

1879.

NEW ZEALAND.

CRIMES COMMITTED IN ISLANDS OF THE PACIFIC.

PAPERS RELATING TO THE CHARGE OF MURDER AGAINST THOMAS RENNELL, AND TO THE QUESTION OF JURISDICTION IN LIKE CASES.

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

RESIDENT MAGISTRATE'S COURT, AUCKLAND.—20TH DECEMBER, 1878.

(Reprinted from the *New Zealand Herald*, 21st December.)

THOMAS RENNELL, on remand, was again arraigned on a charge of murdering Captain Moller, at the Island of Boutaritari. This case had been remanded awaiting instructions from the Government, as the question had been raised whether New Zealand Courts had jurisdiction, or could take cognizance of a crime committed in the island referred to, which is under the jurisdiction of the Governor of Fiji, the Lord High Commissioner of Polynesia.

Mr. Brookfield said, in this case, although the Supreme Court had no power to try the case, he thought that, looking at the Pacific Islands Act and the Imperial Act, and the Interpretation Act of last session, there was little doubt but this Court could inquire into and take evidence, and remand the accused to prison, if the evidence was deemed sufficient, until there was an opportunity to send him to Levuka. There was power given to Her Majesty, by the Foreign Offenders Apprehension Act, to try her own subjects for offences committed in the Pacific Ocean, and to appoint a Court for that purpose. He now asked this Court to take evidence, and to follow the course which he had suggested.

Mr. Hesketh, who appeared for the accused, said the Court was asked to take a course which, if adopted, would place him in a very awkward position as to his right to appear at all. Another question was, what power had the Court at all to try an offence not committed within a British colony, or within the jurisdiction of the Court? Even under the Foreign Offenders Apprehension Act this power was not given to Fiji, for the place where the offence was alleged to have been committed was not in the Colony of Fiji—it was outside it.

Mr. Brookfield: It is within the jurisdiction of the Court at Fiji.

Mr. Hesketh said the Fiji Courts could not have jurisdiction outside the colony, and the Foreign Offenders Apprehension Act gave no power to this Court to detain the man in custody. He referred to the power conferred on Her Majesty by the Imperial Statute to exercise jurisdiction over her own subjects in the Pacific Ocean, in places not within her dominions, but this did not point to any Court in the colony having power to deal with it. If the charge was brought under that Statute, it must be shown that the offence was committed within the jurisdiction of some Australasian Colony, as of Fiji. His Worship, after some further argument and the quotation of sections of the Acts relied on, said it was clear that their own Act was intended to catch all offenders in the Polynesian Islands. If he had no jurisdiction, it was easily tested by an application to the Supreme Court for a writ of *habeas corpus*.

Mr. Hesketh said, as the offence was a very serious one, he presumed the course taken by his Worship was the proper one.

The following evidence was then taken:—

William Sherwin deposed: I was a seaman on board the schooner "Meg Merrilies" in the month of October. Captain Charles Moller was captain of her. On the 7th of October we were at the Island of Boutaritari, in the Gilbert Group, North Pacific. Prisoner, Thomas Rennell, lived on that island, trading for McArthur and Co. On the morning of the 7th of October, I went on shore at the island with Captain Moller, and we went up to the prisoner's house. Captain Moller asked prisoner for his trade invoices, to enable him to make up his accounts, and, after some hesitation, prisoner gave them. Captain Moller looked over the accounts, and told prisoner what he was indebted, but I did not hear the amount. Captain Moller then asked where the trade goods belonging to the firm were, and prisoner pointed to the goods in the store, and said, "There they are." I saw a gun in the room at the time. [Gun produced. Right barrel empty, left loaded.] I took the gun up, and remarked, "It is loaded." Prisoner said, "Yes; I go shooting birds with it." Captain Moller was in the room at the time, but he went out just then, leaving me in the room with prisoner. While the captain was out, prisoner said,

