1904.

NEW ZEALAND.

MAKEA DANIELA

(DECISIONS OF THE HIGH COURT OF THE COOK ISLANDS IN CERTAIN ACTIONS AGAINST).

Laid on the Table of the House of Representatives by Leave.

SIR,— Aitutaki, Cook Islands, 1st September, 1903.

With reference to the speech made in the New Zealand Parliament by Mr. E. G. B. Moss M.H.R., on my refusal to furnish him with a copy of my notes of evidence taken during certain charges made against one Makea Daniela before me as Chief Judge of the High Court of the Cook Islands, I have now the honour to inform you that I based my refusal on the following grounds:—

Firstly, that when the charges were brought against the said Makea Daniela, he was not a British subject, nor was he under the protection of New Zealand, and, therefore, the Parliament of New Zealand can have no jurisdiction in the matter. The charges were made by the Government of the Cook Islands before the Court instituted for such purpose by the Governor of New Zealand and the Parliament of the Cook Islands. It must not be forgotten that the Cook Islands was an independent principality at that time, governed by its own laws, and altogether independent of the control of New Zealand.

Secondly: If the High Court Act be faulty I can only say that it was drafted in New Zealand, and that I had nothing to do with the provisions thereof, and the same may be said of the Parliament and Government of the Cook Islands; they were not consulted in the matter, but passed it at my request. It was at this period that the Parliament and Arikis invited me to accept the position of Chief Judge (without pay). I was by no means anxious to increase my responsibilities by accepting so thankless an office, but I left the matter in the hands of His Excellency, Lord Ranfurly, to decide whether I should or should not accept.

Thirdly: Lord Ranfurly did not approve the request of both Arikis and Parliament without careful consideration—in fact, he visited the Group and inquired carefully into the position before he appointed me to the office of Chief Judge. By this time I had learned the character of those who formed the Law and Order League, and say most decidedly that had there been a right of appeal I would not have accepted the position. After Lord Ranfurly left for New Zealand I wrote to him asking him to accept my resignation on the ground that the Chief-Judgeship would in many ways clash with the office of British Resident. Lord Ranfurly replied that I must submit to necessity since the Islands could not afford to pay a Judge, and there was no one on the Islands capable of taking the position.

Fourthly: I have the honour to inform you that Makea Daniela was not charged with fraud and misappropriation without reason. During the year 1897, the Chairman of the Rarotonga Island Council had called upon Mr. F. J. Moss to inquire into charges brought against that officer, and later on in a letter to the local paper had charged Mr. Moss with aiding and abetting the Paymaster in his misdeeds.

When Mr. Moss and his party had been removed from office, Makea Daniela was charged with five cases of fraud, but I advised that most of the cases should be brought as civil actions for the recovery of money, and in every instance most glaring cases of fraud were brought to light. The result was that he was forced to disgorge. I should be sorry that there should be a genuine inquiry into this matter, for in such case it would be found beyond all doubt that there was actual connivance in this wrongdoing; but an inquiry held in New Zealand by a Supreme Court Judge where no one but Makea Daniela would attend would of course suit Mr. Moss, M.H.R.

The notes of evidence taken on these occasions will at any time be open to the inspection of His Excellency, or a member of the New Zealand Government, but as to others I take up this position: That a Judge's notes are distinctly his own property; that I was forced to assume an office that I detested, and that I have performed the duties thereof to the best of my ability, and gratuitously, for the benefit of the people of these Islands.

As for the reference by Mr. Moss, M.H.R., to previous complaints against me, it was the Moss party who made them, and I should be only too glad of an inquiry into that petition; a more impudent case was never brought before a Court than that on which the petition was based.

I have, &c.,
W. E. GUDGEON,
Resident Commissioner.

The Hon. C. H. Mills, Minister for the Islands, Wellington.

SIR,— Rarotonga, 7th October, 1903.

I have the honour to forward herewith the judgments given by the High Court in the six cases brought by the Federal Government against their sometime Paymaster, Jimmy te Pou, *alias* Makea Daniela.

Mr. Moss, M.H.R., has forced me very unwillingly into this position, that I must either bring before your notice the true circumstances of the prosecution, or allow you to believe that Makea Daniela was a much-persecuted and deeply injured man.

The first judgment will disclose that the Federal Government claimed a refund of £100 12s., money that had been illegally advanced to the so-called Makea Daniela, and for which there was no voucher other than a receipt by the Paymaster, and a remark on the document by Mr. F. J. Moss to the effect that Makea Daniela must account to the Treasury for these advances. This remark was altogether superfluous, for neither Mr. Moss nor his Auditor ever required the Paymaster to show that he had not put the money in his own pocket. Every circumstance connected with this case was irregular and calculated to rouse suspicion, but for this Makea Daniela cannot be blamed. Firstly, it was proved that Ngamaru and the Ngati-Makea Tribe offered to make this road for the sum of $50, which sum would have been expended in the purchase of food, as is customary in these Islands, and it has not been explained why this offer was not accepted. Secondly, it would seem probable that there was some ground for the Native belief that this advance of £60 18s. brought about the seizure of the Cook Islands revenue for the fiscal year 1897–98, for we have the evidence of Mr. Scard that if the Parliament had not voted the money Mr. Moss would have been held personally responsible for the repayment. That the seizure of the revenue was a desperate measure, and absolutely illegal, is a matter that I think admits of no doubt. Thirdly, we have the evidence of Makea Daniela to the effect that £31 of the money now claimed from him was in fact drawn by Mr. Moss for other purposes. That such may have been the case is possible, but Makea Daniela does not deny receiving £100, on behalf of the road, and his memory is so exceedingly treacherous that this Court could take but little notice of unsupported testimony on his part. Fourthly, the witnesses of Makea Daniela, his own people, show that the statement of expenditure handed into the Court by him was absolutely untrustworthy, false, and fraudulent.

