

10. That, as this is the second time that she has been brutally treated by parties coming from the British Consulate, she humbly asks your Excellency if such things are allowed by British law; and, if not, that your Excellency would cause inquiries to be made as to whether the said R. Hetherington had really authority to do as he pleased according to his own statement; and that, if the said Hetherington was justified in all he did through acting under the authority of the British Consul, your Excellency would be graciously pleased to restrain him in future from giving such license in regard to her, as she is a Samoan woman, with no desire to prostitute herself, but simply desirous of living peaceably with her children, on their own land, and in their own house, holding and claiming nothing but what is justly their own.

Your petitioner would only add that the persecutions she has suffered from the British Consulate, or probably R. Hetherington, have made life unbearable; and, as no redress can be obtained in Samoa, she has come to Fiji for the sole purpose of presenting this petition and craving your Excellency's interference for her protection.

MANAEMA.

That the agent of Messrs. W. McArthur and Co. offered \$200 to any person who would point out where any deeds were concealed. The Samoan woman visited Fiji, and appealed to the High Commissioner, the present Governor of Fiji, for protection from the brutalities of the attorney of Messrs W. McArthur and Co. The above petition is supported by the following affidavit, describing all the occurrences in detail:—

Be it known to all, that I, Manaema, of Fasitootahi, in Samoa, have written this evidence, and swear to its truth.

I remember well the day the lawyer (Hetherington) came to Fasitootahi, in the month of June. It was on Friday night he came; people were asleep; it was 10 o'clock when they came. I opened the door a little to see who was there, when it was pushed violently back, and they rushed into the sitting-room. There were only I and the children, the daughter of the chief Saga, and the wife and daughter of the chief Molota, in the house. The door was then shut and no one could get outside. A search was then made throughout the house for deeds of land. I was told that a very heavy fine would be put on me if I did not give up the deeds. I told them I had no deeds. The lawyer again asked me to give him the deed by which I and my children ruled, but I refused. He said he only wanted to look at it, but nothing would have induced me, for I knew he was a thief and a liar. They then kept on searching the entire house, but not a single paper did they get. In their anger they knocked the furniture about because they could find nothing. They then had a talk together, and two bottles of beer and a bottle of gin were brought in. They pressed and urged me to drink, saying it could do no harm and was only drink for women. I noticed that the lawyer often went out with the half-caste Miki, and soon as the lad came in he came directly to me with something to drink. I only once touched gin; it was brought by Parkinson, after he had had a talk outside with the lawyer. I put it aside again and again, but he held it to my lips and poured it down in my mouth. The lawyer then came and sat by my side on the sofa; he took hold of me and held me, and touched my breasts and many times tried to touch me indecently in my person. He used also a great deal of bad language to me. Afterwards he tried to drag me from the room into a bedroom, but I held on to the door of the sitting-room and called upon Tolonene and Sasa (wife and daughter of Molota), on which the lawyer let me go. He told me also that the Consul had given him entire power; that which it pleased him to do he could do; did he wish to drive me away, he could do so. I only replied that the house was mine, and I would be taken away when I was dead. He then said his desire was to make me his wife; that we together could then look after the children; in which case the New Zealand people could no more trouble or annoy me. Observing it was 4 o'clock they prepared to go, lest daylight should break upon them in Fasitootahi; but Tuitafu was awfully drunk, the rest not so bad, but the white man Maiti was stretched out like a pig. This was the foreigner who told me that the Chief Moepau was fined \$1,000 because he stopped on the land. I replied, "Let them fine, I am the proper party to fine, for I rule the land." This is all I have to swear regarding the affair.

MANAEMA.

Sworn before me at Levuka, this 21st day of August, A.D. 1882—John St. Julian, Commissioner of the Supreme Court.

That threats were made by the British authorities in Samoa that, unless peaceable possession of the disputed lands was given to Messrs. W. McArthur and Co., their villages would be burned and their other properties destroyed.

That the attorney of Messrs. W. McArthur and Co. thereupon took possession of the dwelling-house of the said Manaema, wantonly destroyed her household property and clothing, and also property belonging to other Samoan natives, and drove her and her children from their home.

That, finding all hope of redress in Samoa against injustice was vain, your petitioner came to New Zealand to obtain the best legal advice the Colony could afford him.

That Messrs. Hesketh and Richmond, of Auckland, the well-known counsel, on review of the facts of the case as above set forth, gave the following opinion:—

We have given the various important and interesting questions which you have submitted to us our best consideration, with the following result:—

1. We would observe that, though you live in a foreign country, yet you are a British subject, and as such you owe allegiance to the Crown of England, and you are amenable to the laws of England, as the same are in force in that foreign land and in this, even though such acts of the British Legislature may be of a very unusual and exceptional character.

2. The Pacific Islanders Acts, 1872 and 1875, contain special provisions (see section 7 of the Act of 1875) that the powers therein contained shall in no way be construed as giving any dominion or sovereignty to Her Majesty over the islands or any claim or title thereto, and that the rights of tribes or inhabitants shall in no way be interfered with. Section 6 of the Act of 1875, on the other hand, expressly states that it shall be lawful for Her Majesty to exercise power and jurisdiction over *her subjects* in those islands in the same way as if such power and jurisdiction had been acquired by the cession or conquest of territory.

From all this it appears plain that the native laws, customs, and usages remain in full force, and the natives are left in full enjoyment of them. Their titles to land are to be determined according to their customs and usages, and to those only; and it is only by an appeal to those laws that the character and "tenure" of their titles can be ascertained. There being a total absence of dominion or sovereignty on the part of Her Majesty, only those principles of English law which can be found in the native laws must be regarded, and effect must be given to them according to the law of the place and *as native* and not as English law.

In the outset, therefore, English law cannot be appealed to as against the natives, whether for the purpose of deciding their titles to their lands or otherwise, nor can Britain provide tribunals for the purpose of exercising power or jurisdiction over natives; nor, indeed, does she profess to have done so. This appears plain from the Acts referred to, and the Order in Council, which leaves the native owners in full enjoyment of their lands according to their customs and usages; and without dominion or sovereignty there is no power even to provide machinery for investigating and deciding on native rights, saying nothing of the right to touch the land itself.

In the case, therefore, of a native owner's rights of property being invaded by another native, then the native laws must decide between them, for no English law is in force, and the doors of the High Commissioner's Court are not open to natives, nor are they amenable to its jurisdiction.

If this invasion is made by a British subject, the same result follows. If a British subject claimed to be the owner of these lands, and his possession or rights were invaded by *natives*, then native laws must decide, and for the same reasons.

The questions as to whether the native or British subject is owner of the land, as to nature or quality of that ownership, and what incidents of property attach to that ownership, are questions which must be determined by the natives according to their laws in all cases of differences between them and British subjects or foreigners.