

THE FEMME FATALE "HOUSEKEEPER".

George de Lautour (or Latour) - even without the letter 's' at the end of his Christian name, and since he chose to settle in the Anglo-French New Hebrides - one might reasonably presume to be of French nationality. But that was not so. In all the reports and correspondence in the Western Pacific Archives he was referred to as a British subject and was believed to have been of English birth and parentage, though the place of his origin was unknown. He was reliably reported to have been married, with a wife 'in service' in Townsville, Queensland, though it does not appear that she was ever traced. He was also alleged to have had a brother in the Grenadier Guards, though details are lacking.

Having drifted out to Australia, he became in the early eighties a Queensland Government Agent employed in the recruitment of labourers from Melanesia for service in the canefields of that State. However, unlike many of those agents, he proved to be both reliable and competent. In 1884, after a series of shipwrecks, he spent several weeks living in a village on the island of Omba in the northern New Hebrides, to the west of the largest island of Espiritu Santo. The free and easy life in those islands evidently appealed to him for in 1885 he returned to the New Hebrides as a trader and settled on the small island of Aore (often spelt Aure) off the south-west coast of Espiritu Santo.

But life - indeed the mere battle for existence and the making of a living - in those islands in the mid-eighties was one attended by serious risks and little or no profitability. The widespread sales of liquor to the natives, and almost equally widespread possession by the natives of firearms, either brought back from Queensland after their period of service there was over or bought from traders or recruiters to the majority of whom peace and security took second place to profit, rendered any operations on shore or sea hazardous. Copra makers and traders alike lived a precarious hand to mouth existence, whilst planters were faced with almost insurmountable problems such as lack of capital or labour. The dissemination of rumours, the consumption of liquor and the paying off of grudges by the use of firearms seem to have been the most popular forms of recreation.

One reason for this state of affairs was that in the eighties no sovereign power had overall jurisdiction in the New Hebrides. Unfortunately, as far as Great Britain was concerned, the creation of the office of High Commissioner for the Western Pacific under the Pacific Order in Council of 1877 and the appointment of Sir Arthur Gordon to that post provided little or no amelioration for British subjects in those islands. This was because the Order applied solely to British subjects and the High Commissioner had no authority to deal, whether judicially or in an executive capacity, with other foreigners or the natives of those islands. As events almost always involved both British subjects and the natives, the hands of the High Commissioner were largely tied. After very lengthy consideration of this problem by a number of British authorities, including the Admiralty, it was decided that, in cases in which naval officers were unable to effect ad hoc conclusions in disputes as best they might, outrages committed by natives outside British jurisdiction would best be dealt with by the fiction of declaring war in such circumstances on the natives concerned; and it was decided that the naval officers should be wholly responsible for determining whether such acts were requisite, and be exclusively responsible for the performance of such acts of war against native tribes.

Nor did the creation of the Joint Anglo-French Naval Commission in 1887-88, to which reference will be made later since it played an important part in the final chapter of this story, provide a satisfactory solution to the numerous problems of the territory, since its powers were confined to cases requiring acts of war and it had no authority to intervene in civil disputes.

In the first year of his residence on Aore, de Lautour seems to have conducted himself in such proper manner as he would have done in his earlier capacity as a recruiter. Thus, in May, 1886, he discussed with Lieutenant Charles Cross, Commander of H.M.S. Undine, which visited Aore, whether it was legal for traders or plantation owners to recruit labour (as he had done) from other than the islands in which they resided, without committing a breach of the Pacific Islanders Protection Acts. Whereas the natives used to travel by canoe between islands in order to trade, they now took passage in small British and French schooners and, because after trading they were often engaged as labourers at the point of sale, de Lautour thought that such schooner owners might, if not licensed under the Acts, be committing breaches of such legislation. However, he was informed that there was nothing illegal in the engagement and employment of natives by British subjects, but that it was illegal to carry labourers once they had been recruited, at sea in British vessels without a licence under the Acts.

By the following year, however, de Lautour had begun to develop irrational traits of character, which ultimately evolved into megalomania and finally brought him to a violent end. Thus, in a letter dated the 10th March, 1887, addressed and circulated to all commanding officers of British men-of-war who might be cruising in the New Hebrides, he wrote as follows:-

"As a British subject claiming a residence of two years here, and as a purchaser and occupier of some 48,000 acres of land, I claim your assistance to enable me to prove my purchases of land at H.M. the High Commission, Suva, Fiji. As I am now constituted a Chief here H.M. officers will be received in a most friendly way From my position here you must excuse my mentioning that 'there are wheels within wheels' and here I think a few extra, and if you can possibly pay me a visit do so and save me from having to take, as a Chief I must do, the law into my own hands. I now hold the power of life or death, received by me on the death of Chiefs of influence".

He was thereupon warned by Lieutenant Frank Wyley of H.M.S. Raven which was then visiting Aore that, if he did indeed take the law into his own hands and exercise the power of life or death, he would be liable to stand trial under Section 6 of the Acts afore-mentioned.

De Latour does not seem to have contested that warning for in a letter dated the 11th May, 1887, to Lieutenant Wyley he only reverted to the problem of registering his alleged landholding, stating:-

"I have purchased some 50,000 acres of land round here and should like to get my title deeds verified...."

He was advised that his claims to such lands could be registered in the office of the High Commissioner in Suva, but that no certificates of title would be issued. Nevertheless, it is difficult, to say the least, to believe that he had in fact purchased such a vast area, since in those days it would have been impossible to have made any kind of accurate survey of it. Further, whatever consideration he might have given for such a huge area would almost certainly have been derisory, as in so many other cases. In fact, there later proved to be only three entries in the Western Pacific High Commission Register of Land Claims of properties in de Lautour's name, viz., one of 22,000 acres on the island of Aore, one of 2,000 acres at Malo Passage, and one of 6,000 acres on Tattooba Island - a total of only 30,000 acres in all. Further, an examination of de Lautour's so-called title deeds revealed that they were not real title deeds at all, the only papers registered being some very roughly drawn plans of the lands alleged to have been purchased by him. The plans were not drawn to any scale and were in fact only very rough tracings of the lands he claimed to have purchased.

In the same year, 1887, his delusions of grandeur, as indicated in an above-quoted letter, multiplied, for near his gates was erected the notice -

"Dogs and Niggers are forbidden to enter inside the Portal of these Gates.

Any Dogs or Niggers found therein will suffer the Penalty of Death".

On the 10th May, 1887, de Lautour again addressed Captain Davis who, however, did not receive the letter for some weeks. In the letter de Lautour stressed the very great disadvantages faced by honest settlers with regard to the sale of firearms and ammunition to the natives. He wrote:-

"I am settled here as a planter and producer. It is not to my interest to sell firearms or ammunition to the natives, and both myself and M. Bernier, manager of the French company's coffee plantation, Santo, agreed two years ago to stop all sales of ammunition and firearms to the natives.

Different parties who own small cutters on the islands of Malo, Aoba, Ambrym, Pentecost &c., representing the French, German and American flags, come over here with natives from those islands to purchase pigs; and both the whites and the natives from these islands sell large quantities of Snider cartridges, powder, &c., and at times exchange rifles, for pigs, to take home to their various islands.

It is not my wish, nor can it be the wish or intention of any genuine settler, to sell ammunition or firearms to the natives, as he does not know at what moment he may get a ball in him, one he has sold, from some native who fancies he has a grievance. Now, these people in cutters are here today, there tomorrow, and do not care how much they sell".

He concluded by seeking justification for searching any canoe or other vessel which visited Aore and which he suspected carried firearms or ammunition for sale or exchange, and suggested that legislation should be enacted banning the sale or other disposal of firearms and ammunition to natives.

Captain Davis sought detailed information as to the circumstances in which such sales or disposals were effected but, in communicating the representations to his Commander-in-Chief remarked that -

"Mr. de Lautour is undoubtedly right in his views but I fear that the Governments of the traders will not see it in the same light".

Events were, however, by now heading for the final tragic climax. On the 20th June, 1890, de Lautour again wrote to Captain Davis, when H.M.S. Royalist visited Aore, as follows:-

"I am sorry to report that one Barra Barra, a native of Aore (Aore) and son of my Chief Leiloo, also owner of three wives has run amok and been joined by one Sonombra and one Jargie; they came on my ground, seized my housekeeper, one Vagathorlie and threatened to shoot her if she did not go away with them, and have since caught her and taken her away.

Leiloo my Chief and father of both Barra Barra and Vagathorlie tells me to shoot Barra Barra and Sonombra and Jargie the natives connected with the kidnapping of my housekeeper who has been with me for five years and had no wish to go away.

These three, Barra Barra, Sonombra and Jargie now threaten to go for me. Of this I have no fear. As a British subject can you assist me and advise me what to do, as I mean to maintain my country".

Captain Davis immediately sent for Leiloo, advised him of de Lautour's complaint, and read out to him the agreement signed by himself and other Chiefs to protect de Lautour and to trade with him. Leiloo stated that the three men concerned were now in the bush and that he was afraid of them. But Captain Davis emphasized that, as Chief, Leiloo was responsible for the men and must keep the terms of the agreement. He stated that he would return to Aore in a week's time and expected Leiloo to produce the so-called "housekeeper" and the three men who had abducted her.

