

BRAISBY (INSPECTOR OF POLICE) v NELSON

High Court Apia
 December 1933; January, February 1934 (30 days)
 Interim Judgment 3 March 1934
 Final Judgment 7 March 1934
 Luxford CJ

SEDITION - Samoa Seditious Organizations Regulations, 1930 - Regulations made by the Governor-General under s 45 of the Samoa Act, 1921 - Proclamation pursuant thereto by Administrator declaring the Mau a seditious organization - Whether Regulations ultra vires the Governor-General in Council as exceeding the powers delegated by the Parliament of New Zealand to make regulations for the peace, order, and good government of Samoa - Whether s 25(h) of the Acts Interpretation Act, 1924 (NZ) applicable to regulations made under s 45 - Whether Regulations repugnant to s 102 of the Samoa Act, 1921.

INFORMATIONS (Amendment) - Power of Court to amend to conform with the evidence pursuant to s 238 of the Samoa Act, 1921: vide Smith J in Police v. O.F. Nelson and Co. Ltd. [1932] NZLR 337 at p. 362. An order amending a charge against a defendant, which in effect merges in that charge other charges of the same offence, does not substitute a new offence: R. v. Skellon (1913), 33 NZLR 102; R. v. Stone [1920] NZLR 462.

Defendant was charged initially with a total of eight counts of breaching the Samoa Seditious Organizations Regulations, 1930. Subsequently, four further charges were laid for alleged breaches of the Regulations and one for an alleged breach of the Maintenance of Authority in Native Affairs (No. 2) Ordinance, 1928. Ultimately, the later charges were not proceeded with. Of the eight original charges, No. 1 was dismissed on the ground that the facts on which it was based, viz., possession of documents pertaining to a seditious organization, to wit the Mau, did not disclose an offence of identifying with such organization by any of the means specified in clause 3(4), and the words in the clause "or any other means whatsoever" fell to be interpreted in accordance with the ejusdem generis rule: vide Kerridge v. Girling-Butcher [1933] NZLR 646 at p. 664. Charge No. 2 was amended by Order of the Court to charge aiding, abetting or encouraging the continuance of the activities and objects of a seditious organization, to wit the Mau, contrary to clause 3(4), and charges Nos. 5 and 8 were merged in No. 2 as each charged the same offence but did not set out the facts on which they were based. Charges Nos. 4 and 7, being covered by Nos. 3 and 6, were dismissed. Defendant was convicted on charge No. 2, and on charges Nos. 3 and 6 of addressing a meeting held for the purposes of a seditious organization, to wit the Mau, contrary to clause 3(1) of the Regulations. On each of the three charges on which he was convicted defendant was sentenced to eight months' imprisonment and to ten years' exile, the sentences to be served concurrently.

Held: Contrary to the contention of the defendant, the Regulations were

not ultra vires the Governor-General in Council. The Parliament of New Zealand had by its Mandate full and exclusive administrative and legislative powers over the Territory of Western Samoa, and by enacting ss 45 and 46 of the Samoa Act, 1921 had delegated certain very wide powers to the Governor-General in Council to make regulations for the peace, order, and good government of the Territory, and certain more limited powers to the Administrator acting with the advice and consent of the Legislative Council to enact ordinances and make regulations. In enacting ss 45 and 46 the Parliament of New Zealand was acting under clauses 3 and 4 of the Western Samoa Order in Council, 1920 (Imp.), which was held validly made under the Foreign Jurisdiction Act, 1890 (Imp.) in Tagaloa v. Inspector of Police [1927] NZLR 883. By s 45 it intended to and did re-enact the powers conferred on the Governor-General by clause 4 of the Imperial Order, limited only as specified in s 45; that s 45(3) referred to revenue matters, and whatever the reason for its inclusion it could not have been to curtail and power of the Governor-General to provide for imprisonment for breaches of regulations made under s 45(1), which must be inferred; that s 25(h) of the Acts Interpretation Act, 1924 (NZ) limiting the penalty for breach of regulations to £5 did not apply to regulations made under s 45, its application being confined to regulations by the Administrator under s 46, and its application to those made under s 45(1) being inconsistent with the context of that subsection. The Samoa Seditious Organizations Regulations, 1930 were "in the truest sense" made "for the peace, order, and good government of Samoa": vide Myers CJ in O.F. Nelson and Co. Ltd. v. Police [1932] NZLR 337 at p. 350. Further, the Regulations were not ultra vires the Governor-General as being repugnant to s 102 of the Samoa Act, 1921, which defined "seditious intention" and made seditious utterances, seditious libel, and seditious conspiracy offences: Semple v. Donovan [1917] NZLR 273 applied.

McCarthy for the Crown.

Defendant in person.

Pleasants granted leave to appear and address the Court on the law.

Cur adv vult

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INTERIM JUDGMENT

LUXFORD CJ. Seldom have the facts of a case which has occupied a Court for 30 days been so simple. Suffice it to say that apart altogether from the evidence of Inspector Braisby, who was in the witness box for the unprecedented period of 21 days and the 80 Exhibits, (some containing many documents), that were tendered through him, there is ample proof of the guilt of the defendant in respect of three of the charges.

The very able legal argument addressed to me by Mr. Pleasants has been fully considered, but for reasons I will give when the final Judgment of the Court is delivered, does not enable me to uphold his contentions concerning the validity of the Samoa Seditious Organizations Order, 1930, the admissibility of certain documents, nor the right of the Court to amend the second charge.

I made reference to the course of this trial just after the legal argument had concluded, and as a note of what I said is on record in the proceedings it is not necessary to repeat it.

The Crown Prosecutor informed the Court in the early part of Inspector Braisby's evidence, that he did not intend to put any obstacle in the way of the defendant, nor would he seek to limit the ambit of the cross-examination. In effect, the position taken by the Crown in respect of the defendant can be summarized thus:-

You deny our allegations as to your course of conduct, and say that all Mau activity was brought about by acts of commission or omission on the part of the Government, without any instigation on your part.
Very well - here is Inspector Braisby who has a profound knowledge - personal and documentary - of the Government's actions and intentions - ask him what you will - whether it be of matters within his own knowledge or about which there is any information in his records.

With such an invitation by the Crown, a lengthy cross-examination would of necessity follow, but with witness and cross-examiner both sated in facts, ideas and opinions ascertained or formed from entirely different viewpoints, the length of the resultant cross-examination was inevitable.

The variety and extent of the many searching questions put to Inspector Braisby by the defendant were no less remarkable than the Inspector's ability to answer them. I was struck with the absolute fairness of the Inspector's answers.

I cannot help observing that the note of the cross-examination occupies 150 pages of typewritten foolscap. It is no doubt an illustration of the extraordinary latitude that is sometimes given to accused persons who conduct their own defences. Although most of the matters referred to and traversed in the cross-examination by the defendant, and subsequently in one of the most eloquent, able and well balanced addresses from a forensic point of view I have ever heard in a Court, are unnecessary for the determination of the innocence or guilt of the accused, I propose in fairness to him to deal with certain matters in my final Judgment.

The purpose of this interim Judgment is to dispose of the facts in issue, untrammelled by any of the extraneous matters that have been brought into this case.

At least three times during the trial when I questioned the relevancy of certain lines of cross-examination, the defendant pleaded - indeed his plea was almost a plea ad hominem - to be allowed to continue because the importance of the case to him went far beyond a verdict of conviction or acquittal.

I did not ask the defendant to state the nature of the importance, for it was manifest that the defendant's intention and desire was to justify his course of conduct throughout the last seven years in the eyes of the Samoan people, and to show them that he has not betrayed them.

The intense interest of the many high chiefs who have been present

throughout the long hearing indicated that they were concerned for the same reason.

Because Samoan matters political have been so involved in this case, I am taking the unusual course of delivering an interim Judgment. That course has been taken by me because in my opinion the verdict of guilty or not guilty should be determined without regard to such matters.

Once the guilt of the defendant has been established however it will be my duty to consider everything that may show whether the offences are of a venial or aggravated nature. That I will do in my final Judgment, and it will necessarily involve a determination of the very matter the defendant regards as chiefly important. That Judgment will be delivered next Wednesday morning.

There are eight separate charges before the Court, the second of which I have amended. The first charge I will dismiss for reasons to be stated in my final Judgment.

The second charge as amended reads:-

He did on divers other dates between the 18th day of August, 1933, and the said 16th day of November, 1933, at Apia and elsewhere aid, abet or encourage the continuance of the activities and objects of a Seditious Organization - to wit the Mau: in that he

(a) met members of the controlling committees of the Mau and gave advice to them as to methods to be adopted or followed in connection with the organization's activities,

(b) prepared written documents known as Feau, and caused the same to be delivered to the Committee of the Mau for the purpose of directing or assisting the decision of the Committee in matters relating to the activities of the Mau,

(c) acted as correspondent for or agent of the Mau in the preparation of reports and dissertations on Mau activities for publication in a newspaper circulating in the Territory of Western Samoa, called the N.Z. Samoa Guardian, which said newspaper is printed in the English and Samoan languages and is commonly known in Samoa as the Mau newspaper.

The evidence establishes that the defendant is a Fa'atonu (adviser) of the Mau and has held office at all times material to the charges brought against him.

Although there is evidence that he objected to being so called soon after his appointment (see Faumuina's evidence at pp. 240 and 244) the Committee of the Mau maintained the designation even in letters addressed to the defendant, and used him for the purpose for which such an officer would be appointed.

I will make several quotations from the evidence so far as it refers to the general duties undertaken by the defendant on behalf of the Mau before I refer to special duties or things done.