"I am sorry you should come with the captain ashore." I said, "Why, I am only a servant, and I have to obey orders the same as any one else." He gave no reason why he wished this. I asked for a drink of water, and he gave me a drink of gin, at the same time saying, "I am glad you put that gun down again, because I did not like to see you with it." Shortly afterwards, after the captain had brought one or two things, the captain and I went on board to dinner. In the afternoon I went ashore with the captain, the boatman (John Ashby), and Charles Evans (a seaman), and we went to the prisoner's house. Prisoner was standing outside the door. The captain went to the copra shed, about twenty-five yards from the house, and in a few minutes returned, and went inside the prisoner's house. I and the other two men stood outside near the door. The captain called Ashby inside, and they began to hand out the trade goods to Evans and myself. Prisoner was then inside the house. The door was not open the whole time. It was sometimes shut and sometimes open. I could see prisoner walking about with the gun in his hand. After some things had been passed out, Rennell asked Captain Moller if he was going to take that cask of beef (on which the prisoner had his foot)? Captain Moller said, "Yes, but you can take it if you pay for it." All I noticed was that Rennell said, "If you take that, you are a dead man;" and he took up the gun, and went round the table, and just as he spoke he fired the gun. He was standing at one end of a table about six feet long, and Captain Moller at the other. Captain Moller was shot in the left arm, just at the elbow, outside. I did not notice prisoner saying anything after, but the captain said, "I am only following my instructions." He bled a good deal. We took him on board, and laid wet cloths over the wound. He would not allow us to bind it up. I could not tell what the gun was loaded with. There was a good-sized hole, and the whole wad that was in the gun went into it. The captain put his finger into the wound, but could only feel the splintered bone. The captain up to the time the shot was fired was in good health. That evening we took the captain to a mission station in another part of the island, and during that night he was attended by the captain of a German schooner, Captain Kanootzen. On the following day we took the captain on board and sailed for the Marshall Group, to the Island of Evong, where we expected to find a doctor; but on our arrival we found he had gone. We arrived on Friday, and we put the captain ashore on the following morning, and he went to the missionary, Mr. Whitney. Captain Moller remained at Mr. Whitney's house until he died on Sunday. I was present when he died. He died in my arms. He was buried. At the time we went to the Island of Evong, prisoner was on board in custody.

By Mr. Hesketh: There was no altercation except a few words about a loaf of bread in the morning between Captain Moller and the prisoner. During the time from when we went on board to dinner until we came ashore again to prisoner's house I had no conversation with Captain Moller about the prisoner. I did not tell him about the loaded gun, but he was present when I said to the prisoner the gun was loaded, but I do not know that he heard me. I did not notice that the prisoner was lame. We had not, that I recollect, taken any other guns on board. I took none, and I do not know of any being taken. Prisoner had the barrel of the gun in his hand, and the butt on the ground, using it as a walking-stick; but I did not see him using it as a crutch, with the butt under his arm. He then leaned it against the table, and afterwards seized it, and brought it to the charge at the hip. I am quite sure the butt was not under his arm when the gun went off. Captain Moller, when he was shot, was standing erect with a book in his hand. I did not notice the captain rolling the cask of beef. The prisoner did not say to Captain Moller in my hearing, "You must not take that cask; I bought it from you, and sold it again," nor words to that effect. I do not remember that that cask had come from the ship. I do not know whether, immediately after the remark was made by prisoner, "You are a dead man," the captain stooped down defiantly to roll the cask. The whole charge must have lodged in his arm. We could see the shot under the skin on the inside of the arm, but we did not extract any of them. I did not nurse the captain during the voyage to Evong, but I went ashore with him at that island. Prisoner was on board at the time. The captain was dressed in a shirt and pants, but the arm was exposed, except that lint was over it to keep out the cold. I did not hear the prisoner say anything about the captain going ashore with his arm exposed, or remonstrate that it was improper, in that climate, to have his arm exposed. I did not observe any rapid change after he landed on the island. I returned on board, and came back again about two hours before he died. He was in great pain. I never had any conversation with prisoner on the subject of firing the gun at any time. I do not know of anything having been applied to the wound except lint saturated with water. The words about the loaf were in the morning. Prisoner asked the ship's cook to make him a loaf of bread. The cook told him to ask the captain. Rennell was telling the captain this ashore, and he added that he thought it a curious thing that he could not give him a loaf of bread. This was all that passed. Prisoner did not appear to have been drinking. Some drink came ashore, but it was brought back again. I did not hear prisoner remonstrate against selling drink to the natives.

