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KANFOOR.

MARTIAL LAW  
IN THE  
CAPE COLONY,  
DURING 1901.

BY  
FREDERIC MACKARNES,  
*Barrister-at-Law.*

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MARTIAL LAW

IN THE

CAPE COLONY

DURING 1901

ERDREIC MACTHAY

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WINDSOR, IRELAND

*January 10th, 1902.*

TEMPLE.

MY DEAR ELLIS,

I have adopted your suggestion that I should try to collect some of the facts and cases which illustrate what the administration of Martial Law means to our fellow-subjects at the Cape. The results are necessarily incomplete, for, owing to the rigorous measures taken by the Executive to prevent their actions being recorded either in the public Press or in private correspondence, the sources of information are limited. Such, however, as the results are, they present a very distressing picture, well worthy the attention of thinking men.

Very sincerely yours,

FREDERIC MACKARNESS.

JOHN E. ELLIS, Esq., M.P.

January 10th 1902

Dear Sir

My dear Sirs

I have adopted your suggestion that I should try to collect some of the facts and cases which illustrate what the administration of Martial Law means to our fellow-subjects in the Cape. The results are necessarily incomplete, for during the night no reports taken by the Executive to prevent their actions being recorded either in the Public Press or in private correspondence, the sources of information are limited. Still, inasmuch as the results are they present a very interesting picture which will surely be of interest to thinking men.

Yours faithfully

FREDERIC HARRINGTON

John E. Bland Esq. M.P.

## MARTIAL LAW.

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It seems very desirable that an attempt should be made to place on record a few of the facts and incidents of what the administration of Martial Law means in Cape Colony. This can only be done by collecting such information as has been allowed to appear in those colonial papers which have not been either suppressed or silenced. Among those so suppressed or silenced are, unfortunately, the leading Dutch papers, the only Liberal English paper in Cape Town, and the only native paper. The sturdy Liberal editor of the English paper, and the leading Dutch editor, a barrister and Member of Parliament, have been for nine months in prison, though this was not by sentence of a court martial.

The whole of the Cape Colony—an area, be it remembered, nearly three times as large as that of Great Britain—is now subject to Martial Law, and this has been the case—except as to the coast towns—for nearly a year. The coast towns were free until October 11th last. During the whole of this period the Supreme Court of the Colony, which sits in three divisions—one at Cape Town, one at Kimberley, and one at Grahamstown—has been open and exercising its jurisdiction. The Circuit Courts, and a special Treason Court instituted by an Act of 1900, have also been acting in many parts of the Colony, though not in all, without interruption. The alleged justification for the infliction of Martial Law has been the incursion of a few thousand men under Hertzog, Kritzingler, and De Wet in December, 1900, and February, 1901, most of whom were driven out of the Colony in a few weeks, De Wet having been driven across the Orange River about February 28th, 1901. Numerous districts have never been visited at all by the small bands which remained, and they have never approached within from fifty to a hundred miles of the principal coast towns. Under such circumstances the law of England does not, in the absence of legislation, permit the subjection of civilians in the undisturbed districts to Martial Law. On this point I will quote only two out of many high authorities. They are modern, and deal with rebellion in a colony.

When the Canadian rising broke out in 1838, the then Law Officers of the Crown (afterwards Lord Chancellor Campbell and Lord Chancellor Cranworth) prescribed for the Government of Lord John Russell the following conditions under which alone Martial Law could be proclaimed or enforced:—

“The right of resorting to such an extremity is a right arising from and limited by the necessity of the case—*quod necessitas cogit defendit*. For this reason we are of opinion that the prerogative (of the Crown) does not extend beyond the case of persons taken in open resistance, and with whom, by reason of the suspension of the ordinary tribunals, it is impossible to

deal according to the regular course of justice. When the regular courts are open, so that 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. . . . Martial Law is stated by Lord Hale to be in truth no law, but something rather indulged than allowed as a law, and it can only be tolerated because, by reason of open rebellion, the enforcing of any other law has become impossible. It cannot be said in strictness to *supersede* the ordinary tribunals, inasmuch as it only exists by reason of those tribunals having been already practically superseded."

—(*Forsyth's Constitutional Cases*, p. 198.)