Thus from Une's evidence the following quotations are taken:-

At page 172. (Examination-in-Chief).

Q. Since his (defendant's) return, has he done anything to assist the Mau?

A. I don't know.

Q. When the Mau is in doubt as to whether a law has been broken or not, from whom do you get guidance?

A. After the people discuss a matter but can't come to a decision, the matter is referred to the Fa'atonu - the accused.

At page 173.

(Examination-in-Chief).

- Q. Supposing there is some doubt whether the matter (meaning a matter for discussion at a Mau fono) involves a breach of the law, what happens then?
- A. Then it is referred to Taisi to consider whether it is a breach of the law because no Samoan understands the law.

At page 177.

(Cross-examination).

- Q. Except that I have advised on matters when requested, in order to say whether they are or are not within the law, have I ever tried to influence any decision of a Mau fono?
- A. You have only advised us not to do anything which might be considered a breach of the law. You do not interfere in the procedure or conduct of our meetings. That is a matter left to the President and his staff.

At pages 179 and 180.

(Re-examination).

- Q. If there was anything in the decisions of the Mau forwarded to the defendant which contained anything against the law, what would happen?
- A. If there was any doubt as to the legality of any matter it would be referred to the defendant for his opinion.
- Q. How would the defendant communicate that opinion to the Mau?
- A. He would advise the member of the Mau who went to him with the matter for opinion.
- Q. Who would that be?
- A. Anyone appointed by the Samoans The Committee of the Mau would appoint persons to interview the defendant.

The next witness was Leulua and from the note made of his evidence I take the following extracts:-

At page 181.

- Q. Has the Mau an officer called the Fa'atonu?
- A. Yes.
- Q. Who is that?
- A. Taisi.
- Q. What are the duties of the Fa'atonu?
- A. It is not through Mr. Nelson's wish that he is Fa'atonu; it is the wish of the Samoans.
- Q. But what are his duties?
- A. To advise on any matters concerning the Government laws.

Faumuina was called by the Court at the request of the defendant and with the consent of the Crown Prosecutor. I did not enquire the reason

why the defendant did not wish to call him as his own witness. Although the power of the Court to call witnesses in a criminal case seems clear, it is not a power I would care to exercise except by the consent of both the prosecution and the defence: see Cockle's Cases and Statutes on Evidence, 5th Ed., p. 408.

I make the following extracts from the note:-

At page 242. (Examined by defendant).

Q. Have I ever been at a Mau fono other than the meetings at Tuaefu?

A. No. There have been only discussions and conversations at Tuaefu.

At page 245. (Examined by Mr. McCarthy).

Q. Did he advise you against the Mau Police?

A. Yes. He spoke privately to me about that. He said, "Faumuina, I hear there is some mention of the Mau Police. I disagree entirely with the proposal because it would be against the law."

The evidence I have quoted is very general but for the purpose of review it shows the general duties expected.

I will now turn to the specific instances of meetings between the defendant and the Mau between the dates mentioned in the information.

Following on the quotation I have already made of Une's evidence at page 173, in which he said certain resolutions of the Mau were sent to the defendant to consider whether they are in breach of the law, the following appears in the note:-

Q. Has that ever been done?

A. Yes - in regard to the arrangement for the malaga party round Upolu and Savai'i - there was considerable argument among the Samoans, so the matter was referred to Taisi at his home so that he could give a ruling. Some Samoans suggested the malaga party should consist of fifty persons. Some wanted forty persons.

Q. How was the matter of the malaga parties taken to Taisi at Tuaefu?

A. The Committee went to Tuaefu to ask if such an arrangement would be an offence against the law.

Q. Were you present?

A. Yes. I had work to do and I heard the opinion expressed by the defendant

And at page 174.

Q. What was the final decision about the malaga party?

A. The number of each party was reduced and they set out.

Q. To what numbers were they reduced?

A. To just over ten matai.

Q. On whose advice was the malaga party reduced to ten?

A. Taisi's, because there was so much argument about the matter it was finally agreed to reduce the number.

Q. When did all this happen? How long before the malaga party left was it that the matter was discussed at Tuaefu?

A. About two weeks. I can't remember exactly.

It is common ground that the malaga party set out on the 15th November, 1933. Une deposed on page 175 to another visit to the defendant by himself, Tualo Tulo and Autagavaia on what presumably were Mau matters, but as he was making the kava, he did not hear what took place.

At page 178.

(Cross-examination).

Q. Is it not a fact that the malaga parties were decided upon by the Mau before I knew of them?

A. Yes.

Q. Apart from advising that if a malaga party should go, only a few should be in a party, you don't know do you that I selected or nominated any of the personnel of the parties?

A. You did not appoint any member of the party.

Leulua refers to this matter at pages 182 and 188, but it is not clear that he was at the Tuaefu meeting.

Faumuina was asked by Mr. McCarthy (see page 246):-

Q. Did Taisi give advice by word of mouth about the malaga party?

A. He gave advice to the effect that the number was excessive, and if we sent out parties we should send out smaller ones, otherwise we might be committing a breach of the law. I can't remember whether the advice was given at the same time as the Mau Police was discussed. Defendant gave me the advice at Tuaefu.

Q. Would that be in November?

A. Perhaps. I can't remember.

Q. Who else was present with you at Tuaefu when the advice was tendered?

A. I am not quite sure if that was the day the Samoans took me up to effect a settlement of my dispute with Taisi. I have been to see Taisi not only on one occasion but on many occasions to discuss family matters.

Q. Where were you when Taisi tendered you advice about the Mau Police?

A. In the eastern end of the verandah.

The facts deposed to by these witnesses were not challenged in cross-examination, and I accept their truth without hesitation.

I will now refer to the evidence given by the accountant of the Gold Star Transport Co. Ltd. concerning the taxi-cabs ordered and paid for by the Mau Committee during the months of October and November,

1933. Standing alone, that evidence would have no weight, but when connected with the evidence I have quoted, becomes important for it shows that during October and prior to the 16th November there were no fewer than nineteen journeys between Tuaefu and Vaimoso, and that lengthy stays were made at Tuaefu on most occasions. Although Tuaefu is not confined to defendant's residence, the evidence shows that "Tuaefu" is its name. Indeed, that word is depicted on the lawn in large block letters (see page 205). Vaimoso is a large village, but the evidence shows that it is the headquarters of the Mau (see pages 3 and 199).

The evidence of Tualo Tulo (see page 215) shows that a Mau party went to defendant's residence in a Gold Star taxi-cab to consult defendant about the correspondence between the Administrator and the Mau. It is clear, however, that that visit took place between the 15th July and the 18th August. This witness attended a second meeting at Tuaefu. This second meeting is identifiable as 'the reconciliation meeting' between the defendant and Faumuina, and was held on 11th November. Tualo Tulo says at page 217 that he believed he went to Tuaefu in a Gold Star taxi, and that more than one taxi was used.

The admitted object of this meeting was to effect a reconciliation between the defendant and Faumuina, the President of the Mau. It is clear to me that the dissension between the two had nothing to do with Mau matters, but the presence of leading members of the Mau Committee indicated that the healing of the breach was necessary in the interests of the Mau. It is true that the evidence shows that all important chiefs would take part to effect a reconciliation between the holders of such important titles as Taisi and Faumuina, but I believe that those who went on that occasion were concerned only with a reconciliation because of Faumuina's threatened abandonment of the Mau.

A letter written by Faumuina was found in defendant's possession at Tuaefu on the 16th November. The letter was written on 2nd November. I forbade the disclosure of any of the details of the quarrel between the two, and admitted only the last portion in which Faumuina declared, "So now, Taisi, my reply goes forward with humbleness to you - there is no further use for me to see you or work further together with 'lau Afioga' before the people: in my heart my oath before you is finished: I am finished with the Mau and may God see my faithfulness to you."

I have made reference to this meeting chiefly because on the 11th November the Gold Star debited the Mau Committee with two journeys from Vaimoso to Tuaefu and two from Tuaefu to Vaimoso.

The evidence to which I have referred proves in my opinion the facts set out in paragraph (a) of the particulars relating to charge No. 2.

I will now refer to the evidence relating to paragraph (b) of the same charge.

Among the documents seized by the Inspector of Police are five which are designated "O le Feau".

There are two classes of documents relating to Mau activities: one is called "O le Feau" and contains advice given to the Mau by the defendant. The other is called "O le Poloaiga" and contains some decision or order of the Mau itself (see page 246 - Faumuina's evidence).

These five documents are dated respectively 4th October, 13th October, 30th October, 7th November, and 7th November, 1933, and are included in Exhibit 8. Each document is obviously an office copy and is signed with the letter "T" - except the Feau of 30th October. The prosecution alleges that "T" stands for Taisi, the Samoan title by which the defendant is known in Samoa. A copy of the Feau bearing date 30th October, 1933 was shown to Faumuina, who said it emanated from the defendant, but he could not account for the initials "M.T.P." at its foot. The document has obviously been prepared by a third person at the dictation of the defendant. Faumuina acknowledged receipt of the Feau in a letter dated 30th October, 1933 (see Exhibit 8). That letter was found in defendant's possession, and was proved by Faumuina.

The importance of the Feau message of 13th October is that its contents are reproduced substantially in a document (see Exhibit 86)

found in possession of the Savai'i malaga party. This was proved by Tauiiili, Secretary of the party (see pages 221 and 222). Tualo Tulo deposes that the Feau was read out in a fono (see page 213).

