LIFTING THE VEIL

IN

CAPE COLONY;

BEING

SOME FURTHER FACTS ABOUT MARTIAL LAW.

BY

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Barrister-at-Law.

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"The Lords Spiritual and Temporal, and Commons in Parliament assembled . . . do therefore humbly pray your most excellent Majesty . . . that the aforesaid Commissions for proceeding by Martial Law may be revoked and annulled, and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land." *Soit droit fait come est desire.*—(From the "Petition of Right," 1627.)

"Since the 'Petition of Right,' no such thing as Martial Law has been recognised in this country, and Courts founded on proclamations of Martial Law are unknown."—(*Mr.* [*afterwards Lord Chancellor*] *Brougham*, House of Commons, June 1st, 1824.)

"Where then are we to look for any colour of law in these proceedings? Do they derive it from the (Roman) Dutch law? I have diligently examined the Roman law, which is the foundation of that system, and the writings of those most eminent jurists who have contributed so much to the reputation of Holland. I can find in them no trace of any such principle as Martial Law."—(*Sir James Mackintosh*, House of Commons, June 1st, 1824.)

LIFTING THE VEIL IN CAPE COLONY.

IT seems the plain duty of anyone who realises the steadily increasing danger of the situation created by what the Cape Town correspondent of the *Times* described on April 30th as the "vexations restrictions" of Martial Law, to point it out to his countrymen. It is on this account, as well as in the interests of the suffering Colonists, that I have written the following pages. The pamphlet contains a number of facts which have not hitherto been known in this country, and which add much force to the statements which I made in an earlier pamphlet published in January last, and for which I was obliged to rely largely upon newspaper reports. It has been until quite lately almost impossible to ascertain what has really been going on in the Cape Colony. By an act of power, new, I believe, even to the system of despotism known as Martial Law, the Government have drawn a ring fence round the whole of the enormous area known as British South Africa. As the Attorney-General told the House of Commons on the 24th April "the rights of a person to go into Cape Town and to go out of Cape Town stand on precisely the same footing." No one has been allowed to leave it or enter it without permission. Philanthropic ladies like Miss Hobhouse have been refused ingress into it. Political prisoners like Mr. Cartwright, who have been shut up for twelve months within four walls, have been refused egress from it upon release from prison. The Press has been extinguished so far as it is hostile to the Government. So far as it has been allowed to survive, it is muzzled. Such action naturally suggests that there must be awkward facts to conceal. And such is certainly the case. It is only by the lucky advent to this country of a few British subjects from the Cape Colony, who have themselves lived and suffered under the harrow of Martial Law, and who have managed to get away, that we are able to obtain some flashes of clear light upon the real reasons which have led the Government to withhold from the world what has been going on in the Colony. Some little assistance has been also given by the answers extracted in Parliament from Mr. Brodrick. The facts in this letter are derived from trustworthy sources, and are to the best of my belief accurate, though errors in details may have crept

in. They reveal a state of maladministration and consequent injustice which go far to account for the rebellion. What other conclusion, indeed, can anyone come to when he observes that the rebellion has grown, not with the successes of the enemy, but with the extension of Martial Law? Why are the people of the United Kingdom kept studiously in the dark about matters which they have a right to know about, and for which they are ultimately responsible?

The Area and Character of Martial Law Administration.

Martial Law was proclaimed over the whole of the Cape Colony, with the exception of the districts of Cape Town, Port Elizabeth, and East London (and some Native districts), as long ago as January 27th, 1901. Since October last it has been inflicted upon those three districts as well. In other words over an area three times as large as Great Britain the judges and magistrates appointed to protect the lives and liberties of the King's subjects have for more than a year ceased to exercise any jurisdiction except such illusory jurisdiction as has been permitted by the military. The Colony has been divided into districts, each of which has been under the arbitrary rule of a military officer, always destitute of judicial experience, often belonging to some local or irregular corps, and generally quite ignorant of the people whose fate, liberty, and property were committed to his charge. If he has failed to carry out delicate and responsible duties for which he was quite unfitted, the fault is certainly not his, but belongs to those who imposed them upon him. The fines, imprisonments, and deportations inflicted by these district commandants were for many months, even if they are not now, subject to no supervision by any superior authority. Certain sentences have to be confirmed by the Commander-in-Chief, but in many of these there has been no proper record kept of the proceedings, so that the confirmation or review can hardly be considered satisfactory. The Supreme Court has found itself powerless to protect the liberty of the subject against military force. Where it has ordered the liberation of a prisoner unjustly imprisoned the order has been treated by the military with contempt. Hundreds of the King's Dutch subjects have been torn from their homes, and either imprisoned or swept into exile without charge or trial. There they remain to this day, landed proprietors, men of high standing in the Legislature, Church, and learned professions.

Even women and girls have not been spared. Indeed they are still being deported.

I propose to illustrate these statements by examples taken from two or three districts, with the circumstances of which I have made myself acquainted, and which will give a fair example of what goes on in other, though not in all, districts. Let me take first the district of Ceres, in the Western Province of the Colony, about eighty miles from Cape Town, and the centre of a highly-cultivated flourishing area. A startling glimpse into what the people of this district are suffering was given in the *Times* of March 27th last, through a letter addressed to the Editor by Dr. R. J. Reinecke. Let me recall some of the facts stated in that letter, none of which have been questioned.

The Case of Dr. Reinecke.

Dr. Reinecke is a man not undistinguished in the medical profession. He holds the triple qualification of Edinburgh and Glasgow. He has been practising for the last five years in Ceres. He had been approved at the outbreak of the war by the Governor and the Prime Minister of the Colony to go to the seat of operations to do ambulance work, irrespective of nationality. After doing that work for some nine months, he returned with the full sanction of the British authorities to resume his practice at Ceres. For more than a year he carried it on without interruption, and in amicable relations with three successive commandants—Colonel Trotter, Major Capper, and Colonel Gordon. But in August last an Australian officer, Captain Fraser, was sent as commandant to Ceres. Within a few days of his arrival it occurred to this officer to be his duty to take hostile action against leading Dutch colonists in the district. His suspicion of unoffending civilians was not confined to men, for on August 28th both Dr. Reinecke and his wife were ordered to be ready to start on the following morning, under escort, for the town of Malmesbury, fifty miles away, "to reside there." A telegraphic appeal to Cape Town by the lady obtained a remission of this ukase for Mrs. Reinecke and her baby, only three months old. Dr. Reinecke himself was duly deported, and on arrival at Malmesbury found the "residence" prepared for him was a cell in the town gaol. The commandant was a Captain Collier, who had once been in the Cape Mounted Rifles, and who knew as little of Dr. Reinecke, and of the Ceres people, as could be told him by Captain Fraser from Australia with his fortnight's experience. For some weeks

Dr. Reinecke could get no answer whatever from Captain Collier either as to the reason of his deportation, the nature of the charge against him, or when he would be tried. There then occurred the application of Mr. Marais—who had been deported from his home like Dr. Reinecke—to the Supreme Court for a writ of Habeas Corpus. These proceedings warned the military authorities that they must be prepared to give some reason for these deportations of uncharged and untried British subjects. Accordingly Dr. Reinecke was brought up before Captain Collier and charged with a breach of a Martial Law Regulation, which forbids acts contrary to public order and peace. The charge was purely formal. There was no evidence taken. He was not even allowed to plead. He was not informed what was the specific act alleged against him. But such a travesty of a trial was considered as sufficient to constitute a plausible return to the Supreme Court in case Dr. Reinecke applied for a writ of Habeas Corpus. On September 18th such an application was in fact made upon the petition of Mrs. Reinecke, the judge being Mr. Justice Buchanan, in the unfortunate absence through illness of Chief Justice Sir H. de Villiers. So indefensible were the deportation and imprisonment of Dr. Reinecke considered by the Cape Attorney-General that, in response to repeated questions by the Judge, he refused to oppose the application for Dr. Reinecke's release. Mr. Justice Buchanan thereupon ordered him to be released, adding to his judgment this remarkable judicial utterance, "What the military authorities may do afterwards I do not know, and the Court is unable to restrain them." The order reached the gaoler at Malmesbury that afternoon, and before six o'clock Dr. Reinecke was released. He went to the hotel, and about nine o'clock he was re-arrested by order of Captain Collier and marched off, not to the gaol, but to the military camp outside Malmesbury, where he was put into a tent. After a week's imprisonment there, he was lodged again in the town gaol. Fresh restrictions were put upon him by Captain Collier. He was refused light after seven o'clock in the evening. His friends were prevented from sending flowers to his cell. He was locked up in his cell from 7 p.m. till 5 a.m. On September 24th the Judge of Assize sat at Malmesbury and cleared the gaol of all prisoners except the unfortunates under Martial Law. At last, towards the end of October, Captain Collier was superseded by Captain Graham, an officer of the regular army. This gentleman at once took steps to investigate Dr. Reinecke's case, with the result that he was in a few days liberated from gaol, though not allowed to leave Malmesbury. But after three months' delay, at Dr. Reinecke's urgent request, Major Graham gave him in writing the following complete exoneration from all charges :—

"To Dr. Reinecke.—I am directed by the Administrator (Major Graham) to inform you that he has read your and Mrs. Reinecke's correspondence sent him by the authorities, and to let you know he has informed the G.O.C. Cape Town that he can find no evidence to support

the theory that you have done otherwise than acknowledge a sympathy for the men of your race.

"J. EDWARDS, Captain, S.O. Administrator,
M.L., Area 6.

"Malmesbury, *January 20th*, 1902."

It might have been supposed that Dr. Reinecke after this would have been allowed to return to his family and resume his practice at Ceres. But not at all. The limit of concession which he could obtain in February was leave to banish himself and his wife to Europe where he now is, half his young children being still at Ceres with their old grandfather. In the meantime his house and property were seized by the military at Ceres, his children and their grandfather ejected from it, and his plantations much damaged. His medical practice has been completely neglected. The military have now promised to restore, but have not restored his property. Such is a typical case—one not of dozens, or of scores, but of hundreds under the martial law which the Government with Bœotian honesty thinks is binding the Cape Colony to the Empire. Their ignorance of what is going on is well illustrated by the statement made in the House of Commons by Mr. Brodrick, in reply to Mr. Channing, that "Dr. Reinecke was arrested on a charge of communicating with the enemy," such a charge never having been mentioned by any living soul to Dr. Reinecke.

