TALES FROM THE COURTS.

It has always been my practice to avoid dealings with the law as much as possible, seeking advice about it only when absolutely necessary (with a consequent great saving in the payment of lawyers' fees), and avoiding clashes with it for more obvious reasons. However, some months after assuming duty as a Cadet Officer in the Gilbert and Ellice Islands Colony, I found myself appointed to a magisterial post in one court, and required to perform appellate functions in other courts.

In those days Cadets appointed to the Pacific territories received neither training nor tuition in the law or, indeed, anything else before their departure for the Pacific. It seems to have been tacitly assumed that anyone with a University degree, whether in history, geography, anthropology, modern languages or the classics was qualified to administer the law amongst His Majesty's subjects. True, one was required to pass quite a stiff examination in criminal law, contracts, evidence and procedure, etc., as well as in the laws of the Colony, quite apart from the parallel requirement to pass examinations in two languages, but one was allowed three years in which to pass such examinations. However, at the time of my appointments, I had barely commenced my law studies - not an easy matter on which to concentrate in the tropical heat and on one's own. But, in the event, I found that it did not greatly matter as far as my magisterial duties were concerned, and even less when exercising my appellate functions in the other courts. In any case, such law books as were provided for study were long out of date, riddled with white ants, and scarcely conducive to a mastery of the legal processes.

The Colony had, of course, its own laws and any matters not covered by such laws were dealt with in accordance with the laws of England. In the years of which I am writing, there was, however, no parliamentary system of government in the Colony, nor in any of the other territories which came under the aegis of the Western Pacific High Commission. Though the Administration of the Colony was almost invariably consulted as to the desirability or necessity for any particular law, the Ordinances were, somewhat surprisingly, made simply and solely by the High Commissioner for the Western Pacific, a process which lasted for many decades. The High Commissioner exercized that power under the Pacific Order in Council of 1893, the provisions of which were still in force, virtually unchanged, over 50 years later. The Order in Council also provided for the appointment of a Chief Judicial Commissioner (who was also the Chief Justice of Fiji), Assistant Judicial Commissioners or, the lowest rank of all, Deputy Commissioners. I was appointed a Deputy Commissioner, as were all my colleagues in charge of administrative districts, but our powers of sentencing were fairly limited.

But far and away the greater volume of judicial work in the Colony was undertaken in the Native Courts, established on each island. They had a long and honourable history, having been established in 1893, the year after the Union Jack was raised and the Gilbert and Ellice Islands declared a Protectorate; in fact, it is probable that they functioned on a somewhat similar basis, though without legal sanction, even before that year. They bore a remarkable resemblance to one aspect of the English judicial system, of a court comprising judge and jury, and were far in advance of any other system then extant in the Pacific. From the beginning, they administered laws and regulations quite separate and distinct from those administered in the High Commissioner's Court, such laws and regulations being enacted after consultations with the Native Governments on each island.

The Native Government and the Native Court on each island comprised the same personnel. But they exercised quite different functions. The Native Government was concerned with administration in all its aspects, for example, the maintenance of law and order, the supervision of

hospitals, schools and prisons, the maintenance of Government buildings and roads, etc., whilst in its capacity as the Native Court it was concerned with the administration of the native laws and regulations. the performance of marriages, the grant of decrees in native divorce cases, etc.

Though his office was entitled Native Magistrate, that officer was head of the Government on the island, whilst at the same time he exercised magisterial functions as head of the Native Court. There was also a Native Scribe (who functioned as Treasurer and Postmaster) and who, whilst keeping all the governmental records and collecting revenue from licences, was also responsible for recording all minutes of the court; a Chief of Kaubure; and an appropriate number of Kaubure. The latter were elected by their own village folk, usually one for each village or two in the case of larger villages. Their appointment was supposed to be subject to the concurrence of the other members of the Native Government and of the central Government, but in practice this was pretty much of a dead letter at that time. The Native Magistrate and the Native Scribe were appointed by the District Officer, though usually only after the latter had made careful enquiries throughout the island as to the best choice. In practice, the Kaubure acted like an English jury, the Chief of Kaubure like the foreman of an English jury, and the Magistrate pronounced sentence.

In cases of murder or in the hearing of cases for divorce decrees, however, it was laid down that a District Officer must sit with the Native Court.

In fact, and except for Ocean Island, the number of cases which a Deputy Commissioner might be called upon to hear were few, the vast majority of cases being heard in the Native Courts. On Ocean Island the small Native Court dealt almost wholly with the few hundred Banabans (as the natives of that island were called), whose problems mostly concerned land matters rather than breaches of the law.