William Grevin, chief officer of the schooner "Meg Merrilies," deposed: I was chief officer on the 7th October, when Captain Moller was brought on board wounded. He was in a fainting condition. At his own expressed wish I sent him off to a mission station at another part of the island in a boat with three men, leaving me and the cook, and another man and boy, on board. The cook and I went ashore and arrested the prisoner. Directly captain Moller was brought on board I dressed his arm with lint and cold water. That stopped the bleeding. The cook and I brought the prisoner on board. When I arrested him I asked what he shot the Captain for, and he said, "What could I do?" I said, "If you had any grievance, Captain Moller is no bigger than you; you could have punched him, or tried to do so, rather than have shot him." Prisoner said he had been sick. That was all the reason he gave for shooting. I said Captain Moller was not a healthy man—that they were just a fair match. Prisoner said he would go on board quietly, and he did so. I asked him if the house was locked up, and he said, "Yes; I have the key." I did not ask him where the gun was. On the following morning I took him ashore to take up some money he had buried in the sand, and to get the gun. Prisoner found the gun himself on the beach, buried in the sand, about twenty yards from the house. I took possession of the gun, and it is now in the same state as when I got it. One of the barrels was discharged, and the other loaded. I took the prisoner on board again

directly, and we set sail for the island of Evong, calling for the captain on our way. The captain appeared in a very weak state. We sighted Evong on Friday at noon, and arrived at 6 o'clock. I attended to the captain on the voyage, with the assistance of a boy. We only applied the cold water to the wound. I sent the boy on shore with him to Mr. Whitney's. The captain was then very weak, and, as far as I could judge, putrefaction of the arm had set in. I noticed the first appearance of inflammation on Wednesday, and it gradually got worse. The captain died on the Sunday. I did not examine the wound after death. After he was wounded every care that could be taken under the circumstances was taken of the captain.

By Mr. Hesketh: The only thing we applied was cold-water cloths to keep down the inflammation, and his food was rice water. He would take no stimulants, except on the first night out, when he drank a couple of teaspoonfuls of brandy and water. He was then sinking rapidly. I have been accustomed to trading in the tropics. The night before the captain went ashore at Evong I told him I thought putrefaction had set in, and he thought so himself. When the captain went ashore the weather was becoming squally, and was therefore more favourable for a wound—as being cooler. Only the lower portion of the arm and wrist of the wounded man was exposed when the captain was taken ashore, the wounded portion being covered with lint. He never assumed command, or did anything in connection with the vessel, after he was shot.

Mr. Brookfield said there were two other witnesses, but, if his Worship thought there was now sufficient evidence before the Court to establish a *prima facie* case, he would not call them.

Mr. Hesketh agreed, if the question of jurisdiction was overruled, there was quite sufficient to establish a *prima facie* case.

The evidence was then read over to the accused.

Mr. Hesketh again argued the question of jurisdiction, and quoted the 3rd section of the Foreign Offenders Apprehension Act, as follows:—"This Act shall apply to all charges of treason and felony and all indictable misdemeanours committed or charged to have been committed in any of the Australasian Colonies." He argued that, as the offence was not committed within any of the Australasian Colonies, this Act could not apply, and therefore there was no jurisdiction.

Mr. Brookfield contended that it was the duty of the Court to commit the prisoner to gaol until he could be sent to Fiji.

After some further argument, the Court committed him to gaol, pending the pleasure of His Excellency the Governor.

No. 2.

SUPREME COURT SITTINGS IN BANCO.—WEDNESDAY, 22ND JANUARY, 1879.

[Before His Honor Mr. Justice Gillies.]

REGINA v. RENNELL.—His Honor delivered judgment this morning upon the application by Mr. Hesketh, upon the return of the writ of *habeas corpus*, that the prisoner be discharged from custody. His Honor's judgment is as follows:—