There were deported from Ceres about the same time as Dr. Reinecke no less than twenty-two of the leading Dutch inhabitants, including the Dutch Reformed Minister, two of the Field Cornets, one Justice of the Peace, three of the municipal councillors, two Dutch ladies, all of whom were either imprisoned with Dr. Reinecke, or detained elsewhere, and none of whom have ever to this day been tried. Let me refer to the case of the Dutch Reformed Minister.

The Case of the Rev. Mr. Alheit.

This reverend gentleman has been for many years the Minister of Ceres, and while revered by his Dutch congregation has been much liked by the British for his known English sympathies. On the 29th August he was suddenly notified by Captain Fraser that he was to be deported the next day to Malmesbury. He was taken off on the 30th and lodged in the Malmesbury gaol, where he remained till October 24th in a cell, with the prison yard to exercise in, without any form of trial other than the farcical one already recounted in Dr. Reinecke's case. He repeatedly applied to Captain Collier, quite in vain, to know the charge against him. The member for the Ceres division, Dr. Beck, one of the leading medical men in the Cape Colony, asked that legal assistance might be given to Mr. Alheit, but Captain Collier refused to allow a solicitor to see any of the martial law prisoners at Malmesbury. They could get no appeal through to Lord Kitchener or anyone else.

Mr. Alheit was refused even the innocent privilege of reading evening prayers to his fellow-townsmen in gaol. Upon Major Graham's arrival he was liberated. That officer repeatedly told him he knew of nothing against him, and wished to allow him to return to his family and congregation at Ceres ; but objections were made by the Commandant there, and Mr. Alheit has been exiled to Gordon Bay, a village on the south-west coast, where he has to live at heavy expense to himself, with no stipend, and separated by a hundred miles from his congregation.

These are the exact facts about this reverend gentleman ; Mr. Brodrick, however, when pressed about his case in the House of Commons by Mr. H. J. Wilson, actually stated that "affidavits had been entered against him for using treasonable language, and his influence had been used in favour of the enemy," but he then had to admit that "the General Officer commanding at the Cape, on a review of the whole evidence in October, decided that the circumstances did not necessitate his further detention " (Hansard, Vol. 103, p. 706). No such charge was ever made against Mr. Alheit, who, as I have said, was repeatedly assured by Major Graham of his belief in his complete innocence of any offence.

It, therefore, is established that upon the evidence of some undisclosed persons who cannot face the publicity of a Court, a local Commandant, utterly ignorant of the district, exiles and imprisons for months the most respected of the King's Dutch subjects, and that the evidence which led him to take this grave step is such that, when seen by the superior authorities, it is rejected as worthless. Still no amend is made. The injustice already inflicted is aggravated by continued exile. What is not less serious is that the Secretary for War is instructed by someone in South Africa to suggest in the House of Commons charges against men like Dr. Reinecke and Mr. Alheit, men of not less honour than himself, which have never been made, and which the authorities at the Cape admit to be baseless.

Let me mention the case of one other from among the uncharged and untried subjects of the King who have been deported from their homes at Ceres. It is a direct illustration of the way the Boer cause is helped by this blundering and unjust administration of Martial Law.

The Case of Mr. J. C. Lambrecht, Field Cornet.

Mr. Lambrecht, senior, is a landed proprietor of much influence and greatly respected, living at the farm Spes Bona, about fifty miles from Ceres, and holding the official position of Field Cornet under the Cape Government. On August 28th this gentleman drove into Ceres to make an official report to the Commandant. He was immediately arrested by Captain Fraser, deported to Malmesbury, and thrown into gaol. There he was kept in a small cell until October 25th, his frequent applications to know what

was his offence, and to be tried, being ignored by Captain Collier. He is to this day kept as an exile in Malmesbury, having to report himself daily as a criminal, though no charge is made against him.

But the story has a more tragic side than the personal sufferings of Mr. Lambrecht. For he has two sons, who, when he was exiled in August, were left with their mother and sisters at Spes Bona. They were naturally full of indignation at the treatment of their father. In October a Boer patrol crossed the farm—which is some 6,000 acres in extent—and left some discarded horses on it. Lest it should be thought that they took some serviceable ones belonging to Mr. Lambrecht, it may be mentioned that all the horses belonging to Mr. Lambrecht had been taken long before by the British. One son, accompanied by a neighbour, Mr. Van Wyk, went off to the nearest military post at Karoo Poort to report the enemy's presence, and to take the discarded horses to the military. They were promptly imprisoned in a blockhouse, where they were made to sleep for three nights between two armed Hottentots, being confined during the day to a narrow space of a few yards between the blockhouse and the wire entanglement, exposed to the full glare of the South African sun. At the end of three days they were contemptuously turned out, and told they might go back to their farms. Already burning under the wrong suffered by their father, this personal outrage was more than they could bear, and the two young Lambrechts and Van Wyk joined the enemy. This is how rebels are made. Let the Englishman who feels certain that he would have acted otherwise throw the first stone. It must be added that Mrs. Lambrecht and her daughter were brought as prisoners into Ceres, and confined for a fortnight in one room, and forbidden to speak to anyone. They are now exiles in Malmesbury. What has happened to their farm no one of them knows.

Some Exiled Notables.

Among the other persons of repute and position who were deported with Dr. Reinecke, Mr. Alheit, and Mr. Lambrecht and thrown into prison, were Mr. Carl Reynolds, a prominent farmer of British descent and a member of the Divisional Council, Mr. Sarel Rousseau, a Field Cornet, Mr. C. J. Van der Merwe, a Town Councillor of Ceres, together with his son, Mr. Robert Moore and Mr. Theron, traders in Ceres, Mr. George Frick, Chairman of the Prince Alfred Town Council, and Mr. Du Plessis, a member of the same body. They have, none of them, been tried for any offence, and were only released from prison, and then kept in exile when Major Graham succeeded Captain Collier. Mr. Rousseau however, Mr. Van der Merwe, senior, Mr. Frick, and Mr. Du Plessis have now been allowed to return to their homes. Mr. Van der Merwe, junior, together with Mr. Theron's aged father and mother, and their daughter, with a few others, who had been allowed to return to Ceres, have been banished to the military camps at Matjesfontein. Old Mr. Theron, with his

wife and daughter, were sent away *at two hours' notice* from Ceres to Matjesfontein. The ladies had to spend half the night in a waiting-room with an armed sentry who never let them out of his sight. When at Matjesfontein they had to report themselves daily. At last, after many months in that wind-swept, dust-ridden spot, they were deported again to Malmesbury, where they are still kept, having to report themselves weekly. Their house at Ceres has been occupied by military agents, and all their goods used. The offence of this aged couple is having a son who is a fighting Transvaal burgher.

Daily Life Under Martial Law.

It must not be supposed that the sufferings of the Dutch at Ceres were limited to the banishment and imprisonment of the leading inhabitants. It was the policy of Captain Fraser—very likely from instructions, and no doubt with the best intentions—to induce them all to join the Town Guard, and to make life exceedingly unpleasant for those who declined. Now the Town Guard is a volunteer force. The Dutch are not legally bound, and can hardly be morally expected, under the peculiar conditions of this war, to join it. Those, however, who did not join in Ceres were, if traders, stopped from transacting business. About twenty or thirty young men were banished to Matjesfontein, where they were lodged in insufferable heat, sometimes nine in a tent, for which shelter they are made to pay 5s. each per month, and 2s. a day for raw rations. It is said that enteric and other illness is rife in the camp. In Ceres itself, from early in September to late in February, the shops were closed, no church or school bell was allowed to ring, and all the Dutch ladies' bicycles and field glasses were called in. These residents, whom the Commandant thinks "undesirables," have to report themselves four times daily. In the beginning of April, 1902, the Public Boys' and Girls' School was closed, the school committee dismissed, and the Head Master, Mr. G. C. Gerricke, deported. So far for the position of Dutch colonists who have either been deported or who reside in the towns. The position of the farmers who have been left on their farms in the country is scarcely more enviable. All their horses are taken. Their sheep and cattle are bought by military agents at prices fixed by themselves. The farmer himself is prohibited from leaving his farm, although he may not have more than a week or a fortnight's food on his farm, which is often 50 to 100 miles from a town. If under stress of urgent calls he comes to the town, in nine cases out of ten he is not allowed to leave it again. He is therefore dependent for his provisions upon the few favoured store keepers who are allowed to come out in carts to him and to sell to him at their own prices and buy from him at their own weights, which are in the towns, and therefore not accessible to the farmer. People are arrested and exiled as it were by mistake or misrepresentation. Mr. Van

Zyl, a well-known attorney of Van Rhyn's Dorp in the Clanwilliam district, received in September leave from the Commandant, Captain Rawstorne, of the Western Province Mounted Rifles, with whom he was on most friendly terms, to visit his wife and children at Malmesbury. When he arrived there he was detained as a prisoner on parole by the Commandant, and because he one day drove with a friend to a part of the town not outside the area allowed for his movements, but outside a fence, he was imprisoned for three days in the town gaol. He is still kept at Malmesbury and away from his business at Van Rhyn's Dorp for no conceivable reason that he is aware of.

The Sufferings of Political Prisoners.

The fate of political prisoners who are tried by military courts and sentenced to hard labour is very distressing and very provocative. They are shaved, cropped, put into coarse convict jackets and trousers without socks or underclothing, and compelled to work in the public streets or let out to individuals who may have their services for any work however menial. These men subjected to such treatment are taken from all classes, including members of Parliament, and are often sentenced for trivial offences. Take the case of Mr. Van Wyk, an old man of 65, and a wealthy farmer in the Calvinia district. One night in the early summer of last year he was called up at 10 p.m. by a soldier belonging to a neighbouring column, and ordered to act as guide to the column. Understanding from the message, which was given in English, that he was not wanted till next morning, the old Dutchman went to bed again for a few hours. Not long afterwards, however, he was arrested by a patrol, taken to the column, with which he was dragged about for a week, not knowing what his offence was, and never being allowed to see any officer. At last he was tried in July at Clanwilliam for having refused to act as a guide and sentenced to four months' imprisonment with hard labour. This old man had to submit to all the humiliating conditions of a convict, and would have had to work in the public streets of Malmesbury, as was the fate of other respectable farmers also convicted, if the gaoler had not, in consideration of his age and bad health, put him to sweeping and cleaning the prison yard, washing the prisoners' clothes, and working in the kitchen. When he had served his time, he was refused leave to go home, though from the night he was dragged from his home the unfortunate man has heard nothing and knows nothing of his wife, not even whether she is alive or dead, or what has happened to his farm.

