appointed by such warrant.

Exile.

202. (1.) When any person other than a Samoan born in Samoa is convicted by the High Court of any offence for which he is liable to one year's imprisonment or upwards he may, in addition to imprisonment, be sentenced to exile from Samoa for any term not exceeding fifteen years from the date on which sentence is pronounced.

(2.) If any person so sentenced to exile is at any time later than two months after the expiry of the term of his imprisonment, and before the expiry of the term of his exile, found in Samoa he shall be guilty of an offence, and shall be liable to imprisonment for ten years.

Cumulative sentences.

203. (1.) When an offender is sentenced for more offences than one at the same time, or if, when sentenced for one offence, he has already been sentenced for any other offence and has not yet completed the sentence so imposed upon him, the High Court may direct that the sentences passed on him for his several offences shall take effect one after the other or concurrently.

(2.) Save as provided by this clause, every sentence of imprisonment shall commence to take effect on the day on which the sentence is pronounced.

PART VI.

CRIMINAL PROCEDURE.

Jurisdiction of High Court.

204. Except where otherwise provided by Ordinance or regulation in respect of offences created thereby, all offences against the laws of Samoa may be tried in the High Court in accordance with this Part of this Order.

205. There shall be no distinction between felonies and misdemeanours or between offences punishable on indictment and by way of summary conviction; and, so far as may be necessary for the purpose of any rule of the common law or of any enactment in force in Samoa, all offences shall be deemed to be misdemeanours.

Felonies and misdemeanours.

206. Every prosecution in the High Court for an offence shall be commenced by an information in writing filed in the Court by a constable or other prosecutor with the leave of a Judge, Commissioner, Registrar, or Deputy Registrar of the Court.

Information.

207. (1.) On the commencement of any such prosecution a Judge, Commissioner, Registrar, or Deputy Registrar of the High Court may at any time, and from time to time, if and as he thinks fit, issue either a warrant for the arrest of the accused or a summons requiring him to appear before the High Court at a time and place specified in the summons, there to answer the charge made against him in the information.

Warrant or summons.

(2.) Any such warrant may be at any time issued, notwithstanding the fact that a summons has been already issued to the accused as aforesaid.

208. When a prosecution has been so commenced and the accused is in custody a Judge, Commissioner, Registrar, or Deputy Registrar of the High Court may at any time, and from time to time pending the trial of the accused, commit him to prison to await his trial, or admit him to bail, with or without sureties, on a recognizance conditioned to appear before the High Court for trial.

Committed for trial or admission to bail where accused in custody.

209. When any person is prosecuted for an offence punishable by fine only, and has been duly summoned to appear before the High Court, and fails to appear in obedience to the summons, the Court may try and sentence him for that offence in his absence.

Trial of accused in his absence.

210. (1.) A constable may arrest without warrant any person whom on reasonable grounds he suspects of having committed any of the following offences: murder, manslaughter, theft, robbery, rape, arson, wilful bodily harm, wilful mischief to property, riot, forcible entry, escape from lawful custody, indecent behaviour, assault, fighting or drunkenness in a public place, burglary, or an attempt to commit any such offence.

Arrest without warrant.

(2.) Every person so arrested without warrant shall be forthwith brought before a Judge, Commissioner, Registrar, or Deputy Registrar of the High Court.

(3.) If the Judge, Commissioner, Registrar, or Deputy Registrar refuses leave to file an information against the prisoner for the offence for which he has been so arrested, or if a prosecution for that offence is not commenced within a reasonable time, the Judge, Commissioner, Registrar, or Deputy Registrar shall discharge the prisoner from custody; but no such discharge shall operate as an acquittal so as to preclude a subsequent prosecution of the prisoner for the offence for which he was so arrested.

Assessors.

211. On a criminal trial the High Court shall sit either with or without assessors in accordance with the provisions hereinafter contained.

Constitution of Court on criminal trials.

212. On the trial of any person for an offence punishable by death or by imprisonment for more than five years the Court shall sit with assessors.

Court with assessors.

213. On the trial of any person on an information charging him exclusively with an offence or offences punishable only by fine the Court shall sit without assessors.

Court without assessors.

214. (1.) In all other criminal trials the Court shall sit without assessors, unless the Court in its discretion orders otherwise either of its own motion or on the application of either the prosecutor or the accused.

Discretion of Court as to assessors.

(2.) If the Court sits without assessors, it shall have no power to impose any term of imprisonment exceeding twelve months, whatever may be the maximum term of imprisonment otherwise provided by law for the offence.

Number and qualifications of assessors.

(3.) Any such order may be made at any time after the commencement of the prosecution, and whether before or during the trial; but, if made after any evidence has been heard at the trial, all such evidence shall, except so far as repeated before the Court and assessors, be of no force or effect.

215. (1.) The assessors shall in all cases be four in number, and shall be such fit and proper persons (whether men or women) as the Court thinks fit to appoint, and the consent of the assessor shall not be requisite for his appointment.

(2.) No person shall be appointed as an assessor unless he has first been nominated by the Administrator by warrant published in the *Western Samoa Gazette* as a person qualified for appointment as an assessor under this Order, either generally or in respect of any particular case or class of cases; and the Administrator may accordingly from time to time nominate in this behalf such and so many persons as he thinks qualified by reason of their character, education, ability, or reputation to hold such office, and may at any time in like manner revoke any such nomination.

Default of assessor.

216. If any person so appointed as an assessor, and having had reasonable notice of the time and place of the trial, fails without reasonable excuse duly to attend at the trial or at any adjournment thereof, or duly to make oath as such, or duly to act as assessor throughout the trial, he shall be guilty of contempt of the High Court and shall be punishable accordingly.

Remuneration of assessors.

217. Every assessor shall be entitled to receive from the Samoan Treasury such remuneration or allowances in respect of his services as may be authorized by the Court at the trial in conformity with any rules of Court which may be made in that behalf.

Oath of assessor.

218. Before an assessor commences to act as such he shall in open Court and in the presence of the accused make oath to act well and truly as assessor and to decide in accordance with the evidence and with law.

Change of assessor.

219. At any time after the appointment of an assessor and before he has been sworn as aforesaid the Court may, either of its own motion or on the application of the prosecutor or the accused, if satisfied there is any reasonable and sufficient objection to that assessor, remove him and appoint another assessor in his place.

Discharge of assessor and new trial.

220. If at any time after the commencement of the trial and before judgment the Court is of opinion that, owing to the misbehaviour of any assessor, or to the death, illness, or absence of any assessor, or to any accident or misadventure, or to any other sufficient cause, a new trial is necessary in the interests of justice, the Court may discharge the assessors and order a new trial accordingly.

Concurrence of assessors.

221. On a trial with assessors no person shall be convicted of any offence unless the conviction is concurred in by not less than three of the assessors.

Concurrence of Court.

222. If the Court is of opinion that the accused should not be convicted, or if less than three of the assessors concur in his conviction, the accused shall be acquitted.

Sentence.

223. The concurrence of assessors in the sentence to be passed by the Court shall not be necessary.

Concurrence of assessors not necessary except for conviction.

224. The concurrence of the assessors shall not be necessary for any act of the Court other than conviction, and in all other respects the jurisdiction of the Court shall be exercised in the same manner as if it was sitting without assessors.

Miscellaneous.

Alternative and cumulative charges.

225. (1.) Subject to the provisions of this clause, in any prosecution in the High Court the information of the prosecutor may relate to two or more distinct offences whether alternative or cumulative.

(2.) No information for the offence of murder shall charge any other offence except manslaughter.

(3.) No information for the offence of rape shall charge any other offence except indecent assault and an attempt to commit rape.

Relation between information and conviction.

226. On an information for any offence the accused may be convicted either of the offence charged in the information or of any offence which is included within the offence so charged and which might lawfully have been charged in the same information.

227. (1.) An information in the High Court for any offence may at any time, whether before or during the trial, be withdrawn by the prosecutor with the leave of the Court, but not otherwise. Withdrawal of information.

(2.) An information so laid and withdrawn shall not operate as a bar to any further proceedings against the accused in respect of the same offence.

228. (1.) On the conviction of any person of an offence before the High Court, a minute or memorandum of the conviction shall thereupon be drawn up and preserved as a record of the Court, and a formal conviction under the seal of the Court may be drawn up at any time afterwards when it becomes necessary. Drawing up of conviction.

