

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.