Judged by the tests in the above opinion, the administration of the Cape Colony by Martial Law has been very largely, if not wholly, unwarrantable. Civilians have been all over the Colony arrested, tried and executed by military jurisdiction at a time when the ordinary civil jurisdiction was available to try them. Indeed, British subjects have been deported from place to place for hundreds of miles to prevent their being tried by the civil tribunals provided by law to punish their crimes and remedy their wrongs. Sentences have been passed not only of death, but of penal servitude for life and other long periods, by Courts composed of only three military officers, and those not all officers of the regular army. Persons arrested have been persistently refused leave to see their legal advisers. These things are not only opposed to the law as laid down by well-recognised authorities (e.g., "*If a subject be taken in open rebellion, if he be not slain in the time of his rebellion, he is to be tried after the Common Law*," per Rolle, afterwards Lord Chief Justice of the King's Bench, *Rushworth App. p. 79*), but to the regulations issued by the Colonial Office itself in 1867 after the Jamaica rebellion. In that year, Lord Carnarvon, then Secretary of State for the Colonies, wrote to all the Governors of Colonies as follows (*See CAPE BLUE BOOK A. 16-78, pp. 16, 18, 19*):—

"You will see that, under regulation three, 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 . . . nothing short of an unavoidable necessity would justify the infliction of capital punishment on the authority of only three officers."

(This rule has been entirely disregarded in the Cape Colony.)

"The transference of accused persons for the purpose of trial from an unproclaimed to a proclaimed part of the country is a proceeding obviously open to abuse, and unwarranted by that immediate necessity which alone justifies the suspension of the ordinary course of law."

(This has been disregarded if not in fact in principle.)

"Care should be taken to afford the prisoners every reasonable facility for making their defence."

(Prisoners have frequently been refused leave to see their legal advisers.)

“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.”

(This has been persistently ignored.)

These regulations were brought to the attention of Sir B. Frere in 1878 and of Sir A. Milner in 1899.

In 1798 the well-known case of Wolfe Tone in Dublin gave practical proof of the right of the Law Courts to disregard military jurisdiction based upon a declaration of Martial Law not supported by legislation, and since that event martial law has not been exercised in Ireland without the formal sanction of Parliament. For, as the Lord Chief Baron Comyn wrote 150 years ago:—

“Martial law cannot be used in England without authority of Parliament.”—*Digest V.*, 292.

Under such sanction safeguards have been provided for securing the elementary ends of justice. For instance, by the Act of 1803 (43 Geo. III., c. 117) the courts martial in Ireland were to consist of not less than seven nor more than thirteen officers, and no sentence of death was to be given unless there was a concurrence of two-thirds at least of the officers present. Moreover, the power to administer martial law was in terms sanctioned “whether the ordinary courts of justice shall or shall not be open,” a significant admission that without such sanction the civil courts, if open, would be supreme. Then by the Act of 1833 (3 and 4 Will. IV., c. 4) the courts martial authorised by it were to consist of not less than five and not more than nine officers. The president must be a field officer, and no member lower in rank than a captain. At every court martial the Judge Advocate must be a barrister of five years’ standing, and the parties, their counsel, and attornies, had full liberty to examine, cross-examine, and take notes as in a court of law.

It is further to be observed that in the recent Proclamations issued by the Governor of the Cape Colony on January 18th and October 9th of 1901, no attempt has been made to establish a case of “necessity,” arising from war or insurrection in the particular districts affected, for the infliction of Martial Law. Here is the proclamation of October 9th, extending Martial Law to Cape Town and other coast ports:—

“Whereas Martial Law has already been proclaimed and is in existence in certain districts of this Colony, and whereas the Colony has been and is being invaded by armed forces from the Orange River Colony, and whereas it is desirable and expedient that Martial Law should be proclaimed in certain other districts at present not under its operation. Now, therefore, etc.”—(CAPE GOVERNMENT GAZETTE, *October 11th.*)

The earlier proclamations are in similar terms. It must have been perfectly well known to Sir A. Milner and Sir Walter Hely Hutchinson, who issued the Proclamations, that the Proclamations showed no justification for the infliction of Martial Law in the majority of the districts named in them, inasmuch as the invasion did not touch them. Some of

the real objects of the Proclamations were, however, speedily made manifest, viz., the invasion of private homes, and the censorship of private letters. Within half an hour of the issuing of the Proclamation of October 9th, the privacy of ladies, ex-ministers, and professional men of high standing in Cape Town, was invaded by detectives, and their houses, within a few yards of the Supreme Court, ransacked for supposed treasonable documents. None were found; but it was still thought to be in the interests of British supremacy that the house of a leading lady in Dutch society should be constantly watched by policemen, and that an English lady, who had come 6,000 miles by sea to perform a charitable mission, should be forbidden "to land in any part of South Africa," and violently deported to Great Britain. It is still thought necessary to pry into every letter of however harmless or intimate a character which enters or leaves South Africa, and to detain at will whatever displeases the military censors. It is still thought wise to enforce wholly illegal regulations interfering with the rights of British subjects over their own property, their right to get up, move about, and go to bed when they like, and their right to express their own opinions about the policy of the King's present advisers.