In the High Commissioner's Court on Ocean Island, the vast majority of cases concerned the Gilbertese or Chinese labour employed by the British Phosphate Commission, who were engaged in the extraction of phosphatic rock from amid the coral pinnacles of the island, which was only some 1500 acres in extent, and where, despite the fact that the island was the headquarters of the Colony Administration, its staff dominated the social and economic life of the island. Most of the charges against the labourers were of a trivial nature, breaching their contracts of employment, for example, failure to turn up for work on time, failure to fulfil their full stint or task in the phosphate fields, leaving their work early, and so on. If a serious case arose - and there were a few occasionally - then the Resident Commissioner, who was the head of the Colony Administration, was usually appointed an Assistant Judicial Commissioner to hear it, with Assessors.

After some months, the day came when I was summoned to the Residency - a smaller version of Government House in larger territories - which was situated on almost the topmost point of the island and on the opposite side of the cricket field to the small Secretariat building. The purpose of the summons was so that the Resident Commissioner could notify me of my appointment as a Deputy Commissioner.

The post of Resident Commissioner was at that time filled by an acting appointee, who was the senior magistrate in the Colony - an Australian, well built, red-faced, with gold rimmed glasses, and with four children of which the two sons were named with little or no originality as Gilbert and Ellice. He was the sort of man who, when playing tennis, would wear both a belt as well as braces with his shorts, lest the former should let him down. His world seemed to be bounded by a 2/- Australian booklet on etiquette, Colonial Regulations, and the General Orders of the Government. He was unfortunately

completely lacking in humour, and loath to take decisions if they could possibly be avoided, or at least delayed until another day. On any occasion when a Friday and the 13th day of a month coincided, he could never be contacted, having usually, to use an Australian phrase, "gone walkabout", thus avoiding the need to take decisions on such inauspicious days.

One story is told which well illustrates his rigid adherence to the niceties of etiquette, and obedience to rules and regulations. In those days, when ships of the Royal Navy (later the Royal New Zealand Navy) called at islands on which a District Officer was stationed, the District Officer wearing his official uniform was expected to pay a formal call on the Commanding Officer and the ward-room of the vessel. On the particular occasion of which I write, the District Officer stationed at the island of Funafuti in the Ellice Islands (as the Acting Resident Commissioner was then) made his calls in full uniform. He then rushed ashore, changed, and boarded the warship, which then headed for the Tokelau or Union Islands to rescue the crew of a shipwrecked schooner. During the voyage of several days, both to and from the Tokelau Islands, the officer lived in the ward-room and naturally came to know the Commanding Officer and the ward-room officers extremely well. Nevertheless, on the return of the ship to Funafuti, he once more rushed ashore, donned his official uniform, helmet and sword, and paid an official call on the Commanding Officer and the ward-room.

His procrastination in dealing with files, however, was more serious, since this led to a concentration of them in his office, which produced a kind of thrombosis as far as administration was concerned. Certainly when his substantive successor arrived, several dozen files were unearthed in the Residency - some said secreted under his bed, though this may have been an exaggeration. Fortunately he used at times to walk across the cricket field on his way to hold court at the court-house, which was situated on the lower slopes of the island, adjacent to the Treasury and General Post Office. When we in the Secretariat saw him safely on his way, my senior colleague (ex Jesus College, Cambridge, whom I have mentioned in another story, "Tales from the Posts") used to bid me to rush across the cricket field, enter the office at one end of the Residency, collect a large armful of files, and retire speedily to the Secretariat. These were then minuted up to the Residency again in the hope that, gaining a place on the top of the pile in the office, they might be acted upon. Sometimes the ploy succeeded - more often not. So much for our senior magistrate.

After being summoned to be informed that I had been appointed a Deputy Commissioner, I was told that a senior District Officer would collect me from the Secretariat on the following Monday so that I might sit with him in the High Commissioner's Court and learn the manner in which justice was dispensed in this far flung dot of Empire. That officer duly called for me on the appointed day and we strolled down the hillside towards the court-house. As we neared the Treasury, my colleague excused himself, saying that he wished to have a word with the Treasurer, who combined that post with those of Collector of Customs and Chief Postmaster.

The phrase "the majesty of the law" is often used, but it did not seem to me to have much relevance to Ocean Island. Whereas the Acting Resident Commissioner would never have dreamed of appearing in court unless wearing coat and tie, my colleague on this occasion was dressed in a somewhat colourful open-necked shirt, and khaki shorts. However, he was a portly gentleman - in fact a former member of the staff of the British Phosphate Commission - and doubtless found it cooler to dispense justice when dressed thus.