Captain Davis did not return to Aore until the 29th June, and found a letter awaiting him from de Lautour, written two days previously, advising him of a somewhat changed situation. The letter read as follows:-

"Re my former letter to you referring to one Barra Barra, one Sonobra, and one Jargie, who I accused of taking my housekeeper Vagathorlie, I beg to inform you that, though my evidence came from the natives of Aure (Aore) and Vagathorlie it was all false. I have since ~~heard~~ that Barra Barra, Sonobra and Jargie were on the look out to steal women but did not intend to molest me and that the real culprits are a man called Thor and a man called Tappea. These two men caught Vagathorlie in my paddock, took everything from her, and told her to tell me that it was Barra Barra, Sonobra and Jargie had done it, threatening to shoot her if she did not make this statement. This I find out has been going on for some months, always threatening to shoot the woman if she did not go away with them.

These men Thor and Tappea have wives of their own but were under the impression that, as there was only myself, son and housekeeper here they can do as they like. Tappea is a notorious scoundrel, having worked some time for the French Co. My former report to the authorities in Noumea re the murder of the boat's crew of the Idaho; this man Tappea was the cause of the murder; he lives on Aure about three miles from here.

He it was who seven years ago murdered the Mate of a Fiji vessel and eat him, for which no enquiry or a word was said. I myself saw the hands of the murdered white man hanging in Tappea's house about 5 years ago.

Some two weeks ago this man Tappea went to a Chief on the east end of Aure named Salackie and offered to pay him pigs if he Salackie and his men would join Tappea and come and murder me so that he could take my housekeeper and everything on the place.

Salackie said no that he did not wish to make bad for the white man, and told Tappea and his men not to come on his grounds. Since your visit of the 21st June and my complaint Leiloo the Chief here went to Tappea's place and asked Tappea to give up Vagathorlie. Tappea said that he would not give her up and that he and Thor meant to keep her. Leiloo told Tappea that the captain of the man-of-war had spoken to him and said that he Leiloo was to get all the things taken from Vagathorlie which they stripped from her.

Tappea said that he did not care for the man-of-war; they could not shoot or catch him and referred to the bombardment of the French man-of-war Guichen when he murdered the boat's crew of the Idaho saying that the man-of-war could not shoot any man only break trees.

On the 23rd of June Leiloo sent two of his men down to my place to inform me of what he had done and proposed that next day I should go with him to Tappea's place and ask for Vagathorlie. On the morning of the 24th June I proceeded with Leiloo and his people to Tappea's place telling them I went in a friendly way and had no wish for any shooting. I went close up to Tappea, within five yards; he was sitting with his Snider rifle in his hands; Leiloo and his men were behind me. I asked Tappea to

"give up the woman he had stolen from me and had hardly got the words out of my mouth when bang went a Snider rifle from one of the huts; the bullet whizzed past me nearly catching Leiloo. Tappea, as I turned to see who had fired, cleared into the bush. The man who fired is named Bullkeeri and was putting another cartridge into his rifle to have a shot at us when one of Leiloo's people knocked him over.

Leiloo was exceedingly angry and told his men to fire on Tappea's people with the result that one man and one woman was shot, the woman being mistook by one of Leiloo's men for a man. I had my rifle with me and kept firing in the air so as to make as much noise as possible and keep Tappea's people away, but Leiloo told me quietly to leave it to him. I suppose we were at Tappea's place a quarter of an hour when all returned home.....

The other Chiefs say they will bring back Vagathorlie even if they have to kill Tappea and Thor. But the whole island is afraid of these two men and Aure men are genuine curs but great at Treachery".

On returning to Aore on the 29th June, and receiving the last-quoted letter, Captain Davis lost no time in taking action. In his letter to the Commander-in-Chief of the 16th July, entitled "Robbery of a native woman Vagathorlie from off the property of George de Lautour, Trader of Aure Island, Malo Pass, Mew Hebrides, and capture of the offender", he wrote as follows:-

"I sent a message to the Chief Leiloo to come down to the beach and see me - (I had already ordered him to come down on the Ship's return, when he heard the Syren). After waiting two hours (until 1 o'clock) three men came down. They said Leiloo was not coming. I then sent one of the three to him with the message that, if he did not come at once, I should come to him.

At 3 p.m. Leiloo not having appeared, I landed a Company of Small-Arms men, and taking the two remaining natives with me, went through the bush about a mile to Leiloo's village. I found about twenty men there. I told them I wanted Leiloo. At first, they said he was not there - then that he was sick. I made them lay their rifles down and had them unloaded, then called Leiloo's two sons to the front, and told them to send a man for their father, and that I should keep them until he came.

After a time, he appeared. I then told him he had broken his word; he said he could not come as he had a headache. I asked him if, when warned the previous day to be ready to come down when the ship came in, he had replied "Ship no come - all nonsense". He said "Yes, he had said so because he "think ship no come". I told him the English always kept their word, that I had told him to come to the beach to see me and, as he had not come, I should take him there now, together with all his men and, when I had done talking to him, I would return his men their rifles.

Arrived at the beach, I asked Leiloo why, when he had found out that Tappea and Thor had stolen Vagathorlie, he had not brought them to me. He said he was afraid of them. I told him I would support him as Chief and the following morning he was to come down to the beach with all his men, and I would help him to catch Tappea. They all agreed and, having returned them their arms, they went home.

The next morning, having embarked Mr. de Lautour and Leiloo and his men, I proceeded to Salackie's village and took him on board. Salackie is a friendly Chief on the east side of Aure. His men were to meet me on the beach at Senorabe.

I proceeded to Senorabe, landed a Company of Small-Arms men and, with Leiloo and Salackie and their men, proceeded through the bush to Tappea's village - about a mile distant. On arrival we found it deserted; went on to another place but no one was there. We

"then proceeded to the village of a man named Titi and came on it so quietly that we surprised Tappea and four of his men, without a shot being fired, and, when the bugle sounded the "Double", Tappea saw resistance was useless as he was surrounded.

I disarmed him and made a prisoner of him. He said Vagathorlie was in the bush with Thor and Thor's father so I told him that I should take Thor's brother and another man prisoners until Vagathorlie was produced - and that he could send his other two men to find them. I then returned to the ship, taking with me Tappea, Tulkari and Molato as prisoners.

Titi, in whose village these men were, said that they had only come there that morning. I asked him why he allowed a bad man like Tappea to stop there, and he replied, because he was afraid of him - everyone was, and he could not help himself.

Before embarking I took evidence from Salackie and them made a present of some tobacco to him and his men for their good behaviour, and they returned to their village along the beach much satisfied. Salackie's evidence was as follows:-

"The man we take, Tappea, came to my house two weeks ago and asked me to "make bad" for the white man (de Lautour); he said "no", white man he make good for him. Have known Tappea since he was a boy. Heard that Tappea killed a white man seven years ago. Have seen a white man's hands hanging in Tappea's house. Tappea told me he had kai-kai'ed (eat) him. Remember two men killed on Malo Id. at Nasingho about two years ago. Tappea bought them for 30 pigs tusks. Mr. de Lautour landed at Senorabe and took the bodies from the beach. He was passing at the time; one body was cut up. He buried the bodies in the village".

Both Salackie and Leiloo were highly pleased at Tappea's capture and said that all trouble was now finished in the island. He Tappea 'made bad' for everyone, and said 'Man-of-war no could shoot, only break tree' and 'he didn't care for man-of-war!'

Captain Davis then took the evidence of the three prisoners whom he had brought with him to the ship. Molato's evidence was as follows:-

"The man you have is Tappea. I have known him since he was a piccaninny. I remember the white man being killed about six years ago. Roro killed him. Tappea told him to. He killed him for nothing. Roro is dead. I kai-kai'ed (eat) some of the white man myself. I saw the hands of the white man hanging in Tappea's house. I remember the two Pentecost boys being killed by Metanavete on Malo - the bodies were buried by Mr. de Lautour".

The evidence of Tulkari was as follows:-

"I am a brother of Thor. The man you take is Tappea. I have known him since he was ten years old. Six years ago I tomahawked a white man at Senorabe. Tappea told me to do it. The man who first tried to kill the white man was Roro. He is now dead".

(I told Tulkari that when Thor and Thor's father had brought Vagathorlie to Mr. de Lautour, he would be released, and when I returned and sent for him he was to come to me. E.H.M. Davis).

The evidence of Tappea was as follows:-

"Tappea states he took Vagathorlie from Mr. de Lautour's place for nothing. Mr. de Lautour had not made it bad for him. Roro and him too killed the white man about six years ago. White man did nothing. He killed him for nothing. He kai-kai'ed (eat) him. He kept the white man's hands. He some time ago put them in the ground. Remembers French ship coming and shoot - she hit no one. Ship came because two men have been killed. Metanavete killed them and he Tappea paid 30 man pigs for them to kaikai. Mr. de Lautour take the two bodies and put in ground".