The Special Act passed by the Cape Parliament in 1900 for trying political offences by a tribunal of three experienced lawyers gave that tribunal jurisdiction only over offences committed prior to April 12th, 1901. If the Cape Parliament had not been suspended by the Government, that Parliament would no doubt have renewed the powers of this tribunal when it met in ordinary course in May, or those powers might have been renewed by an act of the Imperial Legislature. The Imperial and local governments, however, having agreed neither to pass an Imperial Act nor to call the Cape Parliament together, it became necessary to revert to the jurisdiction of the ordinary civil courts, which command the services, in the Supreme Court, of no less than nine judges. Accordingly in the *Cape Government Gazette* of April 9th there appeared the following notice, signed by the Attorney-General, Sir James Rose Innes, on behalf of the Cape Ministry:—

"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."

Here is an explicit statement by the responsible Government of the Colony that colonists were to be tried by their own legally constituted Courts. During the next ten days, however, a complete change of policy took place, because—as Mr. Chamberlain subsequently told Mr. E. Robertson in the House of Commons—the Colonial Courts were not



adequate for the duty of trying rebels. The result was that on April 22nd, by another Proclamation, the Colonial Courts were superseded, and Military Courts of three officers came into existence, through whose instrumentality many colonists during the ensuing months were sentenced to death, and a much larger number received tremendous sentences of imprisonment. These Courts are still, or were a few weeks ago, in full operation.

Accordingly, on April 22nd, Lord Kitchener issued the following notice through the Cape Attorney-General:—

“All subjects of His Majesty, and all persons residing in the 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.

#### SOME MILITARY TRIALS.

The following cases, taken from a very large number scattered through the Press *during the past year*, illustrate the sort of thing which took place under this Proclamation. The reports are extremely meagre, and doubtless are not always accurate; but no better evidence has been made available to the public. From the cases noticed, incomplete as they are, it will appear that the Military Courts during the last ten or twelve months in the Cape Colony have sent to execution twenty-three British subjects, to penal servitude for life and transportation, eleven; to penal servitude for life (with the addition twice of fines of £1,000) one hundred and twenty-six; to penal servitude for twenty years, nine; to penal servitude for ten years, seventeen, not to mention lesser sentences. I do not suggest that the officers composing these Courts have not done their duty according to their light, but I do suggest that they were not a proper tribunal to which to submit such terribly grave cases. The illegality is all the graver when it is remembered that during the whole year the Supreme Court was sitting in three different centres of the Colony, and that for several months the judges were travelling the Eastern and Western circuits. There was therefore an entire absence of that “necessity” which can alone justify the resort to Military Courts.

#### THE TRIAL AND EXECUTION OF JOHANNES P. COETZEE, FREDERICK ABRAHAM MARAIS, AND CORNELIUS JOHANNES CLASSEN.

The trial of Coetzee took place on June 24th, 1901, at Dordrecht, a town in the east of the Cape Colony, within the jurisdiction of the Grahamstown branch of the Cape Supreme Court. The prisoner was tried by three officers, Colonel Doran, of the Royal Irish Regiment, Major Mullins (2nd Dragoon Guards), of Brabant's Horse, and Lieutenant T. P. Dawson, of the Port Elizabeth Volunteers.

He was charged with: (1) Assaulting with intent to murder Private Gibbons, of the Cape Mounted Rifles on June 6th; (2) High treason

in joining the forces of and fighting with the enemy on that day, he being a British subject.

He was twenty-one years of age : he pleaded not guilty : but was convicted and sentenced to be hanged.

The evidence against him appears to have consisted of only three witnesses—in addition to one who was called to prove “that he knew the prisoner’s father to be a British subject,” the sole evidence of the prisoner being a rebel. The first witness, one of Scobell’s Scouts, described an attack made by Scobell’s column on a Boer force at Wilderfontein, in the Aliwal North district. His evidence did not mention the prisoner directly or indirectly. The second witness—another Scout—deposed to Private Gibbons having been wounded as the Scouts attacked a kopje held by the Boers. The only piece of evidence given by him which could possibly affect the prisoner was this :—

“I recognise all the prisoners now before the Court as the men we captured on the morning of June 6th, 1901.”

The third witness, a private in the 21st Lancers, swore that he took part in the attack on the kopje from which the Boers fired. In a donga near the kopje he found the prisoner and one Marais with rifles which had lately been fired. He said nothing about Gibbons, or his being wounded by the prisoner or anyone else.