(2.) In the meantime the conviction and sentence may be carried into execution, and shall have the same force and effect in every respect as if the conviction had been formally drawn up under the seal of the Court.

229. (1.) No objection shall be taken or allowed to any information, summons, or warrant in any criminal proceeding before the High Court for any alleged defect therein in substance or in form, or for any variance between such information, summons, or warrant and the evidence adduced at the trial. Defects of information, summons, or warrant.

(2.) The Court may at any stage of the trial amend the information in such manner as it thinks fit in respect of any such defect or variance.

230. Any witness at a criminal trial may, if the Court thinks fit and certifies accordingly, be paid out of the Samoan Treasury such allowance for his expenses and loss of time as is so certified, subject, however, to such rules of Court as may be made in that behalf. Payment of witnesses.

231. (1.) If on any criminal trial the Court thinks that the charge, though proved, is in the particular case of so trifling a nature or was committed under such circumstances that no punishment should be imposed, the Court may convict the accused and discharge him without sentence, either unconditionally or on such conditions as the Court thinks fit to impose. Conviction without sentence.

(2.) If any person who is so convicted and discharged on conditions commits any breach of those conditions, he shall be guilty of an offence punishable in the same manner as the offence of which he was so previously convicted.

232. (1.) When any person is released on bail under this Order he shall, with or without sureties as may be required, enter into a recognizance to His Majesty in such sum as may be required conditioned in such manner as may be appropriate to the particular case and as may be required. Bail.

(2.) Every such recognizance may be put in suit in the High Court in the ordinary course of the civil jurisdiction of that Court in proceedings at the suit of His Majesty.

233. In any criminal prosecution in the High Court the Attorney-General for New Zealand may direct a stay of proceedings, and the proceedings shall be stayed accordingly. Stay of proceedings by Attorney-General.

234. (1.) Any Judge or Commissioner of the High Court who is satisfied on the oath of any person that there is reasonable ground for believing that there is in any building, ship, receptacle, or place— Search warrants.

- (a.) Anything which there is reasonable ground to believe will afford evidence as to the commission of any offence; or
- (b.) Anything in respect of which any offence has been or is suspected of having been committed; or
- (c.) Anything which there is reasonable ground for believing to be intended to be used for the purpose of committing any offence—

may by warrant under his hand, authorize some constable or other officer of the Samoan Public Service to search such building, ship, receptacle, or place for any such thing, and to seize and bring it before the person by whom such warrant has been issued.

(2.) Every such warrant shall be executed by day (that is to say, after sunrise and before sunset), unless the warrant expressly authorizes the execution thereof by night.

(3.) Every such warrant may be executed by reasonable force if necessary.

(4.) When any such thing is seized and brought before the person by whom the warrant was issued, such person may either order it to be detained for the purpose of evidence on the trial of any person for any such offence as aforesaid or may direct it to be delivered to any person believed by the person so issuing the warrant to be entitled thereto.

(5.) No such order of delivery shall in any manner affect the right of any person to the ownership or possession of the thing.

(6.) Any thing so ordered to be detained as evidence of an offence may be detained in pursuance of the order for such time as is reasonably necessary for the purpose of any proceedings instituted or to be instituted in respect of the offence.

Pardon, and remission of sentence.

235. (1.) When any person has been convicted of an offence by the High Court, the Governor-General by warrant signed by him may pardon the offender, or may remit any portion of a sentence of imprisonment or exile passed upon the offender or any portion of a fine imposed upon him, or may commute a sentence of death to one of imprisonment.

(2.) In the case of an offender sentenced to imprisonment for a term not exceeding six months, or to pay a fine not exceeding fifty pounds, the Administrator may exercise the like powers of pardon or remission.

(3.) Any such pardon or remission may be made subject to such conditions as the Governor-General or the Administrator, as the case may be, thinks fit.

(4.) The Governor-General may in like manner pardon any offender who has given evidence which leads to the conviction of an accomplice.

PART VII.

LAW OF EVIDENCE.

Definitions.

236. In this Part of this Order, except where a contrary intention appears,—

“Court” includes any person acting in any judicial capacity or having by law or by consent of parties authority to hear, receive, and examine evidence:

“Proceeding” includes any action, trial, inquiry, cause, or matter, whether civil or criminal, depending or to be inquired of or determined in or by any Court.

Discretionary power of admitting evidence.

237. Subject to the provisions of this Order, a Court may in any proceeding admit and receive such evidence as it thinks fit, and accept and act on such evidence as it thinks sufficient, whether such evidence is or is not admissible or sufficient at common law.

Discretionary power of rejecting evidence.

238. A Court may in any proceeding refuse to receive any evidence, whether admissible or not at common law, which it considers irrelevant, or needless, or unsatisfactory as being hearsay or other secondary evidence.

All witnesses competent.

239. No witness in any proceeding shall be deemed incompetent by reason of interest or on any other ground whatever.

Evidence of parties and their husbands and wives.

240. In any civil proceeding the parties thereto, and the persons on whose behalf such proceeding is brought or defended, and the husbands and wives of such parties or persons respectively, shall be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding.

Evidence of accused persons and their husbands and wives.

241. (1.) Every person charged with an offence shall be a competent but (except where the contrary is expressly provided by any Act) not a compellable witness upon his trial for that offence.

(2.) The wife or husband of any person charged with an offence shall be a competent witness on the trial of that person, but shall not be a compellable witness, except in the following cases:—

(a.) When called as a witness by the accused:

(b.) When the offence of which the accused is charged is an offence against the wife or husband of the accused or against a child of the accused.

(3.) If any witness who under this clause is competent but not compellable gives evidence on any such trial, he shall be liable to cross-examination in the same manner as if he was a compellable witness whether the matter on which he is so cross-examined arises out of his examination in chief or not.

242. In any proceeding the Court may limit in any manner and to any extent which it thinks fit the cross-examination of any witness as to credit, and shall refuse to permit any such cross-examination which is needlessly offensive or injurious to the witness, having regard to the nature or gravity of the imputations made against him, to the importance of his evidence, and to the effect of such imputation upon his credibility. Cross-examination as to credit.

243. Nothing in this Part of this Order shall take away or affect the privilege of any witness to refuse to answer any question which may tend to criminate him. Criminating questions.

244. (1.) On application made in that behalf by any person who states on oath that any prisoner can give material evidence in any proceeding in any Court, a Judge of the High Court may, by order under his hand, require such prisoner to be brought up for examination as a witness in that proceeding. Evidence of prisoners.

(2.) In every such case the Judge may, before making such order, require the applicant to deposit a sum sufficient to pay the expense of bringing up the prisoner, maintaining him while out of prison, and returning him thither, including the expense of his custody in the meantime.

245. In every proceeding the Court shall take judicial notice of all Acts, Ordinances, Orders in Council, regulations, Proclamations, and laws in force in Samoa. Judicial notice.

246. In every proceeding the Court shall take judicial notice of the Seal of Samoa and of the seal of any Court, officer, or other person authorized or required by law to use any such seal, and of the signature of any Judge or other officer, whether judicial or not, of the Samoan Public Service, and of the Public Seal of New Zealand, and of the signature of the Governor-General or of any member of the Executive Council of New Zealand, or of the Attorney-General or Solicitor-General for New Zealand, and of the signature of any Judge of the Supreme Court of New Zealand, and of the seal of that Court or of any Registrar thereof. Judicial notice.

247. All Courts are hereby empowered to administer an oath to all such witnesses as are lawfully called or voluntarily come before them, or to take the affirmation of any such witness in lieu of such oath. Power to administer oaths or to take affirmations.

248. Every oath, whether in a judicial proceeding or not, may be made in such form as the person making the same consents to, whether expressly or impliedly. Form of oath.

249. Except when the person making the oath so consents to any other form of oath, an oath shall, whether in a judicial or other proceeding, be made in one of the two forms following:— Form of oath.

(a.) The person making the oath may, while holding in his hand a copy of the Bible, New Testament, or Old Testament, repeat the words of the oath as prescribed or allowed by law; or

(b.) The officer administering the oath may repeat the appropriate form of adjuration commencing with the words "Do you swear by Almighty God," or words to the like effect, and concluding with the words of the oath as prescribed or allowed by law, and the person making the oath shall thereupon, while holding in his hand a copy of the Bible, Old Testament, or New Testament, indicate his assent to the oath so administered by uttering the words "I do." or other words to the like effect.

250. Where an oath has been duly made the fact that the person making the same had at the time of making the same no religious belief shall not for any purpose affect the validity of the oath. Absence of religious belief.