Deportation Camps.

It has been part of the plan of the Government for the coercion of the Dutch population of the Cape to collect them into concentration camps at various centres, and to these centres the principal inhabitants of the Dutch towns have been forcibly

removed. Such camps exist at Matjesfontein, Beaufort West, and Port Alfred, not to mention other places. At Port Alfred, for instance, a little seaside village on the east coast, some two hundred of the King's Dutch subjects have been collected from Middelburg, Graff Reinet, Craddock, Somerset East, and other places. What are the numbers at the other places it is impossible to say. The prisoners at Port Alfred include ministers of religion, members of Parliament, men of business, and ladies. There are the Rev. Mr. Weich, of Bethesda, and the Rev. Mr. Radloff, of Pearston. There are Messrs. Pretorius, Rademeyer, and Du Plessis, all members of the Legislature, and Mrs. Rousseau and Mrs. De Klerk among the ladies. They are all uncharged and untried, and have been kept there—some of them—for more than a year. People are still being sent, for only last month four young ladies from Somerset East were deported there. These people have to live at their own cost. They have to report themselves every day like criminals. Their business and professions are ruined. The Government here, as represented by Mr. Brodrick, appears to be as ignorant as indifferent to what is going on. When questioned in the House Mr. Brodrick often refuses all information, as if the imprisonment or exile of British subjects was a matter of no importance. This was his attitude when asked by Mr. Lough as to the Members of Parliament just mentioned on the 10th March last, and as to the two Ministers by Captain Pirie on the following day. When driven to answer, his answers, as shown in the cases of Dr. Reinecke and Mr. Alheit, are quite misleading. Indeed the policy of the Government towards the Cape Dutch recalls Mr. Gladstone's description of the policy of another Government :—

"The principle is, first, that men are to be treated as guilty until they are proved to be innocent; and, secondly, that they may still be treated as guilty when they have been found not guilty."

The Case of Mr. De Wet.

The treatment of this gentleman illustrates how loyalty is rewarded in a Dutch colonist. He, in company with two other influential Dutchmen, Messrs. Philip du Plessis and Botha, came in the summer of 1900 all the way to England to personally represent to the British people the views of their fellow-colonists in favour of peace. They had been deputed to come by a large Peace Conference held shortly before at Graaf Reinet. They went back unsuccessful. In July of last year Mr. Du Plessis was exiled to Port Alfred, and in September Mr. De Wet was confined in a military camp at Matjesfontein. On March 3rd Mr. Brodrick, being asked for the second time by Mr. Bryn Roberts in the House whether and why this had been done, replied :—

"No, sir. None of these persons has been arrested or hindered in any way."—(Hansard, Vol. 104, p. 165.)

Mr. Bryn Roberts, knowing the facts, pressed further questions, and, on April 14th, elicited from Lord Stanley the following answer, completely contradicting Mr. Brodrick's earlier one :—

"Mr. De Wet has been detained in the military camp at Matjesfontein since September 18th for using seditious language and for furnishing rebels with information. Mr. Du Plessis was ordered to reside at Port Alfred in July last for omitting to report that rebellion was brewing in his ward. He admitted have used his influence against the formation of the district mounted troops."

Mr. Bryn Roberts :—

"I ask whether the charges on which these gentlemen are imprisoned have been communicated to them, and I ask this because they themselves say they do not know the charges."

Lord Stanley :—

"I cannot say."—(Hansard, April 14th, 1902.)

As a matter of fact, as stated by Mr. Roberts, Messrs. De Wet and Du Plessis are ignorant to this day of why they have been deported and imprisoned.

The Case of Mr. Marais.

Mr. Marais' case has become so well known owing to his unsuccessful attempt to obtain leave to appeal to His Majesty in Council that I need only briefly recall the facts of his arrest and deportation. The sequel, however, is not so well known. Mr. Marais was a law-abiding citizen, carrying on his legal business in a peaceful district of the Cape Peninsula, when on August 15th he was suddenly seized, with nine other fellow townsmen, thrown into gaol at the Paarl where he lived, and a few days afterwards forcibly deported three hundred miles away to a small country gaol at Beaufort West. The Paarl is a Circuit Town at which the Assizes were going to be, and were, held a few weeks afterwards. On September 6th, though not allowed to see his legal advisers, he managed to apply to the Supreme Court for a writ of Habeas Corpus, and the only answer that the General (Wynne) commanding at Cape Town could make to the Court was that "there were military reasons why the petitioner and others should be removed and kept in custody," but that "owing to military exigencies he was not prepared to state at present what charges there were against the petitioner and others." This was when Mr. Marais had already been in gaol for three weeks.

This did not satisfy the Supreme Court, who made an order calling upon the gaoler at Beaufort West to show by what authority he detained Mr. Marais in custody. In order to meet this the Military Commandant at Beaufort West issued a warrant charging Mr. Marais (three weeks after his arrest) with the serious charge of inciting to rebellion in breach of Martial Law. Upon a return to this effect made to them the Judges declined to

issue a writ of Habeas Corpus, and Mr. Marais was left in gaol. It should be added, however, that General Wynne made the following promise on oath to the Court :—

"The Petitioner and those with him will be formally charged as soon as possible, and either acquitted or detained in custody in accordance with the verdict arrived at upon the inquiry that may be held by a Military Court."

This was sworn on September 6th, 1901.

Moreover, the Martial Law Regulation (No. 14) under which Mr. Marais was arrested provided that, in terms, he "should immediately on arrest be tried by a Military Court."

On December 15th the Judicial Committee of the Privy Council upheld the Supreme Court in refusing to release Mr. Marais.

When Parliament met in January last, Mr. Marais being still in gaol at Beaufort West untried, Mr. Channing on January 28th asked Mr. Brodrick about it, and received the following reply :—

"Mr. Marais was detained in gaol in Beaufort West pending the decision of the Judicial Committee of the Privy Council. The charge against him was an infringement of the Martial Law regulations. No information has yet reached us of further action taken with regard to him."—(Hansard, Vol. 101, p. 1095.)

It is to be observed, as bearing upon the value of the reason given for not trying him, that, when the answer was given, the Privy Council decision was already six weeks old.

On February 10th Mr. Channing repeated his question, and received this reply from Mr. Brodrick :—

"I am informed by Lord Kitchener that Marais will now be tried very shortly."—(Hansard, Vol. 102, p. 838.)

On March 10th, Mr. Channing again asked whether Mr. Marais had been tried and with what result? He received from Mr. Brodrick the following answer :—

"Mr. Marais has not been brought to trial, but he has been ordered to reside at Port Alfred under surveillance. Lord Kitchener, after carefully considering the evidence, held that, as some of the Dutch witnesses were unwilling to appear, sufficient evidence could not be produced to secure conviction."—(Hansard, Vol. 104, p. 869.)

The result, therefore, is that an innocent man, arrested in August, 1901, without charge or warrant, refused in September his liberation by the Supreme Court on the ground that he was charged with the grave crime of high treason, and promised on oath by the General a speedy trial, as required by the terms of the Martial Law regulation itself, is kept in a village prison till March, 1902, when it is said to be discovered for the first time that there is no case against him, and then, instead of being liberated, he is taken from the gaol where he has been unjustly confined for six months and banished to another place of exile hundreds of miles away. It does not diminish the seriousness of all this that Mr. Marais is a professional man of high character and the son of a greatly respected father who sat for 25 years in the Cape Parliament.

The Case of Mr. Lotter, M.L.A.

The case of this gentleman, who is a member of the Cape Parliament, is another instance of how the regulations of Martial Law are themselves violated by those professing to enforce them. Mr. Lotter, together with his son and the manager of his farm, were arrested as long ago as January 22nd, 1901. When a question was put in the House by Mr. H. J. Wilson on February 21st, 1902, he had not yet been tried. This is what Mr. Brodrick said :—

"Mr. Lotter was arrested on January 22nd, 1901, on a charge of high treason. He was sent to Uitenhage on January 30th, and released on bail on February 27th. The case was then dealt with by the civil authorities under the Special Treason Act, and he was formally committed to trial by a magistrate on January 7th, 1902. It was notorious that he had been very active in his district in fomenting sedition, and he was detained in consequence. The Attorney-General found that the legal evidence available against Lotter was not strong enough to secure conviction, and consequently he was not prosecuted.

"Mr. WILSON : Has he been released ?

"Mr. BRODRICK : I assume so."—(Hansard, Vol. 103, p. 706).

In connection with this answer it is remarkable to observe that according to the *Uitenhage Times* Mr. Lotter was brought after several remands before the acting magistrate at Uitenhage on April 26th, 1901—*i.e.*, just two months after the date on which Mr. Brodrick said he had been released on bail—and that he applied for bail. The magistrate thereupon adjourned the Court "to consult the military," and in half an hour returned into Court saying :—

"The military will not entertain any such proposition, and the Court has to be guided by them."

Now, whichever is the true version of what has occurred to this unfortunate member of Parliament (and I cannot speak with certainty as to the account in the *Uitenhage Times*), it is clear that for more than a year he has been either in prison or under surveillance, on the ground that he had been "notoriously fomenting sedition," and that the moment the charge was brought to the elementary tests provided by the law it broke down altogether, just as it broke down in the case of Mr. Marais, Dr. Reinecke, and the other cases I have mentioned.

The Case of Mr. Schoeman, M.L.A.