Having taken evidence from the three prisoners, Captain Davis handed over Tulkari and Molato to Mr. de Lautour to be kept at his place until Thor and his father brought Vagathorlie back. His report continues as follows:-

"Knowing that Tappea had eluded the French man-of-war Guichen when she tried to capture him a little over two years ago, for having caused the murder of the boat's crew of the French schooner Idaho I determined to retain him on board and hand him over to the (French frigate) Saone when I met that ship.

I am also convinced that it was he who murdered and ate the Mate of a Fijian vessel (I believe the Lizzie Davis) some 6 or 7 years ago, and whose hands Mr. de Lautour saw hanging in Tappea's house some time afterwards. No notice of this was ever taken.

At the meeting of the Anglo-French (Naval) Commission held on board the Royalist at Noumea on the 10th July, I brought up the case of the murder of the boat's crew of the French schooner Idaho producing Tappea and evidence as to his identity, and formally handed over the murderer to the French President who elected he should be disposed of by the Commission.

The members of the Commission decided that Tappea should be imprisoned for fifteen years with hard labour at Noumea".

But the saga of de Lautour and his "housekeeper" was by no means over for, as transpired later, he and his son Willie were murdered in Aore on the 8th September of the same year. News of the murders did not reach the High Commissioner for the Western Pacific until the end of November; but it reached the Anglo-French Joint Naval Commission some time early in October, since there was a meeting of the Commission on the 8th October on board the French frigate Saone at which the murders were discussed. It was the turn of Capitaine de Fregate Bigant to preside at the meeting, which was attended by the two French and two British naval officers of the Commission off the Saone and Royalist respectively. The following is an excerpt from the proceedings of that meeting:-

"It having been reported to the Commission that Mr. de Lautour, an English trader, and his son have been murdered in Aure Island by natives from Malo - and the season of 1890 drawing to a close - the Commission thinks it advisable that this affair should be settled without delay, and awards to Captain Davis full liberty of action to finish it".

It is also appropriate to cite another item from the same proceedings as follows:-

"And in Case No. 9, Murder of a Kanaka belonging to the French labour vessel "Lady St. Aubyn" - the members of the Commission delegate to Captain Bigant freedom of action to conclude this matter also".

In view of the action taken by Captain Davis in what may be termed the Tappea case, of his later action described below in what may be termed the Thor case, and of the sequel to the latter case, it is worth pausing for a moment to consider briefly the responsibilities and powers of the Anglo-French Joint Naval Commission.

The Commission was to be composed of five serving naval officers "charged with the duty of maintaining order, and of protecting the lives and property of British and French subjects". But they were only empowered to act in accordance with the regulations annexed to the Declaration establishing the Commission. Those regulations, signed in January, 1888, laid down that, in the event of disturbance threatening life or property, the Commission should take what measures by act of war it thought necessary. Its powers were limited to those expressly delegated, and it was not to interfere in disputes concerning titles to land or dispossess of their lands any persons, natives or foreigner. It is worth stressing that the powers of the Commission were confined to cases requiring acts of war, and that it lacked any authority in civil disputes.

The scope of the grant to Captain Davis of "full liberty of action to finish it (the case)" was clearly far too wide and ultra vires the powers of the Commission; it was also almost certainly so in the other case determined by the Commission. Apart from the fact that naval commanders almost always publicized their declaration of war against a tribe or village before taking punitive action, nowhere does Captain Davis suggest that he had declared war against Thor and his two colleagues (or against Tappea in the earlier incident). As the High Commissioner later opined:-

"I do not think that "war" can be declared against one man or even three".

And certainly Thor (or Tappea) cannot be said to have declared war against the British (or French) authorities, although the Commander-in-Chief makes the remarkable assertion later that Thor and his colleagues had declared war against de Lautour and his son, and that Captain Davis in turn then made war against Thor and his companions. But the thoughts of Captain Davis are clearly manifested in his report concerning the taking of Tappea, in which the title reads "Robbery of a native woman Vagathorlie from off the property of George de Lautour..". Yet the Commission lacked any authority in civil disputes.

In the initial paragraphs of his final report on the Thor case, dated the 12th November, 1890, Captain Davis wrote as follows:-

"With reference to the murder of Mr. George de Lautour and of his son William on Aure Island, Malo Pass, I have the honour to inform you that I arrived off the mission-station of Mr. Landels, on Malo Island, at 9.30 a.m. on Sunday, 19th October.

Mr. Landels informed me that Thor, a native of Aure, when living in Malo, had come to him on the 24th September and told him that he alone had killed Mr. de Lautour and his son; that he took three Malo men with him, but only to manage the canoe. He said that when a man-of-war came he would go on board and tell the captain all about it. He complained that Mr. de Lautour had killed his pigs and destroyed his houses, fences and fruit trees; and that, had Mr. de Lautour not destroyed his things, he would have remained quiet".

Then, after describing his visits to various places to collect witnesses and obtain information, he continued:-

"I brought the woman (Vagathorlie) on board, and left a small party on shore to secure Thor in case he returned that night. The next morning, the 21st October, Thor came down. I made a prisoner of him and brought him on board.

.....

The following morning, 22nd October, Mulmaiwo (the chief of the district in which Thor lived) brought four Malo men down, whom I brought on board. He would not come himself, but sent his grandson, who, with several other natives, came off to attend the inquiry.

Two of the Malo men I eventually sent on shore, the evidence not being sufficiently strong against them. Thor and the other two I kept as prisoners, also the woman who had connived at the murders, the evidence being conclusive against these four."

Much of the statements contain irrelevant information or hearsay evidence, but the essential parts of such statements are recorded hereunder:-

Statement of Martial (sic) Briault, Trader at Aure Island.

"..... The following morning (9th September) a native from the chief Leiloo arrived at my place about 8 o'clock and told Giovanni (his assistant) that de Lautour and his son had been murdered the night before. Giovanni went round to de Lautour's place and buried the bodies. Vagathorlie was not there, and the two Malo boys who worked for de Lautour were also gone.

".... The native who reported de Lautour's death to Giovanni said he had gone in the morning to sell de Lautour some cocoanuts; and, getting no answer when he called out, and seeing no one, he went into the house and there discovered the bodies. He then went and told Giovanni. The place did not seem to be ransacked at all, but de Lautour's rifle could not be found. The natives say that Thor (a native of Aure) was mixed up in the affair. He had not been allowed to live in Aure Island owing to his bad conduct, and had gone to Malo to live. Vagathorlie is supposed to be living in Malo. de Lautour was shot through the body. There were no marks of bullet-holes through the walls of the house. de Lautour's son was shot twice, and apparently from under the table."

Translation of statement of S. Giovanni, Trader, of Aure Islands.

"On the 9th September last, about half-past 8 in the morning, three natives belonging to the tribe of Lili, sent by the chief Lejloo, came and informed me that that morning about 6 o'clock, a native belonging to the same tribe, arriving at de Lautour's station, had found the boy William de Lautour murdered in front of the door of the room in which he slept. The native, surprised, called Mr. de Lautour, believing him to be still asleep; not obtaining any answer, he entered Mr. de Lautour's room, and found him also murdered in his bed. Frightened at this murder, he ran without delay to inform his chief Leiloo who informed me..... On the 10th, early in the morning, I went to the tribe of Lili. The chief Leiloo put his Kanaks at my disposal. I arrived at Mr. de Lautour's about 8 o'clock. I ascertained that Mr. de Lautour had been killed by a ball from a Snider, which had gone through his abdomen, passing from the right to the left side; and by a blow of a tomahawk, which had gashed his head a little above the right temple. Mr. de Lautour was lying in bed, resting in a sloping position on his left side. I ascertained that the youth William de Lautour had likewise been killed by a ball from a Snider, which had gone through his abdomen, from the right to the left side. I suppose that the youth William must have been dragged from his bed to outside the door, where I found him. He had received a blow of a tomahawk above the right eye, another upon the nape of the neck, a third upon the right arm, and a fourth blow upon the right knee.

Not having previously known Mr. de Lautour's house, I could not ascertain if any theft or burglary had taken place. The natives who accompanied me dug two ditches at a spot that I had pointed out to them, and helped me to inter the two victims there..... Having questioned all the natives present about this affair as to who was suspected of having committed it, they all told me that Toa (sic), aided probably by other Kanaks from Malo, and with the consent of the woman Varicatole (Vagathorlie), who lived with Mr. de Lautour, had committed this double murder. Toa, said(?) for some time previous that he would kill Mr. de Lautour. The latter, warned many times by the natives, had never taken any heed of these warnings, believing them to be false".

Statement of Tsingo, a native of Aure Island.

"I have been living at Nam-a-Boonie, in Malo, for ten years. My Chief is Mulmaiwo. I went to Aure, two days before de Lautour was killed, with Thor, Roroa, Sumbeywr and Insaria. We landed near Bulemasa and left the canoe there, remaining about the bush. I knew what we had come to Aure for. Thor, Roroa and Sumbeywr asked me to come and help them kill de Lautour. At first I was unwilling; and then they prevailed on me to go. de Lautour had never done me any harm. I was afraid to refuse. I did not go to de Lautour's house. Thor's father and Baru came over in a canoe after we did. On the night of the murder they were near the canoe where I was".