Nor could the phrase "the majesty of the law" be appropriately applied to the court-house on Ocean Island. It consisted of a small concrete floor, perhaps 18 feet by 15 feet, with solid posts at each corner upholding a roof of native thatch. It was open at the sides

save for a low lattice fence some 2½ feet high, pierced in one place for entry to the building, if such it could be called. However, it was certainly blessedly cool. At one end, on the right, was a small table, behind which the Magistrate was expected to sit on a most uncomfortable Austrian bentwood chair, whilst at two smaller tables at the other end sat, usually, the two staff members of the Phosphate Commission ready to prosecute Gilbertese or Chinese offenders for breach of contract. The Superintendent of Police might join them if any Crown cases were to be heard, whilst seated adjacent to the prosecutors were the Gilbertese and Chinese interpreters. The accused, upon his case being called, stood at the side of the court opposite the doorway.

In charge of the proceedings was an extremely smart and well-turned out Sergeant of Police, an Ellice islander from Nanumea, in his khaki drill shirt, and lavalava made of the same material with a double red stripe on it, and a leather belt which could have held its own with the most polished Sam Browne imaginable. On our arrival at the court-house, he saluted in a manner which the Company Sergeant Major of any of the Guards Brigade would have approved, and announced in stentorian tones that the court was now open. I noticed that, in contrast to my colleague's rather casual dress, the two prosecutors were dressed in immaculate white drill, with ties and coats.

Those charged with offences sat around the court-house under the coconut trees until such time as their cases were called. On this particular day, the first two or three cases involved trivial shortcomings by the labourers charged, for which they were fined a few shillings. The cases occupied about an hour. After the third man had been found guilty, sentenced and left the court-house, however, the Sergeant sprang into the doorway, saluted, and somewhat to my astonishment, announced in thunderous tones "THE COURT WILL NOW ADJOURN FOR A SMOKE". Further, not only did everyone light up, and commence to discuss local news, than the Sergeant brought from the Treasury building into the court-house two large green coconuts, called moimoto, with the tops knocked off, one of which he handed to my colleague and the other to me to quench our respective thirsts.

After the time in which it took to smoke a cigarette, the court resumed, after another thunderous announcement that "THE COURT WILL RESUME"; but, at intervals throughout the morning, the court again "recessed for a smoke", accompanied by the aforesaid liquid refreshment. Now, the contents of a green coconut are a slightly sweet and fizzy syrupy liquid - excellent as an antidote to beriberi, but somewhat filling; and, after drinking two, I could imbibe no more, though my colleague disposed of several throughout the morning.

The only case which did not involve the breach of a labourer's duties was the last one, which involved an assault by a workman on his European supervisor. After the accused had pleaded guilty, and the prosecutor had briefly outlined the circumstances of the case, my colleague pronounced a verdict of guilty and sentence the accused to imprisonment for a period of five months and three weeks. With the end of that case, the Sergeant boomed that "THE COURT WILL ADJOURN SINE DIE", whereupon, after bidding the Commission's two prosecutors farewell, we left the court-house.

My colleague then suggested then I might like to adjourn to his house for a drink before lunch, whereat he prescribed a gin and tonic as the proper drink to sustain us after our morning's labours. Indeed, from the quantity of gin in my glass, barely adulterated by a few drops of tonic, it was clear that he felt the urgent needs to replenish our "think tanks", so to speak, after such a gruelling morning's work.

He did, however, advise me against following his practice of having periodic breaks for smoking during sessions of the court. Whilst proceedings in Native Courts were pleasantly informal, he said, and the members of those courts would certainly not think such breaks unusual or in any way derogatory of the judicial process, one or two of his senior officers were "rather stuffy" and would regard such breaks as not consonant with Great Britain's imperial role among the islanders,

whilst one or two of the younger generation of District Officers took their duties too seriously to countenance such variations in their court work.

He then asked me what I thought of the two prosecutors from the Phosphate Commission. I replied that I rather liked the one who was prosecuting in the cases involving Gilbertese, since he seemed to have a sense of humour and an air of friendliness towards his charges. As for the other who prosecuted the Chinese, he seemed to me to lack such qualities and I noted that he would scowl and sigh very audibly at times. At this criticism my colleague laughed, remarking that the latter prosecutor always scowled and sighed very audibly when a Chinese was let off (maybe with a caution) than the prosecutor considered proper, his attitude being that, if he brought such labourers before the court, it was the court's duty to impose the maximum fine or other punishment; if it did not do so, then his actions were intended to convey his displeasure to the court.

I then ventured to say that I could not quite fathom the justification for his somewhat unusual sentence of five months and three weeks in the assault case which he had heard in court that morning. I said that I was aware of cases in which the accused might be sentenced to an exact number of months, or even of, say, 2½ or 4½ months but not the somewhat odd combination of months and weeks in his sentence that morning.

