in the constitution or procedure of the High Commissioner's Court. We think, however, that the Chief Judicial Commissioner should be required annually to visit certain central stations in the islands; and, to enable him to do this, and for other reasons, we are inclined to consider that the office should be an independent and substantive one, and not united with that of Chief Justice of a colony, a combination of duties which goes far to prevent the useful exercise of his function as Chief Judicial Commissioner.

119. We think also that it is manifestly expedient that officers in command of cruisers should, in all cases, possess those powers as committing Magistrates and as arbitrators which it was sought to confer on them by the rules of the High Commissioner's Court, issued in March and May, 1881, which were held to have been *ultra vires*, and we would venture to recommend the introduction into the Order in Council of provisions to secure this object.

120. We are not disposed to think that the grant of a concurrent jurisdiction with the High Commissioner's Court to the Supreme Courts of the different Australian Colonies or the allowance of an appeal to them from the High Commissioner's Court, would be attended with advantage, except in the case of Fiji, the Courts of which colony are constituted in a totally different manner from those of Australia, and the procedure of which is similar to that of the High Commissioner's Court. Some of the objections to such appeals were, in our opinion, very forcibly stated by Sir John Gorrie, who, in a memorandum dated March 18, 1881, remarks that, "The Supreme Courts of all the Australian Colonies minister the law of England without the modifications of law and procedure which are necessary in the region of the Western Pacific, and which have already been imposed on the High Commissioner's Court by Order in Council.

121. "A trial for murder without a jury would be alien to their system of jurisprudence pursued in the Australian Courts, and, to enable them, on appeal, to find a murderer guilty without such trial, they must have additional powers. But to give such powers by Order in Council would not be palatable, or probably possible, in a constitutional colony.

122. "Moreover, unless we are to shut the door of justice on the whole native race of the Pacific, as against evil-doers amongst Her Majesty's subjects, and undo the good work which the High Commissioner's Court has already done, we must and do, under the powers of the Orders in Council, receive evidence on affirmation of those who are either not Christians or only nominally Christians, and do not understand the nature of an oath in the technical sense of the English law, weighing such evidence to the best of our ability in the equal scales of justice. But this also would be repugnant to the procedure of some, if not all, of the Supreme Courts of Australia.*

123. "An appeal accordingly from the High Commissioner's Court to such a tribunal would be from a Court which in these particulars administers justice from a higher standpoint to one which does not, and cannot, with its present or any powers which it is likely to obtain for the purpose, administer justice on the same principles.

124. "Another difficulty I foresee relates to the execution of the judgment. The person accused of murder, if taken to Australia for judgment, ought, if the judgment be confirmed, to be executed there. I have noted how, in one colony, the fate of a notorious murderer and bushranger excited sympathy, in another the keen and clamorous excitement created by sentences of death. I can well imagine the public outcry if a colonist were condemned to death without the intervention of a jury, for murdering a Polynesian in a far-off island, and how an attempt would be made to force the hand of the Governor and his Council (who, as it was not a colonial crime, would have no constitutional right to interfere) to prevent the execution on their own soil.

125. "It is by Imperial Courts, and Imperial Courts alone, that justice can be properly administered in the Western Pacific; and any appeal, where such is necessary, must be to Courts dealing with evidence on similar principles, and accustomed, like the High Commissioner's Court, to trials with assessors even in capital cases."

126. In these remarks we, on the whole, concur. Though originally made with reference to the proposal that an appeal should lie from the High Commissioner's Court to those of Australia, they are equally applicable to the suggestion of a concurrent original jurisdiction. We are, therefore, unable to regard with approval the draft Bill, having that object, submitted to our consideration by your Lordship's directions.

127. Before leaving this branch of the subject we think it right to point out that doubts have been raised as to the jurisdiction of the High Commissioner's Court, which should be set at rest.

128. On the one hand, it has been maintained that, as "*all* Her Majesty's jurisdiction in the Western Pacific" is by the Order in Council transferred to the High Commissioner's Court, that of the colonial Courts with regard to those regions has been annulled, it being impossible, if *all* the jurisdiction is given to the High Commissioner, for a *part* of it to be retained by the colonial Courts. Moreover, while giving all Her Majesty's jurisdiction to the Court to be appointed by Order in Council, the Act 38 and 39 Victoriæ provides that similar jurisdiction may concurrently be exercised by the Courts of any British colony *which may be designated by Her Majesty in such order*, a provision which would appear to exclude their jurisdiction unless so designated, which none of the Australian Courts have been.

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* This has been questioned as regards the case of Queensland, and it may therefore be as well to state what the facts are. Up till 1876 native testimony was indisputably inadmissible in the Queensland Courts. By Act No. 10 of that year, unsworn testimony was made admissible if the witness made a declaration that he would speak the truth, "in the full knowledge that if he did not do so he rendered himself liable to the penalties of wilful and corrupt perjury." But at the end of the first section was the following proviso: "Provided that it shall be the duty of the presiding Judge, *before proceeding to take the evidence* of any such person, to *satisfy himself* that he *clearly understands* the meaning of such promise and declaration." The evidence of natives was excluded when none but sworn evidence was admissible, on the ground that they did not understand the nature of an oath; and it is now commonly held in Queensland, that if natives do not understand the nature of an oath, neither can they understand what is meant by wilful and corrupt perjury—a view not without plausibility. We are given to understand that, as a fact, few Queensland Magistrates are able to "satisfy themselves" that natives "clearly understand" the nature of the required declaration and promise.