Affirmation in lieu
of oath.

251. (1.) Every person shall be entitled as of right to make his solemn affirmation instead of an oath in cases in which an oath is required or allowed by law, and such affirmation shall be of the same force and effect as an oath.

(2.) Every such affirmation shall commence with the words "I do solemnly, sincerely, and truly declare and affirm," or words to the like effect, omitting any words of imprecation or calling to witness.

Evidence of
children without
oath.

252. In any proceeding all witnesses who are or appear to be under the age of twelve years may be examined without oath, but any such witness shall in such case be required before being examined to make the following declaration: "I promise to speak the truth, the whole truth, and nothing but the truth," or a declaration to the like effect; and such declaration shall be of the same force and effect as if the witness had taken an oath.

Necessity of oath.

253. Subject to the provisions of this Order, all witnesses in any judicial proceeding, civil or criminal, shall be examined on oath.

PART VIII.

CROWN SUITS.

Prosecution of
claims against
His Majesty.

254. (1.) All claims or demands against His Majesty in respect of the Government of Samoa which might be the subject of a petition of right at common law may be prosecuted by way of petition under the Crown Suits Act, 1908, in the Supreme Court of New Zealand (or in conformity with section thirty-six of the Crown Suits Act, 1908, in an inferior Court), and all the provisions of that Act with respect to such a petition shall apply accordingly.

(2.) The High Court of Western Samoa shall be deemed to be an inferior Court within the meaning of section thirty-six of the Crown Suits Act, 1908.

(3.) The Attorney-General may, at any time before or after the filing of any such petition, but before pleading thereto, require the petition to be filed in the High Court instead of in the Supreme Court, and the petition shall be so filed accordingly.

(4.) All moneys recovered against His Majesty on any such petition shall be payable out of the Samoan Treasury.

Authority of
Attorney-General
and Solicitor-
General.

255. (1.) The authority of the Attorney-General and Solicitor-General for New Zealand as the Law Officers of the Crown shall extend to Samoa in the same manner as to New Zealand.

(2.) Any power, duty, authority, or function imposed upon or vested in the Attorney-General by virtue of his office in respect of Samoa shall and may be exercised and performed either by the person holding the office of Attorney-General or by the person holding the office of Solicitor-General.

Prosecution of
claims by His
Majesty.

256. (1.) Except where otherwise expressly provided, all debts, damages, duties, sums of money, land, or goods due, payable, or belonging to His Majesty in right of the Government of Samoa shall be sued for and recovered either in New Zealand or in Samoa in accordance with the provisions of the Crown Suits Act, 1908, and all the provisions of that Act shall, so far as applicable, apply accordingly.

(2.) All jurisdiction conferred by that Act upon the Supreme Court in respect of any such proceeding may be exercised in Samoa by the High Court.

Warrant to sue in
name and on
behalf of His
Majesty.

257. (1.) When His Majesty has any claim or demand against any person, whether for debt, damages, or otherwise howsoever, in right of the Government of Samoa the Administrator may, under the Seal of Samoa, appoint any person to prosecute such claim or demand in the High Court in the name and on behalf of His Majesty, and the person so appointed may sue and take all necessary proceedings in the High Court accordingly.

(2.) Nothing in this clause shall preclude any other mode of suit that would otherwise be available in respect of the claims or demands of His Majesty.

PART IX.

LAND.

258. (1.) All land in Samoa is Crown land, or European land, or Native land. Classification of land in Samoa.

(2.) "Crown land" means land vested in the Crown free from Native title and from any estate in fee-simple.

(3.) "European land" means land held from the Crown for an estate in fee-simple.

(4.) "Native land" means land vested in the Crown but held by Samoans by Native title, and not by grant from the Crown.

(5.) "Native title" means title to land in accordance with the customs and usages of the Samoan race.

Crown Land.

259. (1.) The Governor-General may grant Crown land in Samoa in fee-simple, or may grant or authorize the Administrator to grant in respect of such land any lease, license, easement, or other limited estate, right, or interest, or may accept or authorize the Administrator to accept a surrender of any estate, right, or interest in such land. Grant of Crown land.

(2.) Every such grant in fee-simple shall be under the public seal of New Zealand, and every other grant shall be made under the hand of the Governor-General or the Administrator.

260. Any Crown land in Samoa may, by Order in Council, be set aside as a reserve for any public purpose, and shall, while such Order remains in force, be reserved and used for that purpose accordingly. Reserve of Crown land for public purposes.

261. (1.) Any European or Native land in Samoa may by Ordinance be taken for any public purpose specified in the Ordinance, and it shall thereupon become absolutely vested in His Majesty as from the coming into operation of that Ordinance, or from any later date specified therein in that behalf, free from all estates, rights, and interests of any other person therein save so far as any such estates, rights, or interests are expressly saved by such Ordinance. Taking of lands for public purposes.

(2.) When any land has been so taken for a public purpose all persons having in respect of that land any right, title, estate, or interest which is extinguished or divested by the taking of the land shall be entitled to compensation therefor from the Crown.

(3.) Such compensation shall be assessed and awarded by the High Court either on the application of the Administrator or on that of any person claiming such compensation or any share therein.

(4.) The compensation so awarded to any person shall constitute a debt due to him by the Crown, and shall be payable out of the Samoan Treasury.

262. (1.) Any Crown land held under lease or otherwise subject to any right, title, or interest in any other person may, by Order in Council, be resumed for any public purpose specified in the Order, and every such lease, right, title, or interest shall in accordance with the tenor of the Order determine accordingly, save so far as expressly preserved thereby. Resumption of Crown land for public purposes.

(2.) All persons entitled to any lease, right, title, or interest so determined shall be entitled to compensation in the same manner as in the case of land taken for public purposes.

263. The Administrator may, for any public purpose for and in the name of His Majesty, purchase any land in Samoa, or acquire by grant or assignment any lease, easement, or other limited right, title, estate, or interest in any such land. Purchase of land for public purposes.

264. The Administrator may exercise on behalf of His Majesty all rights of suit, entry, re-entry, receipt of rents and profits, use, management, control, and possession vested in His Majesty in respect of Crown land in Samoa. Control of Crown land by Administrator.

265. The term "public purpose" as used in this Order includes public health, education, public recreation, the burial of the dead, water-supply, drainage, lighting, the provision of public buildings, the provision of sites for townships, the provision of wharves, harbours, tramways, and railways, and all lawful purposes and functions of the Government of Samoa. "Public purpose" defined.

Foreshore and tidal
lands and waters.

266. The foreshore—that is to say, all land lying between high- and low-water mark—and all tidal lands and waters within the limits of the Territory are hereby declared to be vested in His Majesty as Crown land free from any right, title, or interest in any other person, and subject only to the public right of fishery and navigation.

European Land.

Ownership in
European land.

267. All land in Samoa which at the commencement of this Order is owned by any person or body corporate (other than land owned by Samoans by Native title) shall on the commencement of this Order be deemed to be held by that person or body corporate for an estate in fee-simple as by grant from the Crown, subject, however, to all encumbrances or other interests less than ownership which are at the commencement of this Order vested in any other person or body corporate, and all such land is hereby declared to be European land accordingly.

Native Land.

Ownership in
Native land.

268. All land in Samoa which at the commencement of this Order is held by Samoans by Native title is hereby vested in the Crown subject to such Native title, and shall continue to be so held under the customs and usages of the Samoan race, and all such land is hereby declared to be Native land accordingly, but shall remain subject to any rights which may have been lawfully acquired in respect thereof before the commencement of this Order otherwise than in accordance with such customs and usages.

Saving of existing
interests in Native
land.

269. Where at the commencement of this Order any Native land is subject to any valid and subsisting leasehold or other interest vested in any person or body corporate otherwise than by way of Native title, such leasehold or other interest shall be deemed to be held by grant from the Crown.

Alienation of land
by Samoans.

270. (1.) Save so far as may be otherwise provided by regulation or Ordinance, it shall not be lawful or competent for a Samoan to make any alienation or disposition of Native land, or of any interest in Native land, whether by way of sale, lease, license, mortgage, or otherwise howsoever, other than an alienation or disposition in favour of the Crown, nor shall Native land or any interest therein be capable of being taken in execution or be assets for the payment of the debts of a Samoan on his decease or insolvency.