He laughed and said that he wondered at the time whether I had noted the somewhat unusual sentence. He then asked if I had yet studied the Pacific Order in Council, under which the courts were constituted, to which I replied that I had not yet done so as I was making use of all my spare time to learn the Gilbertese language since I felt that that would be of more immediate use to me, though I appreciated that I should have to study the lengthy Order in due course as part of my law examination.

"Of course" he said "whilst I agree that heavy sentences must be imposed on persons convicted of serious crimes, it is a big mistake to hand out sentences of 6 months, or maybe 7, 8 or 9 months unless that is absolutely essential". "And why is that" I queried.

"Ah", he said; that is where the Pacific Order in Council comes in; for, if you impose a sentence of six months or more, you are required to send all the papers, etc., in the case to the Chief Judicial Commissioner in Suva; and thereafter one is almost inevitably in trouble of one sort or another. In this connexion, perhaps I should first point out that, in the case of a sentence of six months, it is almost inevitably a complete waste of time since, by the time the records have been prepared, eventually despatched to Suva via Australia by sea mail, the case reviewed in its proper turn by the Chief Judicial Commissioner, and finally returned in the same manner with his views and decision, a period of six months will almost certainly have elapsed. This is also almost certainly so in any cases arising elsewhere in the Colony than Ocean Island, since the mails from the Gilbert or Ellice Islands to Ocean Island are infrequent and some weeks may elapse before the records of the case even reach Ocean Island.

However, assuming that the papers in the case reach the Chief Judicial Commissioner before the sentence has ended, and his reply is received in good time, one's troubles begin. The chances are about 100 to 1 that queries will be raised about court procedures, about the admissibility of evidence, even about the guilt or innocence of the accused, and a thousand and one other aspects of the case, as a result of which one may well be told that the prisoner is to be freed. As already pointed out, the prisoner has almost certainly already finished his sentence, so that not much harm is done, save to one's reputation, but all sorts of queries will probably be raised and explanations sought. That may well result in a file being started on the subject, the contents of which are likely to grow steadily before finality is reached; and, one cannot give one's attention to more pressing matters.

But, of course, if one gives a sentence of five months and three weeks, for example, there is no statutory requirement to send forward

details of such cases for review, with all the ensuing complications. I warmly commend this procedure to you".

He continued "one of the pleasures of presiding over or sitting in courts of whatever type in this Colony is that mercifully there are no lawyers here to dabble in cases brought before the courts, to confuse the courts, to waste your time and mine, and possibly to ensure freedom for those who should be in gaol. If and when the day should come when lawyers were enabled to practise in the courts in this Colony, I for one would no longer wish to preside in any court or hear appeals in the Native Courts. There would be neither pleasure nor satisfaction in presiding over, or participating in the procedure of, such courts in those circumstances".

Curiously enough, it fell to the lot of the same officer to introduce me the manner in which the Native Courts were conducted. We had sailed from Ocean Island in the Colony auxiliary schooner for the island of Nonouti but, owing to adverse winds and current, instead of arriving there late one afternoon and settling in, we did not arrive until the following morning; as our time was short, we therefore on landing attended a meeting of the Native Court in the maneaba (meeting house) on the leeward lagoon shore, instead of first visiting the transit quarters some distance away on the windward coast of the island. As no officer had visited the island for some months, there were a lot of appeals to be heard from prisoners in the local gaol. I might digress here to say that I do not believe that in many such cases throughout the islands the prisoners seriously wished to appeal against their conviction or sentence, but simply to enjoy a few hours of freedom and meet the visiting officer or officers. Be that as it may, the number of appeals, the number of divorce cases to be heard, and the other business of the court took up almost the whole morning. I was impressed, both here and elsewhere, with the manner in which the cases had apparently been heard by the court, and the verdicts and sentences given despite, or perhaps because of, the comparative informality of the proceedings.

At the conclusion of the business, my colleague left me to practise my Gilbertese in discussion with members of the court, and told me to follow him to the transit quarters in about half an hour. This I did but, entering the dim interior of the main room from the vivid sunlight outside, I did not at first catch sight of my colleague. I then noticed that he was standing behind, and leaning over, what looked like a kind of portable bar, behind which was a set of shelves upon which bottles of various liquids were ranged. The bar and shelves were brightly decorated with coconut leaves, interspersed with sheets of silver or other coloured paper.