From the second judgment it will be seen that the Federal Government claimed £35 4s., fees and fines of the Arikis' Courts collected by Makea Daniela, and illegally retained by him. Comment is unnecessary in this case; but I submit a copy of his letter (A) admitting that he had converted this money to his own use, and the evidence discloses that he had probably taken £108 of the public money, since it is clear that he did not pay to the Treasury the £73 which he claimed to have paid.

Judgment No. 3 speaks for itself. Makea Daniela did not do the work of the Department during the period for which he was paid, and the attempt by Mr. Moss to foist on the Parliament a deputy in the shape of a private employee of Makea Daniela's, was not only a gross irregularity but also a deliberate attempt to reduce the authority of that assembly of the people.

In judgment No. 4, it will be seen that Makea Daniela received the benefit of the doubt, but it discloses also that the man's whole official history was one of fraud, and that he had been aided and abetted therein in a manner difficult to understand.

The embezzlement charges speak for themselves, and the sums of money there dealt with form only a small part of the public moneys lost to the Federation by the hands of Makea Daniela.

I have, &c.,

The Hon. C. H. Mills, Minister for the Islands. W. E. GUDGEON.

A.

SIR,— Rarotonga, 12th July, 1897.

In paying for the piles used for the U.S.S. Co.'s wharf I have used the Government money, and have paid out £35 more than has been repaid by the company to me, viz.,—

	$
Paid by me	1,082
Repaid me by U.S.S. Co.	730
	$352, equal to £35 4s.

There is also £20 for myself which has not been paid me, and which I have not included in the above $1,082.

I am now asking you to allow me a little time in which to make up this £35 that I have paid out for piles, and which the Union Company refuse to pay. I am unable to pay this at present. I have no agreement with the company and cannot collect from them, I cannot ask the Rarotonga Government for it. I have done this work for the public good, but will have to pay for doing so myself.

You advised me to write again to the Union Company for it; that I cannot do, as you will see by the copy of letters sent by me to Mr. Henderson, now enclosed. I knew I would lose this as I had no agreement with the Union Company whatever. I remain, &c.,

F. J. Moss, Esq., British Resident. MAKEA DANIELA.

True copy.—W. E. GUDGEON.

[NOTE.—To understand this letter it is necessary that it should be explained that Makea Daniela was the Collector of Revenue and Paymaster to the Local Government of Rarotonga and the Federal Government of the Cook Islands, and that while holding this position he contracted verbally with the

Union Company to supply them with piles, this arrangement being altogether apart from his Government office. When the case was tried it was found that the whole sum of $1,082 had been paid out of the Government funds, and had not been accounted for. Then Makea Daniela declared that he had, on the receipt of £70 from the Union Company, paid the whole of that sum into the Treasury; but the purser and captain of the "Ovalau" showed that no such sum had ever been paid to the accused, but they had paid some private accounts for him in Auckland, and deducted some freight due, and had paid him the balance, about £25. Even this sum it was found he had not paid in. Then Makea Daniela handed in accounts to show that he had lost money by the piles provided for the use of the company. This last was a matter that could not affect the case, but the statements made so annoyed persons of the Native race then present, that Taraare and others gave evidence that Makea Daniela did not pay the sums he had given in evidence for the piles so supplied, and that the accounts that he had handed in to the Court were in fact faked and fraudulent. Finally Makea Daniela claimed that he would have paid in the £35 but that Mr. Moss had written to him that there was no need for him to do so, as the Government would pay it for him.—W. E. Gudgeon.]

Judgment of Court.—The Federal Government *v.* Makea Daniela.

The plaintiffs claim a refund of two sums of money—namely, £60 18s. and £39 14s.—drawn by Makea Daniela in order to construct the Ngatipa Road, this money being still unaccounted for.

This has in every respect been a very unsatisfactory case; not only does the defendant appear to be devoid of that moral sense which might be expected in a man who has been intrusted with almost unlimited control of the public funds, but he has, also, a tendency to make light of gravely suspicious actions on his own part, and, worse still, alleges the orders or concurrence of the late Resident in order to excuse errors of omission or commission with which he has been charged. That there has been little if any efficient control exercised over the administration of the public funds may be true, but that the orders of which we now hear so much were ever given seems exceedingly doubtful. Moreover, the contention that an order given by the late Resident would justify any man in doing any illegal action, or in allowing the finances of the country to be shamefully squandered, is too absurd to require an answer. There is nothing in the Constitution Act, or other laws of this Federation, to justify the supposition that any British Resident has had the power to administer the revenues of this Group without the concurrence of the Government thereof; and the mere assumption by a Government officer that the Resident had such powers, will not save him from the logical effect of acts committed under this assumption.

The case itself presents no unusual features: Makea Daniela admits that he undertook the construction of the Ngatipa Road at the request of Mr. F. J. Moss; but he asserts that he did not do this work in the capacity of Federal Paymaster, neither also does he admit that he was a contractor. But he does admit that he drew from the firm of Donald and Edenborough the moneys that form the subject of this action—namely, £60 18s and £39 14s.—as also other moneys, making in all £108, which moneys he expended upon the Ngatipa Road.

The evidence, documentary and otherwise, shows that the £60 18s. was advanced by the firm of Donald and Edenborough in their private capacity in May, 1897, that is, two months before it was voted by the Parliament. Subsequently the same firm advanced £39 14s. in the following sums: On the 10th July, 1897, £8 14s.; on the 17th July, 1897, £18; in August, 1897, £13. These three sums were paid out of "Unauthorised." There is, however, one matter that is not clear, and that is, that Makea Daniela is quite positive that he left for Tahiti on the 13th July, 1897, that the road was then finished, and that he drew no money after that date, though he seems to think that Mr. Moss did draw money for odd jobs after the period mentioned. If we are to accept this as an explanation, then the question will arise, how did Makea Daniela obtain the £108 that he admits having received? This has not been explained.