(2.) For the purposes of this clause a contract of sale of crops, timber, minerals, or other valuable thing attached to or forming part of any Native land shall be deemed to be a contract for the alienation of an interest in such Native land, unless the thing so sold or agreed to be sold has been severed from the land before the making of the contract.

(3.) For the purposes of this clause all rent and other moneys receivable by a Samoan in respect of his interest in any Native land shall be deemed to be an interest in such Native land.

(4.) The Administrator may, under the seal of Samoa and in the name of His Majesty, grant a lease of any Native land for a period not exceeding forty years, and on such terms as he thinks fit, if he is satisfied that the grant of such a lease is in accordance with the desires and interests of the owners of the land and with the public interest; and he may on the like conditions accept a surrender of any lease so granted by him.

(5.) Every such lease shall operate as if it was a lease of Crown land, but the rents or other revenues derived therefrom shall be received by the Crown in trust for the owners of the land.

(6.) Subject to the foregoing provisions of this clause, the ownership of Native land shall be determined in accordance with the customs and usages of the Samoan race, notwithstanding anything to the contrary in this Order.

Native title not to
avail against the
Crown.

271. Save as to the rights of Samoans to have their claims to Native land investigated and adjudicated upon in any manner which may be provided by regulation or Ordinance in that behalf, the Native title to Native land shall not be available or enforceable as against His Majesty the King by way of proceedings in any Court or in any other manner.

272. A Proclamation by the Governor-General that any land vested in the Crown is free from Native title shall in all Courts and in all proceedings be accepted as conclusive proof of the fact so proclaimed.

Proclamation to be conclusive as to Native title.

273. No Crown grant, Crown lease, or other alienation or disposition of land by the Crown shall in any Court or in any proceedings be questioned or invalidated or in any manner affected by reason of the fact that the Native title to that land has not been duly extinguished.

No alienation of land by the Crown to be invalid by reason of Native title thereto not having been duly extinguished.

PART X.
MARRIAGE.

274. With respect to marriage the prohibited degrees of consanguinity and affinity shall be the same in Samoa as for the time being in New Zealand, and every marriage entered into between persons within those prohibited degrees shall be wholly void.

Prohibited degrees of consanguinity.

275. Every marriage in Samoa shall take place in the presence of a marriage officer as hereinafter defined, and of at least two other witnesses, and otherwise shall be wholly void.

Marriages to take place before marriage officer.

276. The term "marriage officer" means a person licensed as a marriage officer under this Order.

"Marriage officer" defined.

277. (1.) The Administrator may, by warrant under his hand and the seal of Samoa, license as a marriage officer for Western Samoa any minister of religion or other person whom he believes to be a fit and proper person to be so appointed.

Appointment of marriage officers.

(2.) Any such license may be at any time revoked by the Administrator in like manner.

278. If any person solemnizes a marriage or otherwise acts as a marriage officer in Samoa without being licensed as a marriage officer under this Order, he shall be guilty of an offence punishable by imprisonment for three years.

Offence.

279. (1.) A marriage officer shall not solemnize or record any marriage unless notice in writing of the intention of the parties to enter into such marriage has been given to the marriage officer by one of the parties thereto at least two clear days before the day of the marriage.

Notice of marriage.

(2.) On receipt of such notice the marriage officer shall publish the same in such manner as he thinks sufficient to give due publicity to the intended marriage.

(3.) On every such notice there shall be payable by the person giving the same such fee (if any) as may be prescribed by the Administrator, and all such fees shall be payable into the Samoan Treasury.

(4.) No marriage shall be invalidated by any breach of the requirements of this clause.

280. Every marriage shall, subject to the provisions of this Part of this Order, be solemnized in such manner as the marriage officer thinks fit.

Mode of solemnization.

281. Every marriage shall, at the time of the solemnization thereof, be recorded in writing by the marriage officer in the form and with the several particulars prescribed by the Administrator, but no marriage shall be invalidated by any error or defect in such form or in the particulars so required to be recorded.

Record of marriage.

282. The aforesaid record of every marriage shall be signed by the parties thereto, and by two witnesses, and by the marriage officer, all being present at the same time, and when the record has been so signed the marriage shall be deemed to be fully solemnized and shall take effect.

Signature of record.

283. The record of every marriage shall be forthwith delivered by the marriage officer to the Registrar of the High Court, and shall be preserved by the Registrar in the same manner as if it was a record of the High Court.

Transmission of record.

284. A marriage officer shall not solemnize or record any marriage unless the husband is at least eighteen years of age and the wife is at least fourteen years of age, but no marriage shall be invalidated by a breach of the provisions of this clause.

Minimum age of marriage.

285. (1.) A marriage officer shall not solemnize or record the marriage of any man under the age of twenty-one years or of any woman under the age of nineteen years without the consent of one of the parents of such man or woman, if either of those parents is alive and resident in Samoa.

Marriage of minors.

(2.) A Judge of the High Court may in any case, if he thinks fit so to do, grant exemption from the requirements of this clause.

(3.) No marriage shall be invalidated by any breach of the provisions of this clause.

Offence.

286. If a marriage officer commits a breach of the provisions of this Part of this Order, or signs any record of a marriage containing any statement known by him to be false, he shall be guilty of an offence punishable by a fine of fifty pounds.

Offence.

287. Every party or witness to a marriage who signs a record thereof containing any statement known by him or her to be false shall be guilty of an offence punishable by a fine of twenty pounds or by imprisonment for six months.

Offence.

288. Every person who, by any wilful misrepresentation made to a marriage officer, procures or attempts to procure the solemnization by that officer of any marriage shall be guilty of an offence punishable by one year's imprisonment.

Legitimation per subsequent matrimonium.

289. An illegitimate child, whether born before or after the commencement of this Order, shall be legitimated by the subsequent intermarriage after the commencement of this Order of the parents of that child, provided that at the time of the birth of the child there existed no bar to the intermarriage of the parents other than the age of one or both of those parents.

PART XI.

DIVORCE.

Jurisdiction of High Court.

290. The High Court shall have jurisdiction in divorce and other causes and matters matrimonial in accordance with the provisions of this Part of this Order.

Limitation of jurisdiction.

291. No decree shall be made for a divorce *a mensa et thoro*, or for restitution of conjugal rights, nor shall any action be brought for criminal conversation.

Nullity of marriage.

292. The High Court shall in suits for nullity of marriage have and exercise in Samoa the same jurisdiction as is possessed for the time being in New Zealand by the Supreme Court.

Grounds of divorce.

293. Any married person (hereinafter called the petitioner) who at the time of the institution of the suit has been domiciled in Samoa for not less than two years may take proceedings in the High Court for the dissolution of his or her marriage on any of the following grounds:—

- (a.) That the other party to the marriage (hereinafter called the respondent) has since the celebration of the marriage been guilty of adultery;
- (b.) That the respondent has without just cause wilfully deserted the petitioner and without any such cause left the petitioner so deserted during two years or more;
- (c.) That the respondent (being the husband) has been habitually guilty of cruelty towards the petitioner;
- (d.) That the respondent (being the husband) has habitually, and without just cause, during two years or more left the petitioner without adequate means of support;
- (e.) That the respondent has for a continuous period of five years or more been of unsound mind and is not likely to recover from such unsoundness of mind;
- (f.) That the respondent has for a continuous period of two years or more been isolated by lawful authority as a leper;
- (g.) That the respondent has for two years or more been an habitual drunkard;
- (h.) That the respondent has been convicted and sentenced in Samoa or elsewhere to two years' imprisonment or more for any offence of violence against the person of the petitioner or of any child of the petitioner.

294. If the Court is of opinion—

(a.) That the petitioner's own habits or conduct induced or contributed to the wrong complained of so as to disentitle the petitioner to a dissolution of the marriage; or

(b.) That in the case of the adultery of the respondent the petitioner has been in any manner accessory to or has connived at such adultery or has condoned the same,—

the Court shall dismiss the suit; but in all other cases, if the Court is satisfied that the case of the petitioner has been established, the Court shall pronounce a decree dissolving the marriage.

295. A deserted wife who was domiciled in Samoa at the time of desertion shall be deemed for the purposes of the jurisdiction of the High Court in divorce (whatever the ground of divorce may be) to have retained such domicile so long as she is resident in Samoa, notwithstanding that her husband may have acquired a domicile elsewhere.

296. In any suit in the High Court for dissolution of marriage on the ground of adultery the Court may, if it thinks fit, require the petitioner (being the husband) to make the person with whom the respondent is alleged to have committed adultery a co-respondent in the suit.