This is a case as regrettable as any, not more for its injustice than for its impolicy. Mr. Schoeman, a member of Parliament of standing and influence, living in the Oudtshoorn district, was told one day in August last by a mounted soldier that his three horses were to be sent in to military custody on a farm about four miles off. He took them there the same day, found no one to receive them, and had to take them back. The next day he again took them, and again found no one to receive them. On the following day another mounted soldier rode up to his farm and charged him with disobeying the military orders. Rather naturally nettled, he said he had tried to obey the orders twice, and that, if the Government

wanted his horses, they had better come and take them. For this he was arrested and detained in custody for two months, and, in November, tried on three charges, before a Court presided over by Colonel Palk, one of which was not delivering these horses. He was acquitted on the other charges, but found guilty, on the facts I have stated, which he admitted, of the technical offence of not bringing in the horses. For this he was sentenced by the majority of the Court *to six months' imprisonment with hard labour*, and also a fine of £500. I have described what hard labour means. It may be wondered how such a sentence was arrived at, but it will seem less strange when it is realised that the evidence given in open Court was added to by extracts from old newspapers, laid by someone in the interests of the prosecution upon the table before the members of the Court, containing speeches alleged to have been made years before by Mr. Schoeman about the Jameson Raid, and said to be of an "anti-British" character. The unfortunate man was, of course, unaware that the Court was reading these speeches, and had no opportunity of denying or explaining them. It would be interesting to know whether this has been done in other cases, for it would explain other sentences besides that passed on Mr. Schoeman.

If anything further was needed to show how Martial Law, the creature of necessity and necessity only, has been abused, I should recall the arrest in August, in a peaceful district near Cape Town, of Mr. Merriman, a Cabinet Minister for twelve years, an Executive Councillor for twenty-five years, and a member of the Cape Legislature for thirty-two years, and his confinement to his farm for upwards of a week for no conceivable cause and without any authority that can be disclosed. I should mention the case of Mrs. Koopmans, an elderly Dutch lady of great social gifts and position, who has been the friend of successive Governors, and whose house, within ten minutes of the proclamation of Martial Law in Cape Town, was ransacked by detectives, and who was herself, though nothing was found in her house, watched as a suspect under police supervision for weeks after. I should add the imprisonment of a lady like Miss Emily Hobhouse, engaged on a charitable mission, on board a ship in Table Bay in a raging south-easterly gale, and her forcible deportation by military men from one ship to another in order that she might not pass even an hour on the shores of South Africa. How odious must be such duties to the brave soldiers upon whom they are imposed by the Government!

The District of Somerset East.

The incidents which I have hitherto referred to took place in the west of the Colony. Those which I am now going to describe occurred in the east, in the district of Somerset East, which lies to he north-east of Port Elizabeth. When Martial Law was pro-

claimed in January, 1901, Commandant Keeton was appointed to control the destinies of the inhabitants of Somerset East and its district, which comprises a very large area. This gentleman had been an English farmer in the Colony and understood the people. Under his administration there was no friction, and no complaint about Martial Law.

But in March he was superseded by a Commandant Schenk, an ex-Cape Mounted Policeman. Within a few days of this worthy's arrival, he thought it his duty to summarily arrest, imprison, and deport to Port Alfred, a village 150 miles distant from Somerset East, about a score of the leading Dutch inhabitants of the town. Amongst them were the principal Dutch attorney, Mr. T. S. de Villiers, two members and the Secretary of the Divisional Council, also the editor of the Dutch paper, and Mr. Berrangé, the district Road Inspector. Not only was Mr. de Villiers deported, but his partner, Mr. Myburg, and his whole staff as well, except one junior clerk, with the natural result that his business has been completely suspended. These gentlemen were suddenly warned on Friday, March 22nd, 1901, by Mr. Schenk, and sent off on Monday 25th, travelling at their own expense, to live at Port Alfred, also at their own expense. There they have been ever since, having to report themselves like criminals. No charge of any sort has ever been made against them, either at Somerset East or Port Alfred. No investigation is allowed into the justification for this arbitrary treatment. It is done on the fiat of a complete stranger, "dressed in a little brief authority," who acts as prosecutor, judge, court of appeal, and executioner all in one.

The rule of Commandant Schenk was, however, short-lived.

About the end of April, he was succeeded by a Captain Llewellyn, who proceeded, with a single eye to military exigencies, to make things uncomfortable for some of the Dutch of Somerset East. He ordered about fifty of the most well-to-do farmers living in the district, many of them at great distances from Somerset East, to abandon their farms and live in the town, their farms, crops, stock, and ostriches being left to the care of natives. Some thirty of the Dutch residents in Somerset East, who did not join the Town Guard, were set to cutting down trees on the commonage from morning till night under a guard of armed men. Forty-five of these Dutchmen were imprisoned for eleven days in the Dutch Reformed Church, and on occasions some were compelled at night to mount on the roof of the Church and sleep as best they could there. While they were so imprisoned in the Church, the Sunday came round for the celebration of the quarterly Communion, known as the Nachtmaal, a great religious event among the Dutch population. On this occasion, the forty-five prisoners were collected into the centre of the Church, and none of the congregation were allowed to speak to them. But the condition of the Church was

such, owing to the disorder and untidiness consequent upon the feeding and sleeping arrangements of the prisoners, that it was impossible to hold the Communion Service. Probably Captain Llewellyn honestly thought the military situation justified his action, but the indignation and pain which such an occurrence must have caused needs no pointing out. The use of Martial Law as a lever to compel Dutch colonists to join the Town or District Guards has prevailed in other districts. In the Worcester District, for instance, they have been compelled, on refusal, to work on the roads and even the public latrines. This has led to their joining the enemy; and in more than one case, on being captured and afterwards tried by Court Martial for high treason, their defence has been "We did not want to join the Boers, but we had to choose between fighting against our kinsmen and the degradation imposed upon us by the Commandant."

Captain Llewellyn was not unnaturally ignorant of the law relating to the Colony. How on earth could he be expected to know it? He thought it reprehensible to encourage the Dutch language. He accordingly sent for the Rev. Mr Hofmeyr, a most distinguished minister and Moderator of the Dutch Reformed Church, who was Chairman of the Belle Vue Educational Seminary and first-class Boys' Public School at Somerset East, and asked what the Boards of the Seminary and the Boys' Public School meant by allowing Dutch to be taught in those schools. When it was pointed out to him that Dutch was by law the language, as much as English, both of the Parliament, the Law Courts, and the Civil Service of the Colony, he was silenced for the moment; but it did not prevent him from some time afterwards breaking in upon a meeting of the Divisional Council, and demanding whether they kept their Minutes in Dutch or English.

Miss Vosloo's Case.

The length to which Captain Llewellyn's sense of duty carried him may be best realised, perhaps, from the way he allowed himself to treat Miss Johanna Vosloo, a lady of twenty-one years of age. She is a clever, well-educated woman, who gains her livelihood by teaching a school of upwards of forty girls. Her brother was Mr. J. A. Vosloo, the editor and proprietor of the Dutch paper, *Het Oosten* ("The Eastern"), who was sentenced to six months' imprisoment for having allowed to appear in his paper a libel upon General French, which had appeared for a week without contradiction in other papers. While this brother was in prison Miss Vosloo wrote a letter to a second brother in another part of the Colony, saying she was glad to hear that their imprisoned brother was "comfortable" in the gaol at Cape Town. This letter was "censored" by Captain Llewellyn, and treated by him as having some treasonable meaning. He sent for the young lady, and in spite of her protest that she meant

nothing but that the Government (which was the Cape Government) was treating her brother with consideration, which she thought was to the credit of those concerned, he ordered her for the future to report herself as a suspect at his office twice a day, at nine a.m. and three p.m. As she lived with her mother some way off she bicycled from her mother's house to the office ; but the Commandant, on discovering this, took away her bicycle, and told her she must "foot it." He also ordered her school of girls to be closed. This went on for about two months, when fortunately a superior officer, Colonel Cavaye, visited Somerset East. Miss Vosloo complained to him. He sent for Captain Llewellyn, and ordered the restoration of the bicycle, the reopening of the school, and an apology to be made to Miss Vosloo, and stopped her having to report herself. Colonel Cavaye took the same honourable course with regard to the complaints made to him by several Dutch ladies in the town whom Captain Llewellyn had accused of jeering at wounded soldiers and threatened with imprisonment, though in answer to their indignant denial and their demand to be confronted with their accusers he could produce no evidence whatever. To these ladies also, who appealed to Colonel Cavaye, an apology was at Colonel Cavaye's direction made by Captain Llewellyn, who said he had been misinformed. It might have been supposed that after these incidents the Government would have found some sphere more adapted to Captain Llewellyn's genius than the administration of Somerset East, but he was kept there for many months afterwards. Nor ought he to be blamed until we know what, if any, instructions were given to him and other Commandants to guide them in their new and arduous civil duties. We have heard of none as yet, though there never was a situation in which there was more need for clear and careful instructions ; for the training of soldiers does not lead them to appreciate political considerations, however important.

Mr. Vosloo's Case.

The case of Mr. J. A. Vosloo, already mentioned as the editor and proprietor of *Het Oosten* ("The Eastern") is very worthy of remark. He was a man against whom, prior to the proclamation of Martial Law in January, 1901, no suggestion of disloyalty had been made. He had, indeed, been consulted in Cape Town by the Governor and the Prime Minister as to what measures were desirable in his own district at the time of the first Boer invasion in 1899-1900. He was Secretary and Treasurer to the Divisional (or County) Council. When the second invasion took place, and Martial Law was proclaimed in January, 1901, he arranged, with the full approval of the Commandant (Keeton), that his paper should thenceforth appear simply as a news and advertisement sheet, all political matter being excluded. His paper in this form was largely used by the military to publish their own notices, and a debt was incurred to Mr. Vosloo for these publications to the amount of

about £60. To this day he has not received one penny of payment for any of this work, although he has applied in turn to the local Commandant, to the authorities at Cape Town, and to the authorities at the War Office in London. Yet the debt is admitted.

In October or November, 1900, the leading Dutch paper, *Ons Land*, published a libel upon General French. After this libel had been circulated for a week without contradiction Mr. Vosloo allowed it to appear in his paper. He made no comment of any sort upon it. For this offence he was proceeded against criminally. On March 18th, while he was awaiting his trial on bail, Commandant Schenk suddenly arrested him and put him into the town gaol for five days. On March 22nd he deported him to Port Alfred, without assigning any reason or charge of any sort. His paper was almost immediately suppressed. There he was kept until he went to Cape Town to be tried on the charge of libel. He was there sentenced to six months' imprisonment, though he defended himself on the ground that he had only taken over statements which had already been freely circulated in his district without any contradiction. He was released from prison in October, 1901, and applied for leave either to return home, or to come to England. Both were refused to him, though he was allowed to go for a few days to his home to see his wife and family. He appealed to the Martial Law Board, an amateur Court of Appeal from military Commandants of well meaning but utterly powerless laymen, from whom he received this illuminating response: "The Board has been given to understand that, for military reasons, you cannot leave Cape Town."