Upon the evidence of these three witnesses the prisoner, who was undefended, and did not cross-examine, was convicted of high treason and attempt to murder Gibbons. About three weeks afterwards, the sentence having been confirmed by Lord Kitchener, this youth was hanged at Cradock in the presence of about thirty male inhabitants of the town, who were ordered by the military to be present. Without commenting on the evidence, which speaks for itself, it will be observed that the Court which sentenced this man to death was constituted of only three officers in direct violation of the Colonial Office injunction issued by Lord Carnarvon and of the Irish practice and that the prisoner was tried nearly three weeks, and executed nearly six weeks, after his alleged offence, at a time when the Supreme Court in Grahamstown, Kimberley, and Cape Town was open and available, in due course, for his trial—a direct violation of the law as stated by Hale, Coke, Rolle, Campbell, and Cranworth.

By what theory of martial, or any other law, thirty perfectly unoffending subjects of the King were compelled to watch the last moments of their compatriot has never been suggested by even the extremest supporters of the Government. But presumably the power is supposed to rest upon military regulations, of which the following is a sample, issued by Major Wiseman Clarke, the Commandant of the District of Cradock :—

“ MARTIAL LAW.

“ NOTICE.

“ All male adults in the township of Cradock are hereby ordered to attend in the market square to-morrow morning at a quarter to eleven, to witness the promulgation of the sentence of death to be passed on Johannes Petru.

Coetzee for high treason and attempt to murder. All places of business must be closed from 10.30 till after the promulgation of the sentence.

“C. C. WISEMAN CLARKE, Major Commandant,  
“Cradock District, *July 11th, 1901.*”

On the day following the execution, Mr. Mathew du Plessis, a Member of Parliament, and eleven other prominent Dutch farmers, were peremptorily ordered to leave the Cradock district, no reason being published, their supposed offence being their refusal to attend the execution.—(*See SOUTH AFRICAN NEWS, July 24th; MIDLAND NEWS, and CAPE TIMES, July 24th and 31st.*)

For participating in the same affair at Wilderfontein, and on similar charges to those against Coetzee, two other Dutch subjects of the King, Marais and Classen, were hanged, one at Middleburg and the other at Somerset East, a few days after Coetzee had suffered. They were tried by the same tribunal of three officers at Dordrecht on or about June 24th, and their execution was attended by the same enforced publicity. Classen was taken to Somerset East to be executed because apparently his parents and friends lived in the district, and three days before the execution the Commandant issued a notice ordering all male persons to attend in the market square at noon. It was estimated that over 1,000 people were compelled by this order to hear the promulgation of the capital sentence on Classen. In addition there were brought into the square all the prisoners, unconvicted as well as convicted, from the local gaol. After the Commandant had thrice repeated in a loud tone to the condemned that he was “to be hanged,” and had it translated by the Rev. J. H. Hofmeyr into Dutch, he went through the painful farce of calling for three cheers for the King. At the execution, which took place on July 23rd, his crime having been committed on June 6th, thirty of the principal residents of Somerset East were compelled to be present.—(*SOMERSET BUDGET, July 24th; CAPE TIMES, July 31st; SOUTH AFRICAN NEWS, August 7th, 1901.*)

Marais was tried by the same tribunal at Dordrecht on the same day, and for the same two offences on the 6th June, as Coetzee and Classen, and also sentenced to be hanged. He was executed a few weeks later at Middelburg with the same attendant circumstances as in the other two cases, the promulgation of the sentence and the execution itself being witnessed by large numbers of respectable fellow-subjects of the condemned man who were compelled to watch his last moments.—(*MIDLAND NEWS and SOUTH AFRICAN NEWS, July 24th, 1901.*)

Middelburg and Somerset East are both within the jurisdiction of the Grahamstown branch of the Supreme Court, which sits at Grahamstown in August and in the Circuit towns of the Eastern Province in September. Neither Classen nor Marais were tried till three weeks after their capture, and not executed for another month.

*The Camdeboo Prisoners.*—On July 12th thirteen men were captured at Camdeboo, some thirty miles from Graaff Reinet, in the

Cape Colony. They were tried by a Court Martial on or about July 30th at Graaff Reinet, as rebels, the charge against them being high treason and attempted murder. Ten of them, all under thirty years of age, were sentenced to penal servitude for life at Bermuda, and three—Jan Van Rensburg, Pieter Fowrie, and Pfiefer—were sentenced to be shot. These last were executed on August 20th, and according to Reuter's Graaff Reinet correspondent "about forty civilians attended to witness the execution of the sentence voluntarily." At the same place, on or about August 26th, Daniel Olwager and Ignatius Nel, found guilty of high treason and attempted murder, were shot.—(CAPE TIMES *Correspondent*, *September 4th*.)