297. By leave of the High Court any person may intervene in a suit for dissolution of marriage for the purpose of opposing the making of a decree for such dissolution.

298. No covenant or agreement between the parties to a suit for dissolution of marriage shall operate as a bar to the institution or prosecution of such suit.

299. No appeal shall lie to the Supreme Court of New Zealand from any decree of the High Court for the dissolution of a marriage.

300. When a decree for the dissolution of a marriage has been made by the High Court it shall be lawful for the parties to such marriage to marry again as if the former marriage had been dissolved by death.

301. In any suit for the dissolution of marriage the High Court may make such order as it thinks fit for the payment of the costs of the proceedings, or of any part thereof, by or to the petitioner, respondent, co-respondent, or any person intervening in the suit.

302. (1.) When a decree for the dissolution of marriage is made by the High Court, the Court may, if it thinks fit, in and by the decree of dissolution, order the husband to pay towards the future maintenance of his wife (whether petitioner or respondent), so long as she remains unmarried, such sum as the Court thinks reasonable, at such times and in such manner as the Court thinks fit.

(2.) Every such order may be at any time varied or cancelled by the Court.

303. The High Court may in and by any decree for the dissolution of marriage, or at any time and from time to time thereafter, make such order as it thinks fit as to the custody of the children of the marriage.

304. If at any time after a decree of dissolution of marriage has been pronounced at the suit of the wife the husband from whom she has been so divorced—

(a.) Commits any trespass by entering or remaining upon or in any land, house, or building which is in her occupation or in which she dwells or is present; or

(b.) Attempts or threatens to commit any such trespass; or

(c.) Molests her by watching or besetting her dwellinghouse or place of business, employment, or residence, or by following or waylaying her in any road or other public place,—

he shall be guilty of an offence, and shall be liable to a fine of twenty pounds or to imprisonment for three months.

305. (1.) The jurisdiction of the Supreme Court of New Zealand under the Divorce and Matrimonial Causes Act, 1908, shall extend to Samoa in the same manner as if that territory was part of New Zealand, and a domicile in Samoa shall for the purposes of such jurisdiction be deemed to be a domicile in New Zealand accordingly.

Grounds of refusal of divorce.

Domicile of deserted wife.

Co-respondent a party.

Intervention.

Agreement no bar to divorce.

No appeal to Supreme Court.

Remarriage of divorced persons.

Costs.

Order for maintenance of divorced wife.

Order for custody of children.

Molestation of divorced wife by her husband.

Jurisdiction of Supreme Court.

(2.) In the exercise of such jurisdiction the Supreme Court shall, in respect of the grounds of divorce and in respect of all other matters, act in accordance with the laws of New Zealand, and not in accordance with this Order.

PART XII.

PERSONS OF UNSOUND MIND.

Orders of Medical Custody.

Application by Chief Medical Officer to High Court.	306. The Chief Medical Officer may make application to the High Court for an order committing any person to medical custody under this Part of this Order on the ground that he is of unsound mind.
Hearing of application.	307. No such order shall be made except on examination of the person alleged to be of unsound mind, and on the production to the Court of the certificate of a Medical Officer that the person in respect of whom the order is to be made is of unsound mind and that his detention in medical custody is necessary in his own interests or for the safety of other persons.
Order of medical custody.	308. If the Court is satisfied on the examination of the person so alleged to be of unsound mind, and on hearing such further evidence (if any) as the Court thinks necessary, that he is of unsound mind and that his detention in medical custody is necessary in his own interests or for the safety of other persons, the Court may make an order (hereinafter called an order of medical custody) committing such person to medical custody for such period as the Court thinks fit, not exceeding six months.
Renewal of order.	309. Any such order may at any time and from time to time, whether before or after the expiry thereof, be renewed for such further period, not exceeding six months, as the Court on a further application and certificate as aforesaid thinks fit.
Cancellation of order.	310. Any such order may be at any time cancelled by the High Court.
Discharge from custody.	311. Any person so committed to medical custody may be at any time discharged from custody by the Administrator, and the order of medical custody shall thereupon lapse.
Arrest and detention of persons committed to medical custody.	312. Any person against whom an order of medical custody has been so made may thereupon be arrested by any constable or Medical Officer, and shall, while the order remains in force, be detained at such hospitals or other places in Samoa, and in the custody of such Medical Officer, as may from time to time be determined in that behalf by the Chief Medical Officer, either generally or in respect of any particular case or class of cases.
Removal from Samoa to New Zealand.	313. When an order of medical custody has been so made against any person the High Court may, at the same time or at any time thereafter while the order remains in force, issue under the seal of the Court a warrant for the removal of that person from Samoa to New Zealand.
Conditions of removal.	314. No such warrant shall be issued unless the Court is satisfied on the certificate of the Chief Medical Officer and on the examination of the person alleged to be of unsound mind that his removal from Samoa to New Zealand is necessary in his own interests or for the safety of other persons.
Method of removal.	315. On the issue of any such warrant for the removal of any person to New Zealand he may be taken to New Zealand in the custody of any person appointed in that behalf by a Chief Medical Officer in any ship belonging to His Majesty or in any British ship.
Persons so removed to New Zealand to be brought before a Magistrate.	316. On arrival in New Zealand he shall be forthwith brought before a Stipendiary Magistrate, together with the warrant and a certificate of the Chief Medical Officer, authenticated by the seal of the High Court, certifying that the person so committed is of unsound mind, and setting forth such particulars as to the physical and mental condition of that person as the Chief Medical Officer thinks necessary.
Magistrate may make a reception order.	317. The Magistrate may thereupon, without further application or evidence, make in respect of the person so brought before him a reception order under the Mental Defectives Act, 1911, in the same

manner, so far as applicable, as if an application for a reception order had been made in accordance with that Act, and the reception order so made shall be deemed for all purposes to be a reception order made under that Act, and shall have effect accordingly.

318. Any person against whom an application has been made for an order of medical custody may be arrested by any constable or other person under a warrant issued by a Judge or Commissioner of the High Court.

Warrant for arrest of persons of unsound mind.

319. Any person believed on reasonable grounds to be of unsound mind and to be dangerous to himself or others may be arrested without warrant by a constable or any other person, and shall be forthwith brought before a Judge or Commissioner of the High Court, who may from time to time make such order for his custody as is thought fit, pending the making and determination of an application for an order of medical custody.

Arrest of persons of unsound mind without warrant.

Criminal Lunatics.

320. If any person on being charged with an offence before the High Court is found to be of unsound mind so that he cannot understand the nature of the proceedings, he shall not be tried, but the High Court shall order him to be detained in prison or in some other place of security until the pleasure of the Administrator or (in the case of a charge of murder or manslaughter) the pleasure of the Governor-General is known.

Insane persons not to be tried for offences.

321. If any person on his trial for an offence before the High Court is found to have been insane at the time of the commission of the offence, he shall be found not guilty on the ground of insanity, and the Court shall order him to be detained in prison or in some other place of security until the pleasure of the Administrator or (in the case of a charge of murder or manslaughter) the pleasure of the Governor-General is known.

Detention of accused persons acquitted on ground of insanity.

322. (1.) Except in the case of a charge of murder or manslaughter, a person shall not be detained under such an order for a longer period than two months, and may at any time be discharged by the Administrator.

Discharge.

(2.) In the case of a charge of murder or manslaughter any person so detained may be at any time discharged by the Governor-General.

323. (1.) When any person is so detained, whether in the case of a charge of murder or manslaughter or otherwise, the High Court shall have the same jurisdiction to make an order of medical custody and to issue a warrant for removal to New Zealand as in the case of any other person of unsound mind.

Orders of medical custody of criminal lunatics.

(2.) Any order of medical custody so made shall supersede the order for detention during the pleasure of the Administrator or the Governor-General, save that, in the case of a charge of murder or manslaughter, no person shall either in Samoa or New Zealand be discharged from custody except with the consent of the Governor-General or become discharged by operation of law under the Mental Defectives Act, 1911.

324. (1.) No person charged with any offence shall be acquitted on the ground of insanity unless the offence was committed by him while labouring under natural imbecility or disease of the mind to such an extent as to render him incapable of understanding the nature or quality of the act done by him or of knowing that such act was wrong.

Defence of insanity in criminal prosecutions.

(2.) A person labouring under specific delusions but in other respects sane shall not be acquitted on the ground of insanity unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act.

(3.) Every one shall be presumed to be and to have been sane unless the contrary is proved.