However, after about three months' residence in Cape Town under the eye of the military authorities, Colonel Cooper, the Base Commandant, informed Mr. Vosloo that he was so entirely satisfied as to the perfect propriety of his behaviour, or words to that effect, that he had his full permission to go to England.

I have already mentioned that Mr. Vosloo was Secretary and Treasurer to the Divisional (or County) Council of Somerset East, a responsible and salaried post which he had held for eight years. When he was sent to prison for criminal libel, so strongly did the Council feel that he was not morally guilty of any offence, that they gave him leave of absence for six months, and accepted a capable solicitor to act as his deputy in the interval. This did not please Captain Llewellyn. He, therefore, one day in August presented himself at a meeting of the Council, and peremptorily demanded what "the Council was going to do with that man Vosloo," and gave them till three o'clock for an answer. The Council, after earnestly debating the matter, and with the fate before them of two of their number who had already been exiled to Port Alfred, reluctantly dismissed Mr. Vosloo. Mr. Vosloo found, therefore, at the end of 1901 that he had been deprived of his civil appointment by one Commandant, that his paper had been suppressed by another, and that he was exiled from his home by a third. Still he

was at least free to come to Europe with the full sanction of the supreme military authorities ; and accordingly one day in January last he went on board the mail steamer for England, with the written permission of Colonel Cooper in his pocket. He was accompanied by another Colonist who had received a similar permission from Colonel Cooper, and against whom there was not, nor ever had been, any sort of charge. Judge of the astonishment and horror of these gentlemen, both of them British subjects, on being taken by armed sentries, made to stand apart under arrest before the whole ship's passengers, and then conducted into the captain's cabin and stripped of every vestige of clothing, while their luggage was thrown open and its contents strewn over the deck. After this outrage had been inflicted upon them they were allowed to proceed to England, being during the voyage naturally objects of suspicion to the other passengers. The unfortunate officer who was ordered to superintend this outrage was the Lieutenant Lingham who was condemned to play such a heroic part in the capture and deportation of Miss Hobhouse, and who deserves as much pity for having such orders thrust upon him as the victims who suffer under them.

The Misuse of Martial Law.

The use, or rather the misuse, of Martial Law for such purposes as the above suggests the question what object had the authorities in view in proclaiming it. On this point we have the authoritative statement of Mr. Brodrick, made in the House on January 30th, 1902, in reply to Mr. Edmund Robertson :—

"Martial Law was declared in the Cape ports to prevent assistance being given to the enemy through the medium of those ports, and the landing of undesirable persons."—(Hansard, Vol. CI., p. 1313.)

And his reply on the 19th July, 1901, that :—

"The institution of Martial Law in the Cape Colony was necessary in all districts which were either invaded *or open to invasion*, and it will be continued as long as circumstances require it."—Hansard, Vol. 97, p. 989.

Compare this wide claim to use Martial Law, especially the words I have italicised, with the conditions imposed by the Regulations of our own Colonial Office on the subject :—

"The governor should not proclaim Martial Law unless he is satisfied of the existence of the following grounds :—

"That there are men in armed resistance to the authority of the Crown.

"That such armed resistance cannot be dealt with by the military acting merely in aid of the civil power in the ordinary manner.

"That such armed resistance cannot be promptly and effectually suppressed otherwise than by subjecting the inhabitants of the disturbed district to direct military control, and by inflicting summary punishment upon offenders against the peace."—(Cape of Good Hope Blue Book, A. 16-78, p. 17.)

Or with the judgment of the United States Supreme Court in the case of Milligan, a civilian who in October, 1864, was arrested under Martial Law in the State of Indiana, tried by a Military Court, and sentenced to death. He appealed to the Circuit Court for a habeas corpus, and there was a further appeal to the Supreme Court. In the course of an elaborate judgment granting the writ, the Supreme Court laid down the following principles, based, be it remembered, on English authorities. (If the words "Cape Peninsula" be substituted for "Indiana" and "Marais" for "Milligan," one might imagine oneself reading the judgment of the dissenting members of the Judicial Committee in the judgment on Mr. Marais' recent petition to the Privy Council) :—

"In Indiana the Federal authority was always unopposed, and its Courts always open to hear criminal accusations and redress grievances. No usage of war could sanction a military trial there for any offence whatever of a citizen in civil life in no wise connected with the military service. Why was he not delivered to the Circuit Court to be proceeded against according to law? . . . If it was dangerous in the distracted condition of affairs to leave Milligan unrestrained of liberty because he conspired against the Government and incited the people to insurrection, the *law* should arrest him, and so render him powerless to do mischief, and then present his case to the grand jury with proofs of his guilt, and, if indicted, try him according to the course of the Common Law. . . . It is claimed that Martial Law covers with its broad mantle the proceedings of the military commission, and that, as in this case Indiana had been again and again threatened with invasion by the enemy, the occasion was furnished to establish Martial Law. The conclusion does not follow from the premises. If armies were collected in Indiana, they were to be employed in another locality where the laws were obstructed and the national authority disputed. On her soil there was no hostile force. If once invaded, that invasion was at an end, and with it all pretext for Martial Law. Martial Law cannot arise from a *threatened* invasion. The necessity must be actual and present. The invasion must be real, such as effectually closes the Courts and deposes the civil administration."—(*Ex parte Milligan*, 4 Wallace's Reports, pp. 121-26.)

In the light of the rules so laid down by the Colonial Office and by the United States Supreme Court, consider Lord Raglan's answer on behalf of the Government, given to Lord Colèridge in the House of Lords on April 24th, 1902. Asked whether there had been any military operations of any kind within an area of 50 miles from the coast at any point for 600 miles between the Cape and Natal, Lord Raglan was unable to give one solitary instance of any such operations, except in the delightfully original sense that

"as Cape Town, Port Elizabeth, and East London had been from the commencement of the war bases of the British army in South Africa, they had been continually the scenes of military operations since war was declared."—(*Times*, April 25th, 1902.)

Yet, in the opinion of the Government of which Lord Raglan is so admirable a representative, this is a justification for imposing Martial Law upon the civilians living in those towns.

It will be observed that the American decision in Milligan's case is directly opposed to the view now put forward on high authority that during a war the Civil Courts, if open, are not to enquire into the "necessity" alleged by the Military for acts of Martial Law. The civil war was raging; as it was also when in 1861 the Chief Justice of the United States (Taney) issued a writ of attachment against General Cadwalader for refusing to bring up a civilian whom he had arrested, and in whose favour the Chief Justice had issued a writ of habeas corpus on the ground that

"a military officer has no right to arrest and detain a person not subject to the rules and articles of war for an offence against the laws of the United States, except in aid of the judicial authority and subject to its control; and, if the party be arrested by the military, it is the duty of the officers to deliver him over immediately to the civil authority, to be dealt with according to law."—(*Ex parte Merryman*, Campbell's U.S. Reports, p. 246.)

This was the ground upon which the Irish Court of King's Bench acted in 1798, when it ordered the suspension of the capital sentence passed upon Wolfe Tone by a Court-Martial, and ordered the summary attachment of the officers detaining him (27 State Trials, pp. 624-26).

The Case of Mr. Cartwright.

The somewhat novel view of the uses of Martial Law held by the Government has been carried to strange lengths, and Martial Law is now used to detain in South Africa persons who, in the opinion of the authorities, are likely to make known awkward facts in this country. Take the case of Mr. Albert Cartwright, the Editor of the *South African News*, as strong an Englishman in race, temperament, and character as anyone, a man who for upwards of two years as fearlessly opposed the war policy of Sir A. Milner as did most of the Liberal leaders here. In the interests of the honour of the country, though in an evil moment for himself, Mr. Cartwright took over in his paper from the *Times* and the *Freeman's Journal* a letter of an officer, alleging that Lord Kitchener had ordered quarter to be refused to the Boers. The material parts of this letter had appeared in, and had been for three weeks circulating in, the *Times* before Mr. Cartwright used it. The allegations in it had been uncontradicted, although to both Lord Salisbury and Lord Roberts appeals had been publicly addressed to contradict them. With these facts before him Mr. Cartwright felt it his duty to publish the letter. The allegations were at last contradicted when, and only when, in consequence of Mr. Cartwright's action, the Cape Attorney-General appealed to Lord Kitchener. Mr. Cartwright immediately published the contradiction. Nevertheless, he was sentenced by a Cape judge to *12 months' imprisonment.* The term of his imprisonment has just expired. He was in bad health at the beginning of it, and he is in bad health now.

His means of livelihood are gone ; for when Martial Law was proclaimed in Cape Town the continuation of his paper was made impossible by the authorities. To this man, weak in health, and ruined in circumstances, leave to come to England was actually refused, and upon a ground which has thus been stated by Lord Stanley (for Mr. Brodrick) in the House as follows :—

" Mr. Cartwright applied for permission to proceed to England, but the authorities in South Africa did not consider it desirable to grant it. His views, as the right hon. gentleman is probably aware, are strongly anti-British, and it was not deemed desirable by the authorities in South Africa to increase the number of persons in this country who disseminate anti-British propaganda."—(*Times*, April 15th, 1902.)

It is absolutely untrue that Mr. Cartwright's views are anti-British, as those who have read his paper know, and it is no wonder that this astounding answer provoked from Mr. John Morley the indignant question whether the Government claimed under the proclamation of Martial Law in South Africa " the right of banishing Englishmen from England," and that he received no answer to the question. It is, however, the fact that no single British subject in South Africa, be he Dutch or English, can leave that continent and come to any other part of the Empire or the world except by the goodwill of Lord Milner or Lord Kitchener. In spite of the fact that the Government in their defence against Mr. Morley's vigorous attack on April 24th have thrown the blame for Mr. Cartwright's detention upon Lord Kitchener, it is the strong belief of those both here and in South Africa who know Lord Kitchener, that the responsibility for that and other like acts of persecution lies not at all with him but elsewhere. What knowledge of his own could he have to act upon ?