Makea Daniela claims that he undertook to construct the Ngatipa Road, at the request of Mr. Moss, who could get no one else to do it; but this tale is evidently incorrect, for Ngamaru Ariki deposes that, with the view of saving the country expense, he offered to construct the road in the same way as he built the Residency—that is, by the aid of Makea's people—and that he asked only $50 for the work, but that Mr. Moss told him it was too much. There seems to be very little doubt that Ngamaru did make this offer, and, therefore, it is a mystery how Mr. Moss should subsequently have authorised a payment of $1,080 for the same work.

M. Daniela further states that he was authorised to give $1½ per diem to his labourers; that is, half a dollar more than the customary wage of unskilled labour; but it does not appear that any supervision was exercised over him; it would seem that he was allowed to do pretty much as he pleased with the funds of the Federation. Mr. F. J. Moss did, however, take one very proper precaution when certifying to the payment of the £60 18s., for his memorandum reads, "To be certified as paid, and to whom, by M. Daniela, who is to receive the cheque." This remark I construe to mean that M. Daniela should produce proper subvouchers in support of the payment of the money intrusted to him. In other words, that he should produce proof that the money was expended, and not put into his own pocket. This, however, is the one thing that M. Daniela has not done, the one order of the Resident that he has not obeyed; and, therefore, we find that the two sums now claimed, amounting in all to £100 12s., have not been accounted for up to this day, twenty-six months after the advance was made. It is still in advance, and, stranger still, we find M. Daniela under the impression that he is badly treated in being called upon to show cause why he should not refund the money to the Federal Treasury; in other words, give an account of his stewardship. That he was not called upon to do this during the financial year of 1897–98 only proves how utterly worthless the system of audit was at that period.

Mr. F. G. Moss, who appears as counsel for M. Daniela, is also impressed with the magnitude of his client's grievance, and impresses upon the Court that M. Daniela has always been ready to account for the money received by him. This is probably true, but M. Daniela is not an ignorant man, for we have the authority of Mr. F. J. Moss for saying that as a Paymaster he showed remarkable aptitude for his work, and this being so he must have known the simple fact that it was his duty to account for moneys imprested to him, whether he was called upon or not.

M. Daniela informs the Court that he did not take receipts for the money he expended on the Ngatipa Road, and that when he handed over the road to Messrs. F. J. Moss and Gelling, no receipts were asked for. His evidence as to the handing-over of this road to this clerk, Gelling, is rather conflicting, but it is among the forty-six witnesses called by M. Daniela that the most astonishing confusion prevails. Many of these men cannot remember how long they worked on the road, nor what money they received for this work; but most of them are quite certain that they were to be paid at the rate of $1½ per diem. Fortunately, however, there are men among these witnesses who can remember the number of days they worked, and what money they received; and it is their testimony that we must compare against the statement handed into Court by M. Daniela, wherein he claims to have expended $1,090. If we institute this comparison, we shall find that eleven men admit that they received £4 9s. 2d., or rather less than one-third of the money with which they are credited in the statement before referred to—namely, £13 18s. 6d.: Angene says that he worked for four days and has never been paid anything; the statement claims that he has been paid £1 7s. Rereao states he never received anything, but that £1 10s. was paid on his behalf to Ngatai; statement credits him with £2 19s. Roo worked three days and received 9s.: statement credits him with £1 17s. 6d. Ioane received 3s. for building a retaining-wall, and did other work, but does not know what he received for this work: the statement credits him with £1 14s. This boy may have earned the money, but the Court does not believe that he ever received it. Eteki says that he worked for three days but that nothing was paid him; believes that his money was paid into a tea-shop company, of which M. Daniela was the head: he is credited as having been paid 12s. Numa admits that he made a gate for Ngatipa, and received 18s., of which sum he gave back 8s. to M. Daniela for material used: he is credited with having received £1 10s. Urikapu worked on the road, received only 2s.: he is credited with having received £1 5s. 6d. Tumataiapo worked three days, and received 6s. 2d.: is credited with receiving 12s. Pakari worked one day, and received 3s.: is credited with 9s. Tutangata worked six days, and received 12s.: is credited with receiving £1 4s. Tangiia says he received $6 (shillings): he is credited with 9s. Out of the forty-six witnesses examined on behalf of M. Daniela, the eleven above quoted deny the truth of the statement produced by that man, and, further, almost all the witnesses who can remember anything deny the truth of the statement as to their own accounts. It has also been shown that M. Daniela gave a contract to five women of his household to clear a piece of the road. For this work they were to receive $20, and they finished the work in one day; in other words, they earned 8s. each woman. This contract we regard as a simple fraud on the part of M. Daniela; indeed, in view of the evidence given in this case, we must regard the whole of his statement as fraudulent, and made up for the occasion. From whatsoever point of view we may regard the evidence it is clear that M. Daniela has not accounted for more than £20, and we cannot say that we believe that he has expended more than £40 out of the £100 12s. drawn by him.

The order of the Court is that M. Daniela shall pay to the Federal Treasurer, Mr. F. Goodwin, the sum of £60 12s. within one week from to-day—namely, at or before 10 a.m. on the 16th day of September, 1899.

CIVIL ACTION.—FEDERAL GOVERNMENT *v.* JIMMY TE POU.

IN this case the defendant, M. Daniela, *alias* Jimmy te Pou, lately the Paymaster of the Federal Government, and Collector of Local Revenue to the Rarotonga Council, is called upon to refund the sum of £35 4s., which same is supposed to be the balance of $1,082—namely, the fees and fines of the three Arikis' Courts of Avarua, Arorangi, and Takitumu, collected by M. Daniela from the month of April, 1896, to January, 1897.

From the evidence of M. Daniela, it is clear that he has always recognised his liability to pay this money. It is moreover evident that he would have done so long since, but for the advice given him by the late Resident; but the whole of the circumstances connected with the case disclose a state of affairs in which it would seem that embezzlement was made easy, and the public of the Cook Islands cannot be blamed for their belief that much of their public money has disappeared under such a system of appalling mismanagement, inasmuch as there has never been the smallest check on the public officers, and the so-called system of audit has been little less than a fraud.