In my opinion these facts standing alone are sufficient to support paragraph (b) of the second charge, but this evidence should be connected with that which I have already dealt with in connection with paragraph (a) and with the evidence provided generally by all the documents found in the defendant's possession on the 16th November, 1933. When that is done, the already strong proof becomes stronger yet.

I now come to paragraph (c) of the second charge. Inspector Braisby says the N.Z. Samoa Guardian "is a newspaper published in New Zealand and distributed throughout the Territory: it is printed in the English language and has a supplement in Samoan: it is commonly known as the Mau newspaper." The Samoan witnesses deny that it is so known, but I accept the Inspector's evidence on this point. Indeed, I don't think the Samoan witnesses were able to appreciate the difference between "a name by reputation" and an actual name. To them it is the "Matua Tausi".

From the excerpts that were read during the evidence (and apart from any portion of an issue specially referred to I have not examined other portions) the Mau newspaper would appear to be a reasonable and indeed only designation.

This paper was first published in May, 1929 and publication continued down to the dates included in the informations. The nominal proprietor is a private Company registered in New Zealand. I use the word "nominal" advisedly, for apart from Inspector Braisby's evidence, I do not think any Court would believe that a Company having a capital of £100 would be formed to carry on the business of newspaper proprietors and publishers as a business proposition, or in other words, with a view to profit.

The documents found in the defendant's possession on 16th November, 1933 and the letters written by the defendant (see Exhibit 44) show conclusively that the paper is kept going solely by the large sums of money the defendant has paid personally and the moneys supplied by the Mau. The documentary evidence also shows that the main object of the paper is the furtherance of Mau activities and objects. The most pregnant description of the objects of the N.Z. Samoa Guardian is contained in the Feau of 13th October, 1933, which I have already held to be a document prepared and signed by the defendant in his capacity of adviser of the Mau:-

The sharpest weapon of the Mau is the newspaper, the Guardian, by which Samoa and the whole world is informed of happenings, and which opposes the mass of lying reports made by those who are angry towards us. So therefore it is proper to try hard to feed that paper with things to enable it to be published every month.

The only meanings attributable to this extract are - (1) that except for news pertaining to Mau activities or relating to the objects of the Mau, the newspaper would not be published; and (2) that the newspaper is the sharpest weapon with which to fight and oppose the functions of the Mandatory power.

The evidence to support the facts alleged in paragraph (c) of the second charge is conclusive. First of all, I will refer to the evidence of the Samoan witnesses, who hold the chief offices in the Mau organization.

Une was not examined on these facts but the following excerpt is from page 177 of the note of the cross-examination:-

Q. As to the resolutions made by the Mau after the manner you have related, were not copies made of them for the different members to take to their villages and districts?

A. Yes. They were typed and circulated. They would be circulated within an hour of the decision being made.

Q. Are not such resolutions as are required for publication in the Guardian sent to Tuaeifu?

A. Yes. What is desired to be published is sent to you but not everything.

Chief Judge. Are copies of resolutions of the Mau other than those to be published in the Guardian sent to the defendant?

A. I do not know if other resolutions are sent or not. I thought that only those to be published in the Guardian were sent to Tuaeifu.

Q. Do you not know that some resolutions of matters just affecting the Samoans are not sent to Tuaeifu?

A. I know that, because it is useless to send resolutions to Tuaeifu which concern only Samoans.

Chief Judge. Why?

A. Because each one has his family to seek assistance from and there is no need to seek assistance from Taisi in respect of those matters.

I pause to observe that I did not require the witness to elaborate his last answer as its meaning is clear to me, or to anyone experienced in such matters. The inevitable disputes between Samoan families are in some cases taken to the Mau Committee instead of the Secretary of Native Affairs or the Land and Titles Commission.

I will now make some quotations from my note of Faumuina's evidence:-

At page 245. (Examination by Mr. McCarthy).

After producing and showing letter of 15th November, 1933 from witness to defendant enclosing a resolution of the Mau concerning the formation of a police department (see page 91 of Volume 1 of the copied Exhibits and also Exhibit 11):-

Q. Did you send all the decisions of the fono to Taisi in that way?

A. No. If the matter did not concern Taisi the decision would not be sent to him. Only those concerning him were sent to him by the Mau.

Q. What was the reason for sending certain decisions to Taisi?

A. Only the matters to be published in the newspaper were sent to Taisi.

Q. Did Taisi send all matters (resolutions) to be published in the Mau paper?

A. The Guardian is not a Mau newspaper.

Q. Evidence has been given that the Mau collects money for the newspaper. Is that so?

A. Money is collected and forwarded to pay the expenses of the newspaper. We do that because we receive it. It was Tamasese who asked the defendant to publish a newspaper for the Samoans to read and he told defendant the Samoans would assist in the expense. When Tuimalealiifano and I went to New Zealand in 1929 we made the same request.

Q. Did you want the decision of the Fono attached to the letter of 15th November, 1933 (above referred to) published in the Guardian?

A. Yes. It was sent to him for that purpose but he evidently neglected to do so.

The evidence of these two witnesses (although accomplices in a legal sense) was given with candour and is fully believed by me. But apart from that, it is corroborated by the documents found in defendant's possession. Although many of those documents were found and properly tendered and received in evidence I do not need to refer to more than a few for the purposes of determining whether the defendant is guilty of the offence with which he is charged.

The two important documents to which I intend to refer very fully in the course of this Judgment are the letter written by the Editor of the Guardian to the defendant dated, "Anniversary of St. Guido Fawkes", and the defendant's reply thereto dated the 15th November, 1933. The defendant's letter was found amongst those ready for the post and is signed in his handwriting.

In this regard I would quote from the note of Inspector Braisby's evidence at page 156 (Cross-examination). This refers to what happened during the execution of the search warrant at Tuaefu on 16th November, 1933:-

Q. Did you not tell me that you would not take any business letters or private letters from Tuaefu?

A. Yes. And I asked you to sort them out which you did. After the search we found that there was one business letter (among those we seized).

Q. Was there anything concerning the case in Allom's letter or Allandale's letter?

A. No. I considered the letters required further investigation. I did all I could in covering any private matters. I went to particular trouble to get your assistance to sort out purely business letters.

. . . .

Q. Did I not ask you to leave out certain business letters, but you took them?

A. I agreed not to take any letter you wished to post and which, in my opinion, was not evidence. I went to particular trouble not to take anything we did not require.

The letter from Andrews to the defendant is consistent only with the allegations set out in paragraph (c) of charge No. 2, but at this stage I will make only one quotation:-

You may affix my signature to anything you like and I'll chance it
The Mau may also make any use of my name they wish to, and I'll stand the racket. You have plenty of Guardian paper now and you can put "Percy Andrew" or "Pasia" to anything that appears on it with your approval. There was no need to ask for that from me.

The defendant in his letter in reply said:-

I thank you for the permission to use your name "Percy Andrews" or "Pasia" in reference to the Guardian. It shall not be used without your being told of it by the

first mail and then on letters regarding the publications only where we think it better that such representation be made direct from Auckland and not here.

In the defendant's letter in the second paragraph appear these words:-

I have used your reference to the 'Status' of the population in the "Latest News".

Among the documents seized is the manuscript of an article headed thus:-

N.Z. Samoa Guardian (Issue December 15th 1933)

Latest News from Samoa
From our Samoan Correspondent

Apia, November 16th, 1933.

This manuscript has upon it the conventional expressions used by printers, and opens with a dissertation on the question of racial status - anent the Administrator's refusal to hold a Fono with the Samoans if the defendant was present. There is a later descriptive account of the malaga parties that had left on 15th November to go round Upolu and Savai'i and to which I have referred previously.

Later still, reference is made to a further letter sent by the Mau to the Administrator on 4th November.

The defendant when addressing me submitted that the evidence did not show that he was other than the Guardian's correspondent and agent, not the Mau's. It does not matter for the purpose of this case whose correspondent or agent he was; but in my opinion, and I so hold, he was the correspondent or agent for the Mau for the purpose alleged in paragraph (c).

I do not think it is necessary to make reference to other documents which contain evidence against the defendant in respect of the allegation in paragraph (c), and I will now pass on to the next two informations which each contain three charges.

The charges numbered 3, 4, 6 and 7 definitely refer to gatherings of the Mau at Vaimoso on 13th and 27th September, 1933. The charges numbered 5 and 8 may refer to those gatherings or to anything else for they do not set out the facts upon which they are based. In the portion of the final Judgment dealing with the legal aspects of the case, I have held that charges No. 5 and 8 are included in the amended No. 2 charge and must be dismissed.

The evidence of Une, Laulua, Tualo, Sergeant Seiuli and Faumuina conclusively proves that these gatherings were Mau functions - or, in the words of subclause 3 of Clause 3 of the Samoa Seditious Organizations Regulations, "meetings held by a seditious organization".

The defendant during his cross-examination elicited that each meeting was largely attended by the Samoans, and that members of the European community attended by special invitation. Indeed, the Administrator and other prominent Government officers were formally invited. The defendant also referred to this matter in his address.

It is common ground that the meeting was unlawful (apart from being a Mau function) under the Maintenance of Authority in Native Affairs Ordinance (No. 2), 1928 because a police permit had not been obtained. It is admitted that the police knew exactly what the first function would be about four days prior to the 13th September; but no steps were taken to stop the function nor any police warning given except to one European who made enquiries about its legality after receiving an invitation. Likewise, the police knew exactly what the second function would be. I made comment upon this during a previous case, and will do so again in my final Judgment. My purpose so far as I have gone (as already indicated) is only to refer to the facts upon which I find the defendant to be guilty of three offences, and to reserve my comment on their degree of

seriousness when awarding the penalties which must be imposed upon the defendant.

