

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 This Act was repealed by 9 Geo.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