The admissions made by M. Daniela are as follows: (1) That in his capacity as Collector of Revenue he received from the three Courts of Rarotonga the sum of $1,082, equal to £108 4s., and that this collection extended over the period from April, 1896, to January, 1897; (2) that he did not pay this money into the hands of the Government bankers, because those officials refused to take Chili coin; (3) that about the month of November, 1896, he reported to the British Resident that he had this money in his hands, and that he did not know what to do with it, inasmuch as the bankers refused to take it. He further affirms that Mr. Moss replied that he would make some arrangement to relieve M. Daniela of the incubus; (4) that subsequently, when he had agreed with the Union Company to supply them with piles for their wharf, he suggested to Mr. Moss the advisability of paying for the timber and labour with the Chili money that he then had in hand, and by this means get rid of this coin, and that Mr. Moss approved the suggestion; (5) that he used the whole of the $1,082 in this manner, and when he was paid for the piles supplied he placed £73 in the hands of the bankers in British coin, but was unable to pay the whole of the amount due for the following reason, that the Union Company dis-

puted his accounts, and did not pay the whole amount due; (6) that on the 12th July, 1897, he wrote a letter to the then Resident, informing him that he still owed the Rarotongan Government £35 4s., and asked for time to pay it; (7) that at an interview with the late Resident he was told by that officer that the Rarotongan Government would pay £25 of his indebtedness, and the Avarua people the balance, and that trusting in this promise he has taken no steps to repay the money; (8) that he is unable to give any reason whatever why the Island should pay his private indebtedness in the matter of the piles, and he admits that the contract entered into between the Government and the Union Company—namely, to pay the latter £75 as a contribution towards the wharf, has been duly carried out, and that the Rarotonga Council and Federal Government are not liable to pay anything further.

The admissions made by M. Daniela amount practically to this: that he has always known that he was liable to pay this money, and was only prevented from so doing by the advice of the late Resident. There are, however, matters in his admissions that will require comment from the Court inasmuch as they cannot be accepted as absolutely true.

Admission No. 2 is not satisfactory, for the Court holds documentary evidence showing that the earlier collections would have been received by the bankers. Moreover, when M. Daniela was asked by the Court why he did not apply to this case the custom which had already been applied to the education rate—namely, of allowing 10 per cent. for the exchange from Chili into British coin, he can only reply, "I did not think of it." Now, it may not perhaps be strange that M. Daniela did not think of this obvious way out of the difficulty (if there was ever a difficulty). But if it is true that he ever did consult the late Resident on this point, it is strange that the latter should not have advised him as to the 10 per cent. solution, which had been adopted in the case of the education rate, where not only had 10 per cent. been allowed for exchange, but also another 10 per cent. for collection. It is moreover singular, that the late Resident should have allowed taxes to be collected in Chili coin, and then have permitted the bankers to refuse to take it, the more so that even to this day the Maoris for the most part prefer Chili coin.

As to the fourth statement, to the effect that the late Resident authorised the Paymaster to use the funds of the Rarotonga Council for his own purposes. This is a matter on which the Court has serious doubts, because, as we have already shown, the Chili coin was not a difficulty unless purposely made so, indeed, the Resident alone could have made it a difficulty. Moreover it is clear that Mr. Moss had no right to authorise the use of public funds for private purposes: It would have been an improper proceeding had Tinomana, the Chief of the Rarotongan Local Government, authorised such a procedure; but infinitely worse in the case of a Resident who had been sent as a guide and instructor to the people of the Cook Islands. That he of all men should give secret instructions to a Government officer to use public funds wrongfully, and neglect to report his action to the Chief of the Local Government, is a matter on which the Court would require very strong proof.

With reference to the fifth statement, the Court sincerely hopes that it may be found that the £73 mentioned therein has been paid into the Rarotongan Treasury; but in this Island truthfulness is such a rare virtue that we can hardly take any statement for granted, and therefore an investigation will be made of the accounts contained in the bankers' books.

The letter referred to in No. 6 is of importance, for the tenor of that letter is such as to justify the Court in doubting the accuracy of No. 3 statement—namely, that M. Daniela had reported to the late Resident that he had a large amount of Chili coin, the property of the Government, in his possession. If such a report had been made, why was the letter of the 12th July, 1897, written in the terms used? Why was the whole matter laid before the Resident as though he had never before heard of it? This is a matter that has not been explained.

As to No. 7 there is no record in the letter-book in the Residents' office that any such promise was made, and M. Daniela himself is unable to produce the copy of the letter which he states was formerly in his possession. Granting, however, that this letter ever existed, by what authority did Mr. Moss make any such promise? Why did he conceal it from the chief of the Government and the Parliament, whose credit he was pledging? And, above all, what reason can be assigned for such a promise? What power had Mr. Moss over the Avarua people that he should promise that they would contribute towards the debt of M. Daniela? On this point we would rule that the late Resident had no power to make any such promise.

It is the order of the Court that M. Daniela do forthwith pay into the hands of the Registrar of this Court £35 4s., as also the costs of this suit, and in default of such payment that the Registrar shall pay himself out of the sequestered rents of the said Makea Daniela.

FEDERAL GOVERNMENT *v.* M. DANIELA (OTHERWISE JIMMY TE POU).

Claim, £22 10*s.*, *Refund of Salary.*

WE have already disposed of the contention set up by Mr. F. G. Moss, the counsel for the defendant—namely, "that the High Court has no jurisdiction that would enable it to hear or decide on the merits of any case in which the late Resident has intervened, or done any act, legal or illegal." Whether Mr. Moss ever intended that this point should be seriously considered is doubtful; but, as a matter of courtesy, we have so considered it, and have pointed out the manifest absurdities involved in this contention. For instance, the Government and people of the Cook Islands would in such case be without redress against any person who might allege an order of the late Resident to do some act which might probably prove to have been both illegal and tyrannical. That this contention might suit the purposes of both Mr. Moss and his friends, is possible; but that it would be in the interests of the population of the Cook Islands is not possible.