Statement of Insaria, a native of Malo Island.

"I live at Abnatorre. I went to Aure in a canoe, four days before de Lautour was murdered, with Thor, Roroa, Sumbeywr, and Tsingo. We landed opposite Bulemasa, and stayed in the bush. We went up to de Lautour's in the dark. Thor went into the house and shot Mr. de Lautour. Thor then ran off and shot Willie. Roroa and Sumbeywr did not shoot at all. After Thor shot de Lautour, Roroa went into the house with a tomahawk. I did not see him hit de Lautour. After Thor shot Willie I saw Sumbeywr take a tomahawk and kill Willie. I did not see Vagathorlie until we were all leaving. Thor asked me to go to Aure to kill de Lautour. He got hold of me and coaxed me to come. At first I was not willing. de Lautour had done me no harm, but he once kicked me when I was working with him. Thor gave us - i.e. Sumbeywr, Roroa, and myself - a pig for helping him."

Statements of Aru and Worricarri, boys, natives of Malo Island.

"Aru, a boy, native of Abuavi, Malo, stated, - I an Worricarri worked for Mr. de Lautour for the five days previous to the murder. On the day he was killed, Giovanni came about 2 o'clock, and left almost immediately, as Mr. de Lautour was not home; a native, Leewoo, was with him. Mr. de Lautour came about sundown. Willie and Vagathorlie were there at the time. Vagathorlie went away up by the road for a short time, she said to get something for Mr. de Lautour. Dras and his wife, and three others of Leiloo's people, came down early in the morning and then returned. I saw Thor during the day; he told me he was going to kill Mr. de Lautour that night, and he threatened to kill me if I told anyone. I told Vagathorlie. We went to bed, and the shots woke us up. We ran out of our house, which is one hundred yards away from where Mr. de Lautour slept. We saw no one, and went down to our canoe and pulled towards Bulemasa.

Worricarri, also a Malo boy, made the same statement".

Statement by Vagathorlie, a native woman of Aure Island.

"Molinbakio was my father; he died about four years ago. I have two brothers, Molsavasava, and Ragorago, they live at Akati, where Salaki lived. I have known Mr. de Lautour between four and five years. When my husband, Mulioulo, died, I sent to Mr. de Lautour; that was about four and a half years ago. Mulioulo was a chief, and had ten wives; I WAS the tenth. About ten days after Mulioulo's death, Mr. de Lautour came and took me away. I was then staying with a son of Mulioulo. I did not like going with Mr. de Lautour, neither did Leiloo. All the people were angry with Mr. de Lautour for taking me away. About four months ago three men tried to take me away - Barra-barra, Targie, and Sonabra. I did not want to go. Mr. de Lautour did not treat me well. He used to beat me because I did not work. After these men tried to take me away, Mr. de Lautour tied me up in the house, so that these men should not take me away. When I was let go, I ran away to Thor. I did not go to Leiloo or my brothers, because Thor wanted me, and I wanted Thor. I stayed at Thor's house for two or three days, after that he took me to Malo. I returned to Mr. de Lautour a few days after; Leiloo and some Aure men came for me and took me back. I remember Mr. Martin (a recruiter) taking Mr. de Lautour away to Mr. Bernier's place about six weeks ago. The next day, on a Monday, Mr. de Lautour returned, about the middle of the day. He ate something and went to bed, after dark. I went to bed first; then he came in and shut the door. I slept soundly until I heard a musket-shot. I got up, opened the door, and ran out of the house. (Mr. de Lautour made no noise; I think he was killed at once).

"There was a lamp on the floor of the bedroom with a little light left in it; a light was generally kept in the bedroom. When I got outside, I saw Thor just by the door with a Snider in his hand. (Mr. de Lautour had two guns - the double-barrelled one was bad, the other rifle is the one he usually carried. When I went to bed these guns were in the outside room). I saw Willie coming out of the cook-house, crying. Thor shot at him, and he fell by the door of the cook-house. As I get to Thor, he said "Don't run away; stand catching me by the hand. I saw Thor had his rifle and shoot Willie, after he shot Mr. de Lautour. The two boys, Aru and Worricarri came running down through the cocoanuts after the first shot, and Thor told them to come to him and not be afraid. They stood still while Thor shot Willie. Thor ran up a bit when he heard Willie cry out just before he shot him. Willie cried out "Father"; but I do not remember him saying anything else. After the shooting Thor and I went to the beach and got into a canoe, and went to Malo; landed at the creek at Weisali, and went up to Abnatorre, and lived there. It was afterwards that the boys told me Thor had told them that he intended to kill Mr. de Lautour. The boys saw Thor up near Leiloo's place. The reason Thor lived in Malo was because he wanted me, and Mr. de Lautour had driven him out of Aure. Thor killed de Lautour because he (Mr. de Lautour) had destroyed all his things. Mr. de Lautour, Willie and I did it. Thor lived at Tamdeinde. We destroyed his things about seven days before Mr. de Lautour was killed (not sure about the date). We destroyed two garden fences, yams, taro, fourteen female pigs, and twenty male pigs. When we went to Malo, Thor took Mr. de Lautour's rifle; besides that rifle, he had altogether in the canoe one gun, and one small knife (from Mr. de Lautour's).

Having warned witness to speak the truth, Vagathorlie continued: I saw ^{Roroa} four men at the time of the murder besides Thor. They were Tsingo, Insaria, and Sumbeywr. Thor shot both de Lautour and Willie, and Roroa and Sumbeywr tomahawked Mr. de Lautour first, and then Willie. Tsingo and Insaria did no tomahawking, but ran away. (I was told this afterwards). They were not there when I came out of the house. The other two and the boys were there. I had heard from Worricarri during the day that Thor was going to kill Mr. de Lautour, but did not believe it. They never told me about it. Mr. de Lautour and Willie were not asleep when I heard it. As I did not believe it I did not tell them. At the time I heard of it Mr. de Lautour and Willie were talking and writing their books, in the house. After that they went to sleep. All the men had rifles except Tsingo, who had a club. Sumbeywr and Roroa each had tomahawks. I have since heard that it was Thor's intention to kill Mr. de Lautour for a long time".

Statement of Sumbeywr, a native of Malo Island.

"I live at Abnatorre. Thor asked me to go with him and kill de Latour. de Latour never did me any harm. I was willing to go. Thor paid us with a pig. The night de Latour was murdered I had a rifle, nothing else. I stood at the door when Thor went inside. He shot de Latour, and then came out and shot Willie. Thor gave me his club, and told me to hit de Latour. I hit him on the arm. Then Roroa came up and tomahawked him. After Thor shot Willie he gave me his tomahawk, and I hit Willie with it and finished him".

Statement of Roroa, a native of Malo Island.

"I live at Auuluoa. I went to kill de Latour because Thor asked me to. I was unwilling to go at first, and told him to go and do it himself, as it was his business. I said I would go and sit there, and he could kill him. Thor gave us a pig for helping. I took a tomahawk only with me. I saw Thor go into the house. I heard a shot fired. I also took a Snider which belonged to Worrantsatsa. He told me to take it and go with Thor. After Thor fired at de Latour he told me to shoot again at him. I did. After that Thor shot Willie, and I tomahawked Mr. de Latour. Thor told me to do so".

" Statement of Thor, a native of Aure Island.

I shot at Mr. de Lautour and then fired at Willie, but missed him. Roroa also fired at Mr. de Lautour and then tomahawked him. After I missed Willie, Sumbeywr rushed up and tomahawked him. Before he did that Willie called out to me, "Thor, don't shoot me". I had been in Aure two days before I killed Mr. de Lautour, so also had Roroa, Sumbeywr, Insaria, and Tsingo. There four were present when de Lautour was killed, also the two Malo boys who were working for him, Aru and Worricarri. I saw Vagathorlie the day I landed in Aure, two days before the murder. She was in the house when I shot at de Lautour. It was dark but she brought some matches and struck them. I arranged with Vagathorlie that I should come that night. I told her to get matches and strike them. She did so. She said, "Yes, come and kill de Lautour, for he tied me up until I was nearly dead". When we landed in Aure we landed abreast of Bulemasa (Turtle Island), and left the canoe there. When we went away after the murder we all went in this canoe. I had been living in Malo at Abnatorre for two months before the murder. Leiloo and Mr. de Lautour drove me out of Aure. Leiloo told Mr. de Lautour to kill me. Leiloo said I was a bad man, because I followed Vagathorlie. I have one wife living in Malo. I remember Barrabarra, Targie and Sonabra, trying to take Vagathorlie away. I had nothing to do with it; they were taking her for themselves. Mr. de Lautour then tied her up for four days, when he let her go. She ran up to my house of her own free-will. When Tappea was taken I was in the bush with Vagathorlie. Molato died of diarrhoea, about eight days after that. Tulkari lives near Leiloo. When Leiloo's people caught Vagathorlie they took her from the house of Woote-taba-nato, at whose house we were living together in Malo. I killed de Lautour because he killed a man and a woman about four months ago. The man was called Taroulo, the woman Woolooloo. Taroulo belonged to Aure; he had worked for Mr. de Lautour. Two days before Taroulo was killed, Leiloo came and demanded Vagathorlie. Tappea and I refused to give her up. Then Leiloo and his men, with Mr. de Lautour and Willie, came to Billaworka and fired on us, killing Taroulo and Woolooloo. They came upon us suddenly through the bush; there was no talking. Mr. de Lautour fired first at Taroulo, then Dras and Boundo fired at him. Vulkari fired back at them. He was the only man who had a rifle. He did not fire first. I took two guns away from Mr. de Lautour's, one a double-barrelled one. I gave the rifle to Weisisari, the double-barrelled gun to Sumbeywr. I am sure it was de Lautour who killed the man and woman. He fired at me first and missed me".