Giving me the usual Gilbertese welcome of "Ko na Mauri" (May you be blessed, or in good health), he said, after the manner of a bartender "And what will you drink, Sir, after that hard morning's work. We can offer you a choice of whiskey, gin, brandy or beer to quench your thirst, Sir". Somewhat startled, I replied that I would like a beer, whereupon he shouted to his servant "Ioane, go and raise two cold bottles of beer from the well". In this connexion, as I think I have explained in another story, beer was always lowered down the well before its consumption so as to render it, alas not cold, but at least cool. Ioane had obviously been practised in this drill for he was back in the lounge in a flash with the two bottles of beer which he handed over to my colleague. He poured mine out and put it on the bar, whence I collected it, and placed the second bottle on the shelf.

Then, somewhat to my surprise, though I knew my colleague to be a man of somewhat unusual and unorthodox character, he came round to the front of the bar and leaned upon it with his back towards me. After a brief pause, he almost immediately sped round to the back of the bar and, in the ingratiating tones of a barman, said "Good morning, Sir, and what may I have the pleasure of serving you with this morning ?". Speeding round to the front of the bar once more,

he then addressed the non-existent barman and said he thought he would have a beer. Reverting to his role of barman behind the bar, he then poured out the beer, after which he returned to the front of the bar, thanked the non-existent bartender, and collected his drink. Our refreshment continued for some time along these somewhat bizarre lines.

During this time, I said to my colleague that I had noted that, whereas there seemed to be no objection to our smoking during the proceedings in the Native Court, no moimoto had been offered for our consumption during that period as had happened in the court at Ocean Island. He replied that the circumstances were quite different and, when I asked him in what way they differed, he explained that sitting in the High Commissioner's Court in Ocean Island and listening to a series of mostly trivial and boring cases of minor breaches of contract, he was in need of what he termed "refuelling" from time to time in order to keep awake and ensure his attention to the matters in issue. When I pressed him still further, however, his secret came out. Whereas the moimoto brought for my consumption contained nothing but pure "coconut water" (as the contents were termed), half of such "water" had been emptied and replaced by gin before his moimoto were brought to him, thanks to the cooperation of the Chief Postmaster in the office adjacent to the court-house. And, although on the occasion when I sat in that court with him, he must have consumed several moimoto filled as to half with gin, I must admit that I would never have suspected from his demeanour or his judgments that he was surreptitiously, to use his own word, being "refuelled".

Turning now to the activities of the Native Courts, one's first duty on visiting an island, other than one's own headquarters, was to meet with the Native Court and hear any appeal which prisoners then in gaol might wish to lodge against their convictions or sentences, although, as already remarked, such courts were not empowered to hear cases of murder, or grant decrees in native divorce cases, unless the District Officer was present.

I well recall the first of several murder cases in which I was involved. Sitting in my office on Betio, one of the islets surrounding the Tarawa lagoon, one day I was told by my clerk and interpreter that a member of the Abaiang Native Government wished to see me most urgently, having sailed down by canoe some 25 miles between the two islands during the night.

Although he reported in considerable detail, in brief the position was that a Gilbertese woman, one Nei Teretia, had in the early morning of the previous day killed her elderly father-in-law, whilst kneeling, by almost severing his head from his body in a single blow with a sharp axe. So, later that day, I sailed by canoe, accompanied by my clerk and interpreter, from Betio to Abaiang, in order that the the case might be heard without delay whilst the recollections of such witnesses as there might be would still be fresh.

The trial lasted two days and, as was not uncommon in cases in the Native Courts, there was in part a religious background to the murder. The accused wished to plead guilty and I had considerable difficulty in persuading her to change her plea. A number of witnesses gave evidence as to her abnormal behaviour on previous occasions; one said "she was crying and talking foolish things when she was found"; another said that "she was mad now as in former times"; another that "I saw her hands covered with blood and I thought she was mad"; another testified that, when he had asked her just after the killing if she had killed someone, she had replied "the words of Father John have come true and he, Teng Kaieta, is now at the foot of the cross of Jesus" (Father John was a Roman Catholic priest, and Teng Kaieta was the name of the deceased); another witness said that the accused had told him to pray for Teng Kaieta as she wanted him to become a Catholic" (as she was); another witness stated that the accused had told him that "Teng Kaieta had got his reward as he was talking bad about the Roman Catholic Bishop, the Blessed Lady and Father Lebeau" (one of the Roman Catholic

Fathers resident on Abaiang); when one witness, prior to the court hearing, had asked her why she had killed Teng Kaieta, she had told him "E a bakaria te karatia". The husband of the accused testified that, when he had returned that morning from the bush, his wife was "not normal in her looks or speech" and that " previously she had been crazy in her talk and the first time she had had this sickness, which was when a child had been born to her, she had walked through the village naked and eaten mud"; he added "that morning she came into our house with blood all over her hands and said to me 'the old man is now dead who was always mocking religion' ".

