

## AN EXAMPLE OF MAIL FRAUD IN 19TH CENTURY SAMOA

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Mail fraud, the purchasing of items via mail order without paying for them, is a common mode of operation of modern day small time crooks. As a 21st century legal problem it is particularly associated with e-commerce.<sup>[1]</sup> It is not new however. Trawling through the pages of nineteenth century newspapers published in Apia, Samoa (South Pacific) in the course of research on various aspects of Samoan history,<sup>[2]</sup> brought to light an example of Alexander Pritchard, a European trader living in Samoa, defrauding the wine wholesaler Edward Patrick Fallon of Albury, NSW, Australia.

### BACKGROUND

This paper will outline the fraud case in hand as an example of European traders in Samoa trying to make the most of a politically volatile situation at the frontier of colonial powers.

The wine trade in Southern New South Wales was pioneered in the mid 1860s by James T Fallon (–1886), who could draw on his own production from the Murray Valley Vineyard, but also the wine production from a large number of small land holders, many of them Germans, as well as larger vineyards.<sup>[3]</sup> By 1873 the wine and spirits business was sold to his younger brother Patrick, who further expanded the business. Both brothers Fallon had been very active in developing a wine export industry for the British colonies in Australia. The elder Fallon had gone to England, for example, to successfully convince the authorities the alcohol content of the Albury-region wines was naturally high, that the wine was undoctored and should be imported with the appropriately lower duty imposed on wines than on spirits. Both brothers Fallon were keen to develop markets wherever they showed an opening. Samoa was one of them. This eagerness made them easy prey to a shrewd operator.

### THE FACTS OF THE CASE

In early January 1892 Alexander Pritchard, European resident on Samoa, ordered ‘one or two cases of port, claret and sherry in quarts and two cases of sherry in pints and other wines you think would suit this market.’ Pritchard gave clear instructions on how to ship the wine. In his letter he claimed that Fallon had been recommended to him by J. Despeissis, then the NSW Government’s agricultural expert on viticulture. As an added stimulus, Pritchard stated that ‘we are desirous of importing our goods from the colonies instead of San Francisco,’ playing on the recipient’s nationalistic or jingoistic tendencies. Both the, most certainly spurious, reference to Despeissis, and, more influentially, the hope of breaking into a new market so far dominated by Californian sellers, seems to have influenced Fallon in filling the order on the promise that payment would occur by return mail.<sup>[4]</sup> Fallon obliged on trust alone, delivering goods worth £14 5s (incl. shipping). But, to his unpleasant surprise, no payment followed.

If a supplier could be fooled once, it stood to reason that another try would be warranted. In early June 1892 Pritchard tried again, now under the name ‘Jas. Jackson of Lata Plantation, Savaii, Samoa.’ This time round he used flattery as his modus operandi: ‘Through the introduction of The Samoa Trading and

Plantain Company of the next island, Upolu, who are taking great pains in getting your wines thoroughly tested by the general public, I write to please send me ...1 case dry wine each quarts and pints, claret, 1 case do. do. port; 1 case do. do. sherry... Your wines are certainly the best that have ever come to this market.’<sup>[5]</sup> Fallon, however, was not to be fooled again.

How serious was such a loss? And, by implication, how trusting was Fallon? The buying capacity of £14 5s in 1892 can be corrected to year 2004 prices using the Australian Bureau of Statistics Consumer-Price-Index.<sup>[6]</sup> This correction gives us \$1,426—a sum sufficiently large to attempt a long-distance recovery.

## ALEXANDER PRITCHARD

Who was this Alexander Pritchard? He was the son of the missionary and former British Consul to Samoa, George Pritchard (1796-1883). In 1888 Alexander came to Samoa from Queensland, where had been an elected member of the Legislative Assembly.<sup>[7]</sup> He was certainly a quite well educated person. It is unclear why he left Queensland, but it had been suggested by his Apia contemporaries that he had left to avoid his creditors. By early 1892 Pritchard had a major swindle operation going. He requested, and frequently received, from unsuspecting Sydney and Melbourne companies,<sup>[8]</sup> goods by using the names: ‘Pritchard & Co.,’ ‘The Pritchard Trading Co.,’ ‘The Samoa Trading and Plantation Co.,’ ‘Jas. Jackson & Co.,’ and ‘Jas Jackson of Lata Plantation, Savaii, Samoa.’<sup>[9]</sup>

Why did Pritchard undertake this fraud? It is highly unlikely that he would have done so as a resident of New Zealand, or one of the British colonies in Australia, such as Queensland. It is very likely that he tried to exploit the unstable political situation in Samoa at the time. In 1889 the Treaty of Berlin was concluded, between the vying foreign powers of the USA, Great Britain and Germany. This Treaty recognized Samoa’s sovereignty and the authority of the 1875 *Constitution*, which established a form of hereditary monarchy. Germany, Great Britain and the USA were all jostling for supremacy of influence over the Samoan chiefs, however, and armed conflict between different Samoan factions was very much part of the milieu.<sup>[10]</sup> Samoa was a lucrative copra-producing island group with a thriving European community provisioning passing vessels and acting a trade centre for the surrounding island groups to the north and northwest, such as (the islands now known as) Tuvalu, Kiribati and, to an extent, the Marshall Islands, as well as to Tonga.