Unprecedented Character of Martial Law Administered at the Cape.

The conclusion which forces itself upon the mind of anyone who studies what has been going on during the last fifteen months in the Cape Colony is that Martial Law has been administered over an area, and for a period, and in a manner, unprecedented, in British history. In Great Britain there has been no proclamation of Martial Law since Charles I., although there have occurred the rising of Monmouth in 1685, that of the Old Pretender in 1715, that of the Young Pretender in 1745, and the Lord George Gordon insurrection in 1780. In Ireland, before and since the Union, Martial Law has been administered, but, since Wolfe Tone's case, under legislative sanction and carefully specified conditions. This is in accordance with the law laid down in 1750 by the Lord Chief Baron Comyns :—

" Martial Law cannot be used in England without authority of Parliament." —(*Comyn's Digest V.*, p. 292.)

and by Blackstone in 1765 :—

"It is Parliament only that, whenever it sees proper, can authorise the Crown by suspending the *habeas corpus* Act for a short time to imprison suspected persons without giving any reason for so doing."—(*Comm. I.*, p. 135.)

and by Lord Campbell and Lord Cranworth, in 1835:—

"When the regular courts are open so that the criminals might be delivered over to them to be dealt with according to law, there is not, as we conceive, any right in the Crown to adopt any other course of proceeding. Such power can only be conferred by the Legislature."—(*Forsyth's Opinions*, p. 198.)

And in 1867 by the Lord Chief Justice Cockburn:—

"It is certain that, while the Crown has absolute power to legislate for the government of the army in time of war, though not, except under the Mutiny Acts, in time of peace, it has no power, whether in time of peace or war, to legislate in respect of the ordinary subject. How, then, can the Sovereign have power to declare Martial Law as against the subject? For to declare Martial Law is to legislate. It is neither more nor less than to enact that the law of the land shall be for the time suspended, and a different law substituted for it. Whether this be effected by Act of Parliament, or by the Proclamation of the Sovereign, it is equally legislation. How is this consistent with the indisputable principle that the Sovereign can only make laws in Parliament with the concurrence of the other estates of the realm? How is it consistent with the sacred principle that no man shall be tried except by his peers and the law of the land?"—(*R. v. Nelson and Brand*, Cockburn's Report, pp. 69 and 70.)

Lord Blackburn, it is true, in 1868 did not go so far, saying that since the Petition of Right the powers of the Crown in time of war had not been judicially decided, but, he added:—

"It would be an exceedingly wrong presumption to say that the Petition of Right, by not condemning Martial Law in time of war, sanctioned it: still it did not in terms condemn it."—(*R. v. Eyre*, Finlason's Report, p. 73.)

The conditions which have been imposed by the Legislature, when sanctioning Martial Law in Ireland, have been almost wholly ignored in South Africa.

Martial Law in Other Colonies.

In the Colonies there have been frequent proclamations of Martial Law, but generally in Crown Colonies, over limited areas, and for short spaces of time. In 1837, during the Canadian Rebellion, Martial Law was proclaimed over the district of Montreal in Lower Canada. It was proclaimed on December 7th, 1837, and discontinued on April 7th, 1838. The proclamation, moreover, issued by the Earl of Gosford contained the following justification which has been wanting in the Cape proclamations:—

"Whereas the exertions of the civil power are ineffective for the suppression of the aforesaid traitorous and wicked conspiracy and rebellion, and for the protection of the lives and properties of her Majesty's loyal subjects. And *whereas the courts of justice in the said district of Montreal have virtually ceased from the impossibility of executing any legal process or warrant of arrest therein:* Now, therefore, I, Archibald, Earl of Gosford," &c.

There was, in 1838, a further proclamation for a few months, on the outbreak of the rising in Upper Canada.

During the present century Martial Law has been proclaimed, generally for a few months only, twice in Barbadoes, twice in Ceylon, twice in Jamaica, once each in Demerara, Cephalonia, and St. Vincent, and four times in the Cape of Good Hope, the occasions in the last-named Colony being native wars or risings. In the many legal pronouncements, both by the Legislature and by distinguished lawyers, which have been elicited by these proclamations, the law, as laid down by Lords Campbell and Cranworth, that if the civil courts have never been disturbed in their operation they cannot be superseded by Martial Law, except under an Act of Parliament, is recognised as sound.

In 1824, Sir James Mackintosh, an admittedly high authority, said in the course of the Demerara debate in the House of Commons :—

"The illustrious judge, Sir Matthew Hale, appeals to the Petition of Right, which, fifty years before, had declared all proceedings by Martial Law, in time of peace, to be illegal. He carries the principle back to the cradle of English liberty, and quotes the famous reversal of the attainder of the Earl of Kent, in the first year of Edward III., as *decisive of the principle that nothing but the necessity arising from the absolute interruption of Civil Judicature by arms can warrant the exercise of what is called Martial Law.* Wherever and whenever they are so interrupted, and so long as the interruption continues, necessity justifies it. No other doctrine has ever been maintained in this country since the solemn Parliamentary condemnation of the usurpations of Charles I., which he was himself compelled to sanction in the Petition of Right. . . . The Irish Statute 39 George III., c.2., after reciting that Martial Law had been successfully exercised in restoring peace so far as to permit the course of the Common Law partially to take place, but that the Rebellion continued to rage in considerable parts of the kingdom, whereby it has become necessary for Parliament to interpose, goes on to enable the Lord Lieutenant 'to punish rebels by courts martial.' This Statute is the most positive declaration that, *where the Common Law can be exercised in some parts of the country, Martial Law cannot be established in others, though rebellion actually prevails in these others, without an extraordinary interposition of the Supreme Legislative authority itself.*"—(11 Hansard, pp. 1046-9.)

The last paragraph—which I have italicised—is a direct contradiction of much that has been said of late to justify the arrest of Mr. Marais. Indeed, it is a complete condemnation of that arrest, for there is no manner of doubt that in the district where he was arrested, as in so many other districts where Martial Law has been enforced against civilians, there has never been any interruption of the civil courts, nor any rebellion. I have already quoted the judgment of the American Supreme Court, which lays down the same principles of law.

It has been suggested that there may be one law for the United Kingdom and another for the Colonies. There is probably no English lawyer whose opinion carries more weight than Lord Mansfield, and it is therefore worthy of record that in the debate in 1754 on the extension of the Mutiny Act to India he, being then Solicitor General, said on this point :—

"No British subject, let him be settled where he will, can now be subjected to Martial Law, whilst he remains under the protection of the British Crown, without his own consent. Nay, even our militia cannot now be subjected, I believe, to Martial Law—no, not even in case of an invasion or rebellion—without an Act of Parliament for that purpose."—(15 Hansard, p. 263.)

The Law of the Cape Colony.

As to what is the law in the Cape Colony itself we have the high authority of Sir Richard Solomon, now Attorney-General in the Transvaal and legal adviser to Lord Kitchener. At the outbreak of the war he was Attorney-General in the Cape Colony, and on November 25th, 1899, in certain reports and Minutes he placed his views as to military jurisdiction over civilians on record. He said :—

"I think it right to point out the grave complications which may arise if, in districts where Martial Law has been proclaimed, persons charged with the commission of serious crimes should be tried before Courts-Martial, while the Civil Courts are still open. . . . Paramount necessity may require the establishment of such (military) courts (for the trial of civilians) when the Civil Courts are closed, and the safety of the country demands the prompt trial and punishment of persons arrested for offences, and in such cases it is right that such courts should be established. Where, however, the Civil Courts are open for the trial of offenders, I must again point out how necessary it is that persons arrested by the Military Authorities should be tried in the ordinary way by duly constituted Courts."—(Blue Book Cd. 420, pp. 2 and 3.)

In this opinion Mr. Schreiner, who was Attorney-General in Mr. Rhodes' last Ministry, agreed. It is quite a mistake to suppose that the Roman Dutch law has any bearing upon the principles governing Martial Law in the Colony. The Courts there have always been guided by the English authorities in this matter.

As bearing out Sir Richard Solomon's view it may be mentioned that after the rebellion of 1863 in the island of St. Vincent—a small island of which four-fifths of the population are black—although Martial Law was in force for upwards of two years, the persons arrested under it were tried by the Civil tribunals.

When Martial Law may be imposed upon Civilians.

The following appear to be fair deductions from the authorities which I have mentioned :—

(1.) That Martial Law imposed upon civilians is unknown to the Common Law of England.

(2.) That it is brought into being, like the law of self-defence, by a public emergency so acute as to paralyse the machinery of the ordinary law.

(3.) That when the Civil Courts continue to work uninterruptedly and effectively no such emergency in the eye of the common law can exist, but when war, foreign or domestic, closes them it does exist.

(4.) That if, under circumstances falling short of such an emergency, the Executive desire to proclaim Martial Law, it

can only be proclaimed with the sanction of and under the conditions imposed by an Act of Parliament.

(5.) That every act of Martial Law inflicted upon civilians is liable to be justified in the Civil Courts if and when sitting, except in so far as the Legislature has provided otherwise.

A Wrong System Adopted.

How much opposed to these principles has been the course pursued during the last year or fifteen months in the Cape Colony! Up to that time Martial Law was confined in the main to those districts really affected by invasion or rebellion, and political offences were tried either by the ordinary civil tribunals or by a statutory court sanctioned by the Legislature. The jurisdiction of the latter court, however, extended only to offences committed prior to April 12th, 1901. At that date, therefore, the jurisdiction of the colonial civil courts, temporarily suspended by the colonial statute, revived. In spite of the fact that Martial Law had been imposed upon almost the whole Colony, the civil courts were in full working order, holding uninterrupted sittings in Cape Town, Grahamstown, and Kimberley, and holding assizes in most of the circuit towns. If juries could not be trusted to be impartial, it would have been perfectly easy, either by an Act of the Imperial Parliament, or by a decree of the Governor and Executive of the Colony, or by an order of Lord Kitchener, to appoint three judges as a special tribunal, which, by the way, is the usual tribunal in all civil cases at the Cape. If Lord Kitchener had so acted he would have followed the example of an illustrious soldier, the Duke of Wellington, who in 1851 thus described the duty of a General as he himself understood it in such circumstances :—

"The General who declares Martial Law and commands that it should be carried into execution is bound to lay down the rules and regulations and llmits according to which his will is to be carried out. Now I have in another country carried on Martial Law. . . . But then what did I do? . . . I governed the country strictly by the Laws of the Country. . . . The Judges sat in the Courts of Law conducting their judicial business, and administering the Law under my direction."—(Hansard 115 (3), p. 879.)