A.-4, 1898, page 38.

The question of the legality or otherwise of the Proclamation, under which the revenues of 1897–98 were seized and administered by the late Resident, is not one that this Court will consider, for the reason that it is not necessary to do so; we will, on the contrary, assume for the purposes of this case, that the Proclamation was legal, and, therefore, the Parliament having passed Vote 6, it was properly payable to some one.

The real question is, therefore, to whom was this money payable? The late Resident unhesitatingly decided in favour of M. Daniela, who was evidently regarded by him in the light of his own servant, and not as the servant of the Federal Government. Strange to say this also was the view taken by M. Daniela of his position, for his letter of resignation evidences this point very strongly, and can only be characterized as a gross piece of impertinence to his own Arikis and the Federal Government. I venture to say that had such a resignation been addressed to any other Legislature in the world, it would have been followed by the immediate dismissal of the writer. But even this very long-suffering body of men, who at that time composed the Federal Parliament, would seem for once to have asserted themselves, since they not only accepted the resignation of M. Daniela, but also appointed a Clerk of their own, in the person of Mr. F. Goodwin, who not only still holds the position, but has also shown that the choice made by the Parliament was a wise one.

It is this appointment that has caused the present action, inasmuch as the Parliament, by appointing Mr. Goodwin, rendered themselves liable for his salary; but they evidently did not anticipate that they would also be required to pay a second salary for the same work, and to a man who did not do that work.

It is true that the late Resident refused to accept the resignation of M. Daniela, and it is also true that the popular idea is that the late Resident had the power to veto every Act of the Cook Islands Parliament. I think he even had this impression himself. Now it will be the duty of this Court to presently consider what were the powers of the late Resident, as exhibited by his official instructions; at present it will be sufficient to say that, wherever it could be shown that any person was unfit, by reason of any defect in his moral character, or from want of education, to fill an appointment under the Federal Government, it became the duty of the Resident to veto that appointment, in the interests of the public, whom it is presumed he had been appointed to protect. As regards the veto on Mr. Goodwin's appointment, the foregoing remarks do not apply, for it is well known that he is an exceedingly reliable and able officer, whose character does not appear at any time to have been assailed.

The question then is, had the Resident the authority to force the Federal Parliament to retain the services of M. Daniela, after they had accepted his resignation, and after he had been guilty of gross insubordination towards the Parliament? Is there anything in the official instructions given by Lord Onslow that would warrant the late Resident in supposing that he had such power, or that he was justified in using it? On this point, we have the letter of instructions issued to Mr. F. J. Moss, and also the Constitution Act to guide the deliberations of the Court.

In the Proclamation issued by Lord Onslow, dated the 4th day of April, 1891, in which the British protectorate over the Cook Group is declared, the following passage occurs: "The British Resident has received from me full and definite instructions as to the action he will take." Now, the instructions referred to are evidently those contained in Parliamentary Paper A.–1 of 1891, wherein Mr. Moss has been recommended to be careful as far as possible to avoid interfering with the Natives in their legislation, but generally to lead and advise them in a conciliatory manner. Such were the instructions given to the late Resident, and nothing can be gathered from these instructions that would justify the belief that the British Resident was authorised to interfere unduly in the work of the Government; he was rather to act as the friend and teacher of the Natives, and the "Constitution Act" was framed in the same spirit.

By this last Act the Parliament are held responsible for the peace, order, and good government of the Cook Islands, and the legislation and government of the Islands is placed absolutely in their hands. Lastly, all appointments to the public service are made subject to the approval of Parliament.

The only distinct power given to the Resident is under section 13, which provides that he may veto any act of administration with which he shall see reason to disagree. Under this section the Resident may have had the power to refuse his assent to Mr. Goodwin's appointment, but it would be stretching that power unduly to say that this section authorised him to dictate to the Parliament and say, "You shall not accept the resignation of an impertinent servant, and you must accept his clerk as a substitute for himself whether you like it or not."

By section 12 of the Provisional Powers Act it is distinctly provided that the Government shall appoint such officers as may be necessary, and pay their salaries, but that both of these acts shall be subject to the approval of the Parliament.

The position may be summed up in a few words: there was but one vote for the payment of the salary of the Clerk of Parliament, and there were two men to be paid out of that vote, one of whom had deliberately resigned his position, and whose resignation had been accepted by the Parliament. In such a position the payment of either of these rival officers should have been left to a distinct vote of the Parliament. The late Resident thought otherwise, and paid the money into the hands of his servant, M. Daniela. I say "his servant" advisedly, for it is clear that from the date of his resignation he was not the servant of the Federal Government.

Under these circumstances, the Court holds that the Federal Government are justified in demanding a refund of the salary paid to James te Pou from the end of September, 1897, to the 30th June, 1898, and therefore gives judgment in favour of the Federal Government against M. Daniela for the sum of £22 10s. and the costs of the case.

FEDERAL GOVERNMENT *v.* MAKEA DANIELA.

Embezzlement of $35 50c. *Dog-tax.*

THIS is not a charge that can be hastily dealt with or dismissed with the words "Guilty" or "Not guilty," as the case may be; for in every case brought against M. Daniela the attitude of himself and his counsel has been that of martyrs to political persecution, and this also is the attitude in which they have posed to the New Zealand public. For this reason it has become necessary, in justice to the Federal Government, that the Court should review the whole career of M. Daniela as Paymaster, and show what his actions have been during the period that he held the important positions of Paymaster and Collector of Local Taxes, in order to demonstrate with how little reason this man has adopted the *rôle* of persecuted innocence.

The evidence of Mr. Banks (*alias* Scard) has, we presume, been taken in order to show how unreliable the written records of the Paymaster's department are, and how unsatisfactory the verbal explanation of those records can be. For his evidence has very little direct bearing on the guilt or innocence of the accused; most certainly it does not—as Mr. F. G. Moss contends—prove that the $35½ has been paid into the Federal Treasury, or that the sum in question is identical with the £3 4s., which it is contended was paid into the Treasury fourteen months after the receipt thereof.