The actual presence of a person at a meeting held by the Mau is prima facie evidence of an offence under subsection (3), but such person would be acquitted if circumstances or direct evidence proved an absence of guilty knowledge. The defendant accordingly contended that the whole nature of the proceedings, the presence thereof of police officers, the absence of a police warning, the presence of leading members of the business community, the invitation to the Administrator, all show complete innocence on his part. Had that been the only evidence against the defendant I would not discuss the matter further for it is clear that in those circumstances the Court would not impose a penalty. But the evidence which is contained in a document known as Report No. XVII negatives the defendant's contention.

I find it necessary at this stage to make a brief reference to the defendant's return to Samoa after the expiration of the term for which he was deported. He sailed from Auckland by a Matson liner to Pago Pago in Eastern Samoa via Suva. He was met in Pago Pago by a delegation of the Mau Committee, who informed him of the preparations that were being made for his welcome when he reached Apia. The defendant wisely objected to the programme. Indeed, he sent a radiogram to that effect before reaching Pago Pago, for no doubt he had heard of the programme by letter.

The defendant arrived in Apia on 16th May, 1933, and celebrations in the form of a ta'alolo by the Women's Mau were held at Vaimoso on that and the following day.

The Inspector of Police admitted that these gatherings were unlawful, but no action was taken. On page 2 of the note appears the following:-

Nelson was met at the wharf by a large number of women in Mau costume. There were 1,500 of them. Nelson inspected them. It was an orderly reception but obviously a Mau reception.

That day and the two days following there were receptions at Vaimoso. They were orderly meetings but unlawful. No police action was taken. It was felt as a matter of policy that no trouble should be caused because of Nelson's return.

The programme suggested by the Mau, and which was altered at the defendant's request, included ta'alolos by the Mau.

I now quote from my note of the defendant's examination of Faumuina at page 240:-

Q. Did I not request the Samoans and particularly yourself on the second day of my return that I thought the receptions already held were sufficient, and that nothing should be done to cause the Government to think I was flouting the laws?

A. Yes.

Q. Would you say that the ta'alolo subsequently held (i.e., on 13th and 27th September) were those that might have been given at time of my arrival?

A. Those were the ta'alolos the Samoans were prepared to give you on your arrival.

Q. Was I informed of the proposed ta'alolo before all arrangements had been made for holding them?

A. The districts had first advised that they were all prepared for the ta'alolo. Then you were advised.

I will now revert to Report No. XVII. Among the documents seized at defendant's residence on 16th November, 1933 were eight which are headed, "To Friends of Samoa, Auckland, N.Z. From Taisi". The Reports are numbered XVII to XXIV, and bear dates respectively 20th September,

29th September, 9th October, 9th October, 13th October, 19th October, 26th October and 15th November. The documents are office copies. In the letter from Andrew to the defendant of 5th November, 1933, to which I have previously referred, appears the following:-

This brings me to Report No. XXIII, which I am glad a later letter by the same mail cancelled There is quite a good circle who have been seeing the reports ever since number one from Suva . . . but we all enjoy these reports, and they keep our little circle together by bringing them in to hear the latest and know what is going on; but what you could tell us if you were here among us for a Saturday fono is different from what you can put in writing

I have made this quotation because the letter from which it is made was acknowledged and answered by the defendant's letter of 15th November and thus definitely connects the authorship of the reports with the defendant. The possession of such documents alone, found in the circumstances detailed by Inspector Braisby, would be sufficient to call for an answer by the defendant. Having satisfied myself that the defendant prepared and sent the originals of the reports to the alleged friends of Samoa, I will quote from Report No. XVII:-

So as to have always a few papalagis in each of the Mau functions to me (three persons named) are being invited to the Palauli function . . . with the exception of the Nelson staff . . . the others would prefer not to attend, but will find it hard to refuse the Samoans because of various reasons, commercial and otherwise; but that is why they are invited. We want to know which side they are on. It is now a matter of, "You must be with us or against us". You will see that there is always a method in Mau madness.

The last paragraph of the Report is more relevant to charge No. 2. It reads:-

I have now decided to send one copy of each of all these reports to the three directors of the Guardian for them to show to friends, one for the Mau office here, and one for my files. I can only get five copies in one set.

This Report is dated the 20th September, 1933, seven days after the first function and seven days before the second.

Probably it would be impossible to find stronger evidence of the defendant's knowledge of the purport of the meetings of the 13th and 27th September.

It is clear from the evidence that the defendant addressed each meeting and must be convicted on charges two, three and six. As these charges cover charges four and seven, and charges 5 and 8 are now included in the amended second charge, the last mentioned four will be dismissed.

The defendant will be remanded in custody to appear before me at 9:00 o'clock on Wednesday morning next - 7th March, when I will deliver my final Judgment.

FINAL JUDGMENTPART 1

LUXFORD CJ. The defendant is charged with having committed eight offences against the Samoa Seditious Organizations Regulations, 1930 and has pleaded guilty thereto.

The eight charges are set out in three informations in the following words, but charge No. 2 has been amended in accordance with a formal Order I made on the 1st day of March and is shown in amended form in my interim Judgment.

Charges:-

1. On or about the 16th day of November 1933 at Tuaeifu near Apia did identify himself with a seditious organization, to wit, the Mau by having in his possession certain documents the property of the Mau and by having in his possession on the date aforesaid certain other documents and papers relating to the Mau and its organizations and activities.
2. Did on divers other dates between the 18th August 1933 and the 16th November 1933 at Apia and elsewhere identify himself with a seditious organization, to wit, the Mau by meeting and associating with members of the Mau.
3. On the 13th September 1933 at Vaimoso did address a meeting held by/or for the purposes of a seditious organization, to wit, the Mau.
4. Did on the date aforesaid at Vaimoso attend a meeting held by/or for the purposes of a seditious organization, to wit, the Mau.
5. Did on the date aforesaid at Vaimoso participate in activities and aid and abet and encourage the continuance of activities or objects of such organization, to wit, the Mau.
6. On the 27th September 1933 at Vaimoso did address a meeting held by/or for the purposes of a seditious organization.
7. Did on the date aforesaid at Vaimoso attend a meeting held by/or for the purposes of a seditious organization, to wit, the Mau.
8. Did on the date aforesaid at Vaimoso participate in the activities and aid and abet and encourage the continuance of activities and objects of such organization, to wit, the Mau.

The Samoa Seditious Organizations Regulations, 1930 came into force on the 11th day of January, 1930 by virtue of the publication thereof in the Western Samoa Gazette No. 60. On the 13th January, 1930 the Mau was declared a seditious organization by the Proclamation of the Administrator duly published in the Western Samoa Gazette No. 61.

The effect and scope of the Regulations were referred to by the learned Chief Justice in the case of O.F. Nelson and Co. Ltd. v. Police [1932] N.Z.L.R. 337 at page 351. He there says:-

It may be arguable, having regard to the language of the Order in Council and its scope and object - and in deciding its scope and object regard must be had to the conditions existing at the time - that its effect, as soon as the Proclamation was made and gazetted, was intended to be, and was as it were to outlaw the Mau, and to prohibit any person from dealing with it, or helping it in any way whatsoever.

The specific prohibitions against dealing with or helping a seditious organization are set out in clause 3 of the Regulations in the following

words:-

1. No person shall summon, organize, conduct, or address, or attempt or assist to summon, organize, conduct, or address, any meeting held or proposed to be held by or for the purposes of a seditious organization.

2. No person shall use any premises or grant or offer or agree to grant the use of any premises for a meeting held or proposed to be held by or for the purpose of a seditious organization.

3. No person shall attend or invite any other person to attend any meeting held or proposed to be held by or for the purposes of a seditious organization.

4. No person shall participate in the activities of, or objects of, any seditious organization, or by any badge, symbol, uniform, flag, banner, or any other means whatsoever, identify himself with or express his approval of any seditious organization.

A penalty of imprisonment for twelve months, or a fine of 200 is provided in clause 6 for any breach of the provisions of clause 3.

The first charge is in respect of an alleged breach of the last prohibition contained in subclause (4) of clause 3 which enacts that:-

No person shall . . . by any badge, symbol, uniform, flag, banner, or any other means whatsoever, identify himself with or express his approval of any seditious organization.

The facts upon which this charge is laid are set out in the information thus:-

. . . by having in his possession certain documents, the property of the Mau, and by having in his possession on the date aforesaid certain other documents and papers relating to the Mau and its organizations and activities.

Mr. Pleasants, to whom I granted leave to appear to address the Court on the legal aspects of the case, and for whose able and instructive argument I am grateful, submitted that the allegations of fact appearing in the information do not disclose an offence, nor is there any evidence to support the charges.

It has been the practice in this Court in criminal cases to specify in the information the particulars of the facts upon which the charge is laid. This practice was referred to and commented on by Mr. Justice Smith in O.F. Nelson and Co. Ltd. v. Police (*supra*) at page 362. The learned Judge indicated that when the evidence went beyond or differed from the facts alleged in the information the Court should make the necessary amendments thereto under the powers conferred by section 238 of the Samoa Act, 1921.