Summary Supersession of the Colonial Courts.

Lord Kitchener, however, took a very different course from that taken by the Great Duke. He set aside the experienced judges of the Colony, he overrode the legally constituted criminal courts, and established purely military tribunals of *only three officers to try the most serious capital charges*, and this in opposition to not only the views of the late Attorney-General, Sir Richard Solomon, but the then Attorney-General, Sir James Rose-Innes, now Chief Justice of the Transvaal. It is highly significant that, in the opinion first expressed of that experienced lawyer and his colleagues in Sir Gordon Sprigg's Government, the ordinary courts were, on April 9th, 1901, fully competent to deal with the political

offenders produced by the invasion or rebellion, and accordingly Sir James on that date issued the following notice:—

"It is hereby notified for general information, that in terms of the Indemnity and Special Tribunals Act, 1900, no case of treason or rebellion or of any crime of a political character committed after the 12th day of April, 1901, will be tried by Special Court, or by any Commission constituted under that Act. Any act of treason or rebellion, and any crime of a political character committed after the 12th day of April aforesaid, will be dealt with by the ordinary Courts of the country, and will render the offender liable to the penalties prescribed by the common law. Those penalties are death, or any fine which the Court trying the case may duly see fit to impose."—(*Cape Government Gazette*, April 9th.)

But barely a fortnight was allowed to pass before this well-meant effort of the Cape Government to secure for colonists a fair trial by legal experts was peremptorily cancelled by the issue of the following military order:—

"All subjects of His Majesty, and all persons residing in Cape Colony, who shall in districts thereof in which Martial Law prevails, be actively in arms against His Majesty, or who shall directly incite others to take up arms against him, or who shall actively aid or assist the enemy, or commit any overt act by which the safety of His Majesty's forces or subjects is endangered, shall be immediately on arrest tried by Court-Martial convened by my authority, and shall on conviction be liable to the severest penalties of the law."—(*Cape Government Gazette*, April 23rd.)

On July 29th, 1901, Mr. Edmund Robertson endeavoured to find out from Mr. Chamberlain the reason for this extraordinary change, and received the following answer:—

"Although the ordinary courts were nominally open they were not able adequately to deal with the grave cases of treason and rebellion which were increasing within their jurisdiction."—(Hansard, Vol. 98, p. 374.)

And he added that Lord Kitchener had issued the notice of April 22nd "with the approval of the Cape Ministers," the same Ministers, be it observed, who had on April 9th publicly designated the ordinary courts as open and competent to try these very cases of treason and rebellion, Ministers, moreover, who were governing without a Parliament. It is true that on April 17th, in response apparently to urgent representations from Lord Kitchener, the Cape Ministers did reluctantly give way. But through Sir James Innes they stipulated for the following weighty conditions:—

"If Military Courts are to deal with treason cases, certain conditions should be laid down and strictly observed. In the first place, only those offences should be taken before Courts-Martial which directly and necessarily endanger the safety of H.M.'s forces. . . . Mere expressions of opinions, however strong, and trading and consorting with the enemy, should continue to be dealt with by the ordinary law. The constitution of the Courts should be carefully considered. Only officers of experience and judgment should sit upon them, and where possible a magistrate or civil official having some knowledge of law. The evidence should be fully recorded. Every sentence should be confirmed by Lord Kitchener; and where the penalty is one of death, the proceedings should be read by a competent legal adviser on his staff. . . . A copy of the proceedings in each case should be sent to the Attorney-General for record in his office."—(Blue Book 903, p. 14.)

Illegal Constitution of the Military Tribunals.

It is now pretty well known what followed during the ensuing months, and how far the conditions laid down by the Cape Ministers were observed. Military Courts were instituted consisting only of three officers, without any Magistrate or legal expert, who sentenced large numbers of the King's subjects to death and to tremendous punishments of penal servitude. It appears that an Army Order was issued ordering that the procedure of a Field General Court Martial was to be followed. Yet in a large number of cases the evidence of the witnesses was not read over to them as required by law, nor was a proper record of the proceedings kept. Indeed, out of ninety cases that I know to have been tried by these Military Courts such a record was kept in only about thirty. Yet the sentences passed, which were of every kind of severity, were confirmed or varied by Lord Kitchener. Upon what evidence or upon whose advice can he have acted in deciding such grave matters? It is safe to conclude that it was not that of Sir Richard Solomon. And how is this consistent with the regulations of the "Manual of Military Law" prescribing that the whole of the transactions of the particular Court-Martial must be sent for confirmation, and that "a conviction and sentence are not valid until confirmed by superior authority" (cap. v., R.R. 66 and 89, and Rules of Procedure 83 and 95). So marked have been the irregularities in the procedure of some of these Courts that they have led to protests, and certainly in one case to the resignation of one of the members of the Court. There was not only no legal member or assessor of the Court, but the Crown Prosecutor was not in most cases a lawyer. The Court which did the most deadly work at Dordrecht, Middelburg, Craddock, and Somerset East only included one Imperial officer, Colonel Doran, of the Royal Irish Regiment, the others being a major in Brabant's Horse and a subaltern in some Port Elizabeth volunteers. None of the rebels were tried when taken red-handed, but all of them weeks after their capture. It is not clear how many of them had legal assistance. The executions were not only public, but the principal inhabitants of the towns in which they took place, including friends of those executed, were compelled to be present. Up to the end of last year, by a moderate calculation, over 20 people had been executed, and over 160 sent to penal servitude. The number of the latter is now enormously increased.

The whole of these proceedings were in violation of well-recognised principles of usage if not of law, and authoritatively-established rules of the Colonial Office itself. I have already alluded to the law; I will now refer to the rules.

Colonial Office Rules for the Administration of Martial Law.

On January 26th, 1867, the Earl of Carnarvon, then Secretary for the Colonies in Lord Derby's Government, was impelled by the deplorable events to which Martial Law in Jamaica gave rise to

draw up and issue to the *Governors of all the Colonies* three circulars containing principles and rules for the administration of Martial Law, framed, as he said, upon "the advice of military and civil officers whose rank and experience qualified them to suggest such regulations as would be at once practicable and useful," and adopted after careful consideration, "with the concurrence of the Secretary of State for War and the Field Marshal Commanding-in-Chief."

In the first of these circulars Lord Carnarvon says :—

"You will see that, under Regulation 3, it is provided that Courts-Martial shall consist of at least three members. I think it right to observe, on this particular rule, that whenever capital punishment is awarded, so small a number as three officers is most undesirable. Circumstances may no doubt be imagined, especially when the military force is inadequate to the duties forced upon it, in which a larger tribunal could not possibly be obtained. I feel, however, bound to express my decided opinion that nothing short of an unavoidable necessity would justify the infliction of capital punishment on the authority of only three officers."

In giving this direction Lord Carnarvon was merely following the rule laid down by several Acts of Parliament. By the Act of 1803 (43 George III., c. 117) Courts-Martial in Ireland were to consist of not less than seven officers, and no sentence of death was to be given unless there was a concurrence of two-thirds at least of the officers present. And by the Act of 1833 (3 and 4 William IV., c. 4) no Court-Martial was to consist of less than five officers. Moreover the President was to be a field officer, and no member of the Court was to be lower in rank than a captain. At every Court-Martial there was to be a Judge Advocate of five years standing at the Bar, and there was to be every facility for the prisoners to have counsel, attorneys, and the right to examine and cross-examine freely. Wolfe Tone was tried by seven officers. Even in the calm atmosphere of peace only a general Court-Martial consisting of a minimum of five officers, who must be unanimous, can sentence a soldier to death.

The Judge Advocate.

In how many cases in the Cape Colony have the prisoners been given these legal facilities for their defence? We know that in many cases Martial Law prisoners have not been allowed to see their lawyers. It was so in the case of Mr. Marais and Dr. Reinecke. Then as to the Judge Advocate, we learnt, from the reply of Mr. Balfour in the House on March 26th, 1900, that the legal expert selected to advise the military Deputy Judge Advocate was Lord Basil Blackwood, whom Mr. Balfour described as a barrister of more than three years' standing (Hansard, Vol. 81, p. 309). As a matter of fact, Lord Basil Blackwood is reported in the Law List to have been called only in May, 1897, and he was, therefore, when appointed, hardly qualified in point of standing. Among the many subjects upon which information is required, one which presses is whether it was upon the advice of this youthful jurist that Lord Kitchener relied in appointing the

irregular military tribunals, irregular both in the number and rank of their members, and upon his advice that he also acted in confirming the terrible sentences of death and penal servitude passed by these irregular Courts. It seems to have been only during this year that Sir R. Solomon has been formally consulted.

For it must be remembered that the sentences of penal servitude which have been passed by the score are, by the rules of the Colonial Office, as destitute of validity as the sentences of death. Rule 19 contains the following order :—

"As sentences of Courts-Martial may not avail beyond the term of Martial Law, no sentence of imprisonment beyond that term should be awarded, nor any sentence of penal servitude."

Colonial Office Rules recommended to Sir B. Frere and Sir A. Milner.

According, therefore, to the principles laid down by a Conservative Government and acted upon ever since by its successors, the Courts-Martial and all their most serious sentences, sanctioned by the present Government, in Cape Colony have been wanting in validity. I say these principles have been acted upon by succeeding Governments, because on February 16th, 1878, when Sir Bartle Frere, then Governor of the Cape Colony, had proclaimed Martial Law in the Eastern Province of that Colony, Sir Michael Hicks-Beach, then Colonial Secretary in the Government of Lord Beaconsfield, sent a despatch to him, regretting the necessity for it, and concluding thus :—

"I enclose copies of three circular despatches addressed to the Governors of the Colonies in January and March, 1867, which may possibly be of use to you in framing instructions for the guidance of officers who may be called upon to act in any emergency which may arise after the proclamation of Martial Law."—(Blue Book, Cape of Good Hope, A 16-78.)