While £14 5s was not a trifling matter by any standard, Pritchard could be confident in assuming that this would be written off as a bad debt without action being taken. We can assume that he was sufficiently familiar with the British legal system as it applied in Samoa to be confident in that regard.

## SEEKING LEGAL REDRESS

Fallon, however, had not come so far without being a determined businessman. Writing off a bad debt without a reasonable attempt of recovery was bad business policy as it could set a precedent, even if the costs of recovery would equal the amount of money owed. Indeed, Pritchard’s second attempt, under the name of Jas. Jackson suggest as much. We can only speculate whether Fallon would have let the matter drop had the second request not arrived. From what we know about the man, however, this would have been unlikely.

Thus, on 1 March 1893 Fallon wrote to the Apia solicitor William Cooper to act as a debt collector on his behalf, in the hope of recovering the payment or the merchandise. In the light of Pritchard’s track record, however, Cooper had to inform Fallon that he had little chance of recovering any of the outstanding account.<sup>[11]</sup> Nonetheless, Fallon decided to pursue the matter and had Pritchard hauled before the British High Commissioner’s court.

## THE HIGH COMMISSIONER'S COURT

At the time, Samoa was *de jure* an independent country, ruled by the Samoan chiefs. The Samoan government did not, however, have any authority over British subjects. In 1879 the Western Pacific High Commission had concluded a *Treaty of Friendship* with Samoa, which removed British subjects from the jurisdiction of local Samoan courts. That same year the *Apia Municipal Convention* was concluded. This Convention removed the Samoan government's jurisdiction over Apia, and instead gave it to a Municipal Council, made up of the Consuls of Germany, Great Britain and the USA or their nominees. The President of the Municipal Council also had the duty of acting as an advisor to the King. *De facto*, therefore, much of the power lay with the consuls of the three main competing powers. While their power did not extend to the Samoan village life, it was near absolute as far as the residents of the Municipality of Apia were concerned. Traders residing outside the municipality, such as Alexander Pritchard, were subject to the jurisdiction of the consuls of their own nationality, under the terms of the 1879 *Treaty of Friendship*.

Appointed by the High Commissioner of the Western Pacific in Fiji, whose authority 'exists under the authority of an order in council, and extends over the whole of the Western Pacific not occupied by civilised powers'<sup>[12]</sup> the consul of Her Britannic Majesty had extraterritorial jurisdiction only over British subjects.<sup>[13]</sup> For civil law matters the consul sat in judgment alone. For matters relating to personal injury or worse, the consul was assisted by two assessors, who were drawn, on the consul's discretion it would seem, from the respectable members of the British expatriate community.

In Pritchard's case, the British consul of the day was Sir Thomas Berry-Smith, a man regarded as a largely ineffective consul,<sup>[14]</sup> who was for most of the time most certainly preoccupied with matters of teaching polo to the Samoans, pomp and circumstance, and British cultural imperialism.<sup>[15]</sup> Berry-Smith exercised his duties with care, but it seems without much vigour.<sup>[16]</sup>

## THE OUTCOME

So, what was the outcome of the court case? Precisely nothing. Because of lack of personal finances and any property of note which could be seized and auctioned off, Pritchard was left off the hook on a caution. While the court case was well publicised in the contemporary press in Apia, which would have acted as a warning not to trust Pritchard unless goods were prepaid, it would have had little effect beyond Apia—where Pritchard was anyhow well known. Fallon never got his money back, and, moreover, had to pay Cooper for his time and efforts. Fallon, it seems, was careful not to advertise this in Australia either.<sup>[17]</sup>

Why could nothing be done? The sum was not trifling by any means, but not sufficiently high that drastic action had to be taken. The sum far too trifling for imprisonment to be considered, which also would have reflected badly on the status of British citizens in Apia—not an option when three powers are jostling for political dominance—and property could not be seized. It seems Pritchard had been very careful in ordering consumables and items that could be swiftly disposed of to the local Samoan community so that no assets could be seized. In the light of this, the assertion to Fallon attains a very different meaning when Pritchard was 'taking great pains in getting [Fallon's] wines thoroughly tested by the general public ...'<sup>[18]</sup>

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[1] See, for example, Philip Tagini, 'E-commerce in Vanuatu: Can contract law accommodate for new technology?' (2000) 4 JSPL [http://www.vanuatu.usp.ac.fj/journal\\_splaw/Working\\_Papers/Tagini2.html](http://www.vanuatu.usp.ac.fj/journal_splaw/Working_Papers/Tagini2.html) at 12 December 2004.