From a strictly legal point of view, I do not think it is essential, however desirable it may be, to set out the facts on which the information is based, *i.e.*, for the information to do more than describe the offence; but the Court would in fairness to the defendant order particulars of the facts to be supplied and grant such adjournments as would be fair and reasonable in the circumstances if the defendant were in any way embarrassed. In the present case, neither the facts disclosed in the information containing the first charge nor the evidence adduced at the trial support the offence therein alleged, although those facts have direct bearing on the second charge as amended. The gravamen of the prohibition is identifying oneself with or expressing approval of a seditious organization "by any badge, symbol, flag, banner, or any other means whatsoever." In my opinion, the specified things which precede the general words can be placed in a common category. Each one is an outward and visible public manifestation of common association with or approval of the seditious organization and of such a definite common genus that the word "whatsoever" is insufficient to preclude the application of the eiusdem generis rule. With respect, I adopt and apply the principles

enunciated by the learned Chief Justice in Kerridge v. Girling-Butcher [1933] N.Z.L.R. 646 at page 664. For these reasons the first charge must be dismissed.

The evidence adduced in this case went far beyond the particulars which originally appeared in any of the remaining seven charges. Indeed, no particulars at all are set out in charges Nos. 5 and 8. They merely describe the alleged offence of aiding, abetting and encouraging in the words of the enactment. The variation of the evidence from the facts alleged commenced with the first and principal witness for the Crown. This was intensified in his lengthy cross-examination by the defendant, and in the examination and cross-examination of the other witnesses. Only once did the defendant suggest that the answer to a question related to a charge not before the Court, but in point of fact it related to charge No. 2 before amendment.

I propose shortly to make reference to the facts leading up to my amendment of the second charge, to which formal objection was lodged by the defendant.

In addition to the eight charges now before the Court, four further charges were brought against the defendant for alleged breaches of the Samoa Seditious Organizations Regulations, 1930 and one for an alleged breach of the Maintenance of Authority in Native Affairs (No. 2) Ordinance, 1928. The defendant pleaded not guilty to these charges originally, and thereafter the hearing was adjourned from time to time until the 17th December, 1933 when the trial opened. At the commencement of the Crown Prosecutor's opening he said, "I propose to take the first eight informations." I frankly confess that I thought he was referring to the first part of his opening, for no application was made formally to adjourn the remaining five charges. The opening address proceeded and covered the facts relating to all the charges, as did the evidence in chief of the first and principal witness for the Crown. The defendant apparently thought otherwise as will be seen from page 21 of my notes of the evidence when he asked Inspector Braisby whether the remaining five charges had been withdrawn. I was surprised at this question and after enquiring from the Crown Prosecutor what the position was I made the following note:-

Mr. McCarthy explains that he was proceeding with all the charges; his reference to the eight charges meant he was dealing with them first. Again, I had in mind his opening address.

That took place on the 28th December. When the Court resumed on the 2nd January Mr. McCarthy made application that the remaining charges be brought before the Court and that he be allowed to open up new matter in re-examination. This application caused me the greatest surprise and I refused it with the intention that I would subsequently make such amendments as could properly be made and otherwise hear the remaining charges at a separate trial. The prosecution then agreed that only the first eight charges should be deemed to be before the Court. However, the examinations-in-chief and cross-examination continued to go far beyond the facts alleged in the charges.

At the close of the Crown's case and before calling upon the defendant I intimated that I proposed to amend the second charge to one of aiding, abetting and encouraging the continuance of the activities or objects of a seditious organization. I also intimated that if the defendant was in any way embarrassed I would allow any witness to be recalled for further cross-examination. The defendant said he would object formally to the amendment.

As Mr. Pleasants had previously obtained leave to appear to address the Court on legal questions, I deferred making the Order of amendment until he had submitted argument. After the argument I decided for reasons I will state presently that the amendment should be made. I accordingly drafted the amendment and it was submitted to the Crown Prosecutor and to Mr. Pleasants.

On the 1st March, after hearing the defendant further, as appears from

my note, I made the formal Order of amendment.

The right of the Court to amend is regulated by section 238 of the Samoa Act, 1921, which is very similar in wording to subsection (1) of section 392 of the Crimes Act, 1908 (N.Z.). Mr. Pleasants argued the matter solely on the ground that the power given by section 238 did not enable the Court to substitute one offence for another. There is no suggestion that the defendant is embarrassed or prejudiced by the proposed amendment, nor do I think any such suggestion is possible.

In my opinion, the power of the Court under section 238 of the Samoa Act, 1921 is not less than the power of the Supreme Court of New Zealand under section 392 of the Crimes Act, 1908. The powers of the Supreme Court to amend an indictment by substituting one count for another, and by adding a new count, were fully considered by the Court of Appeal in R. v. Skellon (1913) 33 N.Z.L.R. page 102 and R. v. Stone [1920] N.Z.L.R. page 462, respectively. In the present case the actual charges of aiding, abetting, or encouraging are before the Court in charges Nos. 5 and 8, which, as I pointed out previously, do not set out the facts on which they are based. In my opinion, those two charges now merge in charge No. 2. That is what I intend, so really a new offence has not been substituted at all. Consequently, charges Nos. 5 and 8 must be dismissed. I prefer, however, to rest the amendment I have made on the authority of the two cases I have cited.

Mr. Pleasants has challenged the validity of the Order in Council under which the defendant is charged. He contends that the whole Order in Council is ultra vires the Governor-General, and is also repugnant to the provisions of the Samoa Act, 1921.

In view of the importance of the point raised, and the number of Orders in Council by which laws have been enacted for the Territory of Samoa that would be affected if Mr. Pleasants' argument were upheld, I would have stated a case to the Supreme Court of New Zealand if I thought there were any substance in it.

The main argument relating to repugnancy is based on the assumption that the Order in Council is inconsistent with the provisions of section 102 of the Samoa Act, 1921. I am relieved from further consideration of this ground of contention for Mr. Pleasants frankly, and I think properly, admitted after Mr. McCarthy's argument that the decision of the Court of Appeal in Semple v. Donovan [1917] N.Z.L.R. 273 answered most of his submissions under this head.

The contention that the Order in Council is ultra vires the Governor-General is based on three grounds:-

- (1) The subject-matter legislated for does not come within the authorizing words "peace, order, and good government".
- (2) The powers of the Governor-General are limited to the matters specified in subsection 3 of section 45 of the Samoa Act, 1921.
- (3) If otherwise valid, the whole Order in Council becomes invalid because it imposes a penalty greater than £5.

The source of the Governor-General's power to legislate for Samoa comes from section 45 of the Samoa Act, 1921, which is in the following words:-

45. (1.) In addition to all special powers of making regulations conferred upon the Governor-General by this or any other Act, the Governor-General in Council may make all such regulations as he thinks necessary for the peace, order, and good government of Samoa.
- (2.) No regulation made by the Governor-General in Council under this Act shall be of any force or effect so far as it is repugnant to this or any other Act of the Parliament of New Zealand in force in Samoa, but no such regulation shall be deemed to be repugnant to this Act because it is repugnant to the law of England as established in Samoa by this Act, or because it deals with a matter already dealt

with by this or any other Act; and every such regulation shall take effect according to its tenor, save so far as inconsistent with any such Act.

- (3.) The power conferred on the Governor-General by this section to make regulations for Samoa shall extend to the imposition of tolls, rates, dues, fees, fines, taxes, and other charges.
- (4.) Notwithstanding anything in the Customs Act, 1913, the Governor-General in Council may, by regulations under this section, impose such conditions, restrictions, and prohibitions upon the export or import of goods from or into Samoa as he thinks necessary.

That the Governor-General has power to make regulations to define and prohibit seditious organizations is in my opinion beyond doubt. Probably there is no expression in legal language so wide and comprehensive in effect as the words "peace, order, and good government". They may have been judicially defined, but with the paucity of legal books of reference in this Territory I have been unable to find a case which gives a definition of them. I have a recollection of reading a remark by, I think, Lord Justice James to the effect that, "the plainer the meaning of an expression, the harder to find judicial authority for its interpretation", and probably, I would add, the less necessary. The words were used however by, and with respect I adopt the language of the learned Chief Justice in O.F. Nelson and Co. Ltd. v. Police (supra) at page 350:-

The Order in Council was made in the truest sense for the peace, order, and good government of Samoa.

The Order in Council now challenged by Mr. Pleasants came before the full Court in that case, and its validity was assumed by the appellant and the respondent and no doubt as to its validity was expressed by any of the learned Judges.

I must confess that the provisions of subsection (3) have puzzled me ever since first I had to consider the laws of Samoa. The purported extension of the powers of the Governor-General are very plain, but the necessity of elaborating them after the extensive powers given by subsection (1) is the question I have not been able to solve. Whatever be the true reason for the inclusion of subsection (3), it cannot be to curtail the power of the Governor-General to the extent that he cannot by Order in Council provide for imprisonment for breaches of laws made under subsection (1) for the peace, order, and good government of Samoa.

The provisions of subsection (3) of section 45 are reproduced in subsection (2) of section 46 relating to the power of the Administrator acting with the advice and consent of the Legislative Council, to make Ordinances. In subsection (2) of section 46 the additional words, "save as otherwise provided in this Act" appear. Section 61 definitely limits the powers of the Legislative Council by prohibiting some of the powers that ex facie are conferred by subsection (2) of section 46, e.g., the power to impose duties of Customs or export duties.

But section 61 (paragraph f) also limits the power of the Legislative Council to provide as the penalty for an offence a term of imprisonment exceeding one year or a fine exceeding £100.

The intention of the Legislature to confer upon the Legislative Council a power to provide the penalty of imprisonment for breaches of the provisions of a law made by it for the peace, order, and good government of Samoa must in my opinion be inferred. The full Court in Tagaloa v. Braisby (Inspector of Police) [1927] N.Z.L.R. 883 upheld the validity of the Samoa Offenders Ordinance, 1922, which contained such a provision. The question of the effect of subsection (2) however was not raised in argument, but it was referred to by Mr. Justice Ostler in his dissenting Judgment. The provisions of subsection (1) of section 46 are in effect almost identical with subsections (1) and (2) of section 45 except that they are not so wide. Thus ordinances must not be repugnant to regulations made by the Governor-General in Council under section 45; and, further, they cannot deal with matters already dealt with by the

Samoa Act, 1921, or any other Act.