The demeanour of the accused at the trial was exemplary and she gave her evidence in a confident manner. After recounting her movements in the early morning of the fatal day, she continued "Then I returned to my cooking house, and when I got near it, I began to cry as some words came to my ears, saying that I have got to go and get the axe from the cook-house and hide myself by going slowly to the old man Teng Kaieta. So when I got to his house (outside of which he was kneeling)I struck him with an axe...Then I sang a hymn 'This is the day of Easter'. I did this thing as I received the wind which makes me lose my senses".

In cross-examination, the accused stated that Father Lebeau had told her to pray for Teng Kaieta, so that the old man, who was a Protestant, might become a Roman Catholic, but she denied that the deceased had ever talked ill of her religion or even discussed religious matters with her. She said that she was still nursing her youngest child of some 9 months old and that "when a child is born to me I lose my senses and eat mud and talk foolishly". That statement was confirmed by more than one of the witnesses.

It proved impossible to determine the precise meaning of the phrase which the accused had use "E a bakaria te karatia". The literal meaning is "Help from God has fallen on him". The word "karatia" was apparently one solely used by the missions, and especially by the Roman Catholic Mission, when a person changed his religious views and embraced the Catholic faith. The phrase therefore seemed to be without meaning, unless the accused considered that God had decided it was better for the old man to die than to remain a Protestant.

At the conclusion of the evidence given by the witnesses for the prosecution and the accused, the latter was remanded in custody so that the Senior Medical Officer might examine her and later give such evidence as might then be appropriate when the trial was resumed. His report, submitted to the Native Court, at its final hearing of the case was as follows:-

> "This is to certify that Nei Teretia of Abaiang has been under my observation in Tarawa Central Hospital for the past two months since she committed an act of violence in killing an old man with an axe.
>
> During the period of observation she has remained healthy in body and no abnormality or aberration in her mental state has been seen.
>
> Her past history during the child-bearing part of her life is known to me and I have seen her on different occasions at Abaiang. At no time have I seen her deranged, but it has been reported to me by responsible natives that during pregnancy and the subsequent lactation period she is subject to temporary, sometimes momentary, attacks of intense uncontrollable desire to inflict lethal cruelty on those nearest and dearest to her. This is a well known type of transitory insanity seen in pregnant and nursing women".

In another tale I have referred to the problem facing the somewhat literal and simple minded members of the Native Courts when faced with applying Native Law No. 1, Murder, the text of which was as follows:-

"The punishment for taking the life of another is death".

I felt certain therefore that, in the eyes of the Native Court, there was no question but to pronounce a verdict of guilty and a sentence of death. So they did, but the Court added a rider that "great mercy and clemency be extended to the accused".

Anticipating such a verdict and sentence, I felt fully justified in speaking privately to the accused before they were passed, assuring her that she had no need to fear that such a sentence would be carried out, though I am not sure whether she believed me.

In forwarding the records of the case to headquarters in Ocean Island, whence it was sent on to the Chief Judicial Commissioner in Suva, and recommending that the sentence be set aside and the accused be detained during His Majesty's pleasure, I stated that "it would appear that the most humane and practical method of dealing with the particular abnormality exhibited by the prisoner would be to have her sterlized" and futher that "there should be no difficulty in obtaining her consent to such a proceeding especially in view of the fact that she already has two children". In subh case, she could presumably have been released from confinement forthwith. Whilst, however, the first part of my recommendation was accepted, the second was obviously too radical in those times for the powers-that-be to contemplate, and was not approved.

In general, the judgments of the Native Courts were usually sound, especially as they knew that, if a large number of appeals should be upheld, there would undoubtedly be repercussions. Apart from murder, other native laws dealt with assault, theft, drunkenness, adultery, rape, arson, slander, threatening or abusive language, formication, the destruction of coconut palms, and so on. In hearing appeals in Native Courts, it was the general experience that the majority of the prisoners were usually found to be guilty of adultery or drunkenness. It was perhaps unfortunate that adultery was a criminal offence, for which the minimum penalty was three months imprisonment, without the option of a fine. Drunkenness was a somewhat serious problem; whilst the sale or other supply of any alcoholic liquor to natives was forbidden at the time of which I write, the Gilbertese had their own ways of circumventing the law. Thus, the vast majority tapped the spathes of the coconut trees for fresh toddy, a nutritious drink, but, once allowed to ferment, the toddy became veritable "firewater" and a large proportion of the cases of murder or assault throughout the Colony could be attributed to the accused having first consumed "sour toddy" as it was called. I personally sampled it on a number of occasions, but found it to be a vinegary and most unpalatable drink.