At this point, after recording the various statements, it is necessary to resume and conclude the report made by Captain Davis to the Commander-in-Chief, dated the 12th November, 1890; the relevant paragraphs are as follows:-

"I then proceeded to Port Sandwich, Mallicolo Island, returning the following day, 24th October, to Malo, where I embarked several natives from the various tribes in Malo. I proceeded for Aure, anchored at 3.15 p.m., and landed the small-arms men and marines, with the three prisoners and the woman Vagathorlie, at the station of the late Mr. de Lautour. Leiloo, the chief of Aure, was sick, but sent some of his men down. Through Mr. Landels, I told the natives present that I had found Thor, Roroa, and Sumbeywr guilty of the murder of Mr. de Lautour and his son, and for that crime they would be shot.

"Thor's excuse for the murders was that Mr. de Lautour had shot a man named Taroulo and a woman named Woonoomoo. This I did not believe, because it was only a few days after these people were supposed to be killed that I had asked Leiloo and all his people if they had any complaint to make against Mr. de Lautour, and they said "No". That, even had Mr. de Lautour been guilty of this crime they should have complained to a man-of-war, which not only came to punish natives, but white men when they did wrong. The two Malo men - Rotoa and Sumbeywr - had no complaint against Mr. de Lautour but assisted in the murders for the consideration of a pig. The other two Malo men - Insaria and Tsingo - had accompanied Thor to Aure through fear, but were not present at the murder, so I let them go free. The woman, Vagathorlie, who, in my opinion, was the cause of all the trouble, and had connived at the murders, was a very bad woman, and I should send her back to the chief Leiloo. The three murderers were shot in an adjoining paddock - and the bodies having been interred - the party returned on board, and the ship proceeded to the mission-station at Malo, and anchored for the night.

In conclusion, I would state that when I first heard of these murders I thought they must be the outcome of the removal of Tappea in July last for the murder of the Pentecost boys of the "Idaho", but on enquiry I found they had no connection with that case. The woman Vagathorlie was the sole cause of it. How Mr. de Lautour became possessed of this woman it is hard to state, as I was unable to get hold of Leiloo, the chief of Aure. This man, who is a very inefficient chief, evidently feared to meet me, as being chief of Aure, he must have felt that, in a very great measure, he was responsible for the murders. He must have known, or should have, that Thor was in Aure, and he should have warned Mr. de Lautour. But in my opinion he and all his tribe were afraid of Thor, and had not Mr. de Lautour taken such an active part in ridding the island of him, Leiloo being afraid to do so by himself, these murders would not have occurred. But Mr. de Lautour knew that Thor wanted Vagathorlie and so got rid of him out of the island".

Four points should perhaps be made at this stage in the story:-

- (1) the services of one John D. Landels of the Presbyterian Mission were employed as interpreter during the making of the statements;
- (2) all the statements were concluded by the words "Before me - Ed. H.M. Davis, Captain and Deputy Commissioner" and the last two words have a special significance;
- (3) it is also significant that in his report to his Commander-in-Chief, cited above, Captain Davis used the word "inquiry"; and,
- (4) Captain Davis appears to have assumed the duties of prosecutor, judge and jury, though there is no suggestion that any kind of court, or judicial procedures were used.

The report was sent to the Commander-in-Chief, who thereupon sent it to the High Commissioner, though without comment. The latter received it with profound disquiet as is shown by his reply to the Commander-in-Chief as follows:-

"

20th December, 1890.

My Lord,

I have the honour to acknowledge the receipt of your Excellency's despatch, and its enclosures, of the 19th November, relative to the murder of Mr. George de Lautour and his son at Aure Island, New Hebrides, and the subsequent punishment of the murderers, Thor and two others, by Captain Davis, of H.M.S. "Royalist".

"As gathered from the papers transmitted, I understand that Captain Davis held an inquiry into this case on board the ship under his command, not as a Deputy Commissioner for the Western Pacific, but as a naval officer; acting either upon a recently-conferred authority, the extent and nature of which is at present unknown to me, or under power supposed to be conferred by the regulations issued for the guidance of the Joint Naval Commission annexed to the Declaration signed at Paris on the 26th January, 1888.

I arrive at the conclusion that the action taken by Captain Davis was not qua Deputy Commissioner - although the notes of evidence are signed "Captain and Deputy Commissioner" - because it is clearly shown in Her Majesty's Western Pacific Orders in Council that a Deputy Commissioner can neither sentence any man to death, nor carry such sentence into execution; and, further, that no officers appointed under the Orders in Council in question have any authority or jurisdiction over other than British subjects. Upon the subject of jurisdiction, I might perhaps also invite your Excellency's attention to section 7 of the Pacific Islanders Protection Act of 1875.

Regarding the action taken in this matter by Captain Davis as one based exclusively upon naval authority, it would, under ordinary circumstances, be no part of my duty to make any observation upon it, or address your Lordship on that which I cannot but regard as an unfortunate and unsatisfactory occurrence.

But your Excellency will appreciate my position as High Commissioner when I say that, to my mind, it is very doubtful indeed that the native Thor deserved the punishment of death inflicted upon him. Admitting, however, that he deserved the fate he met with, I am more doubtful still that Captain Davis had, or has, any authority or power whatever to hold a quasi judicial trial of any person he may have made prisoner, or who may have voluntarily surrendered to him, and thereafter to inflict upon such prisoner the death penalty.

If, as I venture to assume, Captain Davis has no such power, what is his position when within the jurisdiction of the High Commissioner? I am unable to see that the fact of a British subject being a naval officer relieves him in any way of the legal consequences of putting to death any persons not sentenced by some competent legal tribunal. And I know of no other legally-constituted tribunal that would cover the action of any British subject in carrying into effect a sentence of death - and then not in such a case as this - than the Court of the High Commissioner for the Western Pacific.

I may here perhaps recall to your Excellency's recollection the refusal - and, as I submit, most proper refusal - of Captain Clayton of H.M.S. "Diamond" to put to death one Diaviri, who at New Guinea had murdered Captain Miller of the cutter "Daisy", and subsequently surrendered himself to Lieutenant and Commander Field of H.M.S. "Dart".

I might also refer to my despatch of the 11th March, relative to the expressed intention of Captain Hand, of H.M.S. "Royalist", to hang one Sono, or Johnson, a native of San Christoval; and, finally, I would venture to point out that the proceedings in the case now in question can, in no way, be regarded as an "act of war" during the course of which it may unfortunately happen that life may be taken. The execution of the man Thor, and the two others before referred to, appears to me an act unsupported by any other authority than that of Captain Davis's personal decision.

Your Excellency will, I trust, share my views that the question of jurisdiction involved in this case are of the highest importance, and should be settled. Captain Davis either had, or had not, jurisdiction. If, in your Excellency's opinion, he had, may I ask to be so informed, and of the source whence such jurisdiction was derived?

Proceeding to a consideration of the charge against the man Thor, and to Captain Davis's observations upon his trial, I venture to think that Captain Davis forgot the evidence which was supplied by Mr. de Lautour himself in connection with his proceedings against one Tappea, charged with "the robbery of a native woman named 'Vegathorlie' from off the property of George de Lautour of

"Aure Island.

On this point I beg leave to refer your Excellency to your despatch and enclosures of the 30th August last, by which it will be seen that in the pursuit of the native woman euphemistically described by Mr. de Lautour as his "housekeeper", but in reality a concubine detained by force, one man and one woman were shot; the woman, Mr. de Lautour observes, being "mistaken for a man". At the beginning of the fray, described in Mr. de Lautour's letter to Captain Davis of the 27th June, 1890, another man - one Vull-ki-ri - was also "knocked over". This man was knocked over by "one of Leiloo's men"; the chief, Leiloo, being in effect the leader of de Lautour's party. It was, therefore, unlikely that Leiloo, when asked by Captain Davis, would make any complaint against de Lautour with regard to the death of these people. After the raid upon Tappea and Thor, de Lautour succeeded in driving Thor from his home; and, if we believe the evidence of Vagathorlie - in this respect uncontradicted - de Lautour, assisted by his son, in another raid destroyed Thor's garden, fences, crops, and pigs.