On September 4th, according to a Special Correspondent of the *Cape Times*, three more of the rebels taken at Camdeboo in July were executed at Colesberg. "The execution took place at seven o'clock in the morning in the outskirts of the town. A large number of civilians obtained permits from the Commandant to witness the execution. The names of the condemned men were Frederick Toe, Hendrik Veenstra, and Hendrik van Vuren.—(CAPE TIMES, *September 11th*.)

It would be interesting to know what power there is in any Court Martial to transport British subjects for life to a distant country, and by what law the authorities in Bermuda are justified in detaining them. Lord Durham's resignation was caused by the universal condemnation of his conduct in doing the same thing with Canadian rebels.

*Steynsburg, Graaff Reinet, Dordrecht and Vryburg*.—On June 16th Petrus W. Klopper was tried before a Military Court at Steynsburg, apparently for high treason in joining the Free State forces. He was subsequently taken to Burghersdorp, where "in the presence of the garrison and all males over sixteen years, Major Forbes Taylor, in a loud clear voice, read out the sentence of hanging for murder and high treason. He was hanged on July 23rd at Burghersdorp."—(Reuter, SOUTH AFRICAN NEWS, *July 31st*, 1901; CAPE TIMES, *July 31st*, 1901.)

Courts Martial at Graaff Reinet on or about the same date sentenced Gert Polyar, a boy of sixteen, to death, the sentence being subsequently commuted to one of two years' imprisonment; Petrus Willem was also sentenced to death, the sentence being reduced to ten years' penal servitude; Haren Petzer, condemned to death, had his sentence commuted to one year and £100 fine. The death sentence of Jacob Buys was commuted to ten years' imprisonment, that of Cornelius Meyer to five years' imprisonment, while six others were sentenced to terms of penal servitude varying from ten to one year.

On July 23rd the Special Correspondent of the *Cape Times* at Dordrecht telegraphed that "The military court had tried fifteen rebels, thirteen of whom had been sentenced to imprisonment for life, and two to five and ten years respectively."

And on July 24th, Reuter's correspondent at Vryburg: "Four rebels caught with arms in May last have been sentenced to ten years' penal servitude."—(CAPE TIMES, *July 31st*.)

## TRIAL OF LOTTER AND HIS MEN.

On September 5th Commandant Lotter and a number of alleged rebels were captured in the neighbourhood of Graaff Reinet. Lotter was tried in that town by a Military Court—apparently consisting of the same three officers who tried the Dordrecht cases—on September 27th and 28th, just three weeks after he had surrendered. He was charged with several offences including treason, murder, and damaging the railway, his guilt being really dependent upon the legal question, whether or not he was a British subject. His defence was that he was a Free State burgher, but that he had lost or had had stolen from him the bag containing his certificate of burgher rights. A witness for the defence, one Hugo, captured with Lotter, said he carried the papers of the latter in a bag, and that one of them had on it the words “Burger Recht,” and that Lotter had told him this was his “burgher right” paper. Another witness, Steyn, said he had been sent by President Steyn and General De Wet, with papers for Lotter, which De Wet told him were matters of life and death to Lotter. Another witness swore that Lotter had said that he had lived for fifteen years in the Free State. For the prosecution, the principal witness was the resident magistrate of Colesberg, who said—

“The prisoner’s name was on the voters’ list as ‘J. J. Luther Lotter, barman, Naaupoort.’ The prisoner’s name was in fact, Johannes Cornelius Lotter. This must be a clerical error: He knew the prisoner well as a barman, at Naaupoort. The voters’ list was very carefully compiled.”

Two other witnesses spoke to his having at various times lived in the Colony. Lotter himself, who was undefended, said:—

“It is very hard to be tried as a rebel, while there are so many witnesses in the field fighting who can prove I am a Free State burgher. Further, the name on the voters’ list is wrong and not mine, for my name is Johannes Cornelius Lotter, and was not put on at my instigation. Otherwise it would appear to be correct on the list.”

He was found guilty, and sentenced to be hanged as a rebel. The sentence was promulgated on October 11th, in the market square of Middelburg, in the presence of the prisoner and the leading residents of the town, and the execution took place on the 12th at the same place, more than five weeks after his capture.