In my opinion, ordinances are subordinate to regulations made by the Governor-General in Council, and it must be borne in mind that the Governor-General has by virtue of section 57 power to disallow an ordinance in whole or in part at any time within one year after the Administrator's assent has been given thereto. It follows from this interpretation that the Governor-General is fully empowered to make provision for the penalty of imprisonment in respect of breaches of any regulations made by him under section 45. Whether that same power exists in respect of regulations made under other sections of the Act is open to doubt.

The foregoing, in my opinion, also answers Mr. Pleasants' contention that the power of the Governor-General is by reason of paragraph (h) of section 25 of the Acts Interpretation Act, 1924 (NZ) limited to fixing a monetary penalty of £5. The provisions of section 25 only apply where they are not inconsistent with the context, and if my interpretation of section 45 is correct, the provisions of paragraph (h) of section 25 of the Acts Interpretation Act, 1924 (NZ) relating to the quantum of penalty that can be provided for in regulations would be an inconsistency.

I know of no authority, nor was any such authority cited in argument, that a power to make regulations does not include a power to provide penalties in respect of any breach of such regulations. The special provision in paragraph (h) is in my opinion merely declaratory of a power already existing, but prescribed a limit in the exercise thereof. I intend, however, to take the matter further.

In the construction of an Act of Parliament, or any part thereof, not only may the scope of the whole Act be taken into consideration, but also the historical evolution of the Legislative enactments which have dealt with the same subject-matter. The preamble to the Samoa Act, 1921 sets out the various steps which lead up to its enactment, and makes special reference to the Western Samoa Order in Council, 1920 (Imp.), which by clauses 3 and 4 made the following provisions:-

3. The Parliament of the Dominion of New Zealand shall have full power to make laws for the peace, order, and good government of the Territory of Western Samoa, subject to and in accordance with the said Treaty of Peace.
4. Subject to the authority so conferred upon the Parliament of the Dominion of New Zealand, and until that Parliament otherwise provides, the Executive Government of the said Dominion may, by Order in Council, exercise the like authority to make laws for the peace, order, and good government of the said Territory.

This Imperial Order in Council was held to have been made validly under the provisions of the Foreign Jurisdiction Act, 1890 (Imp.) by the full Court in Tagaloa's Case.

In pursuance of the powers conferred by the Imperial Order in Council and the Treaties of Peace Act, 1919 (NZ) the Governor-General in Council made the Samoa Constitution Order, 1920, which is substantially identical with the Samoa Act, 1921, and also made a number of other Orders in Council dealing with certain special matters such as Customs, Post and Telegraph, Immigration, Quarantine, Land Registration, Maintenance and Affiliation, and others: see the N.Z. Gazette, 1920, pp. 1619 to 1695. The provisions now contained in section 45 did not, of course, appear in the Samoa Constitution Order, 1920.

I will turn again to the preamble of the Samoa Act, 1921, and refer to the last part of the preamble which reads:-

And whereas it is expedient that permanent provision should now be made for the peace, order, and good government of the aforesaid Territory:

This recital follows the recital in which it is said that the Governor-General has from time to time made temporary provision in that behalf under the Treaties of Peace Act, 1919 (NZ) and the Imperial Order in Council. In my opinion, the Parliament of New Zealand in exercising its powers under clause 4 of the Imperial Order in Council intended to and did

re-enact the powers conferred on the Governor-General by clause 4 of that Order, limited only as is specified in section 45.

I will now refer to the provisions of subsection (1) of section 373 of the Samoa Act, 1921, which enacts that all Orders in Council made by the Governor-General, which were in force at the commencement of the Act (save the Samoa Constitution Order, 1920), "shall continue in force as if they had been made by the Governor-General in Council under the authority of this Act". Among the Orders in Council so kept in force is the Samoa Maintenance and Affiliation Order, 1920, which by clauses 28 *et seq.* creates a number of offences punishable by imprisonment up to the term of two years. The Maintenance and Affiliation Order, 1920 was made validly under the powers conferred by the Imperial Order in Council and continues validly in force by virtue of section 373(1). It has since been amended, and may be amended in future. If the amendments become so numerous, and some do, that a consolidating order is necessary in the public interest, the Governor-General would not have power to re-enact the penal provisions if the contention put forward by Mr. Pleasants is correct.

Parliament is presumed to know and have full knowledge of each and every Order in Council referred to in section 373 and that those Orders in Council were made under prior authority. It necessarily follows that where an Act of Parliament specifically keeps in force an Order in Council made under a prior authority "as if it had been made by the Governor-General in Council under the authority of this Act", the Governor-General has the same power as he had under the prior authority, save only as far as it is specifically modified in the Act.

Perhaps my immediately preceding statement is too wide, but for the purpose of this case it need not go beyond the power to provide the penalty of imprisonment for breaches of any laws enacted by the Governor-General under section 45.

For these reasons the defendant's contention fails.

Apart from the authority of His Majesty under the Foreign Jurisdiction Act, 1890, the sole repository of legislative authority for and in respect of Samoa is the Parliament of New Zealand, and that authority is limited only to the extent specifically set out in the provisions of the Mandate. The Parliament of New Zealand, however, while fully maintaining the supreme power, has delegated a limited legislative power upon the Governor-General in Council and a still more limited power upon the Administrator acting with the advice and consent of the Legislative Council of Western Samoa: see sections 45 and 46. Legislative enactments by the Governor-General are called regulations, and those by the Legislative Council are called ordinances.

The Samoa Act, 1921 itself being an Act of the Parliament of New Zealand (although apart from certain jurisdiction of the Supreme Court is not operative in New Zealand), may or may not be for all purposes subject to the provisions of the Acts Interpretation Act, 1924 (NZ), although its provisions are made applicable to Samoa by section 371 of the Samoa Act, 1921 and "shall apply to Orders in Council and to Ordinances in the same manner as to Acts of Parliament". It is to be noticed that section 371 refers to Orders in Council, but section 45 refers to regulations. The word "Regulation" is defined in section 3 as "regulations made by the Governor-General in Council whether before or after the passing of this Act". All regulations under section 45 must be Orders in Council, but all Orders in Council need not be regulations. The word "regulations" appears in clause 4 of the Samoa Constitution Order, 1920 and in various other clauses: see clauses 11, 31 and 270. Those clauses have been re-incorporated in sections 11, 31 and 280, respectively, of the Samoa Act, 1921. The power to make regulations in those sections explains the opening words of section 45, "In addition to all special powers of making regulations conferred by this or any other Act".

Mr. Pleasants stressed the use of the words "Orders in Council" in section 371 instead of "regulations", and submitted that they meant Orders in Council referred to in section 373(1), and not regulations made under section 45; in short, that regulations under section 45 were relegated to the status of regulations within the meaning of paragraph (h) of section 25 of the Acts Interpretation Act, 1924 (NZ).

I do not agree with that submission. It was necessary, in my opinion, to use the words Order in Council in section 371 for the purpose of embracing Orders in Council referred to in section 373 and the regulations referred to in section 45. Some of the regulations made by the Governor-General and of the ordinances made by the Administrator with the advice and consent of the Legislative Council confer upon the Administrator power to make regulations. To regulations so made I have no doubt that paragraph (h) of section 25 of the Acts Interpretation Act, 1924 (NZ) applies.

A further legal objection to these proceedings was made by Mr. Pleasants. He referred to negotiations between the Administrator and the Mau for the holding of a Fono with a view of settling the grievances of the Samoans. When these negotiations broke down the Administrator warned the Mau delegation that the law would be enforced and the Samoans had only themselves to blame if they broke the law. That, according to Mr. Pleasants' submission, was evidence that the Administrator had by conduct revoked the Proclamation of the 13th January, 1930 and the Mau cannot become a seditious organization again until a new proclamation has been made by the Administrator. I do not think it has ever been suggested before that a proclamation can be revoked except by a revoking proclamation. In any case, there is no evidence of any intention to revoke.

In accordance with leave reserved, I allowed Mr. Pleasants to address me on the admissibility of any document put in other than by consent. No sufficient ground was put forward against the admissibility of any documents except those in Exhibit 45, but in the circumstances of the case I will admit them under the powers conferred by section 248 of the Samoa Act, 1921. All documents referred to in my note as "provisionally admitted" are deemed to have been formally admitted.

PART II

The evidence in support of the charges has been dealt with by me in the interim Judgment I delivered on the 3rd March last, in which I held that the defendant must be convicted of the offences set out and described in charges Nos. 2, 3, and 6. I explained why I took the unusual course of delivering an interim Judgment, and intimated that I would defer comment on the degree of seriousness with which the proved offences must be regarded until my final Judgment. The interim Judgment will now form part of this Judgment and is annexed hereto.

Little, if anything, need be added to justify the imposition of the sentence I propose to pass upon the defendant for sufficient already appears in my interim Judgment, but the facts I will now relate have been considered by me for the purpose of determining whether the defendant should be sent into exile after the termination of his sentence.

The evidence satisfies me that the defendant at the beginning of the agitation against the Government acted conscientiously and with the highest motives, however misguided were the methods employed, and subsequent events have proved how misguided they were.

The evidence further shows that even at the time of deportation, and for some time after, the motives of the defendant were still actuated by what he thought was in the best interests of the country, but he had made a promise to the Samoans that he would return with a victory for them, and should have known what the effect of such a promise would be.