This is a motion to discharge the prisoner, Thomas Rennell, from the custody of the gaoler, upon his being brought before me under a writ of *habeas corpus*. The gaoler's return to the writ sets forth a warrant of commitment by the Resident Magistrate of Auckland, in the following terms:—"Whereas Thomas Rennell was this day charged before me, R.M., one of Her Majesty's Justices of the Peace in and for the said colony, on the oath of William Sherwin and William Brevin, for that he did, at Boutaritari, one of the islands of the Gilbert or Kingsmill Group, in the Pacific Ocean, on the 7th day of October, 1878, feloniously, wilfully, and of his malice aforethought, kill and murder one Charles Moller, against the peace of our Lady the Queen, her Crown and dignity, this is to command you, and I do hereby command you, the said keeper of the said common gaol, to receive the said Thomas Rennell into your custody in the said common gaol, and there safely keep him, pending the pleasure of His Excellency the Governor. Given," &c. After filing this return, I allowed, on behalf of the gaoler, an amendment thereof, by adding another warrant by the same Magistrate, of the same date, and in similar terms, except an allegation that the prisoner "being a subject of our Lady the Queen on land out of the United Kingdom, to wit, at Boutaritari," &c., and the command was, "and there safely keep him until he can be sent to the Colony of Fiji, within the jurisdiction of which the offence is alleged to have been committed, and delivered to the proper authorities therein. Given," &c. Counsel for the Crown (who seemed, however, to be very imperfectly instructed in respect of such an important case) admitted, what was manifest, that the first warrant, committing "pending the pleasure of His Excellency the Governor," could not be supported; but relied on the second warrant as being in terms of "The Foreign Offenders Apprehension Act, 1863." That Act is, by section 1, declared to apply to all charges of treason and felony, and to all indictable misdemeanours, committed or charged to have been committed in any of the Australasian Colonies." By another Act, the Colony of Fiji is declared to be one of the "Australasian Colonies." By section 4 of the Foreign Offenders Apprehension Act, it is enacted that, "if any person shall be within the Colony of New Zealand who shall be charged with having committed any offence, such as hereinbefore mentioned, within any other of the Australasian Colonies, it shall be lawful for any Justice of the Peace to issue his warrant for the apprehension," &c.; and by section 5, "It shall be lawful for any Justice before whom any such supposed offender shall be brought as aforesaid, upon such evidence of criminality as would justify his committal for trial if the offence had been committed within the ordinary jurisdiction of the Justice, to commit such supposed offender to prison, there to remain till he can be sent back to the colony in which the offence is alleged to have been committed, and delivered to the proper authorities therein," &c. The provisions of this Act, therefore, apply only to offences committed "within any of the Australasian Colonies." But it appears on the face of the warrants in the present case, that the alleged crime was committed on an island not being within the limits of the Colony of Fiji, of which limits I feel bound to take judicial notice, and therefore this Act

