

No. 242.

GOVERNMENT NOTIFICATION.

His Excellency the Governor has been pleased to appoint M. J. ADAMS to be Inspector of Nuisances from the 12th instant.

By Command,

C. MAY,
Acting Colonial Secretary

Colonial Secretary's Office, Hongkong, 13th December, 1878.

No. 243.

GOVERNMENT NOTIFICATION.

The following Order in Council dated Osborne, the 14th day of August, 1878, amending the Order in Council of the 9th March, 1865, relating to Her Majesty's Courts in China and Japan, is published for general information.

By Command,

C. MAY,
Acting Colonial Secretary.

Colonial Secretary's Office, Hongkong, 14th December, 1878.

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT,

The 14th day of August 1878.

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas Her Majesty the Queen has power and jurisdiction over Her Majesty's subjects resident in or resorting to China and Japan:

Now, therefore, Her Majesty, by virtue of the powers in this behalf by the Foreign Jurisdiction Acts, 1843 to 1875, and by the Act of Parliament of the Session of the sixth and seventh years of Her Majesty's reign (chapter 80) "for the better government of Her Majesty's subjects resorting to "China," or otherwise, in her vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:

Preliminary.

- 1.—This Order may be cited as The China and Japan Order in Council, 1878.
- 2.—This Order shall commence and have effect as follows:
 - (a.) As to the making of any warrant or appointment under this Order, immediately from and after the making of this Order.
 - (b.) As to all other matters and provisions comprised and contained in this Order, immediately from and after the expiration of one month after this Order is first exhibited in the public office of Her Majesty's Consul-General for the district of the Consulate of Shanghai; for which purpose Her Majesty's Consul-General or other principal Consular officer for the time being for that district is hereby required forthwith, on receipt by him from Her Majesty's Minister in China of a copy of this Order, with instructions in this behalf, to affix and exhibit this Order conspicuously in that public office, and to keep the same so affixed and exhibited during one month thereafter; of the time of which first exhibition notice shall be published as soon thereafter as practicable in each Consular district in China and in Japan, in such manner as Her Majesty's Ministers there respectively direct; and the time of the expiration of that month shall be deemed the time of the commencement of this Order.
- 3.—(1.) Articles 9 to 22, both inclusive, of the China and Japan Order in Council, 1865, are hereby revoked.
 - (2.) Articles 36 and 37 of that Order are hereby revoked as regards Japan only.
 - (3.) In this Order "the Secretary of State" means one of Her Majesty's Principal Secretaries of State.
 - (4.) Subject to the foregoing provisions, this Order shall be read as one with the China and Japan Order in Council, 1865.
 - (5.) A Copy of this Order shall be kept exhibited conspicuously in each Court and Consulate in China and in Japan.
 - (6.) Printed copies thereof shall be provided, and shall be sold at such reasonable price as Her Majesty's Ministers there respectively direct.

Supreme Court for China and Japan.

4.—(1.) There shall be a Chief Justice and an Assistant Judge of the Supreme Court for China and Japan.

(2.) The Assistant Judge shall be the Registrar of the Supreme Court; and the office of Law Secretary of the Supreme Court is hereby abolished.

(3.) The Assistant Judge shall hear and determine such causes and matters, civil and criminal, and transact such other part of the business of the Supreme Court, as the Chief Justice from time to time by general order, or otherwise, directs; and for that purpose the Assistant Judge shall have all the like jurisdiction, power, and authority as the Chief Justice.

(4.) Any party to a suit or proceeding wherein any matter or question is heard and determined by the Assistant Judge shall be entitled, as of course, to a rehearing before the Chief Justice, sitting with the Assistant Judge, or, in the unavoidable absence of the Assistant Judge, alone.

(5.) If, on any such rehearing, there is a difference of opinion between the Chief Justice and the Assistant Judge, the opinion of the Chief Justice shall prevail.