[2] Dirk HR Spennemann, *Fiction Published in Nineteenth Century Samoa Newspapers (1877–1900)*. (2004); Dirk HR Spennemann, 'The Heritage of Nineteenth Century Samoan Newspapers. A Bibliographical Analysis' (2003) 195 *Johnstone Centre Report*.

[3] W.P. Driscoll 'James Thomas Fallon' in B. Nairn *et al.* (eds) *Australian Dictionary of Biography* (1972).

[4]. Letter A.P. (Alexander Pritchard) to Fallon, Murray Valley Vineyard Co., dated Apia 1 January 1892. Reproduced in *Samoa Weekly Herald* (Apia) vol. 1 n° 26, 3 June 1893, p.2..

[5]. Letter Jas. Jackson, Lata Plantation Savai'i, to Fallon, Murray Valley Vineyard Co., dated Apia 13 June 1892. Reproduced in *Samoa Weekly Herald* vol. 1 n° 26, 3 June 1893, p.2

[6]. Australian Bureau of Statistics (2004) *ABS Report 6401.0 Consumer Price Index, Australia. June 2004*.

[7]. Alexander Pritchard died 1 December 1898.—'Local and General News.' *Samoa Weekly Herald* vol. 4 n° 43, 3 Dec. 1898, p.2.

[8]. Such as Swallow and Ariell Ltd, Melbourne; Marc Robertson, Fitzroy; S.T. Leigh, Sydney: 'High Commissioner's Court.' *Samoa Times and South Sea Advertiser* (Apia) vol. 4 n° 182, 16 April 1892, p.2.

[9]. See William Cooper 'Sublime Audacity.' *Samoa Weekly Herald* vol. 1 n° 36, 19 August 1893, p.2.

[10] Paul M. Kennedy, *The Samoan Tangle. A study in Anglo-American-German Relations 1878-1900* (1974).--Deryck Scarr, *Fragments of Empire: A History of the Western Pacific High Commission, 1877-1914* (1967). For more detail on functioning of the Municipality, see also Apia Municipal Regulations Contained in Documents relating to the condition of affairs in Samoa. 50th Congress, 2d Session. Executive Document n° 31, item 59, pp. 91–98.

[11]. William Cooper 'The Height of Impudence.' *Samoa Weekly Herald* vol. 1 n° 26, 3 June 1893, p.3.

[12] William B. Churchward, *My Consulate in Samoa. A record of Four years' Sojourn in the Navigators Islands, with personal experiences of King Malietoa Laupepa, His Country and His Men* (1887) p. 153.

[13] Under the *Western Pacific Order in Council 1877* (UK) while able to sentence British subjects, the High Commissioner's Court could not redress injuries inflicted on person or businesses of British subjects, unless the perpetrator's consuls agreed to prosecute the matter. If Samoans were involved, then often no redress could be found by the consul.

[14] Dirk HR Spennemann, (2003) 'Solitary among a crowd': Books and Empire at 'The Beach', Samoa. in: 'Books and Empire.' *Textual production, distribution and consumption in Colonial and Postcolonial Countries*. A regional conference by the Society for the History of Authorship, Reading and Publishing (USA). Sydney 30 January –1 February 2003.

[15] Thomas Cusack Berry-Smith's diaries are kept in the Alexander Turnbull Library, Wellington, New Zealand.

[16] William Cooper, a British lawyer from New Zealand, who represented Fallon against Prtichard, was a prominent Apia figure who moved in the same social circles as Berry-Smith. Incidentally, both were founding members of the Apia Public Library ('Local and General News.' *Samoa Times* vol. 4, n° 168, 9 January 1892, p.2 col. 3.) an institution set up by Berry-Smith to preserve the "Britishness" of his subjects. (Dirk HR Spennemann, (in prep) From Gentleman's Club to Coffee House for the Working Man: The Nineteenth Century Beginnings of the Apia Public Library, Samoa. *Library History*. ) He retired in 1896. In September 1896 William Cooper offered his library of law books and general literature for sale in one lot. ('Notice.' *Samoa Times* vol. 8, n° 49, 12 September 1896, p.3 col. 7.)

[17] No reference to this can be found in the contemporary Albury paper, the *Border Post* or the *Albury Banner*.

[18]. Letter Jas. Jackson, Lata Plantation Savai'i, to Fallon, Murray Valley Vineyard Co., dated Apia 13 June 1892. Reproduced in *Samoa Weekly Herald* vol. 1 n° 26, 3 June 1893, p.2

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