Captain Davis was certainly placed in a difficult position: because, though the elder de Lautour had by his violent conduct provoked the resentment of the natives, they were, whatever view may be taken of the matter, not justified in killing the son. But even the son had given cause for resentment if, as stated by Vagathorlie, he assisted his father in the destruction of Thor's garden and pigs; and in such case it would be very difficult for the native mind to make any distinction between father and son. That Thor considered himself justified would appear from the fact that he told the Rev. Mr. Landels that when a man-of-war arrived he would go on board and tell all about it; and he appears to have come from Malo to Aure for that purpose. I agree with Captain Davis that "the woman Vagathorlie was the sole cause of all the trouble". She was the cause of the quarrel between Thor and de Lautour, and connived at, if she did not suggest, the murder. It is difficult to see why, if Captain Davis thought he was justified in executing Thor, Roroa, and Sumbeywr, he did not also execute Vagathorlie, who was equally guilty.

It is the most unsatisfactory feature of the whole affair that these troubles arose solely from the immoral life and violent conduct of a British subject, who persisted in living with an unwilling native concubine; and that, when this concubine ran away, the assistance of one of Her Majesty's ships was obtained in order to bring her back to enforced servitude. Such assistance was indeed obtained by misrepresentation on the part of de Lautour, who stated that the woman was taken by force and did not want to leave him; and I cannot but feel that if Captain Davis had been aware of the true state of the case, he would not have taken the action he did in June last. The statements of de Lautour appear to have been accepted without any enquiry; but even had the facts been as stated, it does not appear to me that the recovery of a native woman, taken away by the tribe of which she is a member, or any part of it, is a matter calling for the intervention of Her Majesty's naval forces".

A copy of the High Commissioner's above-quoted despatch was sent to Captain Davis, who commented:-

"...I acted under the authority vested in me by the Joint Naval Commission, whose proceedings I am unaware come under the jurisdiction of the High Commissioner. I have, therefore, no remarks to make on His Excellency's letter".

It will be noted that Captain Davis carefully avoided to explain why he subscribed to the various statements as "Deputy Commissioner", perhaps preferring to leave such an explanation to his Commander-in-Chief by chance or by prearrangement.

The Commander-in-Chief sent Captain Davis's letter to the High Commissioner, and wrote as follows:-

"Captain Davis in this case did not act upon any recently-conferred authority, but, under the terms of the New Hebrides Convention of the 16th November, 1887, the matter was brought before the Joint Naval Commission, which accorded to Captain Davis "full liberty of action to finish it".

Captain Davis's authority was therefore derived from the Joint Naval Commission."

After referring to the Admiralty instructions for the guidance of naval officers, the letter continued:-

"The notes of evidence were inadvertently signed by Captain Davis as "Captain and Deputy Commissioner", though he was not acting in the latter capacity, but under the authority of the Joint Naval Commission.

Your Excellency having invited my attention to the case of the "Daisy" in 1885, may I also call to your recollection the case of the "Beagle" in 1879, in which the action taken by Lieutenant Crawford Caffin, in executing a native of Tanna, was subsequently approved by the Admiralty.

With regard to paragraph 10 of your Excellency's letter, I entirely share the view you express, that the question of jurisdiction is of the highest importance. My view of the case in point is that Thor and the two men with him made war on Mr. de Lautour and his son, and killed them. The Joint Commission (which under the authority of Article 3 of the Convention of 16th November, 1887, is charged in Article 1 of the Declaration of 26th January, 1888, to maintain order and protect the lives and property of British and French subjects in the new Hebrides) gave Captain Davis full liberty of action to finish the case; and by this authority he made war on Thor and his guilty companions, and was fortunate enough to be able to punish the actual men who had killed Mr. de Lautour and his son.

I am forwarding to the Lords Commissioners of the Admiralty a copy of this correspondence with a view to ascertaining to what extent the action of naval officers, as members of the Joint Naval Commission, can be commented on by Her Majesty's High Commissioner for the Western Pacific, as I think it desirable my officers should know the extent of the jurisdiction exercised by your Excellency in such matters among the New Hebrides Islands.

The capture of natives who have actually killed British subjects is a rare occurrence, and I am fully convinced in my own mind that the punishment of the actual offenders is far preferable to the indiscriminate bombardment of villages, where comparatively unoffending people may be killed, and also that the punishment of the offenders will have a great influence in the future preservation of good order in the New Hebrides".

Under cover of a letter dated the 29th January, 1891, the Commander-in-Chief forwarded all the correspondence to the Secretary to the Admiralty, writing in the following terms:-

"Having regard to the fact that the New Hebrides are not mentioned in Article 5 of the Western Pacific Order in Council of 13th August, 1877, among the islands to which the said Act applies; also that, by the declaration dated 26th January, 1888, agreed to by the Governments of Great Britain and France, pursuant to Article III of the Convention of 16th November, 1887, relative to the New Hebrides, the Joint Naval Commission is charged with the duty of

"maintaining order and protecting the lives and property of British and French subjects in the New Hebrides, I would request the earliest possible information as to whether the New Hebrides come within the jurisdiction of the High Commissioner for the Western Pacific. This information is urgently needed in order that naval officers who are acting under the authority of the Joint Naval Commission in the punishment of natives may know whether they can be called to account for their actions by the High Commissioner.

I would venture to point out that a difficulty is raised if the High Commissioner has no jurisdiction in the New Hebrides, inasmuch as the British subjects in those islands would then be under no jurisdiction, in a similar way to French citizens and subjects of other countries settled in the New Hebrides, who are under no jurisdiction whatever.

The French Admiral recently pointed out...the great inconvenience of the French citizens in the New Hebrides being under no jurisdiction.

Having this difficulty in view, I consider the reading of the Western Pacific Order in Council of 1877, and the Convention between Great Britain and France, should be, "That the duty of maintaining order, and protecting the lives and property of British and French subjects in the New Hebrides from the natives, should be in the hands of the Joint Commission, and that the British subjects in those islands should be under the jurisdiction of the High Commissioner".

In a letter dated the 2nd March, 1891, the High Commissioner replied to the Commander-in-Chief as follows:-

"...Your Excellency informs me, in reply to the inquiry contained in my letter of the 20th December last, that Captain Davis's authority for the execution of the natives named is derived from "the New Hebrides Convention of the 16th November, 1887", the matter having been "brought before the Joint Naval Commission" which accorded to Captain Davis "full liberty of action to finish it". And your Excellency concludes by acquainting me that you "are forwarding to the Lords Commissioners of the Admiralty a copy of this correspondence, with a view of ascertaining to what extent the action of naval officers, as members of the Joint Naval Commission, can be commented upon by Her Majesty's High Commissioner for the Western Pacific".

With regard to the last question, and to Captain Davis's letter of the 26th January, your Excellency will, I trust, permit me to say that I neither claim, nor have claimed, any authority or jurisdiction whatever in respect of the proceedings of naval officers, being members of the Joint Naval Commission established by the Declaration of Paris dated the 26th January, 1888, and acting under the powers conferred by the regulations made in conformity with such Declaration. And, in order to remove apprehension on this point, I should feel obliged, should your Excellency see no objection, if Captain Davis were so informed. I also desire to remove from your Excellency's mind the impression, if it exists, that I have any desire to comment upon the action of naval officers under your Excellency's command, whether members of the New Hebrides Joint Naval Commission or otherwise. The object of my last despatch was not to comment upon the incidents to which it referred, but to confer with your Excellency upon an important, delicate, and, to my mind, very doubtful question closely affecting the Queen's service; but, in order to do this, comment in some degree was necessary to the subject. My motive for adopting this course, and the exceptional circumstances of the case, were carefully and, I think, clearly indicated in the eighth paragraph of that despatch.

"Since the receipt of your Excellency's despatch under acknowledgment I have carefully reperused the regulations issued under the Declaration of Paris dated the 26th January, 1888, and have taken the opinion of my Law Adviser; and it is my duty to acquaint your Excellency that I am unable to find in those regulations anything that legally justified Captain Davis in putting to death the natives before referred to. I will not again dwell on the question whether Thor made war on Mr. de Lautour, or whether Mr. de Lautour, in company with the native Leeloo, made war on Thor and killed some of his people, or whether Thor - could he have been tried in a competent Court of law - had no good plea to urge in mitigation of a capital sentence. But, until the question is decided by Her Majesty's Government, who will doubtless consult the Crown Law Officers, I must demur to your Excellency's views that in accepting the surrender of Thor and his companions, and subsequently shooting them, Captain Davis "made war upon Thor", or was justified in so doing under the authority of the diplomatic arrangement quoted by your Excellency.

I beg leave to enclose for your Excellency's information a copy of a minute which I have written to the Chief Judicial Commissioner, together with a copy of His Honour's reply, and to add that copies of this correspondence will be transmitted for the consideration of Her Majesty's Government".

Minute of the High Commissioner to the Chief Judicial Commissioner.

"A divergence of opinion having arisen between the Admiral Commanding upon the Australian Station and myself, with reference to the recent proceedings of Captain Davis, of H.M.S. "Royalist", at the New Hebrides, I have to request that your Honour will favour me with your opinion upon the issue which is raised in the accompanying despatch from His Excellency Lord Charles Scott, C.B.