The same circulars were evidently brought to the attention also of Sir A. Milner, and by him to the attention of the Cape Ministers in 1899, because in a Minute addressed by the Cape Premier to him on January 4th, 1900, the "Ministers express the pleasure with which they believe that His Excellency broadly concurs with the view, which indeed has the sanction of a circular despatch from the Colonial Office, of which Ministers were supplied with a copy by His Excellency," and Mr. Schreiner goes on to quote the express words of No. 2 of Lord Carnarvon's Regulations. The suggestion, therefore, made by the members of the Government in the House of Lords that these Regulations were only intended for Governors of Crown Colonies is without foundation. These members seem to have been entirely ignorant of the action of Mr. Chamberlain in sending the Regulations to Sir A. Milner.

Suggested Remedies.

Among the conclusions which suggest themselves from what I have said are the following :—

(1) *That Martial Law ought to be withdrawn from all those*

considerable parts of the Cape Colony where they are not and never have been (in the words of the Colonial Office Regulations) "men in armed resistance to the Crown," and where the Courts have been acting in full efficiency, and without interruption, or an Act passed to sanction it.

(2) *That in those districts where there has been invasion or rebellion, and Martial Law has been necessarily proclaimed, the administration of it should be placed in the hands of duly qualified officers whose acts should be liable to regular supervision by superiors.*

I do not forget in this regard that on April 24th Lord Stanley informed Mr. John Ellis that "officers in charge of districts are selected from the experienced senior officers available," and no doubt during the last few months "administrators" have been appointed, but the appointments last year of Mr. Schenk, Captain Collier, Captain Fraser, and Captain Llewellyn show what is meant by "selection from the experienced senior officers available." As a matter of fact they have been appointed by the Colonels of regiments in the districts and have often been the senior captains not wanted for more pressing duty at the front. What this would mean is easy to imagine. They are perpetually changed; so that they can rarely learn their duties properly or, when they have learnt them, remain to carry them out. The commandant is still, so far as we know, supreme in his district, and there is no appeal from his acts, however unwise or unjustifiable, for the Martial Law Board is not taken seriously. Yet he has been left without any adequate instructions as to his important civil duties.

(3) *That in properly-proclaimed Martial Law districts the judicial and magisterial work should be left, as was done by the Duke of Wellington, in the hands of officials trained in the law.*

At the present moment the system appears to be for the magistrate as "deputy Administrator" to sit and take such trivial cases as the Administrator cares to leave to him, and for other cases to be taken either by this officer or by a kind of travelling Military Court of three officers, who perambulate the Colony, such a Court, for instance, as tried Mr. Schoeman, M.L.A. Every day the papers record the infliction of heavy sentences by these Courts of inexperienced soldiers upon British subjects, although there is amongst the judiciary and magistrates of the Colony an abundance of experienced lawyers qualified to try the cases. To what confusion this hopeless mixture of magisterial and military jurisdictions leads was pointed out by Chief Justice Sir Henry de Villiers in the Supreme Court at Capetown on April 16th last. It enables a military prosecutor to deprive the accused of the right which he enjoys by law of appealing to the Supreme Court, and it imposes upon Magistrates sitting as Deputy Administrators the demoralising duty of passing irregular and anomalous sentences which are not their own and run counter to their legal instincts.

Speaking with the great weight attaching to his high position,

and with the authority of the full Court of three Judges, the Chief Justice said :—

"I feel bound to say that a system under which the Magistrates of this Colony have to administer Martial Law regulations appears to me to be unfair towards the Magistrates and fatal to the due administration of Justice. I have discussed this matter with both my learned colleagues, and they fully agree with me that the sentences are illegal, and that the additional duties imposed upon the Magistrates are inconsistent with the due performance of their duties as administrators of the ordinary law of the Colony, and ought, if possible, to be avoided."—(*Cape Argus*, April 12th, 1902.)

He then quashed two convictions in which Colonists had been illegally sentenced to six months' imprisonment with hard labour by Magistrates apparently sitting as Deputy Administrators of Martial Law.

(4) *That there should be an enquiry by a properly-qualified tribunal into the whole administration of Martial Law in the Colony, but especially into the numbers and circumstances of the hundreds of British subjects who have been imprisoned and exiled without charge as "undesirables."* Most of these men and women have been confined or deported upon the mere order of the local commandant, acting often not even on his own judgment, but on the information of local partisans. In some cases they have been deported or imprisoned even after acquittal by a Military Court, as in the case of Field Cornet David Burgers, who, having been tried and acquitted on October 9th, 1902, at Matjestfontein, was nevertheless kept in custody as an undesirable by the local commandant. The detention of these unfortunate so-called "undesirables" should be justified before a competent tribunal, or they should be set at liberty.

Conclusion.

Let me say, finally, that the questions raised by this letter are of supreme importance both at present and for the future. At present, because at any moment in the Legislature, by the introduction of a Bill of Indemnity, the justification for the methods and principles upon which Martial Law has been administered will have to be most gravely considered. This can hardly be done satisfactorily without some more detailed knowledge of what has been going on than has so far been vouchsafed by the Government. And as for the future, it is impossible to over-estimate the importance to British subjects of the attitude now adopted by the Liberal party. Will that party pass without protest the fact that, by the mere use of the Prerogative, at a time when legislation in the Imperial Parliament was practicable, the Government imposed upon the whole Cape Colony Martial Law, and has maintained it for upwards of fifteen months? Will it sanction the use of Martial Law to keep back from the electors of this country all knowledge of what is really going on in a Colony for which in the long run they are responsible both morally and financially? For, if the doctrine of the present Government is acquiesced in, that when-

ever and wherever war is taking place Martial Law may be proclaimed by the will of the General to any extent and over any area that appears to him to be required for the protection of the Empire, it is clear that the liberties of all those who happen to be opposed to the war policy of a strong Government stand on a very slender foundation. According to many influential supporters of the present Government, every one who opposes the war is an enemy of his country, and holds "anti-British views." All such opponents of the war are, in their view, liable to the summary infliction of Martial Law. On March 17th the Lord Chancellor told the House of Lords :—

"The real English of the matter is that if you are at war, there is and there can be no constitutional liberty at all. You are under the hand of the Commander-in-Chief, whoever he may be."

And on April 24th the Attorney-General said in the House of Commons :—

"When military law is in force, whatever the Commander-in-Chief deems necessary for the safety of the country under his care may properly be done."

And the Lord Chief Justice, on the same day, told the House of Lords what the General might deem "necessary" :—

"What is the real necessity of Martial Law? It is the presence of the King's enemies, public or secret. You may have enemies working quite as well, although there is no armed force within 200 miles."

And yet these statements of the law seem inconsistent with the fact that in neither of the Rebellions of 1715 and 1745, or the Insurrection of 1780, though in the two first cases the whole country was full of Jacobite sympathisers, did the Government of the day dream of imposing Martial Law. For, as Lord Mansfield (referring to 1745) said :—

"No such thing was thought of, notwithstanding the imminent danger we should have been in, had his Royal Highness and the troops from Flanders been detained but a few weeks."—(Hansard 15, p. 263.)

They seem equally inconsistent with the views of the great lawyers whom I have mentioned in the seventeenth, eighteenth and nineteenth centuries, with the judgment of the highest tribunals in Ireland and the United States, and with the opinion of the Government's most trusted legal adviser in South Africa. The Lord Chief Justice has thought it necessary to distinguish the Martial Law imposed upon civilians in South Africa from the military law applied to soldiers which he thinks was the only thing in the minds of the seventeenth century constitutional lawyers. But is there any distinction between the two, except that the latter is limited by the express provisions of Acts of Parliament, while the former is limited by nothing but the will of the General or the Executive of the day? And are not both illegal when not sanctioned by Parliament, except during such emergencies as make it impossible to obtain that sanction? It would surely be

an anomaly if our Constitution, which forbids the application of military law to soldiers except under statutory safeguards, allowed its application to civilians without any such safeguards. It would be equally strange that great lawyers advising British Governments, such, for instance, as Lord Campbell and Lord Cranworth, in 1837, who use the term "Martial Law" for military law applied to civilians and soldiers, should not have been aware of the distinction deemed so vital by the Lord Chief Justice. Perfectly clear was the opinion of Lord Loughborough, who said in 1792 that Martial Law (as we now use the term) was "contrary to our Constitution and totally exploded." (*Grant v. Gould*, 2H. Bl., p. 66.) Equally clear was that of Chief Justice Cockburn in 1867, who said that the silence of such great authorities as Coke and Blackstone, when carefully enumerating every species of law obtaining in the Kingdom, showed that they were ignorant of the existence of any power to apply Martial Law to civilians in times of disturbance.—(*R. v. Nelson*, p. 59.) The latter-day views might easily render all strong Liberals liable to serious restrictions. At the present moment the Executive claim the right to forbid any Liberal either to go to South Africa or to leave it, or to correspond with their friends there. At any moment the "necessity" of the situation might to them, or the military authorities, justify the further suppression of all opposition to their measures, and writing or speaking in England against the war might be stopped as summarily as in South Africa. The confinement or deportation of those who insisted on free speech, or free writing, would follow as a logical consequence. These things may or may not come at once out of the present war, but that the administration of Martial Law in the present war will form a precedent for future and aggravated invasions of constitutional liberty can be doubted by no student of history. There is, therefore, in my humble judgment, no more vital duty for Liberals than to make clear that they are not parties to the way in which the rights of British subjects in the Cape Colony have been invaded or to the principles upon which the present Government justifies that invasion. In so doing they will be performing, as Mr. Gladstone said on a famous occasion, a "truly Conservative office, by marking off from the sacred cause of government in general, a system which brings the name and idea of government into shame and hatred, and converts the thing from a necessity and a blessing into a sheer curse to human kind." The duty is surely the more pressing when we remember that the sufferers under this system are fellow subjects whose loyalty in 1897 made such a deep impression upon the not too impressionable mind of Governor Sir A. Milner, and who, within a few weeks of the war were actually held up by Lord Goschen—then a leading member of the Cabinet—as having set an example of practical Imperialism, by their subsidy to the Navy, which he called enthusiastically upon all other colonies to imitate.

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