Three days later Piet Wolfaardt, who was captured with Lotter, was executed at Middelburg. The next day Schoeman, another of his men, was shot at Tarkastad. On the following day two more men, Breda and Kruger, were executed at Cradock. Two others, Erasmus and Vorster, had their death sentences commuted to penal servitude for life. The charges against the two who were executed were, in addition to high treason, having in the one case wrecked a train and in the other killed a native. (*Midland News, Cape Times*, October 23rd.) On October 11th, at the same place, five other members of his commando were sentenced to death at Middelburg, but their sentences were commuted by Lord Kitchener to penal servitude for life, while two or three

others, on account of their youth, were sentenced to be flogged and to suffer imprisonment during the continuance of the war. On October 8th it was reported that twelve of Lotter's men were sentenced at Middelburg to penal servitude for life, while one Daniel Henning was sentenced, in addition to the life sentence, to a fine of £1,000. On October 9th, at Cradock, sentences of penal servitude for life were publicly passed in the market place on no less than fifty-three more of Lotter's men, all having been originally sentenced to death. On October 11th, at Richmond, two more, Cornelius Smit and Hendrik Visser, having been sentenced to death, were sent to penal servitude for life (*Cape Times' Special Correspondent*, October 10th). At the same place, on October 14th, eight more sentences of penal servitude for life—originally death sentences—were promulgated, two youths getting off with flogging and imprisonment during the war. On October 20th, at Middelburg, Botha, another of Lotter's men, had his death sentence commuted to penal servitude for life.

The above bare facts in connection with Lotter and his men are taken in the main from the telegrams sent to the Press by Reuter's agents on the spot. On several vital points no information is forthcoming, e.g., how was the Court which inflicted in a few days these many and terrible sentences constituted? did the prisoners have any legal assistance? what was the evidence that each of them was a British subject? All these men were tried and sentenced weeks after their offences had been committed, and when the ordinary Courts were open and available for their trial, in violation of the constitutional doctrine laid down by Lords Campbell and Cranworth that—

“The prerogative (to declare martial law) does not extend beyond the case of persons taken in open resistance, and with whom, by reason of the suspension of the ordinary tribunals, it is impossible to deal according to the regular course of justice.”

*Michaelmas Sitzings of the Military Courts.*—Military Courts were at work at Vryburg in September and October. On September 10th four prisoners named Wolfaardt, Geel, Jensen, and Rautenbach, were sentenced to death, but the last two only were executed, the sentences of the first two being commuted to transportation and penal servitude for life and three years respectively. The charges were high treason, aggravated in the case of two by breaches of parole. (*Bechuanaland News, Cape Times*, October 23rd). On October 26th two brothers, named Potgeiter, were sentenced to six months' imprisonment for neglecting to report that the enemy were on their farm in August, and on the 29th sentences on twenty-one rebels were promulgated at the same place. Two were sentenced to death, and were executed, six were sentenced to penal servitude for life, eight to twenty years penal servitude, one to ten years, and two to five, and another to five years in addition to a fine of £500. Fourteen of the prisoners are said to have taken part in a fight at Zoet Kloof. Thus this Court, besides passing two capital and six life sentences, awarded amongst thirteen prisoners no less than 185 years' penal servitude.

On November 1st, at the same place, Basson was sentenced to fourteen months' imprisonment with hard labour for concealing arms, Du Plessis to six months for failing to report the enemy's presence, Venter and Van Rooy to ten and fifteen, and Meintjes and Kruger to twenty years each respectively for being actively in arms against the King. About the same date at Graaff Reinet one Davel was sentenced to a fine of £1,000 (and two years imprisonment, afterwards remitted) "for failing to bring in his lucerne and hay, and being in possession of a rifle."

The above facts were all recorded by Reuter's local agents.

*November and December.*—Throughout these months military courts appear to have been inflicting heavy sentences on colonists in all parts for all sorts of offences. At Colesberg, on November 10th, Van Wyk was sentenced to death and executed two days later for "joining the enemy, marauding, and violently assaulting the postmistress of Maraisburg." On the same day, Van Rensburg was sentenced to death, and finally fined £1,000, and sent to penal servitude for life for "being in arms and murder." And on the 14th Jacobus Van Zyl, charged with taking up arms against the King, had his death sentence commuted to one of ten years' penal servitude (*Cape Times*, November 20th). On or about the same day at Beaufort West, two farmers, Muller and Els, were sentenced to death, commuted to penal servitude for life and ten years' penal servitude respectively, for "treason and attempted murder." On November 12th Piet Van Heerden, one of Kritzinger's commando, having been convicted on a charge of attempted murder, was executed at Tarkastad, and on the 16th, at Middelburg, the death sentence passed upon Hendrik Coetzee was commuted to penal servitude for life, his crime being high treason (Reuter, *Cape Times*, November 20th). At Aliwal North, on November 15th, twelve alleged rebels captured at Zastron two months before were sentenced to imprisonment for life, and four others to ten years' imprisonment. On November 18th, at Kenhardt, the death sentences passed on Delanost, de Bruyns, and Jasper Cloete were commuted to penal servitude for life. The same sentence was passed on Venter, and one of ten years' penal servitude on Piet Van der Merwe (Reuter, *Cape Times*, November 20th). And on November 19th, at the same place, one Liebenberg, captured on July 12th, was put on his trial for an alleged murder of an Orange River policeman over a year before, but the trial was postponed for further evidence.