We will, however, leave this subject for the present, in order to comment on the evidence of Mr. Banks, which does bear indirectly on the case, since it shows that the Federal Government had good reason to doubt the honesty of their servants, and that the late Resident had himself grounds for something more than suspicion in the case of Makea Daniela.

Mr. Banks says in his evidence, "I do not remember seeing the books of M. Daniela. I did not see them before placing my certificate on the statement of revenue and expenditure for 1896–97." The meaning of this is clear enough; it is that he did not see the books at the time that it was most necessary that he should see them—viz., when he was attempting to audit the accounts, and found that he could not do so. We are not, however, told why he did not see the books, nor that it was the want of them that prevented the audit. On these points we must draw our own inferences.

Again Mr. Banks informs the Court, "I have seen M. Daniela's books, and think they were fairly well kept." But he has to admit that the books to which he refers were not among the exhibits, though the whole of the books received from the Paymaster were on the table and open to inspection. Mr. Banks further enlightens the Court by saying that he does not know that the Paymaster ever kept a cash-book. These are not the only references to these missing books, for subsequently Mr. Banks admits that he made an abstract of the books in November, 1897, and hands the same in for inspection of the Court.

Now the point made manifest by this evidence is not so much its inconsistencies, as the fact that when Mr. Banks did attempt somewhat late in the day to audit the collection of these local taxes, the books that should have enabled him to execute this very necessary work were not forthcoming, so that he was unable to perform the task set him. We may assume, also, that M. Daniela had seen the error of his ways very shortly after the attempted audit, and just before the arrival of Sir James Prendergast, who came to hold an inquiry into charges made against M. Daniela and others. It was then that he allowed Mr. Banks to see these books just to make an abstract, of which the Court has a copy in the handwriting of Mr. Gelling, and which, at that time, was the only evidence the Government held of the late Paymaster's transactions.

Touching the condition of Makea Daniela's accounts, Mr. Banks tells us that "the Rarotonga Council passed a vote of £7 10s. to pay for an extra audit of the local taxes, presumed to have been collected by M. Daniela in 1896–97. Mr. Moss asked me to undertake this duty, but, when I attempted to do so, I found it impossible to carry out the work, forasmuch as the accounts had not been properly kept. I reported this state of affairs to Mr. Moss and relinquished the fee. I did not make a written report to Mr. Moss when I signed the statement. At the time I intended to do so, but I only reported verbally to him."

The reason for this attempt at audit seems clear enough, for Mr. Banks has given evidence to the effect that he did not audit the road and dog tax, or the education rate, or the revenue derived from the Arikis' Courts during the financial year 1895–96.

Now the only possible excuse for not making this audit is that the accounts were in such a mess that it was not possible to do so, and it would seem that this was the case, for the Maoris themselves knew that taxes that had been collected had not been accounted for in the financial statement. Whether M. Daniela was really responsible for the statement to which his signature is attached is doubtful, but he must be held to be so since he has not repudiated the authorship.

Mr. Banks says that he reported the lamentable condition of the Collector's accounts to the late Resident; but, serious as the case was, he did not make the report in writing, nor did he give that information to the Rarotonga Council which they had a right to expect, he being their servant. The result of this system of concealment was that the Council subsequently accused Mr. Banks of having aided M. Daniela in stealing their money. The Council did not, perhaps, use the best possible terms when commenting on the singular manner in which the *laches* of the Paymaster had been covered by Mr. Banks and others, who evidently dreaded lest the Federal Government should learn the true state of M. Daniela's accounts, but they evidently felt that they had a real grievance, and spoke accordingly.

In the face of the certificate given by Mr. Banks, it is difficult to believe that he did not report in writing on the statement of revenue and expenditure for 1896–97, for it reads as follows: "I have examined these accounts and compared them with the books and vouchers, and certify that they are correct, subject to the remarks as to collection, &c., that I have made in my special report on the road-tax, dog-tax, and education rate respectively." The words, "the special report that I have made" do not fit in with the explanation offered by Mr. Banks, which is, "When I signed the certificate, I intended to make a written report, but did not do so."

When Mr. Banks says that Makea Daniela sent him a written statement of the moneys he had received, and that it was this fact that induced him to sign the statement, it is equivalent to saying that M. Daniela had made a false return to him, for he had already said that he did not know that the Paymaster had Council money in his possession when he signed that statement. That this was the case I do not doubt, for Mr. Banks has also said that when M. Daniela returned 6s. 7d. as the amount of the dog-tax for that year, he accepted it as a true statement.

The Court is of opinion that the following matters are proven by the evidence :—

(1.) That in September, 1896, Makea Daniela received $35\frac{1}{2}$ on behalf of the Arorangi dog-tax.

(2.) That he issued a financial statement in 1896–97, and did not account for this money, but did account for another sum of 6s. 7d.

(3.) That he obtained the auditor's certificate to that statement by representing that he had only received the 6s. 7d.

(4.) That whereas it is alleged by M. Daniela that he could not pay the money now in dispute into the bank by reason of its being Chili coin, he nevertheless made no report to the Council that he had moneys the property of the Council in his hands, which he had been unable to pay into the bank.

(5.) That in a letter addressed to Sir James Prendergast by Mr. Scard, who was then the Auditor, it is stated that during the financial year 1895–96 Chili money was received by the bankers, but in consequence of an objection made by the Council, the bankers were instructed not to receive money after that date excepting always in British currency. If this be true it is a remarkable fact that M. Daniela, who was Clerk of the Council, made no record in the Council minutes of this fact. The Court has no reason to believe that any such objection was made by the Council to the Chili dollar, which is still preferred by the Maori inhabitants of this group.