(6.) Throughout the China and Japan Order in Council, 1865, and the Rules made thereunder, the Chief Justice of the Supreme Court shall, as regards China, be deemed to be therein substituted for the Judge of the Supreme Court.

(7.) There shall be attached to the Supreme Court a Chief Clerk, and so many officers and Clerks as the Secretary of State from time to time thinks fit.

Court for Japan.

5.—(1.) There shall be in and for Japan a Court styled HER BRITANNIC MAJESTY'S COURT FOR JAPAN.

(2.) The Court for Japan shall have a seal, bearing its style and such device as the Secretary of State from time to time directs.

(3.) The Court for Japan shall hold its ordinary sittings at Kanagawa, or, on emergency, at any other place within the district of the Consulate of Kanagawa, but may at any time transfer its ordinary sittings to any place in Japan approved by the Secretary of State or by Her Majesty's Minister in Japan.

(4.) There shall be a Judge and an Assistant Judge of the Court for Japan.

(5.) The Assistant Judge shall hear and determine such causes and matters, civil and criminal, and transact such other part of the business of the Court, as the Judge from time to time by general order, or otherwise, directs; and for that purpose the Assistant Judge shall have all the like jurisdiction, power, and authority as the Judge.

(6.) Any party to a suit or proceeding wherein any matter or question is heard and determined by the Assistant Judge shall be entitled, as of course, to a rehearing before the Judge, sitting with the Assistant Judge, or, in the unavoidable absence of the Assistant Judge, alone.

(7.) If, on any such rehearing, there is a difference of opinion between the Judge and the Assistant Judge, the opinion of the Judge shall prevail.

(8.) In Japan, persons accused of crimes which in England are capital shall be tried by the Judge of the Court for Japan, with a jury, and not otherwise.

(9.) There shall be attached to the Court for Japan a Chief Clerk, and so many officers and Clerks as the Secretary of State from time to time thinks fit.

Jurisdiction in Japan.

6.—(1.) Her Majesty's Consul for the district of the Consulate of Kanagawa shall cease to hold and form a Provincial Court.

(2.) Unless and until the Secretary of State otherwise directs, Her Majesty's Consul for the time being for the district of the Consulate of Kanagawa shall be the Assistant Judge of the Court for Japan.

(3.) All Her Majesty's jurisdiction, civil and criminal, exerciseable in Japan shall, for and within the district of the Consulate of Kanagawa, be vested in the Court of Japan as its ordinary original jurisdiction.

(4.) All Her Majesty's jurisdiction, civil and criminal, exerciseable in Japan beyond the district of the Consulate of Kanagawa, and not under this Order vested in the Court for Japan, shall, to the extent and in the manner provided by the China and Japan Order in Council, 1865, as modified by this Order, be vested in the Provincial Courts in Japan, each for and within its own district.

(5.) The Court for Japan shall have, in all matters, civil and criminal, an extraordinary original jurisdiction throughout Japan, concurrent with the jurisdiction of the several Provincial Courts in Japan, the same to be exercised subject and according to the provisions of the China and Japan Order in Council, 1865, as modified by this Order.

7.—(1.) Subject to the provisions of this Order, the provisions of the China and Japan Order in Council, 1865, and the Rules in force in the Supreme Court and other Courts in China and Japan made under that Order, shall extend and apply to the Court for Japan, as if the same were a Court (not a Provincial Court) established under that Order.

(2.) For the purpose of the application thereof to the Court for Japan, in Articles 23, 24, 38, 39, 41, 42, 43, 47, 54 to 57, 59, 61, 62, 67, 68, 69, 72, 74, 77 to 80, 83, 93, 99, 102, 105, 108 to 111, 117, 119, 120 to 126, 144, 153, 155, all inclusive, of that Order, and throughout those Rules, there shall, as regards Japan, be deemed to be substituted Japan for China or for China and Japan, Kanagawa for Shanghai, the Court for Japan for the Supreme Court for China and Japan, and the Judge and Assistant Judge of the Court for Japan for the Judge and Assistant Judge of the Supreme Court; but not so as to affect those Articles or Rules as regards the operation thereof in and for China.