PART XIII.

INTOXICATING LIQUOR.

Manufacture of
intoxicating liquor
prohibited.

325. (1.) It shall not be lawful for any person to manufacture any intoxicating liquor in Samoa.

(2.) Any person committing any offence against this clause shall be liable to a fine of one hundred pounds or to imprisonment for three months.

(3.) All intoxicating liquor manufactured in breach of this clause may be seized and destroyed by an officer of Customs or police.

Importation of
intoxicating liquor
prohibited.

326. Save as provided by this Part of this Order, it shall not be lawful to import any intoxicating liquor into Samoa.

Sale of intoxicating
liquor prohibited.

327. (1.) Save so far as provided by this Part of this Order, it shall not be lawful for any person to sell or offer for sale or have in his possession for sale any intoxicating liquor in Samoa.

(2.) Every person who commits an offence against this clause shall be liable to imprisonment for three months or to a fine of fifty pounds.

(3.) For the purposes of this clause a contract of barter, or any other contract under or by virtue of which the property in any intoxicating liquor passes to any other person, shall be deemed to be a contract of sale.

Giving intoxicating
liquor to a Samoan
prohibited.

328. (1.) Except by or with the approval of a Medical Officer for medicinal purposes, it shall not be lawful in Samoa to give or administer any intoxicating liquor to a Samoan, or to permit any such liquor to be consumed by a Samoan.

(2.) Except with the approval of a Medical Officer for medicinal purposes, it shall not be lawful in Samoa for any Samoan to consume intoxicating liquor or to have such liquor in his possession for the purpose of consumption by himself or by any other Samoan.

(3.) Every person who commits an offence against this clause shall be liable to a fine of five pounds when the offender is a Samoan and of fifty pounds in any other case.

(4.) Nothing in this clause shall apply to the use of wine for sacramental purposes in accordance with the practice of the Christian religion.

Administrator may
import liquor for
medical services
or for sale.

329. (1.) The Administrator may, for and on behalf of the Crown, and at the cost of the Samoan Treasury, purchase in New Zealand or elsewhere and import into Samoa such intoxicating liquor as he thinks required from time to time, either for the hospitals and medical services of the Territory or for sale under the provisions hereinafter contained.

(2.) Any liquor so imported may, in accordance with regulations, but not otherwise, be sold for medicinal, sacramental, or industrial purposes.

"Intoxicating
liquor" defined.

330. The term "intoxicating liquor" as used in this Part of this Order means alcohol and any liquor containing alcohol, but, save so far as may be otherwise prescribed by Ordinance or regulation, does not include—

- (a.) Perfumery or medicinal preparations containing spirit;
- (b.) Methylated spirit and other preparations containing spirit but not suitable for human consumption;
- (c.) Fermented or other liquor containing less than three per centum of proof spirit.

PART XIV.

THE PUBLIC TRUSTEE.

Authority, powers,
and functions of
Public Trustee
extended to Samoa.

331. To the extent and in the manner indicated in this Part of this Order the authority, powers, and functions of the Public Trustee as constituted by the Public Trust Office Act, 1908, are hereby extended to Samoa, and to property, whether real or personal, situated therein.

Public Trustee as
executor of a will.

332. The Public Trustee may be appointed and may act as the executor of a will.

333. The High Court may grant to the Public Trustee letters of administration of the estate of an intestate, or letters of administration with the will annexed, in any case in which the Court is of opinion that such an appointment is advisable, and to the exclusion of any person otherwise entitled to such letters of administration.

Grant to Public Trustee of letters of administration.

334. The High Court may in any case in which it thinks such a course advisable remove any person from office as an executor or administrator, and appoint the Public Trustee in his place.

Removal of executor or administrator from office, and appointment of Public Trustee.

335. The High Court may in any case in which it has power to appoint a trustee of any estate or property appoint the Public Trustee as such.

Appointment of Public Trustee as trustee by High Court.

336. Any person settling any property on trust, whether by will or otherwise, or having power to appoint a trustee of any property, may appoint the Public Trustee as the trustee thereof.

Appointment of Public Trustee as trustee by person selling property or having power to appoint trustee.

337. (1.) When any person is in lawful confinement in Samoa or elsewhere as a person of unsound mind the High Court may, on the application of the Public Trustee or of any other person, appoint the Public Trustee as the committee of the estate of the person of unsound mind.

Appointment of Public Trustee as committee of estate of person of unsound mind.

(2.) While any such order remains unrevoked the Public Trustee shall have the same powers, functions, and authority in respect of such estate, so far as situated in Samoa, as if he had been appointed the committee of the estate of such person of unsound mind by the Supreme Court of New Zealand under the Mental Defectives Act, 1911, but subject to the control of the High Court instead of that of the Supreme Court.

338. By regulation or Ordinance there may be conferred upon the Public Trustee such rights, powers, and functions as may be considered necessary with respect to insolvent and other estates.

Regulations or Ordinances as to insolvent and other estates.

339. Subject to the laws of Samoa, all powers and functions conferred upon the Public Trustee by or in pursuance of this Order shall be exercised and fulfilled by him in the same manner, so far as may be, as in the case of the like powers and functions pertaining to him in respect of property in New Zealand.

Powers and functions of Public Trustee.

340. The remuneration of the Public Trustee in respect of his functions under this Order shall be such as may be prescribed by Order in Council.

Remuneration of Public Trustee.

341. There shall be stationed in Samoa an officer of the Samoan Public Service who shall be called the Samoan Deputy Public Trustee, and whose functions shall be to assist the Public Trustee in the exercise by him in Samoa of the functions conferred upon him by or in pursuance of this Order.

Samoan Deputy Public Trustee.

342. Subject to regulations, the Public Trustee may delegate to the Samoan Deputy Public Trustee any of the powers vested in the Public Trustee by or in pursuance of this Order.

Power of delegation.

343. The profit made by the Public Trustee in the exercise of his powers under this Part of this Order shall be estimated by him at the end of each financial year and certified to the Minister of External Affairs, and the amount so certified shall be paid out of the Public Trustee's Account into the Samoan Treasury.

Profit of Public Trustee.

PART XV.

ROADS.

344. In this Order the term "road" means a public right-of-way, or the land which is subject to such a right-of-way, as the context may require.

"Road" defined.

345. All roads existing in Samoa at the commencement of this Order shall continue to exist as if established under this Order.

Existing roads.

346. (1.) The Administrator, if satisfied that any Crown or other land has been continuously used as a public highway as of right for not less than five years before the commencement of this Order, may by warrant under the seal of Samoa proclaim that land as a road in pursuance of the provisions of this clause.

Proclamation of existing roads.

Proclamation of
new roads.

(2.) Every such warrant shall be conclusive that the road so proclaimed was theretofore a public highway, and no compensation shall be payable to any person in respect thereof.

347. (1.) The Administrator may by warrant under the seal of Samoa proclaim any Crown or other land as a road.

(2.) All persons having any interest in such land and suffering loss or damage by reason of the proclamation of a road under this section shall be entitled to compensation for that loss or damage in the same manner as in the case of land taken for public purposes under Part IX of this Order.

Roads to be vested
in the Crown.
Formation,
maintenance, and
repair.

348. All roads in Samoa, whether constituted before or after the commencement of this Order, shall, subject to the public right of way thereon, be vested in the Crown, and may be formed, maintained, and repaired by the Administrator.

Closing of roads.

349. It shall be lawful by Ordinance to close, in whole or in part, any road in Samoa, and to make or authorize such disposition as is thought fit of the land comprised within the area of the road so closed.

Warrant as to
roads to be
gazetted.

350. Every warrant of the Administrator under this Part of this Order shall be published in the *Western Samoa Gazette*, and shall take effect upon such publication or upon any later date specified in that behalf in the warrant.

PART XVI.

THE LAWS OF SAMOA: GENERAL PROVISIONS.

Law of England
as in the year 1840
to be in force in
Samoa.

* 351. (1.) The law of England as existing on the fourteenth day of January in the year eighteen hundred and forty (being the year in which the Colony of New Zealand was established) shall be in force in Samoa, save so far as inconsistent with this Order or with any Ordinance or regulation or inapplicable to the circumstances of the Territory:

Provided that no Act of the Parliament of England or of Great Britain or of the United Kingdom passed before the said fourteenth day of January in the year eighteen hundred and forty shall be in force in Samoa unless and except so far as it is in force in New Zealand at the commencement of this Order.