(6.) That it is claimed that the $35\frac{1}{2}$ is part and portion of the $1,082 which M. Daniela was unable to pay into the bank, and which he also claims was, with the approval of the Resident, used to pay for the labour and material incidental to the supply of piles for the Avarua wharf. Now, during the civil action for the £35 4s., admitted by M. Daniela to be the balance of the $1,082 still in his possession, he was questioned by the Court why he had not followed his ordinary custom and charged 10 per cent. for the conversion of this Chili money into British coin. He replied, "I never thought of that way out of the difficulty." Now this answer is clearly untrue, for in an abstract of the Paymaster's accounts, in the hand-writing of his clerk—now in possession of the Court—it will be noticed that in every instance 10 per cent. has been deducted for exchange.

(7.) In the before-mentioned abstract the amount of Arorangi dog-tax shown as being in the hands of the Paymaster in September, 1896, is £3 4s. Now, if this is identical with the $35\frac{1}{2}$ the sum should be shown as £3 11s. A deduction of 10 per cent. would indeed reduce the amount by 7s., but the moment this 10 per cent. was deducted the money should have been paid into the bank; there was no longer an excuse for keeping it in the hands of the Paymaster. These remarks apply to every item in the abstract. If M. Daniela used this money, as he asserts, for the purpose of converting it into British coin, by what right does he charge exchange on it ?

(8.) In the Victoria Road case Makea Daniela twice stated on oath that the $1,082 were derived from the fees and fines of the three Arikis' Courts of Rarotonga: how then does it happen that this dog-tax is now found to be part of that sum ? How can a Court give credence to such contradictory statements ?

(9.) That M. Daniela fraudulently withheld his books from the Auditor when the latter was specially employed to examine into the state of his accounts, and thereby contributed to the defeat of the audit.

(10.) That it is an unpleasant fact that the Council were never informed that the Auditor had been unable to audit the books of the Paymaster, by reason of the fact of the confusion thereof, the want of a cash-book, or, indeed, any books, and the fact that counterfoil receipt-books had not been used, though the Paymaster was in possession of the same.

(11.) In the State paper A.-4 1898 of the New Zealand Legislature, it is noticeable that a copy of the financial statement does not appear to have been sent to His Excellency the Governor, as had been the rule in previous years. All that was done on this occasion was to forward the reference made to the statement in Tinomana's address to the Council. By this arrangement the remarks of the Auditor did not reach His Excellency.

(12.) That the fact that the Auditor did not make a written report on the Paymaster's accounts after he had been employed to audit the same, and had failed to do so, must be regarded by the Court as confirmatory of other evidence showing that the utmost care was taken to prevent the people of the Cook Islands from forming a true and correct idea of the dishonesty or incapacity of Makea Daniela.

(13.) That the only reason given to explain the extraordinary retention of this money in the hands of the Paymaster for fourteen months, as alleged in the case set up for the defendant, is that it was difficult to change the money into British coin. This explanation is not worthy of credence, for in the abstract made twelve months before the date on which this money is alleged to have been paid to the bankers, the 10 per cent, had already been deducted from the $35\frac{1}{2}$.

(14.) That the Court is justified in believing that it is doubtful whether Chili money was ever refused by the bank; not only because the minutes of the Council contain no record of anything leading up to such a transaction, but also because there is—to the knowledge of the Court—no official correspondence; nothing to show the concurrence of the British Resident or Chief of the Government in such an important departure from ordinary custom.

(15.) That although Mr. Scard's letter to Sir J. Prendergast is the only record of the refusal of the bank to take Chili coin, yet he admits that when he signed the statement of revenue and expenditure for 1896-97 he did not know that the Paymaster had at that time in his hands a large sum of Chili money, the property of the Rarotonga Council. We regard this concealment as being in itself a fraud.

(16.) That when M. Daniela gave evidence in his own behalf in the civil action brought against him by the Federal Government in order to recover the sum of £35 4s., the balance of the $1,082 alleged to have been used in the payment of piles supplied to the Union Company for their wharf, he said, "When the steamer returned from Auckland I paid £73 into the hands of the bankers, but not in one sum; I paid it in as taxes." But in the hearing of the action for the recovery of the money advanced on the Victoria Road, but unaccounted for, he gave very different evidence on this point. He then said, "When Mr. Beaton went to New Zealand I paid £25 into the bank, and when the steamer returned and I was paid, I paid in the balance, making in all £73 paid into the bank." Now, in this evidence there is hardly a scintilla of truth. Dates have been carefully avoided by M. Daniela, but his counsel, Mr. F. G. Moss, has asserted that they will prove that this £73 was paid into the bank in November, 1897.

Now, this evidence is refuted in all important details by Mr. Tubby, purser of the "Ovalau," who shows by his letter-book that no money was paid to M. Daniela after the 10th May, 1897, and that only £32 1s. 10d. was paid about that date. His evidence is to the effect that probably as early as November, 1896, M. Daniela had received an advance of £25, and that subsequently at his request the company had paid out of money due to him £16 12s. 6d. for a tombstone; therefore the only moneys received directly by him were:—

	£	s.	d.	£	s.	d.
Cash in November	25	0	0			
Cash in April or May	32	1	10			
				57	1	10
For tombstone				16	12	6
				£73	14	4

There was, moreover, an account owing by M. Daniela on shipments of fruit to the amount of £26 1s. 10d., which may probably have been charged against his bill of £108 4s. for the supply of piles for the wharf. To recapitulate, the defendant in this case received only £57 1s. 10d. in money, and £42 14s. 4d. by the payment of his debts. It is therefore clear that he did not receive £73 from the Union Steamship Company, or pay that sum of money into the bank.

(17.) That in the month of November, 1896, M. Daniela reported to the late Resident that he had in his possession $1,082. It is the opinion of the Court that this statement is not true, for in the abstract before referred to, and which is the only evidence we possess of the Paymaster's accounts, he had only £86 12s. 9d. in hand up to the end of November, and during that period he disbursed £16; therefore he could have had only £70 12s. 9d. in hand, and not £108 4s.

