

gradually again drawn to questionable proceedings of British subjects in the South Seas, and the nefarious features of the system under which labourers from that region were obtained for service on the sugar estates of Queensland and Fiji. Probably, however, there would have been much protracted discussion without decisive action, had not the murder of Bishop Patteson in 1871 suddenly roused public opinion in a manner which rendered the enactment of "The Pacific Islanders Protection Act, 1872," easy, if not imperative. This Act, which gave powers to the Supreme Court of any of the Australasian Colonies to punish any British subjects who should decoy away or enlist against his will any native, and which rendered a license from the Governor of one of the Australasian Colonies, or from a British Consular Officer, necessary for all vessels engaged in the labour traffic, was supplemented three years later by "The Pacific Islanders Amendment Act, 1875," which provided, among other things, for the creation by Order in Council, at the Queen's pleasure, of a High Commissioner having jurisdiction over all British subjects throughout the Western Pacific, and empowered in Her Majesty's name and behalf to make regulations for their government, and issue the licenses required by the Act of 1872. It provided also for the constitution of a Court having cognizance of all offences committed in those regions, and the fullest powers of dealing with them. The Order in Council authorized by this statute was not, however, issued until August, 1877.

8. It contained a very complete code—perhaps, indeed, in some respects, even too complete a one—for dealing with the misdeeds of British subjects, and, while affording them the means of civil litigation, furnished the means of providing machinery with which to bring it into active operation. Nearly the whole of the Order is devoted to the powers and procedure of the High Commissioner's Court. Of the 321 articles which it contains, only six relate to the duties of the High Commissioner and his deputies, as apart from the judicial functions of his Court. These six articles provide—(Art. 7) for the appointment of a High Commissioner, (Art. 8) for his official seal, and (Art. 10) for the appointment of Deputy-Commissioners by the High Commissioner, liable (Art. 11) to suspension or removal by the High Commissioner. They authorize (Art. 24) the High Commissioner to make regulations for the government of British subjects in the Western Pacific, to prohibit (Art. 25) any person dangerous to peace and good order from living in any part of the Pacific, and, if necessary, to remove him (Art. 26) from any island in which he may at the time reside.

9. A supplementary Order in Council issued in 1879 considerably extended the power of making regulations, and also the jurisdiction of the High Commissioner when sitting alone as a Judge in places where the assistance of a Judicial Commissioner was unattainable; and in 1880 another Order in Council authorized the appointment of an Assistant High Commissioner.

10. It is important to observe not only what it is that these Orders in Council are intended to effect, but what also are the matters with which they make no profession to deal. The object sought to be obtained is solely the control of British subjects, and this it is proposed to accomplish partly by the exercise of executive and legislative authority on the part of the High Commissioner, and partly by the action of competent Courts for the settlement of disputes and the punishment of offences. But the Orders in Council contain no provision whatever with regard to offences committed by natives, and confer no powers for their punishment.

11. The jurisdiction of the High Commissioner extends over all British subjects in the Western Pacific, but over British subjects exclusively. He has no authority whatever to deal, whether judicially or in his executive capacity, with offences committed by persons not British subjects, whether natives of islands not under the dominion of the Crown, or by other foreigners.

12. The High Commissioner has on more than one occasion pointed out to the Imperial Government that, unless a jurisdiction were created competent to take cognizance of offences committed by natives against British subjects in the Pacific beyond Her Majesty's possessions, the infliction of punishment on British subjects for outrages against natives in the same regions, when such cases came before the High Commissioner's Court, was sure to excite, on the part of those brought before it, not unnatural irritation, and a sense of being treated with injustice; for it is hardly to be expected that men of the class to which most British subjects in the Pacific belong, should understand that Great Britain has an interest in the good conduct of the Queen's subjects, and the maintenance of legal restraint over their actions, quite apart from any sympathy with natives or care for their protection.

13. The reply returned to all such representations has invariably been that, in the opinion of the Law Officers of the Crown, insuperable obstacles exist to any assumption of jurisdiction by Her Majesty over other than British subjects beyond the limits of Her Majesty's dominions. Nevertheless, although Her Majesty's Government has not as yet seen a way to overcome the real as well as the formal and technical difficulties with which any such exercise of authority is undoubtedly surrounded, the necessity for exceptional dealing with exceptional circumstances is not, we think, unrecognized; and precedents exist which, though not precisely similar, would, we cannot but believe, justify such an assumption of jurisdiction as is desired.

14. Meanwhile, however, the High Commissioner is absolutely powerless to take judicial cognizance of any offence committed by a Polynesian native not being also a subject of Her Majesty.

15. The natural result has been that pointed out by the High Commissioner. Great irritation has been excited among all interested in the Pacific trade, and at an Intercolonial Conference of Ministers of the different Australian Colonies indignant resolutions were adopted virtually censuring the High Commissioner for not having done that which he had no legal power to do, and had, indeed, been expressly forbidden to attempt to do.

16. The groups of islands to which the operation of the Order in Council was by name specifically extended were the following:—

- The Friendly Islands.
- The Navigators Islands.
- The Union Islands.
- The Phoenix Islands.