does not apply. It was contended, on behalf of the Crown, that the statement of the warrant, that the offence is "alleged to have been committed within the jurisdiction of the Colony of Fiji," was sufficient to bring the present case within the scope of the Act. "The jurisdiction of the Colony of Fiji" is a very vague expression, and cannot be construed to mean within the Colony of Fiji, in face of the specific statement that the crime was committed "at Boutaritari, one of the islands of the Gilbert or the Kingsmill Group," which we know is not within the limits of the Colony of Fiji. It was suggested that this expression meant that the Courts of the Colony of Fiji had obtained jurisdiction over offences committed outside that colony under paragraph 2 of section 6, of 38 and 39 Victoria, c. 51. The provision of that section is that "Her Majesty may, by Order in Council, from time to time direct that all the powers and jurisdictions aforesaid (i.e., Civil, Criminal, and Admiralty jurisdiction) over Her Majesty's subjects within any islands and places in the Pacific Ocean, not being within Her Majesty's dominions, nor within the jurisdiction of any civilized Power, or any part thereof, shall be vested in, and may be exercised by, the Court of any British colony designated in such order; and may provide for the transmission of offenders to any such colony for trial and punishment," &c. But it does not appear, nor was any evidence offered to show, that any such Order in Council had been made conferring such jurisdiction on the Fijian Courts, or providing for the transmission of offenders to that colony. I am therefore compelled to come to the conclusion that both warrants, original and substituted, are equally bad, and that neither of them legally authorizes the detention of the prisoner. But a further, and most important, question arises. In the case of *Regina v. Marks* (3 East 157) and *Ex parte Kranz and others* (1 B. and C., 258), it was held that, although the warrants under which the prisoners were detained were bad, still, if there appeared to have been a crime committed, the Court would not discharge the prisoners, but would issue a good warrant for their detention for examination or for trial. In the present case, the Magistrate having, although erroneously, issued his warrant under the Foreign Offenders Apprehension Act, I think I may reasonably assume that he did so in accordance with the provisions of the Act, "upon such evidence of criminality as would justify his committal for trial, if the offence had been committed within his jurisdiction." Although, therefore, the depositions are not before this Court, as they were in the case of *Marks* and *Kranz* (*supra*), I think there is sufficient to warrant me in holding that, *prima facie*, a felony has been committed, and reasonable ground of charge thereof against the prisoner, so as to warrant his being committed for trial, if this Court has the power to do so. I must therefore endeavour to ascertain whether this Court has any jurisdiction to try such an offence as the prisoner is charged with, bearing in mind that this Court has, within the colony, all the common-law and statutory powers and jurisdiction which the Court of Queen's Bench held in England in 1860. At common law, homicide committed in a foreign country was not triable in England. "The killing must be within the realm, for if a man be killed in *partibus transmarinis*, it is triable by the Constable and Marshall, and not by the common law" (Com. Dig. tit. Justices M. 2, p. 601, H.P.C. 54, 8 Inst. 48). We must therefore look for statutory jurisdiction. This was given by 33 Henry VIII., c. 23, under which, had it been still in force, the prisoner might have been indicted, as in the case of *Queen v. Sawyer* (2 C. and K. p. 101). But the statute of Henry was repealed by 9th George IV., c. 31, and other provisions substituted in lieu thereof; and this statute of George was in its turn repealed in England by 24 and 25 Vict., c. 95, and in New Zealand by our "Indictable Offences Act Repeal Act, 1867." But, while the English Act, 24 and 25 Vict., c. 100, sec. 9, contains provisions which would render the prisoner liable to be tried in England, our New Zealand statute, "The Offences Against the Persons Act, 1867," although enacting the main provisions of the English Act, omits this section, probably from some doubt in the minds of our Legislature as to its power to enact a similar provision in respect of the colony. Had the offence been committed on the high seas, or within the jurisdiction of the Admiralty, then the prisoner might have been triable under 12 and 13 Vict., c. 96, or 18 and 19 Vict., c. 91, sec. 21. Or, if the prisoner had, within three months before committing the offence, been a seaman employed on board a British ship, he would, although the offence was committed on land out of Her Majesty's dominions, have been triable under section 267 of 17 and 18 Vict., c. 104. Or, if the prisoner had been sent to this colony by warrant of any person having authority derived from Her Majesty in that behalf, he might have been triable here under 6 and 7 Vict., c. 94, sec. 4, it having been declared by 38th and 39th Vict., c. 51, sec. 6, lawful for Her Majesty to exercise power and jurisdiction over her subjects within any island and places in the Pacific Ocean, &c. But, upon a careful and, I may say, an anxious examination and review of all the statutes which might give power or jurisdiction to this Court to try the charge against the prisoner, I have failed to find any that confer that jurisdiction. Had I been able to find even an apparent authority for assuming jurisdiction, I should, in the interests of public justice, have assumed it, leaving the Court of Appeal ultimately to determine the question. But I cannot find even an apparent authority, and I am therefore compelled, through a legislative defect, to permit a manifest failure of justice. The prisoner must be discharged: but I trust that the Government of the colony will take such measures as will prevent the recurrence of such an event.

No. 3.

The PREMIER to His Excellency the ADMINISTRATOR of the GOVERNMENT.

Memorandum for His Excellency.

THE Premier presents his respectful compliments to the Administrator of the Government, and advises His Excellency to forward to the Secretary of State the enclosed memorandum by the Attorney-General of the colony, respecting the recent charge of murder against Thomas Rennell.

Wellington, 7th March, 1879.

G. GREY.

Enclosure.

Memorandum for the Hon. the Premier.

I THINK the attention of the Secretary of State for the Colonies should be specially drawn to the case of Thomas Rennell, charged with the murder of Captain Moller. His Honor Mr. Justice Gillies decided, and I think rightly so, that the Supreme Court of New Zealand had no jurisdiction to try Rennell, the offence having been committed in an island of the Gilbert Group.

Seeing the trade that exists between New Zealand and the Pacific Islands, and the prospect of the commercial relations now existing being extended, the need of some control in New Zealand for the preservation of law and order, will not, I think, require much argument. By 4 Geo. IV. c. 96, legislative authority was granted to the Supreme Courts of New South Wales and Van Diemen's Land "to hear, inquire of, and determine all treasons, piracies, felonies, robberies, murders, conspiracies, and other offences, of what nature or kind soever, committed or that shall be committed upon the sea," &c., where the Admiral or Admirals "have power," or in the "Islands of New Zealand, Otaheite, or any other island or place situate in the Indian or Pacific Oceans, and not subject to His Majesty or to any European State or Power," &c. (See section 3.) This Act was repealed by 9 Geo. IV., c. 83, which, however, gave powers to the Supreme Court of New South Wales and Van Diemen's Land to try the offences I have just quoted. (See section 4.) The English Parliament has, therefore, recognized the necessity of some local authority being established to try offences committed by "British subjects" in islands or places far removed from England. No doubt the question opens up the wider one of the attitude that England and the Australasian Colonies should assume towards the Pacific Islands. As you intend dealing with that subject, I do not require to allude to it. I consider, however, that this is a question that may be settled independently of the wider one of Pacific Island colonization. A short Act, giving power to the Supreme Court of New Zealand to try offences committed by British subjects in any of the Pacific Islands, or in the Pacific Ocean out of the jurisdiction of a stable Government, might be passed by the English Parliament, and, were such passed, the like termination of a prosecution to that of the Queen v. Rennell would not be witnessed.