8.—(1.) Article 119 of the China and Japan Order in Council, 1865, relative to appeals in civil cases to the Supreme Court for China and Japan, shall extend and apply to appeals from decisions of the Court for Japan, as if the same were a Provincial Court within that Article; and that Article, and the Rules therein referred to, shall, accordingly, notwithstanding anything in this Order, apply to appeals from the Court for Japan to the Supreme Court for China and Japan; but the last-mentioned appeals shall not be heard, except by the Chief Justice of the Supreme Court, sitting with the Assistant Judge of that Court, or, in the unavoidable absence of the Assistant Judge, alone.

(2.) If, on any such Appeal, there is a difference of opinion between the Chief Justice and the Assistant Judge, the opinion of the Chief Justice shall prevail.

(3.) Articles 120 to 126, both inclusive, of the China and Japan Order in Council, 1865, relative to appeals to the Supreme Court for China and Japan, in criminal cases, shall extend and apply to appeals to that Court in criminal cases from decisions of the Court for Japan, both in cases originally tried in the Court for Japan and in cases brought by virtue of this Order before that Court, under those Articles, by way of appeal from any Court or Officer in Japan; and, for the purposes of this Article, the Court for Japan shall, in cases so brought before it by way of appeal, be deemed to be the Court trying the case.

Judges in China and Japan.

9.—(1.) The Chief Justice and Assistant Judge of the Supreme Court and the Judge and Assistant Judge of the Court for Japan shall each be appointed by Her Majesty by warrant under Her Royal Sign Manual, subject and according to Article 23 of the China and Japan Order in Council, 1865.

(2.) The Chief Justice and the Judge shall each be a subject of Her Majesty by birth or naturalization, who, at the time of his appointment, is a member of the Bar of England, Scotland, or Ireland, of not less than seven years' standing.

10.—(1.) In case of the death or illness, or the absence or intended absence from the district of the Consulate of Shanghai, of the Chief Justice or of the Assistant Judge of the Supreme Court, Her Majesty's Minister in China may appoint a fit person to be the Acting Chief Justice or to be the Acting Assistant Judge (as the case may require); but, unless in any case the Secretary of State otherwise directs, the Assistant Judge, if present and able to act, shall always be appointed to be the Acting Chief Justice.

(2.) In case of the death or illness, or the absence or intended absence from the district of the Consulate of Kanagawa, of the Judge or of the Assistant Judge of the Court for Japan, Her Majesty's Minister in Japan may appoint a fit person to be the Acting Judge or to be the Acting Assistant Judge (as the case may require).

Vice-Admiralty Jurisdiction.

11. Any proceeding taken in China or Japan against one of Her Majesty's vessels, or the officer commanding the same, as such, in respect of any claim cognisable in a Court of Vice-Admiralty, shall be taken only in the Supreme Court or in the Court for Japan, under the Vice-Admiralty jurisdiction thereof respectively.

Pending Proceedings.

12. Nothing in this Order shall affect any suit or proceeding, civil or criminal, pending at the commencement of this Order, with reference either to the original proceedings therein, or to any appeal therein, or otherwise; save that all suits and proceedings, civil or criminal, instituted or taken in the district of the Consulate of Kanagawa before and pending at the commencement of this Order are hereby transferred to the jurisdiction of the Court for Japan; and the same may be carried on and shall be tried, heard, and determined, in and by the Court for Japan, as nearly as may be, as if the same had been instituted or taken in the district of the Consulate of Kanagawa after the commencement of this Order.

And the Most Honourable the Marquess of Salisbury, and the Right Honourable Sir Michael Edward Hicks-Beach, Baronet, two of Her Majesty's Principal Secretaries of State, and the Lords Commissioners of the Treasury, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein as to them may respectively appertain.

C. L. PEEL.