Jurisdiction of the
High Court.

(2.) For the purposes of this clause all rules of common law or equity relating to the jurisdiction of the superior Courts of common law or of equity in England shall be construed as relating to the jurisdiction of the High Court of Western Samoa.

Common law and
equity to be
administered
concurrently.

352. All Courts in Samoa shall within the limits of their jurisdiction administer common law and equity concurrently, and in all cases in which there is any conflict between common law and equity with reference to the same matter the rules of equity shall prevail.

Statute law of New
Zealand not
applicable to
Samoa.

353. Save so far as otherwise expressly provided, the statute law of New Zealand, whether enacted before or after the commencement of this Order, shall not be in force in Samoa.

Statute of Frauds
and Statute of
Frauds Amendment
Act, 1828, not in
force in Samoa.

354. The Act of the Parliament of England, known as the Statute of Frauds (29 Charles II, chapter 3), and the Act of the Parliament of the United Kingdom, known as the Statute of Frauds Amendment Act, 1828 (9 George IV, chapter 14), shall not be in force in Samoa.

Common-law rules
disqualifying aliens
from acquiring or
holding land not in
force in Samoa.

355. The rules of the common law of England disqualifying aliens from acquiring or holding land shall not be in force in Samoa.

When Act in force
in Samoa amend-
ments and
regulations to be
in force also.

356. When any Act of the Parliament of New Zealand is in force in Samoa every existing or future amendment of that Act, and all existing or future regulations, rules, Orders in Council, and other acts of authority in force under any such Act, shall, so far as applicable, and with all necessary modifications, be or become also in force therein, except where otherwise expressly provided.

Acts in force in
Samoa to be read
subject to this
Order.

* 357. Every Act of the Parliament of New Zealand which by virtue of this Order is in force in Samoa shall, in its application to Samoa, be read subject to the provisions of this Order, and subject also to all modifications necessary for such application.

358. In every enactment in force in Samoa every reference to the trial of offences by way of indictment or by way of summary proceedings shall, in the application of that enactment to Samoa, be construed as a reference to the trial of such offences by the High Court in the ordinary course of its criminal jurisdiction and procedure.

Criminal procedure in Samoa.

359. (1.) The Copyright Act, 1913, shall apply to Samoa in the same manner in all respects as if Samoa was part of New Zealand, and the term "New Zealand" as used in that Act shall, both in New Zealand and in Samoa, be construed as including Samoa accordingly.

Copyright Act, 1913, in force in Samoa.

(2.) The High Court shall have no jurisdiction in civil proceedings under that Act.

360. (1.) The Patents, Designs, and Trade-marks Act, 1911, shall apply to Samoa in the same manner in all respects as if Samoa was part of New Zealand, and the term "New Zealand" as used in that Act shall, both in New Zealand and in Samoa, be construed as including Samoa accordingly.

Patents, Designs, and Trade-marks Act, 1911, in force in Samoa.

(2.) The High Court shall have no jurisdiction in civil proceedings under that Act.

(3.) All patents in force in New Zealand at the commencement of this Order shall extend to and be in force in Samoa in the same manner as in New Zealand.

(4.) All designs and trade-marks registered in New Zealand at the commencement of this Order shall have the same protection in Samoa as in New Zealand.

361. Save so far as may be otherwise provided by regulation or Ordinance, the law of Samoa as to prescription and the limitation of suits and actions shall be the same as that which is in force for the time being in New Zealand.

Prescription and limitation of actions.

362. (1.) Save where otherwise provided by this Order or by any Ordinance, the legal capacity of a married woman, whether contractual, proprietary, testamentary, or of any other kind whatsoever, shall be the same as that of an unmarried woman, and marriage shall not, save in respect of intestate succession, confer on either party thereto any rights to or in respect of the property of the other.

Legal capacity and status of married women.

(2.) Nothing in this clause shall affect the validity or operation of a restraint on anticipation.

363. When in any action for damages the cause of action depends on the negligence of a servant of the defendant, it shall be no defence that the plaintiff was engaged in common employment with that servant.

Employer's liability.

364. (1.) Notwithstanding anything to the contrary in any Act, or in any rule of law or in any lease, it shall not be lawful for any person to distrain for rent.

No distress for rent.

(2.) This clause shall extend and apply to leases granted by the Crown.

365. The calendar in Samoa shall be one day behind the calendar in New Zealand, so that the first day of January in Samoa shall be that day which is coincident for the most part of its duration with the second day of January in New Zealand, and so on from day to day throughout the year, and so that Sunday in Samoa shall be that day which is coincident for the most part of its duration with Monday in New Zealand, and so on from day to day throughout the week.

Calendar of Samoa.

366. (1.) It shall not be lawful for any person, firm, or company to carry on the business of banking in Samoa, except under the authority of an Order in Council and in accordance with the terms and conditions prescribed by that Order.

Banking.

(2.) It shall not be lawful for any bank to issue bank-notes in Samoa.

367. (1.) Save as is otherwise herein or in any Act or regulation expressly provided, the currency, coinage, and legal tender of Samoa shall be the same as that of New Zealand.

Currency.

(2.) The Minister of External Affairs may issue Samoan Treasury notes in such form and of such denominations, not exceeding five pounds and not less than five shillings, as he thinks fit, and such notes shall be legal currency and tender in Samoa and shall be negotiable and transferable by delivery.

(3.) All such notes shall be countersigned by the Secretary of the New Zealand Treasury, or as he directs.

(4.) On presentation of any such notes to the New Zealand Treasury at any time after the expiration of five years from the commencement of this Order the bearer shall be entitled to receive the amount thereof in cash or other legal currency of New Zealand in exchange therefor, and all moneys so paid by the New Zealand Treasury shall be repayable by the Samoan Treasury.

(5.) In respect of all Samoan Treasury notes the Minister of External Affairs shall give to the New Zealand Treasury, at the cost of the Samoan Treasury, security to the satisfaction of the Minister of Finance for the liability so incurred by the New Zealand Treasury, such security to be constituted either by the deposit of cash or by the hypothecation of debentures, inscribed stock, or other securities issued by the Government of New Zealand.

(6.) The total amount of Samoan Treasury notes so issued shall at no time exceed the total amount of security so provided for the time being by the Samoan Treasury.

(7.) All currency notes which have been issued by the Military Administration of Samoa and are outstanding at the commencement of this Order shall be deemed to be Samoan Treasury notes issued under this Order, and the Minister of External Affairs shall forthwith after the commencement of this Order provide due security therefor to the New Zealand Treasury in accordance with the foregoing provisions.

Statutory
declarations.

368. (1.) Any Judge, Commissioner, Registrar, or Deputy Registrar of the High Court, Collector of Customs, Medical Officer, Commissioner of the Supreme Court, or solicitor of the Supreme Court may in Samoa take and receive in any matter the declaration of any person voluntarily making the same before him in the form in the Second Schedule to this Order.

(2.) If any declaration so made is false in any material particular, the person wilfully making such false declaration shall be guilty of an offence punishable by imprisonment for two years.

(3.) Any declaration made in Samoa under and in accordance with this clause shall be deemed to be a statutory declaration within the meaning of that term as used in any enactment in force in Samoa or in New Zealand.

Contracts by
Samoans.

369. The jurisdiction of the High Court or of any other Court in Samoa to enforce any contract made by a Samoan shall be discretionary; and if the Court is of opinion, having regard to the interests of the Samoan, that the contract is oppressive, unreasonable, or improvident, the Court may either refuse to enforce the contract or may enforce it only to such extent or on such terms or with such modifications as the Court thinks fit.

370. No security given by a Samoan over any property shall be enforceable, whether by the exercise of a power of sale or otherwise, without the leave of the High Court.

Securities given by
Samoans.

371. Save so far as may be otherwise provided by regulation or Ordinance, the right of succession to the property, whether real or personal, of a Samoan on his death shall be determined in accordance with Samoan custom, and all other laws in force in Samoa with reference to succession shall be subject to such custom accordingly.

Succession to
property of
Samoans.

372. (1.) Except where other provision is made by law in that behalf, any warrant for the arrest of any person in Samoa may be directed either to any constable or other person by name, or generally to the constables of Samoa.

Warrants of arrest.

(2.) When such warrant is directed to constables generally, any such constable may execute the warrant in like manner as if it was directed specially to him by name.

(3.) Any such warrant may be granted and executed on a Sunday, and either by day or night.