In hearing appeals in Native Courts, one had nevertheless always to be on the alert for several tendencies which were at times inclined to affect their judgments. One such tendency was the exercise of religious prejudice by the courts; thus, in the north the majority of the islanders were of the Roman Catholic faith, represented by the Sacred Heart Mission, whilst in the south the majority known as Protestants were represented by the London Missionary Society. Indeed, as late as 1930, there were serious religious riots in one of the southern islands. The best Native Magistrate I ever struck called himself a pagan, holding no religious beliefs. In consequence, the judgments and sentences in his court never to my knowledge showed any religious favours or prejudices.

Another such tendency arose from the Gilbertese men and woman sometimes taking the law into their own hands in matters of personal relationships. The Gilbertese man was often inclined to be very jealous of his womenfolk, even to the extent that, when finding that their womenfolk had been unfaithful, they occasionally bit off the noses of their spouses; equally, the women could act vindictively enough if their favours were scorned. I came across one or two cases of nasal disfiguration.

Apropos of the second tendency above-mentioned, this was sometimes apparent in cases of rape. I recall reviewing the sentence of a prisoner on a charge of rape; he had received a fairly heavy sentence of imprisonment. At the appeal, the prisoner had protested his innocence with considerable vehemence, whilst the femme fatale was equally insistent as to the gross indignity and brutality of his act.

It was the word of one against the other, and the Native Court had clearly believed the evidence of the young woman. But, after hearing the evidence of both parties on appeal, I was inclined to believe the accused, who denied the crime attributed to him in a straightforward manner compared to the somewhat histrionic manner in which the woman gave her evidence; and I could not help but wonder if this was the case of a woman scorned. I was loath to interfere with the conviction and sentence imposed by the Native Court without good reason, especially owing to the lack of any confirmatory evidence but, after pondering the evidence, a way out of the impasse suddenly occurred to me, although I felt sure that my suggestion might cause some surprise, if not astonishment, amongst the members of the court since, as far as I knew, it was quite novel. But, as the alleged rape had taken place only some 24 hours earlier, I suggested that the Senior Medical Officer, assisted by the senior of the Native Medical Practitioners, should examine the lady for evidence of rape and report the results of their examination to the court. This was agreed to, though only after some discussion, and despite the furious protests of the lady in the case, who talked loudly about further indignities; and no wonder she protested, for the doctors certified shortly thereafter that the lady was a virgin! It later transpired that she was furious that he had rejected her advances and had decided to take her revenge thus. It is said that there is no fury like that of a woman scorned, and so it proved. The prisoner was naturally released, and the lady immediately charged under the native law of slander.

In another case in one of the northern islands, an elderly man and an equally elderly woman - both probably in their early fifties - appeared on appeal, having been convicted of adultery. Prima facie, they looked the most unlikely couple to have sinned thus, and the quiet and convincing manner in which they both protested their innocence made me suspect that something was wrong. I therefore called on the Native Magistrate to recount the facts of the case. It appeared that the village policeman had been patrolling through their village not long before the 9 p.m. curfew (by which time, even in the thirties, all villagers had to be indoors) when he spied the two prisoners sitting close to each other in an open-sided bure (or house) which belonged to the male prisoner. He observed that the man was smoking a cigarette, when suddenly the woman placed a cigarette in her mouth, leant across to the man, seized one of the man's hands in her's and, with her other hand, held his cigarette and lit hers from that in the man's mouth. There was a pause and I waited for the Native Magistrate to continue but, as he did not do so, I asked as to what happened next. The Native Magistrate replied, somewhat to my astonishment, that that was all. After a pause for breath, I pointed out to the Native Magistrate that the Gilbertese offence of wene ni bure meant literally "lying in sin" and there did not seem to be much evidence of it in this case on the evidence adduced thus far. This seemed to flummox him, but he finally said that for a woman to light her cigarette in her mouth off one in the mouth of a male was roughly equivalent to adultery, or might at least be construed as an invitation to adultery, or the first step in the process. I said that whilst the two latter interpretations might just conceivably be so, though I gravely doubted it, I could not construe the act as the commission of the crime of adultery, and that the prisoners must be released forthwith. He ordered such action with bad grace, whilst both the prisoners thanked me with that innate politeness which was typical of the older Gilbertese in those days and left the court-house. I later discovered that all the members of the court were of one religious persuasion, whilst the two prisoners were of the opposite persuasion!