(18.) That M. Daniela has handed into the Court a statement showing the cash-disbursements made by him in the purchase of piles for the Union Company's wharf, amounting in all to $1,082 (£108 4s.), and in this statement will be found the following items:—

	$
42 piles from Tupapa, labour and food	92½
82 piles from Tupapa, labour and food	140
5 piles, royalty to Taraare, $2 each	10
	$242½

As to these charges we have the evidence of Taraare, who, as the head chief of Tupapa, kept a list of the men employed and of the payments made to them. This list he hands into Court, and we find that it contains the names of twenty-nine men who worked on three days and received half a dollar per diem for the seventy-nine days' work done: in addition to this money the workmen were supplied with two cases of beef, worth probably $48—that is, the workmen received money and goods to the value of $87½, instead of $242½ charged in M. Daniela's account. As to the five piles for which M. Daniela shows a royalty paid of $2 each, Taraare tells the Court that he only received $1 each pile. The same statement of disbursement shows $280 paid for carting. This is an absurd sum of money to charge for the cartage of 209 wharf-piles and a few house-blocks an average distance of about half a mile. But Taraare's evidence throws a new light on the subject, and that is that the disbursements in this instance were made by M. Daniela to himself, for only his own wagons were employed. This evidence is merely of importance as an answer to that of M. Daniela who has made much of the fact that he has used this money only as a public benefactor and for a public purpose, whereas it is clear that the whole account is a fabrication.

So far the Court has shown a long list of suspicious and even fradulent transactions, but there is a probability that this sum of $35½ may be included in the £35 4s. for which judgment has already been given against M. Daniela. He is entitled to the benefit of the doubt, and we give him that benefit by dismissing this charge.

FEDERAL GOVERNMENT *v.* M. DANIELA.

Embezzlement of 18*s.*, *Takitumu Road-tax.*

IN this case the only defence made is the production of an account-book showing the collection of local revenue during the year 1895–96—a book that has long been wanted—and the assertion of Mr. Moss that the 18s. now in dispute has been paid into the bank, that it formed part of a sum of £7 18s. 4d. paid into the bank on the 28th December, 1895.

Now, this book contains some very curious entries. Firstly, under date of the 18th October, 1895, 18s. is entered as having been received from Samuela Taunga, and this entry is made on a page devoted to the fees of the Avarua Court. On the 12th November following, £18 6s. 1d. is shown as having been paid into the bank, and a balance of £4 8s. 11d. as left in the hands of the Paymaster. From this sum the 18s. is deducted, and, therefore, up to this date the 18s. has not been accounted for. On the same page another entry is made of this 18s., and on the 10th December a balance is shown in the Paymaster's hands of £9 1s. 11d. Here the manipulation commences: the £9 1s. 11d. is not brought forward to page 14, but a sum of £8 4s. 11d.; and to this is once more added the 18s. and another sum of £2 4s., leaving a balance of £11 6s., from which, without rhyme or reason, the 18s. is again deducted, making the balance in the hands of the Paymaster £10 8s., of which £7 18s. 4d. was subsequently paid into the bank, and was made up of two sums of £1 17s. 6d. each, and one of £4 2s. 4d., all of them stated on the receipt as being derived from the fees and fines of the Avarua Arikis' Court. It will, however, be seen that the receipt bears no date by which the money can be traced in the banker's books. So far, then, it is clear that the sum of 18s. has not been paid into the bank. The collector's book put in as evidence shows that when the £7 18s. 4d. had been paid into the bank, the balance in the Paymaster's hands was £2 9s., and this sum is shown as the balance on the 1st January, 1896 (page 16). To this sum is once more added the 18s. It is proved beyond all doubt that the 18s. was not paid into the bank on the 28th December, 1895; that it did not form part of the £7 18s. 4d. There is, moreover, nothing to show that the balance of £2 9s. remaining on hand on the 1st January, 1896, has ever been accounted for.

The Court is of opinion that M. Daniela has embezzled the sum of 18s., Takitumu road-tax, and convicts him of the offence and sentences him to six months' imprisonment with hard labour, sentence to be served on the Island of Manuae.

FEDERAL GOVERNMENT *v.* M. DANIELA.

Embezzlement of £17 5*s.* 9*d.*

BEFORE delivering the judgment of the Court in the two cases now pending, it will not be out of place to comment on the manner in which the many actions against M. Daniela have been defended. The Court has very great sympathy with M. Daniela, but that he has committed all the acts with which he has been charged is very clear. Had he pleaded the ignorance and incapacity which has been made manifest to the Court, we could then have recommended Makea Ariki to exercise the mercy which is the prerogative of the Federal Government under section 11 of the Constitution Act of 1891. As it is, Makea Daniela has listened to the bad advice of a man who seems to have had no other object than to obtain a conviction against his client. The action of Mr. F. G. Moss in introducing one of the long-lost books of the Collector of Local Revenue, and objecting to its being impounded by the Court on the ground that it contained incriminating evidence against his client, appears to the Court to admit of no other construction than that we have placed upon it.

No evidence in support of the defendant's case has been offered in this action, and the arguments of Mr. F. G. Moss are hardly worth consideration. That the late Resident should have instructed M. Daniela to retain 10 per cent. for exchange during the financial year 1895–96 is absurd, for we have the authority of Mr. Scard's letter to Sir James Prendergast (A.–3 of 1898, page 85) to show that the bank was taking Chili money during that year. So, also, the contention that this charge of 10 per cent. was openly made, is absurd, for Mr. Moss knows well that this book was always concealed, and would probably never have seen the light of day, but that Mr. Moss produced it in evidence, and by so doing proved beyond all doubt that Makea Daniela had deliberately defrauded the Government of £17 5s. 9d.—illegal deductions from education rate and fees of the Arikis' Court.

We find M. Daniela is guilty of embezzlement of the £17 5s. 9d., and sentence him to six months' imprisonment with hard labour in addition to the six months already given to him as a punishment for the embezzlement of 18s. Both sentences will be served on the Island of Manuae, to which island he will be sent on the first opportunity.

Approximate Cost of Paper.—Preparation, not given; printing (1,125 copies), £6 13s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1904.

Price 6d.]