(4.) Every such warrant shall name or otherwise describe the person against whom it is issued.

(5.) It shall not be necessary to make such warrant returnable at any particular time, but it may remain in full force until executed.

373. (1.) Subject to this Order, and subject to any regulation or Ordinance which may make different provisions in that behalf, the Acts specified in the Third Schedule hereto shall, so far as applicable, be in force in Samoa, with such modifications as are expressed in that Schedule.

(2.) In the application of those Acts to Samoa every reference therein to New Zealand shall be read as a reference to Samoa, and every reference to the Supreme Court shall be read as a reference to the High Court, and every reference to a Magistrate or a Justice of the Peace shall be read as a reference to the High Court or to a Judge thereof.

374. The Acts Interpretation Act, 1908, so far as the same is applicable, shall extend to and be in force in Samoa, and shall apply to Orders in Council and to Ordinances in the same manner as to Acts of Parliament.

PART XVII.

TRANSITORY PROVISIONS.

375. So far as the Governor-General in Council has authority in that behalf, and save so far as otherwise expressly provided in this Order, all enactments and laws whatsoever in force in Samoa at the commencement of this Order are, so far as there in force, hereby repealed, and all Courts of Justice and public offices existing in Samoa at the commencement of this Order are hereby abolished.

376. (1.) Notwithstanding the repeal of the former laws of Samoa by this Order, all rights, obligations, and liabilities already existing under those laws at the commencement of this Order shall continue to exist and shall be recognized, exercised, and enforced accordingly, but subject to the provisions of this clause.

(2.) In respect of the recognition, exercise, and enforcement of such rights, obligations, and liabilities as aforesaid, and in respect of all matters wherein any doubt, difficulty, or injustice arises, or may arise by reason of the transition from the legal system hitherto in force in Samoa to the system established by this Order, the High Court and all other Courts in Samoa or in New Zealand are hereby empowered and directed to exercise their jurisdiction in accordance with equity and good conscience and not otherwise.

(3.) All persons who at the commencement of this Order are registered as foreigners under the laws theretofore in force in Samoa shall be deemed to have been registered as Europeans in pursuance of this Order.

(4.) All marriages which at the commencement of this Order are valid under the laws theretofore in force in Samoa shall be deemed to be valid marriages for all purposes hereunder, including that of the legitimation of any child of the parties to any such marriage born before such marriage.

(5.) All proceedings, whether civil or criminal, which are pending in any Court of Justice in Samoa at the commencement of this Order may be continued and completed (save so far as other provision is made in that behalf by this Order or by any Ordinance or regulation) in the High Court in accordance with the ordinary procedure of that Court, so far as may be, and with all necessary modifications; and all judgments, orders, convictions, sentences, and other judicial acts theretofore given, made, or done by the Court so abolished shall remain in full force and effect, and shall (save so far as other provision is made hereby or by any Ordinance or regulation in that behalf) have the same operation as if given, made, or done by the High Court with full authority, and may be executed and enforced accordingly.

(6.) Criminal proceedings in respect of offences committed against the laws of Samoa before the commencement of this Order may be instituted in the High Court in the ordinary course of its criminal jurisdiction and procedure under this Order, and the offenders shall be liable to the punishments appointed by those laws.

Taxes, fees, and assessments to continue until abolished.

Property of German Government to vest in His Majesty.

Continuance of corporate bodies.

Appointments.

Military government to continue until commencement of Order.

Debts, liabilities, and assets of the Military Administration of Samoa.

377. All taxes, fees, duties, and assessments whatsoever (other than duties of Customs and export duties) in force in Samoa at the commencement of this Order shall continue to be in force there until abolished by Ordinance or Order in Council.

378. His Majesty the King is hereby declared to be the successor in title to all the property and proprietary rights whatsoever of the Government of Germany in respect of the Territory of Western Samoa, and all such property and rights are hereby vested in His Majesty accordingly for the public purposes of the Government of that Territory.

379. Save so far as may be otherwise provided by any regulation or Ordinance, all incorporated companies and other bodies corporate existing at the commencement of this Order, and incorporated in Samoa under laws theretofore in force in the Territory, shall continue to exist with the same constitution and organization as at the commencement of this Order.

380. All appointments authorized by this or any other Order may be made at any time after the making of the authorizing Order, but shall not take effect until the commencement thereof.

381. (1.) Until the commencement of this Order the Military Government of Samoa as established and existing during the recent war with Germany shall continue to exist, and such Government shall be deemed to have at all times existed, with full authority of law notwithstanding the termination of the said war, and all the acts of that Government and of the officers thereof, whether during or after the said war, are hereby ratified and confirmed.

(2.) This clause shall take effect on the passing of this Order.

382. (1.) All debts and liabilities incurred by the Crown in respect of the administration of Samoa before the commencement of this Order and outstanding at the date of such commencement, other than debts and liabilities incurred in the maintenance of the New Zealand (Samoan) Expeditionary Force, shall be payable out of the Samoan Treasury.

(2.) All moneys and other property which at the commencement of this Order belong to the Crown in respect of the administration of Samoa, or which thereafter come into the possession of the Crown in respect of such administration prior to the commencement of this Order, other than moneys or property held by the Crown in respect of the New Zealand (Samoan) Expeditionary Force, shall belong to the Crown in right of the Territory of Samoa, and shall be subject to the provisions of this Order accordingly.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

LIMITS OF THE TERRITORY OF WESTERN SAMOA.

The islands of Upolu and Savaii in the South Pacific Ocean, together with all other islands adjacent thereto and lying between the 13th and 14th degrees of south latitude and the 171st and 173rd degrees of longitude west of Greenwich.

SECOND SCHEDULE.

FORM OF DECLARATION.

I, A. B. [Insert place of abode and occupation or description], do solemnly and sincerely declare [insert facts]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of an Order in Council of the Executive Government of New Zealand entitled the Samoa Constitution Order, 1920.

A. B.

Declared at
before me.

, in Western Samoa, this day of, 19

Judge of the High Court of Western Samoa [or Collector of Customs of Western Samoa, or Medical Officer of Western Samoa, or Solicitor of the Supreme Court of New Zealand, or otherwise, as the case may be].

MAY 21.]

THE NEW ZEALAND GAZETTE.

1667

THIRD SCHEDULE

Acts in Force in Samoa.	Modifications.
The Administration Act, 1908. The Arbitration Act, 1908. The Bills of Exchange Act, 1908. The Chattels Transfer Act, 1908	Instruments shall be registered in the office of the Registrar of the High Court.
The Deaths by Accident Compensation Act, 1908. The Marine Insurance Act, 1908. The Mercantile Law Act, 1908. The Partnership Act, 1908. The Property Law Act, 1908. The Sale of Goods Act, 1908	Section 6 of that Act shall not be in force in Samoa, and no contract for the sale of goods shall be unenforceable because of the want of any note or memorandum in writing. Section 24 of the said Act (relating to sales in market overt) shall not be in force in Samoa.
The Trustee Act, 1908. The (Imperial) Wills Amendment Act, 1863 (15 and 16 Victoria, chapter 24).	

F. D. THOMSON,
Clerk of the Executive Council

THE SAMOA CUSTOMS ORDER, 1920.

LIVERPOOL, Governor-General.

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this twentieth day of April, 1920.

Present:

THE RIGHT HONOURABLE W. F. MASSBY, P.C., PRESIDING IN COUNCIL.

HIS Excellency the Governor-General of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council of that Dominion, and in pursuance of the authority to make laws for the peace, order, and good government of the Territory of Western Samoa conferred upon him by the Western Samoa Order in Council, 1920, made by His Majesty on the eleventh day of March, nineteen hundred and twenty, under the Foreign Jurisdiction Act, 1890, and further in pursuance of the authority conferred upon him by the Treaties of Peace Act, 1919, doth hereby order as follows:—

1. This Order may be cited as the Samoa Customs Order, 1920, and shall, subject to the provisions of clause seventeen hereof, come into operation on the same day as the Samoa Constitution Order, 1920.

2. The Customs Act, 1913, shall be in force in Samoa subject to any modifications made by this Order or by any other Order in Council which may be in force in Samoa.

3. In its application to Samoa all references in that Act to New Zealand shall be read as references to Samoa.

4. Collectors and other officers of Customs stationed in Samoa shall as such be officers of the Samoan Public Service, and their appointment and tenure shall be governed by the Samoa Constitution Order, 1920, notwithstanding anything to the contrary in the Customs Act, 1913.