But, although the defendant should have known, he apparently did not realize the ultimate effect of what he was doing. The defendant was appointed the representative of the Mau after his deportation, and took a petition of the Samoans to the Mandates Commission of the League of Nations, which contained details of the grievances of the Samoans against the Mandatory power; but the Mandates Commission would not give audience to the defendant when he went to Geneva. The petition was considered, however, by the Commission and a decision was given thereon. This decision was communicated to the Samoans.

Just prior to the defendant's departure from Europe to return to New

Zealand, some of the members of the European Committee who had been associated with the defendant in the early stages of the agitation endeavoured to arrange a meeting between the Administrator and the Mau with a view to and in full confidence of arranging a settlement of its complaints. They accordingly sent a long radiogram to the defendant requesting him to advise the Mau to meet the Administrator. A file containing copies of the radiograms to and from the defendant was put in evidence by consent, and although the defendant asserted that he remembers two more radiograms had been sent by him which set out his attitude in the matter, the fact remains that he did not agree to the request that had been made to him.

The evidence of Leulua (page 193) and Faumuina (pages 236 and 238), and the evidence generally relating to last year's proposed Fono, make it clear, however, that whatever the advice of the defendant may have been the Mau was determined not to meet the Administrator in fono to discuss their grievances unless the defendant was present.

The defendant returned to New Zealand after his visit to Geneva and sometime afterwards became associated with a man whose evil influence, in my opinion, is to some extent responsible for the subsequent conduct of the defendant, and helped to bring him to his present unfortunate position.

The defendant became obsessed with what he considered the injustice of his deportation for five years from his native country without trial. Indeed, the most painful feature (to me) of this long trial was the number of times he used that set expression, and the emotion he exhibited each time he made use of it. It was evident to me, and I think to anyone who has any knowledge of human nature, that his grievance has become a deep-rooted obsession, forever present, and which often dominates his thoughts and actions.

It is difficult to say when the obsession first made itself manifest, but clearly it was sometime prior to May, 1929 for on the 9th of that month there was published the first issue of the N.Z. Samoa Guardian. The Volumes which contain all the issues of the Guardian down to the end of 1932 were handed in because they contained the particular issues that were put in in evidence. I have not thought it necessary - even if legally I could - to examine other than the matters specifically put in in evidence. The issues from January to October, 1933 (both months included) were put in as documents found in the possession of the defendant. But what I have examined satisfies me that the N.Z. Samoa Guardian is a seditious paper of the worst type. Its main purpose has been maliciously to insult and belittle the Mandatory Power and those to whom the administration of the country has been entrusted. The evidence of Inspector Braisby, who at the request of the defendant himself produced what he deposed were deceptive articles published in the Guardian, is quite sufficient to justify my comments.

There is ample evidence, as I pointed out in my interim Judgment, to prove that the paper could not have been published unless the defendant had supplied the necessary funds; and that he has been responsible for its continued publication, aided by the evil influence of which I have made mention, and to which I will refer more fully presently.

The best indication of the defendant's state of mind is found in the article published under his own name in the issue of 23rd October, 1930. This was read aloud in Court, but I do not propose to perpetuate it by making any quotations from it in this Judgment.

When a person is suffering from a grievance, real or imaginary, he seeks the association of those who will agree with him, and his mind becomes very receptive to suggestions for righting the grievance or punishing those who he thinks are responsible for his position. In this case the defendant considered the Government of New Zealand and the Administrator of Samoa were responsible parties, and assisted by the evil influence of Percy Andrews, the Editor and Publisher of the Guardian, has waged an incessant campaign of calumny against the Government and those connected with it through the medium of the Guardian printed in the English and the Samoan languages and circulated throughout the Territory and elsewhere. It is with pleasure that I note, and I think all right thinking citizens have noted, that two months ago this paper was declared seditious and prohibited from coming into Samoa.

The intent and purpose of Andrews is graphically illustrated in the seventeen pages of a typewritten letter sent by him to the defendant in November of last year. Apart from references to persons, which justly entitle Andrews to be termed "a human scavenger", he advises the defendant how to extricate the firm of O.F. Nelson and Co. Ltd. from its financial difficulties. First he says:-

It's murder the way the Bank are trying to keep their throttle on you through your firm, but I know how ghoulish they are when they get their talons into anyone, and when there is political pull behind the Bank like the B.N.Z. they will stick at nothing.

And then he adds a little later:-

Talking over a quiet one with Petia after the fono yesterday, we agreed that if you were boldly to renounce the Nelson and claim the 'Taisi' it would put Hart and N.Z. off-side . . . That of course is only a suggestion, but with Faumui failing in health, if you were to do this and openly proclaim yourself a Samoan first, change the name of the firm, make it a cooperative concern as far as you could with as many Samoan shareholders as you can find - so long as you hold unchallenged control - you might be able to throw off the bank's shackles, take open charge of the Mau, and then see what the cows here could do.

The Samoan chiefs and orators and the business community in Samoa who remember the year 1904 will remember that a man named Pullack tried the same thing, and how, as a result, a serious upheaval was narrowly averted by the German Government.

Of course, that is only Andrews' suggestion, but the defendant answered that letter by his letter of 16th November and made no reference to the suggestion. As such a proposal on the face of it could only mean that the defendant was to save his firm at the expense of the Samoan people, I infer by his failure promptly to denounce the author that he thought there was something in it and deferred the matter for further consideration.

Then, in the same letter, Andrews sneers at the Samoans and their devotion to the churches in which they receive their spiritual teaching. He considers that the Samoans should pay more towards the upkeep of the Guardian, and this is what he says:-

They can always find money in Samoa to save their souls in the next world: can't they find as much to save them in their own little world . . . I suppose a good Samoan would think nothing of giving £5 a year to his church (that's only 2/- a week) - but if asked for a dollar to help our fight he'd plead poverty and the price of copra.

The defendant replied to this portion of Andrews' letter, and I will include in the quotation a reference to the Upolu and Savai'i malaga parties. This is what he says:-

The malaga of 10 men each for Upolu and Savai'i left today and will take things very cautiously. One or two wild suggestions have already been made, but I knocked them on the head. Regarding the efforts of the Mau to cover expenses by contributions, you really must admit that they have done their best when you realise that, with the exception of the small district in and around Apia, the Samoans have been cutting copra for the last month or two which required a quantity of 2,200 lbs. dry copra or 4,000 lbs. green copra to get but 20/- cash, and when the price was reduced for a little while to sixpence a 100 lbs., double that quantity was needed to get one sovereign in currency. To cut and dry it takes one man's good hard work all his time to get three or four hundred pounds per week which will also require a lot of time of his family to watch the drying process.

The defendant shows clearly with what difficulty a Samoan can by days of heavy work earn a few shillings, but does not tell Andrews that he will cease pressing them for every penny he can get to keep a seditious paper going. He says he knocked the wild schemes of the Samoans on the head, but he does nothing to knock on the head the vile scheme proposed by Andrews to save the firm of O.F. Nelson and Co. Ltd. at the expense of the Samoan people. Neither does he denounce Andrews for his sneering reference to the Samoans' love for their churches.

All of which, in my opinion, shows the nature of the association between these two persons.

I am prepared to believe that after the defendant left New Zealand he made an endeavour to get rid of the effect of Andrews' influence, and thought seriously of following the advice given to him by the Prime Minister of New Zealand in a letter bearing date the 11th day of November, 1932.

The defendant arrived in Samoa on the 16th day of May, 1933, when he found himself on the horns of a dilemma, for the Samoans had not forgotten the promise he had made nor the moneys they had subscribed towards its fulfilment. The defendant had either to announce publicly and finally that he had failed, and take the inexorable consequences that Samoans would demand, or else devise a scheme to cover his failure. He evidently decided that he would encourage a fono between the Mau and the Administrator, which he knew both were anxious to hold. The first approach for the fono was made on the 5th June - within three weeks of his return. Various preliminary conferences were held, and the fono was agreed upon. Then came a hitch. The Samoans insisted that the defendant be one of their representatives, and the Administrator was equally insistent that he would not agree to that.

It would be improper for this Court to make any comment on the decision of the Administrator on such a matter, but I think I am within my rights in observing that the letter bearing date 15th July, 1933 written by the President of the Mau to the Administrator, and according to the evidence the English version was written by the defendant (see Faumuina's evidence page 247), shows that the deportation of the defendant and two other Europeans was one of the main grievances of the Mau. I observe further that the petitions to the three powers also makes the deportation a ground of complaint, while Part IX (paragraphs 12 and 13) of the "Case for Samoa" brings up a claim for reparation on behalf of the deportees.

The Administrator would be quite justified in assuming that the defendant's personal grievances were inserted at his own instigation, and in refusing to allow such a matter to be brought up at a fono to be held to settle the grievances of the Samoan people. No doubt the Administrator had other reasons to justify his attitude.

The defendant by his cross-examination proved conclusively that he urged the Samoans to hold the fono without him being present. That was after the Administrator had definitely declared his attitude; also, that it was in the defendant's own interest for the fono to be held, whether he was present or not, but the Samoans were insistent in their demand. The reason for their insistence, however improbable I thought it was, namely, that as Taisi had suffered so much for the cause of the Samoans it was right that he should attend the fono, might have been deemed a fact proved by evidence, for such was said by witnesses. I mention the improbability of the correctness of the reason, for no matter how often a Samoan would make such a statement, I would know that he does not think along those lines.