On November 8th, at Cradock, Robert Wilson, a farmer, alleged to have been captured with Lotter early in September was sentenced to death, his sentence being commuted to imprisonment for life. At Graaff Reinet, on November 20th, two of Lotter's commando, Van Aardt and Meintjes, were sent to penal servitude for life, and three days afterwards, at Colesberg, William Hofmeyr Louw, the son and nephew of two greatly respected ministers in the Dutch Reformed Church, was executed, the charges against him being treason, murder, and marauding. He denied the last two charges, but was found

guilty on all (Reuter, *Cape Times*, November 27th). At Burghersdorp on November 26th, one Viljoen was sentenced to death and had his sentence commuted to lifelong imprisonment. At Kimberley, on November 27th, Graaff and Maritz had their death sentences commuted to penal servitude for life, the charges against them being of having been in arms against the King and attempted murder (*Cape Times* Correspondent, December 4th). At Graaff Reinet on December 4th, one farmer was sentenced to a year's imprisonment and a fine of £100 for "withholding information of the presence of the enemy," and one, Albertyn, alleged to have been a rebel guilty of "marauding and burning property," was sent to imprisonment for life. On the same day, at Richmond, one farmer got ten years' imprisonment and a fine of £1,000 for giving false information about the enemy, and another two years and a like fine for having food on his farm from which the enemy could supply themselves, sentences afterwards commuted to two years and one year respectively. At Swellendam, on December 3rd, five rebels were sentenced to terms of imprisonment varying from six to eighteen months, with a fine of £200 in one case as well, and at Oudtshoorn on December 7th no less than thirty-two persons were tried, including a Member of Parliament and several local farmers, the charges being those of "failing to report that the enemy was on their farms," or "neglecting to bring in horses which thus fell into the enemy's hands." The sentences included heavy fines and varying terms of imprisonment. Swellendam and Oudtshoorn are both Circuit towns on the Western Circuit. At the time these Military Courts were thus sending men by dozens to jail, the Judge of Assize was actually travelling on his circuit, and he sat at Oudtshoorn itself on November 20th, and tried eleven criminal and four civil cases. Both in Kimberley and Oudtshoorn, if not in other places, Supreme Court Judges and Military Officers were holding Courts actually at the same time in the same place.

The above facts are taken, as before, from the telegraphic reports sent by Reuter's local agents about the dates of the events reported and the *Cape Times* of November 27th.

*Trapping Rebels.*—The difficulties of the farmers, placed between the Boer commandoes, composed of men of their own blood and race, on the one side, and the military courts on the other, can be better imagined than described. Their difficulties are aggravated by absence of protection and by the methods employed to get evidence against them. Here is a sample of the latter, as described by the Press Association's special war service correspondent at Middelburg on October 14th, just after the trial and execution of Lotter and his men. He says:—

"The Dutch farmers are still disloyal, giving to the Boers as much information as possible, and withholding all intelligence from our columns. One of the men was smartly trapped last week. Two colonial officers, belonging to Colonel Hunter Weston's column, disguised themselves as Boers, and went to a neighbouring farmhouse. The farmer received them gladly, and when he was entertaining them, gave them much valuable



information about the column, where it was camped, and where it would be best to attack them. The following day he was sent for, and asked where the two Dutch officers were who had visited him the previous day. He declared he had seen no Boer officers, and was loud in his professions of loyalty. After hearing what he had to say, the two supposed Dutchmen were brought before him, and he was sent to the nearest town to stand his trial for giving information to the enemy."

What a prospect for the future peace of the Colony, when the military courts are employed in procuring evidence against "rebels" by the artifices of "loyalists!"

*Native Evidence.*—The dangers which the Dutch farmers run from the unscrupulous use of native evidence may be seen from the following trial before a Military Court at Windsorton described by the *Cape Times* correspondent at Kimberley on December 6th:—

"A farmer named Boshof was charged with . . . harbouring on his farm four Boers in June last in the Barkley West District. Four native witnesses, two male and two female, were called, all in the accused's employ, and each of whom had made affidavits in the case before the resident magistrate at Klipdams. They now all stated that their affidavits were false, and that they had been frightened into making them by Kinnear, a police detective, who said that, if they did not, they and their master would be taken to Cape Town and their throats cut. Two men were ordered to be detained in custody to await a charge of perjury. Another native was called and stated that about four months ago he saw four armed Boer strangers in the accused's house. Kinnear having given evidence regarding the last witness having reported the matter to him, and stating that the story told by the other four witnesses was false, the Court after a brief deliberation found the accused not guilty and discharged him."—(CAPE TIMES, December 11th.)