Briefly stated, the question is - Do the regulations made for the guidance of the Joint Naval Commission established in the New Hebrides pursuant to the Declaration of Paris of the 26th January, 1888, annexed, confer upon a naval commander, being a member of such Commission, judicial or quasi-judicial authority in virtue of which sentence of death may be passed and executed upon an aboriginal native of the island? The unavoidable killing of persons during military operations, as an incident of war, while engaged in maintaining order and protecting life and property during disturbance, is not questioned.

Your Honour will observe that Admiral Lord Charles Scott affirms that the regulations in question confer authority upon Captain Davis to execute the native Thor and two others concerned in the murder of one de Lautour, a planter or resident at Aure Island. And His Excellency expresses the opinion that Thor made war upon de Lautour, and that Captain Davis made war upon Thor. From my despatch to the Admiral (copy attached) your Honour will gather that, in my opinion - an opinion founded upon Captain Davis's own report of proceedings, dated 16th July, 1890, and annexed - it was de Lautour who made war upon Thor, and killed two or three of his friends; also that, in my opinion, the proceedings of Captain Davis were ultra vires, and not conducive to the administration of even-handed justice. At the same time, such proceedings compel me to consider how far British law has been set aside and ignored. For, unless otherwise advised, I should feel unable to admit that a diplomatic compact, or the approval of the Admiralty, conferred authority upon British naval officers within the Western Pacific to put to death native or other prisoners who may surrender themselves, or who may fall into their hands during the course of military operations.

"Your Honour will observe, by the Regulation No. 6, that the Commission shall have "no further or other powers than are expressly delegated to it by such regulations".

I apprehend that these powers are (1) the repression of disturbances, and (2) the protection of interests endangered. In either case, "military force" may be used; and no isolated or independent action, except in urgent cases, is permissible. I do not think that "war" can be declared against one man, or even three; and I do not think the regulations in question permit, or that Her Majesty's Government intended, that natives surrendering themselves, or made prisoners by naval officers, should be brought before a tribunal unknown in law, and then, without the aid of any person skilled in the law, without any counsel for the prisoner, without, as must often happen in such cases, competent and full interpretation, be summarily sentenced to death.

It is right to explain here, though not directly bearing upon the question submitted to your Honour, that in addressing Rear-Admiral Lord Charles Scott upon this important subject, I cannot admit that I am, as he observes, "commenting" upon the action of a naval officer acting under the authority of the regulations quoted. What I conceive I am doing - at least what I intended - is not "commenting upon the action of naval officers as members of the Joint Naval Commission" in the New Hebrides, but conferring with the Naval Commander-in-Chief, for the good of Her Majesty's service, upon an important point of law.

23rd February, 1891. J.B. Thurston.

Minute by the Chief Judicial Commissioner.

His Excellency the High Commissioner.

In obedience to your Excellency's minute, 23rd February, 1891, desiring me to inform your Excellency whether in my opinion "the regulations made for the guidance of the Joint Naval Commission, pursuant to the Declaration of Paris, 1888, confer upon a naval commander, being a member of such Commission, judicial or quasi-judicial authority in virtue of which sentence of death may be passed and executed upon an aboriginal native of the islands", and requesting me to express "my opinion upon the issue raised in the accompanying despatch from His Excellency Lord Charles Scott, C.B.". I have the honour to say that in my opinion the Declaration of Paris and the regulations made in pursuance thereof confer no such authority upon the Joint Naval Commission. The Governments of Great Britain and France could not, conformably with the recognized principles of international jurisprudence, constitute a tribunal with jurisdiction to try, sentence, and punish natives who are foreigners beyond the limits of the territorial jurisdiction of Her Majesty and the French Republic; and, even were it legally possible to assume such a jurisdiction and authority over foreigners living beyond the jurisdiction, an instrument such as the Declaration of Paris of 1888 would be clearly insufficient for the purpose. The powers of the Commission are clearly expressed, and are limited to the "repression of disturbance" and the "protection of interests endangered" - Article 1. There is no power to punish for offences committed.

The Joint Naval Commission has no judicial authority of any kind either over the subjects of Great Britain and France or over the natives of the islands. Criminal offences committed by British subjects against natives are cognisable in the Court of the High Commissioner for the Western Pacific; like acts committed by natives against British subjects can, where the circumstances justify, be treated as "acts of war", and be dealt with accordingly.

In the case under consideration, the natives who, with the sanction and approval of the Joint Naval Commission, have been

"sentenced to death and executed by Captain Davis for having been concerned in causing the death of two British subjects, were, according to the view taken by Admiral Lord Charles Scott, at the time of their trial prisoners, who had been captured in the course of "a war" made upon them by Captain Davis in retaliation for "war" which they had previously made upon these British subjects. If such be the case the natives so captured were "prisoners of war" and, as such, it was contrary to the law and usage of civilized warfare to put them to death for life taken by them in the course of "war".

With respect to the question raised by Admiral Lord Charles Scott as to your Excellency's jurisdiction as High Commissioner for the Western Pacific to take notice of the action and conduct of commanders of Her Majesty's ships in respect of the native inhabitants of the islands of the Western Pacific, I am of opinion that there is in this respect no distinction to be made between a commander of one of Her Majesty's ships and any other subject of Her Majesty. The jurisdiction of the High Commissioner extends over all Her Majesty's subjects for the time being within the Western Pacific. By the Western Pacific Order in Council, 1877, the whole of Her Majesty's civil and criminal jurisdiction over all her subjects, without distinction, within the Western Pacific, is vested in the High Commissioner's Court constituted by that Order; and to that Court all Her Majesty's subjects, so long as they are within the Western Pacific, are amenable civilly and criminally."

27th February, 1891.

H.S. Berkeley,
Chief Justice.

Since the Commander-in-Chief refers to Admiralty instructions for the guidance of commanding officers of Her Majesty's ships, it may be appropriate to digress here and insert a brief note on this point, lest it be thought that any such instructions gave commanding officers virtually unfettered powers in cases in which natives committed outrages against British subjects. Following upon the making of the Pacific Order in Council of 1877, there were unfortunately very considerable differences of opinion between the Senior Naval Officer on the Australian Station and the Acting High Commissioner (at that time the Chief Justice of Fiji) as to the relative authority to be exercised in the case of such outrages by the High Commissioner and the Senior Naval Officer, or his officers. However, after lengthy discussions between the Foreign Office, the Colonial Office, the Admiralty, the High Commissioner and the Senior Naval Officer on the Australian Station, it was determined that, in cases in which immediate action was called for to punish crimes committed by natives against British subjects, commanding officers were to act on their own responsibility (which they would later be required to justify to their superiors), provided that they considered that, where it was practicable and would not cause serious delay or render their action inoperative, they should first communicate with the Senior Naval Officer and the High Commissioner. That position obtained until the early nineties when, as a result probably of the Thor case and the actions of Captain Davis, the powers of commanding officers were diminished, as will be apparent from the final paragraphs in this story. Suffice it to note here that there appears to be no record that Captain Davis sought to justify the necessity for his immediate action to his superiors. Thor could, even assuming that he did not again wish to surrender himself, sooner or later have been easily apprehended, and it would seem to have been entirely appropriate if Captain Davis had investigated the circumstances of the case and submitted a full report to both the High Commissioner and the Admiral, with his views as to what action might best be taken.

In his despatch No. 8 of the 11th March, 1890, the High Commissioner had warned the Colonial Secretary of the possibility of a sentence of death being carried out by naval officers on natives of the Western Pacific who, having been guilty of outrages against British subjects, had surrendered themselves, or had been given up by other natives. In his despatch No. 38 of the 23rd December, 1890, the High Commissioner informed the Colonial Secretary that such a case had now occurred, Captain Davis of H.M.S. Royalist having caused three natives to be shot in connexion with the killing of Mr. George de Lautour and his son on Aure Island in the New Hebrides. He sought advice as to what steps, if any, he should now take in the matter.

In his despatch No. 9 of the 4th March, 1891, however, the High Commissioner addressed the Colonial Secretary at greater length, the essential parts of that despatch being as follows:-

"In the present case I have felt it my duty to draw the attention of the Naval Commander-in-Chief to that which appears to me a breach of the law and an inexpedient procedure, which, presuming my views upon the case are not incorrect, it is better should form the subject of conference between us, and of reference to Her Majesty's Government, than the subject of comment in English journals and the House of Commons.

For if it should happen that my opinions as to the propriety or necessity of Her Majesty's forces being landed in an uncivilized country to procure the restitution to a not wholly reputable British subject of his runaway native concubine - and of all the events to which this and previous acts upon the part of such British subject subsequently gave rise, be incorrect, it will occur that my opinion, put forward for the reasons given, will be overruled by competent authority and the matter will there end. On the other hand if my views are correct Her Majesty's Government will be in a position to issue such instructions as may be deemed necessary with reference to cases such as that now under report. Upon receipt and perusal of Captain Davis's report of proceedings dated the 16th July, 1890 (relative to the Tappea case), which formed part of one of the enclosures to my despatch No. 38 of the 23rd December, it occurred to me that Mr. De Lautour's complaint was one which, upon his own showing, might well have been referred to the High Commissioner with a view of enabling that officer to consider whether it would not be necessary to institute criminal proceedings against a man who, in order to recover possession of a native concubine, appeared to have made war upon the natives holding her, during which war natives were "knocked over". But Captain Davis having, as he believed, concluded the action, and settled the contention about the woman, I felt it better - though with some doubt - to let the matter pass at the time with a simple acknowledgment of the papers, in the expectation that further information would be received...