The true reason is deducible from the answer given by Leulua to the defendant's question referring to the speeches made at Tuaeufu by the Mau delegation that informed the defendant that the Mau would not agree to him being left out of the proposed fono. The question was, "In those speeches some rather uncomplimentary references were made concerning my withdrawal - that I was afraid - do you remember that?", and Leulua answered, "A number thought that." (See page 189)

It is clear from this question and answer that there must have been some other reason than the defendant's suffering in the cause of Samoa for the Samoans to be so insistent. The true reason, which I deduce from what was said coupled with my knowledge of the Samoan mind, is this, "You have led us into this trouble - it is for you to get us out of it."

Once again the defendant was on the horns of a dilemma, but once the negotiations with the Administrator definitely broke down, he abandoned the restraint he had exercised since his return to Samoa. The old obsession possessed him once more, and regardless of the consequences to the Samoan people he set them in train for what was likely to end in what he himself suggested, a clash of some kind sooner or later: see page 3 of Report XVIII to "Friends of Samoa".

It is important to note that the negotiations with the Administrator broke down on 18th August, and on the 13th September a big Mau ta'alolo (followed by another on 27th September) was held. In my interim Judgment I quoted from Faumuina's evidence at page 240 (defendant's examination), and I will make the same quotation again:-

Q. Did I not request the Samoans and particularly yourself on the second day of my return that I thought the receptions already held were sufficient and that nothing should be done to cause the Government to think I was flouting the law?

A. Yes.

Q. Would you say that the ta'alolo subsequently held (i.e., 13th and 27th September) were those that might have been given at the time of my arrival?

A. Those were the ta'alolo the Samoans were prepared to give you on your arrival.

Probably no better example of the defendant's intention to flout the law could be afforded than this evidence that he himself invited; but the importance of this evidence for my present purpose is to show the defendant's change of mind as soon as he realized that the fono could not be held, and he was once again forced to decide whether to acknowledge to the Samoans failure to fulfil his promise or to make another shadow for them to follow.

In the case against the Savai'i malaga party, certain defendants who were acquitted of the charge of participating in Mau activities were convicted of attending the ta'alolo at Vaimoso on the 13th and 27th September, and I then expressed astonishment that the police had not issued a public warning that the gatherings were unlawful, knowing that invitations had been issued to various members of the public. In any case, in my opinion, it is the duty of the police whenever they have definite information that a big gathering prohibited by law is to take place to issue a warning to the general public, not for the sakes only of those having control of the arrangements, but for the sakes of the many people who would assume the legality of such a gathering.

In the last case, I inflicted a nominal penalty only because of this, but the defendant's course of conduct during the period covered in the charges disentitles him to any consideration in the same direction. I have made reference to that in my interim Judgment.

It is interesting to note that during the month of September there are no taxi-cab hires charged to the Mau for journeys between Vaimoso and Tuaefu, but in October there were nine hires charged, and ten between the 1st and 15th November.

The inference I draw is, that after the negotiations broke down on the 18th August, and the defendant determined on the course of action I have referred to, there was the activity of the Mau in preparation for the ta'alolo in September, and then the preparations were put in hand for the first definite step in the defendant's plan of campaign, the sending of two malaga parties, one to go around Upolu and the other around Savai'i.

The defendant persistently questioned the members of those parties to show that the sole object of the malaga was the laudable object of inspecting the plantations and the cleanliness of villages and roads. The Samoan witnesses readily agreed that was the object of the visit, and truthfully said that because I am certain it was the object the Mau originally had in view until the defendant made use of it for the purpose and in the manner I will presently describe.

The persistence of the defendant's questions to establish the innocent and laudable object made me assume that what was suggested by Mr. Klinkmueller during Mr. McCarthy's opening, namely, that certain documents may have been planted in the defendant's house for the purpose of injuring him maliciously, was to be proved substantively by the defendant. But the defendant elected not to give evidence, nor to call evidence. Upon that I do not comment.

The innocent and laudable object of the malaga party is best rebutted by two quotations, one from Andrews' letter to defendant and the other from defendant's letter to Andrews in reply (letter of 16th November). From Andrews' letter:-

I am glad to learn from yours of 13th October to me that the Mau are going in for silent organising work to get the running of the country into their hands, and they are wise in doing it without any publicity until the time comes to show their hand and prove what they have been doing. The whole question is very difficult and needs careful handling. A false move might be disastrous....

The defendant replied to that as follows:-

Regarding the silent organising work of the Mau to run the country, you are quite right in saying that it requires delicate handling and a foolish move might be disastrous. The malaga of ten men each for Upolu and Savai'i left today and will take things very cautiously. One or two wild suggestions have already been made, but I have knocked them on the head.

One's intelligence is shocked to think that the defendant should have made a suggestion that the sole object of the malaga party was as I have previously stated.

The evidence to which I referred in my interim Judgment does not make special reference to the Feau of the 7th November. There can be no doubt as to the defendant's authorship of this document. Une deposed that he heard its contents read at Vaimoso. In this document the defendant says:-

There will also be no value in the malaga if it departs before first deciding on matters and work that will be done on the malaga, and the party does not take with it any "Order" of the Mau to act as a basis for work to be done and read this "Order" out in each village. . . . If the Mau is agreeable the Representative (Adviser) can prepare some matters to become messages to be taken by the party, provided the real purpose of the malaga is made known.

It is clear from the evidence, and the first paragraph of the Feau that the Mau itself decided on the malaga parties for the purpose of making inspections, but the defendant in his Feau made suggestions that completely altered the purpose of the party.

It is significant that a lengthy document dated the 8th November, 1933, known as 'O le Pologaiga Muamua a le Mau' (the first Order of the Mau), which obviously was prepared for the malaga party immediately after the Feau of the previous day, had been received. Indeed, it gives the names of twenty chiefs or orators who are to form each party, but, as will be seen from the evidence, this later was reduced to ten for each party.

It is difficult to fix the dates of the meetings at Tuaeifu when the malaga party was discussed, and the defendant advised the Committee of the Mau to reduce the size of each party as otherwise the law would be broken. I pause to observe that if the defendant gave such advice, it could not have been given honestly. The activities of the Mau itself, as he well knew, were illegal, and the size of a malaga party, whether large or small, could not alter that. If he gave honest advice he would have told the Committee that smaller malaga parties would not be so noticeable and there would be less chance of the police finding out about it.

The documents would indicate that the meeting took place on the 8th November - the day following the receipt of the Feau - and that the

'Poloaiga Muamua a le Mau' was drawn up immediately afterwards. It is to be noted that a taxi-cab hire charged to the Mau by the Gold Star included two and a half hours' standing time at Tuaeifu on that day. Une in his evidence at the top of page 174 says:-

When the Committee returned to Vaimoso it was not satisfied with the advice given by the defendant. Faumuina insisted that we the representatives should form the malaga party

In answer to a question as to whom he referred by "we the representatives" he said, "Leota, Tualo Tulo, Autagavaia and myself". Those are the "four seats", and the list of the names of the two malaga parties comprises ten from each seat.

I wish to make a short reference to 'O le Poloaiga Muamua a le Mau' because one of its copies found in defendant's possession has two alterations that were made in his admitted handwriting: see Exhibit 8. The admission was made by Mr. Klinkmueller when the document was tendered. Attached to this document is another typed copy, but the typograph contains the altered words of the other document, as well as the names of the various signatories.

Exhibit No. 7 are two copies of a document that were found torn up in a rack behind defendant's desk, and is called 'Fa'avae o le Mau a Samoa' (The Constitution of the Mau of Samoa). The similarity between it and the 'Poloaiga Muamua' suggests that the defendant prepared it in the first place, but after hearing of the proposed malaga parties decided to incorporate its provisions in the "Order" that would be taken by the malaga party, and that he then drafted the 'Poloaiga' (Order) and made the two alterations to the typed draft. The final engrossment may have been done at Tuaeifu, or at Vaimoso, but after it had been signed an exact copy was sent to the defendant.

In spite of the intention expressed in the first and second paragraphs of the 'Poloaiga', the document, viewed as a whole, shows that it is the first active part of "the silent organising work of the Mau to run the country" and "a foolish move might be disastrous" to that work. It justifies my comment that the defendant was leading the Samoan people, through the Mau, to a position which would culminate in open rebellion.

The first two paragraphs are in my opinion merely one of the acts of caution that the defendant refers to in his letter to Andrews, and were inserted to hide the true meaning of the document from many of the Samoans to whom it was to be read.

That completes my review of the facts. There are many more to which I could refer, but enough has been done for the purpose.

It was my unpleasant duty in November and December to punish by imprisonment a number of the High Chiefs and Orators who were members of the Upolu and Savai'i malaga parties. Had the facts now known by me been known when their cases were heard, I would not have imposed the sentences that I did. Justice now demands that they be released from prison and the defendant, the responsible party, take their place. I propose to recommend that the Administrator remit the balance of their sentences.

Defendant, your present position can be very briefly described as "a sad tragedy", for the evidence satisfies me, apart altogether from the manner in which you conducted your defence, that your outstanding ability was capable of being, indeed actually was a force of good to this country and to your mother's people, but you have turned the talents wherewith you were blessed into a force of evil.

The sentence of the Court is that you are to be imprisoned for 8 months concurrently on each charge, and be exiled from Samoa for a term of ten years from this date.

NOTE

On appeal to the Supreme Court of New Zealand sub nom NELSON v. BRAISBY (No. 2) [1934] NZLR 559 all three convictions were affirmed, there being an equal division of opinion as to charge No. 2, but the sentences were varied to remit the prison term to the date on which bail pending appeal had been granted appellant.