

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