

are some friendly letters that you are assured contain not one word that is objectionable, does not that make it different to a case in which there is an express provision for stopping letters passing without censorship?—I cannot see that it does really. I had been down at the island before the war started, and the mails close one or two hours before the steamer sails, and it was the regular custom at that time for people to bring down letters to the pursers or passengers to carry, but I know that immediately after the commencement of the war that was put an entire stop to, and no letters were allowed to leave the island at all that had not passed through the Censor's hands, and Mr. Gaudin knew that.

38. The position Mr. Gaudin is in to-day is this: he has been convicted of the offence of war treason; he has been sentenced to five years' imprisonment with hard labour; that sentence has been remitted to a period of six months from the time of his offence—that is so, is it not?—Yes, that is so.

39. He is therefore in the same position as a criminal who had been sentenced to five years for house-breaking and whose sentence had been remitted to six months, and all that has been done is the remission of sentence?—Yes.

40. And I take it you think, in common justice to Gaudin, that the Committee should recommend to the House something in the shape of a declaration that, while he did receive this heavy sentence and served a portion of it, he was not guilty of treason in the generally accepted sense?—That is so; but I cannot suggest that it does not mean war treason. As long as it is made clear to the public that he is not guilty of treason in the ordinary acceptation of the word—that he is not a traitor to his country—that ought to suffice.

41. You do not want the public mind to be in any sense of doubt that he was guilty of treason at all. If you use the expression "war treason" there is still left on the public mind an impression that it has the same meaning. "War treason" would therefore appear to convey the impression of being a traitor to your country in war-time, and in order to eliminate any paraphrasing in regard to war treason or real treason, perhaps you could agree to this suggestion: "That Gaudin was tried for a breach of the war regulations; that he pleaded guilty to a breach of the regulation for taking gold out of Samoa; that he pleaded not guilty to war treason; that he was convicted on both and sentenced to five years' imprisonment; that he has satisfied the Committee that, while he deserved some measure of punishment for his breach of the war regulations, he has further satisfied the Committee and satisfied the Judge-Advocate-General that he was in no way guilty of treason": and I leave it there?—Well, you know one feels this, that it is not fair to stultify the finding of that Court. I had to advise originally as to whether they were entitled to find him guilty of war treason. I have so advised, and I think they were justified in finding him guilty of war treason, and the only thing I find fault with is the term of the sentence.

42. I argued the matter before His Honour the Chief Justice and Mr. Justice Edwards, and I rightly or wrongly took the view that he could not be convicted of war treason?—The Judges did not decide that.

43. No, but I think there is every room for difference of opinion on that question?—There is room for difference of opinion, no doubt.

44. I suggest that a term which even lawyers cannot agree upon the meaning of—and I say with respect that no lawyer can say definitely what is war treason—should not be an element in your suggested report, and that what the Committee should say is that Gaudin was punished, and properly punished, for a breach of the regulations, but was not guilty of treason, and has not been a traitor?—I have tried to get that effect by defining that "war treason" simply means a breach of the regulations.

45. If you were dealing with a Court, or even with the gentlemen of this Committee, that is the only vindication his character might need; but if the report is couched in the terms you suggest it will leave those people who believe him to be guilty of treason still in that belief?—No, I think it is only fair to relieve Gaudin of the stigma of actual treason; his name should be cleared of being guilty of actual treason.

46. *The Chairman.*] But you are not prepared to agree to the suggested resolution that Sir John Findlay put forth?—No, I am not prepared to do it, because the Military Court found he was guilty of war treason, the "war treason" meaning a breach of the regulations. No Court is entitled to review that finding, and it would be a mistake, I think, for the Committee to find what would practically mean a reviewing of their finding. No ordinarily constituted Court has the power. It has been held over and over again that in time of war the ordinary Courts have no jurisdiction to review the findings of Military Courts at all.

47. *Sir John Findlay.*] You very frankly admitted that the gravity of the offence is usually expressed by the severity of the sentence. It is impossible to escape the suggestion that the Court in Samoa took the view that they were trying this man for treason, otherwise they would not have imposed a sentence of five years' hard labour, so that it would appear he was convicted of more than a mere breach of the regulations—he was convicted of an offence which deserved five years' hard labour, and we want to make it clear to the public irrespective of the feelings of the Court of Samoa?—I am not concerned with the feelings.

48. As British justice should stand as the basis of all things, nothing should stand in the way of this man being declared before his country absolutely innocent of an offence for which the sentence was five years' hard labour, and if you leave in the words "war treason" you will still lead his critics to believe he was guilty of treason?—[No answer.]

49. *The Chairman.*] You will agree that Parliament can review the decision of a Military Court?—By legislation the House has power. I do not suggest you have not the power, but it is a question of the wisdom of interfering during a time of war.