

It will be perceived that this Ordinance authorizes the making of the following orders :—

- (a) An order requiring a Samoan to leave any village, district, or place, in Samoa, and to remain outside such limits for such time as the Administrator thinks fit, and to order such Samoan to reside in any place specified in such order :
- (b) An order prohibiting the use by a Samoan of any Samoan title or titles named in such order for such time as the Administrator may think necessary. Disobedience of the order was punishable by conviction before the High Court. (Section 5.)

It is to be observed that the full Supreme Court of New Zealand has held that the provision authorizing the Administrator to make these orders is not punitive ; that the Administrator may satisfy himself in any manner he sees fit as to the propriety of making any such order, and so long as he acts *bona fide* the question whether his opinion is justified or not, or whether he should have been satisfied or not on the materials before him, is not examinable by the Courts.

The orders with which we are now dealing and which have been brought before us extend from the year 1922 down to the end of the year 1926. Two of them—namely, the orders against Autagavaia and Matafa—were made by the ex-Administrator, Colonel Tate, on the 22nd September, 1922. The remainder of the orders were made by the present Administrator.

Of the cases, involving fifty-six persons, the complainants or applicants for the orders in cases involving thirty-nine persons were the chiefs of the district, or the chiefs of the district together with the heads of the family, or the heads of the family or individuals aggrieved. In nine cases, involving thirteen persons, the Administration was prosecuting. In two cases, relating to four persons, the applicants are left in doubt.

During the sittings of the Commission, at the request of counsel for both sides, we gave a direction as to the materiality of the evidence to be called in relation to the local banishment of Samoans from the 11th September, 1922, the date of the coming into force of the local Samoan Offenders Ordinance, 1922, until the end of the year 1926. It was desired to ascertain how far it was necessary to call witnesses as to the circumstances attending the making and putting into force of such banishment orders. The direction we gave was as follows :—

2. It is common ground that none of such orders relates to any participation in the Mau movement, or to any alleged political offence or misconduct in any way relating to the Mau movement. They all relate to domestic offences, matters, and conduct.

3. It is clear that the Commission cannot investigate or review the merits of the offence, conduct, or matter on which these orders respectively are based.

4. We are of opinion, and so direct, that evidence as to these orders should be limited to the following matters : Did the Administrator in each such case, before making the order, for the purpose of satisfying himself that the presence of the Samoan in question in the particular village, district, or place was likely to be a source of danger to the peace, order, and good government of such village, district, or place, cause the matter alleged against the person in such case to be investigated and reported on by a Faipule, or meeting of Faipules, or by the Administrator, or by some official or board appointed by him for that purpose, and was such person in such case present or given an opportunity of being present at the inquiry, and given an opportunity of asking questions and presenting his case.

5. The proof of these matters ought to be in the possession of the Administration ; and we suggest that counsel for the Administrator should begin on this branch of the case, reserving leave to counsel for the petitioners, if they find it necessary so to do, to call rebutting evidence. We think it reasonable that counsel for the Administrator should, a reasonable time before calling such evidence, give to counsel for the petitioners a general statement of the procedure in the case of each such order.

The suggestion made by us and mentioned in paragraph 5 was adopted by counsel. It was obviously quite impossible for the Commission to attempt a rehearing of the grounds upon which the orders were made, but we thought it proper that an inquiry should be made directed as to the manner in which the case against each person was investigated by, or at the instance of, the Administrator, and as to whether such person was given an opportunity to be present at the inquiry and of asking questions and presenting his case.

In all the cases comprised in the class we are now considering an inquiry was held before one or other of the following quasi-tribunals, and in all cases the