7th March, 1879.

ROBERT STOUT.

No. 4.

His Honor the CHIEF JUSTICE, Fiji, to His Excellency the GOVERNOR.

SIR,—

Levuka, Fiji, 4th March, 1879.

I have the honor to address your Excellency in relation to a case reported in the *New Zealand Herald* of 23rd January last, by the result of which it seems that one Thomas Rennell, accused of the murder of Charles Moller, at the Island of Boutaritari, Gilbert Group, in the Western Pacific, has been set at liberty without trial.

2. His Honor Mr. Justice Gillies is reported to have said, after quoting "The Pacific Islanders Protection Act" of 1875:—"But it does not appear, nor was any evidence offered to show, that any such Order in Council had been made, conferring such jurisdiction on the Fijian Courts, or providing for the transmission of offenders to that colony."

3. Your Excellency, I have no doubt, must be aware that an Order in Council was passed on the 13th of August, 1877, to constitute the Court authorized by the Imperial Act above-mentioned. It is styled "Her Britannic Majesty's High Commissioner's Court for the Western Pacific," and has been exercising its jurisdiction since the 4th February, 1878.

4. The Court, by the High Commissioner or a Judicial Commissioner, may exercise its powers either in the Western Pacific or in Fiji.

5. I may state that, as Judicial Commissioner, I tried in Fiji, on the 29th of January last, John Daly, master of the "Heather Bell," of Sydney, for an offence committed at Ocean Island; and on 24th February, I tried in the same capacity, also in Fiji, William Waite, late master of the "Marion Rennie," of Levuka, for an offence committed at Santo, in the New Hebrides.

6. As acting in such matters for the High Commissioner in his absence, I have to request your Excellency to make known the existence of the High Commissioner's Court to your law officers, See *New Zealand Gazette*, 1879, Vol. I., p. 592.
magistrates, and others.

7. I have directed six copies of the Order in Council to be forwarded herewith. Your Excellency will be the best judge whether some public announcement should be made in the *Gazette*, or otherwise, of the existence of the Court. I observe that the *New Zealand Herald* of 23rd January, 1879, commenting on the decision in Rennell's case, has the following remarks:—"Till it is quite understood that offences committed on those islands can be taken cognizance of by the Courts of this country, we are not likely to have any more prisoners brought here, at much expense and trouble, but as there are a number of Europeans on these islands, we may hear a good deal of 'wild justice.'" It may be as well that all parties be warned that there is a Court in existence, qualified to deal not only with such offenders but equally with those who attempt to execute "wild justice."

8. What the seamen who brought Rennell from Boutaritari should have done, was to have brought the accused to Fiji, on their way to New Zealand; but seamen can well be excused for being ignorant of a jurisdiction so recently created.

9. I do not assume that if the Judge had known of the existence of the High Commissioner's Court his decision would have been different, as I can appreciate the difficulties he felt under the New Zealand Apprehension of Offenders Act of 1863.

10. Although, of course, I have no right to assume that the newspaper account of his judgment is correct, I find there is a reference in the report to the Imperial Act 6 and 7 Vict., c. 94, and a very correct deduction made that, under that Act and the Pacific Islanders Protection Act of 1875, the prisoner might have been triable in New Zealand, if sent to the colony under a warrant from a person entitled to grant such warrant at the place where the crime was committed. The learned Judge, not having the Order in Council before him, came to that conclusion by a comparison of the provisions of

the two statutes; but in point of fact it is specially provided for in the Order in Council itself, section 52, subsection 2:—"Where it seems to the Court for any reason expedient that the offence be inquired of, tried, determined, and punished, within Her Majesty's dominions elsewhere than in England, the accused may (under section 4 of 'The Foreign Jurisdiction Act, 1843') be sent for trial to a place in Her Majesty's dominions."