Events, however, have proved that the quarrel about the woman Vagathorlie was rendered more acute, and culminated in the murder of de Lautour by this woman and the native Thor, with whom, but for opposition and detention by her so-called "employer", she would have lived her savage life in ordinary peace.

I concur very fully with Admiral Lord Charles Scott, when he says that "punishment of the actual offenders is far preferable to the indiscriminate bombardment of villages, where comparatively inoffending people may be killed".

But when, as in Thor's case, in accordance with an intention previously expressed to the local European Missionary, for the purpose of justifying himself, he is then summarily shot without adequate, or indeed any, weight whatever being given to his grievances, I do not think the future number of surrenders will be many, or that the confidence now reposed to some extent in English Naval Officers will be augmented. Nor do I think the case has been

"yet finished in that perfect way contemplated by the Joint Naval Commission when under its consideration, and it will not surprise me to learn hereafter that some unfortunate people have had to compensate for the lives of Thor, Roroa and Sumbeywr. In concluding this despatch I would venture to suggest - unless there are strong legal objections to such a course - that Pacific islanders like Thor and his comrades, not killed in actual and necessary military operations undertaken for the suppression of disturbances, or the protection of life, but surrendering, or taken prisoner, should be forwarded on the first convenient opportunity to this Colony (Fiji); and that an Ordinance should be passed by the local legislature providing for the detention, control and maintenance of such persons when brought within the jurisdiction."

It was not however until some 8 $\frac{1}{2}$ months later that the Colonial Secretary replied in his despatch No. 22 of the 15th November, 1891, the essential part of which was as follows:-

"I am advised by the Law Officers to whom I caused the papers to be referred that although the execution of the natives in question cannot be justified as an act of war, yet, having regard to the circumstances of the case and the authority given to Captain Davis by the Joint Naval Commission to finish the case, his conduct was justifiable as being an act of retaliation and necessary for the punishment for the murderers of Mr. Latour. At the same time they add the case is one of great difficulty, and it would be well if definite instructions could be laid down for the guidance of officers in such circumstances. They observe that Captain Davis could be put on his trial before the High Commissioner's court under clauses 6, 7, 22, 27 and 28 of the Western Pacific Order in Council of 1877, or, in England under 24 & 25 Vic: cap 100, and that, although the jurisdiction of the Court would not in either case be ousted by the authority which he received from the Joint Naval Commission, that authority would have a most material bearing upon the merits; and they add that they are of opinion that no proceedings should be taken against Captain Davis. In this opinion I concur, and it is, therefore, unnecessary to comment upon the circumstances of this particular case, but I am considering what instructions can be laid down, as suggested by the Law Officers for the guidance of Naval Officers in dealing with any similar cases in future".

The Thor case, even if unsatisfactory in a number of aspects, did at least result in one major improvement - in the relationships between natives not under British jurisdiction, and the Royal Navy, even though it was nearly 18 months before the British Government accepted the suggestion made in the last paragraph of the High Commissioner's despatch No. 9 of the 4th March, 1891, cited above.

In his despatch to the High Commissioner No. 31 of the 7th September, 1892, the Secretary of State for the Colonies reviewed the problem of outrages committed by natives not under British jurisdiction with a view to reaching a satisfactory solution and concluded as follows:-

"...it seems that the least objectionable plan will be to follow a course analogous to that set by the Ordinances which have been enacted in certain Colonies for the local detention of "political prisoners", and to pass an Ordinance in Fiji legalizing the conveyance to and detention in that Colony of native offenders brought there by Her Majesty's Naval Officers. A native who has committed an outrage on the subject of a civilized power could then be apprehended by a British Naval Officer as a prisoner of war, and although a regular judicial trial could not be held, the officer could investigate the facts and prepare a report for communication to you. If satisfied as to the prisoner's

"guilt, he would bring him (if and when convenient having regard to his other duties) to Fiji for detention there, and you would then examine the report and any evidence which might be available and decide as to whether the circumstances justified the detention, and if so, of how long. No judicial trial could be held, but of course the prisoner should be allowed to make any statement or explanation he might wish.

I enclose the draft, as approved by the late Law Officers of the Crown, of an Ordinance for this purpose, and request that you will cause its enactment in Fiji.

I also enclose a copy of a letter from Lord C. Scott to the Admiralty, with its enclosures, relating to the subject. The course there proposed of giving powers to the Joint Naval Commission to punish natives judicially is impracticable .. at all events in the absence of any agreement with the natives of the New Hebrides".

The Ordinance was accordingly enacted in Fiji on the 29th November, 1892.

Meanwhile, on the 31st October, 1892, the Secretary to the Admiralty wrote to the Commander-in-Chief on the Australian Station in the following terms:-

"You are to forward copy of the Ordinance to the Naval Officers under your orders, who may be affected by it, and to issue to them instructions to the following effect, namely:- It is considered advisable to take steps for dealing with outrages affecting subjects of civilized powers committed by natives of the Western Pacific Islands. As Her Majesty has no jurisdiction over natives of islands which are not part of the British Dominions in these places, the punishment of such outrages is a matter of difficulty, except by acts of war, recourse to which should be resorted to as seldom, and in as lenient a form, as possible. It has been decided that it will be desirable to pass an Ordinance in Fiji legalizing the conveyance to and detention in that Colony of native offenders brought there as prisoners by Her Majesty's Naval Officers. Any native who, in a place not being within Her Majesty's Dominions or the jurisdiction of a civilized power, commits crimes, outrages, or disorders, affecting subjects of civilized powers, may therefore after the passing of this Ordinance, be apprehended by any British Naval Officer as a prisoner of war. This officer, without holding a regular judicial trial, should investigate the facts and report to the High Commissioner. He may, if satisfied of the guilt of the person apprehended and that the circumstances of the case require his removal from the island, bring the offender to Fiji for detention there at the discretion of the High Commissioner; or may send him to Fiji for that purpose by any other of Her Majesty's ships".

It is to be hoped that news of the revised procedures may have filtered through to the Anglo-French Joint Naval Commission and discouraged it thereafter from presuming to exercise a judicial authority which it did not possess, and confining its decisions strictly to the powers set out in the regulations annexed to the Declaration of Paris.

Thus ends the somewhat lengthy saga of what Erle Stanley Gardner would have entitled perhaps "The Case of the Hapless Housekeeper".

But it is not possible to conclude the story without feeling some doubts and misgivings as to the propriety and judgment of Captain Davis's part in it. Seemingly an efficient, intelligent, and thrustful senior naval officer (perhaps too thrustful - he was later to be heavily criticized by United States authorities in connexion with his visit to Butaritari

in 1892 to raise the flag there), he must have known that the "full liberty of action to finish" the Thor case, accorded to him by the Anglo-French Joint Naval Commission was ultra vires its powers; (if he did not know it, he should most certainly have done so). Further, the Law Officers of the Crown had no hesitation in advising that the execution of Thor and his two companions could not be justified as an act of war; and Captain Davis must surely have realized that so-called "making war" against a single individual, or even three, especially without prior announcement of so doing, was a travesty of what was intended in the regulations for the guidance of naval officers; in any case, by Thor and his companions freely surrendering, if the action was regarded, as Captain Davis seems to have regarded it, as "an act of war", then, as the Chief Judicial Commissioner points out, Captain Davis should logically have treated them as prisoners of war and not liable to summary execution. In addition, Captain Davis seems to have paid little or no attention to Thor's defence of his actions in connexion with the wilfully destructive acts wrought against his property by de Lautour, or the shooting by de Lautour and his vacillating henchman Leiloo of two of Thor's supporters; as pointed out by the High Commissioner, Captain Davis's reasoning in the latter respect was faulty. Nor is it possible to overlook the manner in which Captain Davis carefully avoided the High Commissioner's enquiry as to why he endorsed all the statements of the witnesses in the case as "Deputy Commissioner". It was most unlikely to have been "inadvertent" as stated by the Commander-in-Chief in an endeavour to absolve his officer; Captain Davis was not a calibre of officer to make such "inadvertent" mistakes. It was surely clearly intended to suggest that he had acted in a position of judicial authority (of which he had none in this case), or was perhaps merely an expression of self-importance. Again, the Law Officers of the Crown, in tendering advice to the Colonial Secretary, opined that Captain Davis's conduct was "justifiable as being an act of retaliation and punishment for the murderers of Mr. de Lautour". Retaliation in the heat of the moment, or even in a brief period thereafter, is conceivably understandable, and maybe excusable; but decisive cold-blooded retaliation in the circumstances already described several weeks after the murder is surely very different indeed. Finally, the very fact that the rules for the guidance of naval officers in dealing with natives not under British jurisdiction had necessarily to be changed as a result of the Thor case surely implied an admission of the righting of a wrong.