Apropos of the offence of adultery, my immediately senior colleague (ex Jesus College, Cambridge) told me of a circumstance in which a woman in the island in which his headquarters were situated,

had appeared before the Native Court and demanded a divorce on the grounds of her adultery. Though she named the co-respondent, he was not summoned to the court as there was no evidence other than the woman's assertion that adultery had taken place. The court accordingly decided to ignore her representations, whereat she was so incensed that she informed the court that, after making the necessary arrangements, she proposed to repeat the offence , that she would notify the court of the time, day and place when the offence would be repeated, and demanded that, on the next occasion, the court should send a village policeman to witness the offence , so that he might give evidence in court as to its commission in due course.

I found that one of the most difficult class of cases on which to reach conclusions were those involving magic, though fortunately they were infrequent. I therefore relied as much as possible on the opinions and conclusions of the Native Courts in such cases. Having taken a degree in anthropology, I thought possibly the best guideline to follow might be to try and distinguish between cases of what one might term "anti-social" and "social" magic. But even this distinction was not always satisfactory; thus a man building a canoe and doing magic over it to make it go faster than it might otherwise do could not possibly be blamed for so doing; on the other hand, some man doing magic with the aim of making another ill, or adversely affecting him in some way, was clearly culpable. I recall one case where two men had been indulging in the latter kind of magic, complete with various aids to assist them in the conduct of such magic. The Native Court convicted and sentenced them, and I could see no good reason for releasing them on appeal. But my Resident Commissioner thought differently when they later appealed to him and released them. Knowing that they could not be again charged for the same offence, however, both later admitted that they had been correctly convicted and sentenced by the Native Court. But my guideline of "anti-social" and "social" magic was not infallible; thus, what of love magic ? It might be acceptable if, say, he against whom it was done, found it acceptable; but if he against whom it was being done objected to it, it was clearly unacceptable. I recall my servant once informing me when we were living at Funafuti in the Ellice Islands that love magic had been done against me by two charming Ellice Islands' girls - but that's another story!

Apart from hearing appeals against the native laws, there were also appeals against convictions for imprisonment or fines for transgressions against the native regulations. Some of these in the early days of the Protectorate were somewhat draconian: thus, "No one may work, light a fire, fish or gossip on Sundays - fine $2"; or, "It is forbidden when in difficulties to tell a lie - fine 16/-"; or "It is forbidden to play cricket whilst at public work - fine 1/-"; on the other hand, some were less harsh than the laws and regulations of the thirties; thus, "Law on adultery. It is not allowed. Anyone breaking this law will be fined £1"; or "Law for virgins. Anyone carried away by lust and seizing a virgin - fine £4: to desire the girl without using force - fine £2". But, even in the thirties, some of the regulations, which were made by the Native Governments, though technically subject to approval by the District Officer, were still somewhat otiose; thus, the carriage of passengers, cargo and mails throughout the islands was usually by way of sailing craft but anyone shouting "Tero" (Sail ho) without sighting a ship, but thereby causing folk to cease work, was liable to a fine of 2/-, a not inconsiderable sum in those days at the height of the depression; or again breaches of the evening curfew also resulted in fines.

Finally, a footnote about a case which did not take place in the Gilbert and Ellice Islands Colony, though it had its origins there. In 1975 and 1976 the Banabans (natives of Ocean Island) sued the British Phosphate Commissioners in one case and Her Majesty's

Government in another, claiming some £21 million in one of the cases. They were heard in the Chancery Division of the High Court in London by Mr. Justice Megarry (later Sir Robert Megarry), Vice Chancellor, during 206 days in those two years, and thereby broke all legal records for the length of time for hearing of civil suits. I do not propose to refer here to the actual cases themselves, save to remark that the court rejected the claims against Her Majesty's Government, but allowed limited damages against the British Phosphate Commissioners. I was requested to give evidence for the Crown, which I did. I have already mentioned my distaste for becoming embroiled with the law in any way, but there was one incident in which I was involved during the hearing which I clearly recall. I should digress here to remark that the court proceedings seemed to me to be conducted with the utmost courtesy and respect on all sides. Entering the witness box to give evidence, I was asked a number of questions by one of the counsel for the Banabans, to which I replied to the best of my ability, bearing in mind that the questions related to matters of some 30 years previously. Suddenly Counsel said (and I think I quote him correctly) "I think we shall get along faster if you will answer the questions which I put to you, instead of trying to evade them". I must confess that I was completely taken aback by such rudeness and extremely angry. I had taken the oath and answered such questions to the very best of my ability, not an easy task remembering, as noted above, that they related to matters of some 30 years previously. It had seemed to me that counsel, by the questions he had asked, was simply "fishing", and not very expertly at that; and I was sorely tempted to reply "If you ask silly questions, you'll get silly answers", but managed to restrain myself and preserve what I hoped was a dignified silence; but his childishly unpleasant insinuation certainly did not encourage one to go out of one's way to be more helpful than occasion strictly demanded.