11. What created the difficulty here was, that the learned Judge found no authority for the converse of the case above-mentioned, viz. the authority for a Judge in New Zealand to send the prisoner who had committed the offence elsewhere to be tried within the jurisdiction in which the offence was committed.

12. The only method which appears to be competent is under the Imperial Act of 6 and 7 Vict., c. 34 (28th July, 1843), "For the better Apprehension of certain Offenders." Under that Act, section 2, the High Commissioner's Court may issue a warrant for an offence committed in the locality where this offence is said to have been committed. But in order that it may do so, it is necessary, both by that Act (section 4) and section 198 of the Order in Council, subsection 4, that sufficient evidence be before the Court to authorize the issue of a warrant.

13. It will therefore be necessary that some of the seamen—say two of those who were cognizant of the facts, and saw the occurrence—be sent here to give their depositions. They may be sent by any of the trading schooners, and their expenses will be paid out of the High Commission funds.

Should their evidence be sufficient, the High Commissioner's Court may grant a warrant, which, upon being indorsed successively by a Judge of any of the colonies, will be good all over Australia as well as in the Western Pacific.

14. The Act last cited, it will be observed, speaks of the offence as "committed in any part of Her Majesty's dominions," which the Gilbert Group is not; but this must be read along with "The Foreign Jurisdiction Act, 1843," section 1, which provides that it shall be lawful for Her Majesty to hold any jurisdiction which Her Majesty then had or might at any time thereafter have, within any place out of Her Majesty's dominions, in as ample a manner as if the jurisdiction had been acquired by conquest or cession of territory—and read also along with the Pacific Islanders Protection Act of 1875, giving jurisdiction to Her Majesty over British subjects in the Western Pacific.

15. I am aware, also, that Her Majesty's Government have under consideration a Bill to amend the Fugitive Offenders Act of 1843, and I will take care to bring to the notice of the Secretary of State the difficulties which have occurred in this instance.

His Excellency the Governor of New Zealand.

I have, &c.,

JOHN GORRIE.

No. 5.

The PREMIER to His Excellency the GOVERNOR.

Memorandum for His Excellency.

By a memorandum No. 18, of March 7th, 1879, the Premier had the honor of advising His Excellency the Administrator of the Government, to forward to the Secretary of State for the Colonies a memorandum by the Attorney-General, and other papers, respecting the charge of murder in the island of Boutaritari, South Pacific, brought against Thomas Rennell—the prosecution of Rennell in this colony—his discharge from custody by Mr. Justice Gillies, on the ground of want of jurisdiction in the Supreme Court—and the consequent necessity for certain powers being given to that Court to deal with like cases.

2. Ministers have considered a despatch from His Honor the Chief Justice of Fiji, in which Mr. Gorrie, as Acting High Commissioner under "The Pacific Islanders Protection Act," explains the jurisdiction of the Court created in accordance with that Act, and requests that, because of Mr. Justice Gillies's decision, the existence, and the powers, of the High Court may be made known in this colony.

3. Extracts from the Order in Council constituting the Court, and *Gazette* notices addressed to Resident Magistrates, master mariners, &c., have accordingly been published; and the papers respectfully sent herewith, for the information of his Excellency the Governor, will supply details of the action taken.

4. But, in the opinion of the Attorney-General, it remains, notwithstanding Mr. Gorrie's explanations, very desirable that jurisdiction over British subjects who may commit offences in the Pacific, should be conferred upon the Supreme Court of New Zealand; and Ministers have the honor to advise His Excellency to forward to the Secretary of State the copy of a memorandum by Mr. Stout, with respect thereto, which is enclosed.

Wellington, 17th May, 1879.

G. S. WHITMORE,
In the absence of the Premier.

Enclosure.

Memorandum for the Hon. the Premier.

REFERRING to the letter addressed by the Chief Justice of Fiji to His Excellency the Governor I would remark that the fact that there is located in Fiji a High Commissioner for the trial of offences committed in the Pacific does not, in my opinion, afford any reason why the Supreme Court of New Zealand should not have jurisdiction to try crimes committed by British subjects in the Pacific. The expense of forwarding persons charged with crimes from New Zealand to Fiji will be very heavy; and no provision is made as to what Government should bear that expense. I think, therefore, that the Imperial Government should still be pressed to confer the jurisdiction I have mentioned on the Supreme Court of New Zealand.

15th May, 1879.

ROBERT STOUT.