*Arrest of Mr. Merriman.*—There has been no more unintelligible or unexplained exhibition of Martial Law administration than the arrest of Mr. Merriman on his farm near Stellenbosch, within thirty miles of Cape Town, on Sunday, August 25th. On that morning he was suddenly confronted by two armed mounted men, who handed him the following order:—

"The bearer of this is a sergeant in the District Mounted Troops. Be good enough to hand over to him your monthly permit, and do not leave your farm till further orders.

"L. C. POTTS, Major."

Armed men were stationed round his property, and at 9 p.m. he was given the choice of promising to confine himself to his farm or submitting to have a guard round his house. For some days he was confined in this way to his farm, and then on September 3rd he was allowed out, but not beyond the Stellenbosch district. An application by him for a permit to go to Cape Town was at first refused, but subsequently granted. No charge of any sort or kind was or has ever been made against Mr. Merriman, who is the son of the late deeply respected Bishop Merriman, and the oldest member of the Cape Legislature. He has sat in it without intermission since 1869, and has been a

Minister of the Crown for eleven years of that time. He has been for twenty-five years a member of the Executive Council of the Colony.

The arbitrary arrest and deportation of British citizens, however, in all parts of the Colony on the ground of suspicion, or that they are what the military call "undesirables," has been prevalent, and can be illustrated by one or two out of many cases.

*Arrest and Deportation of Mr. Marais.*—The case of Mr. David François Marais, which has become well known owing to his abortive appeal to the Privy Council, is a conspicuous instance of the system. Moreover, he is a man of good professional position, and his father was for years a prominent member of the Cape Parliament. He resides and carries on his business as an attorney and auctioneer at the Paarl, a small town some thirty miles from Cape Town. The district has never been anything but perfectly peaceful. Suddenly, on August 12th, by order of the local Commandant, Mr. W. H. Myburgh, a well-known resident of the Paarl, was arrested and thrown into gaol without any charge or warrant. Two days later nine other gentlemen, including Mr. Marais, were in the same way arbitrarily arrested and imprisoned, one of them, Mr. T. Louw, being over seventy years of age. They were not told what was the charge against them, and they were not allowed to see either friends or legal advisers. Three days after the arrest their solicitor in Cape Town went to the Paarl to communicate with them, but found the Commandant away in Cape Town. A telegram despatched by the solicitor to the Cape Attorney-General was diverted by the military and sent to the Commandant at the Mount Nelson Hotel in Cape Town, but it was entirely ignored by him. The very next day, which was Sunday, at ten o'clock at night, a Lieutenant McCausland came to the gaol and ordered Mr Marais and four other of the prisoners to go with him to Beaufort West, a small town 300 miles away. There they were lodged in the common gaol, and there they are believed to be still. After nine days imprisonment at Beaufort West Mr. Marais sent a civil request to the Commandant, a Captain Boyle, to ask on what charge he and his fellow prisoners were imprisoned, but received only a curt refusal to see him or tell him anything. An application by their legal adviser at Beaufort West to be allowed to see the prisoners was also refused. An application by their Cape Town solicitors to the General commanding there to know on what charges the prisoners were arrested, when they would be tried, and when the solicitors might see them, was totally ignored. On September 6th a petition was presented to the Cape Supreme Court for the release of Marais, on which occasion the General at Cape Town (General Wynne) made an affidavit saying, *inter alia*, "there are military reasons why the petitioner and the others should be removed and kept in custody. . . . Owing to military exigencies I am not prepared to state at present what charges there are against the petitioner and others." Upon this the Court made an order calling

upon the gaoler at Beaufort West to show by what authority he detained Marais. The reply to this was that the gaoler was acting upon a warrant issued by a Captain Geullond, District Commandant of Beaufort West, on September 8th, *i.e.*, just three weeks after the prisoner's arrest. It charged him with a breach of a Martial Law regulation. Upon hearing this the Court declined to interfere, on the ground that Marais was in military custody in a martial law district. It was pointed out by Mr. Currey, his counsel, but without avail, that the Circuit Court was exercising uninterrupted jurisdiction, and was advertised to sit in a fortnight at the Paarl, the place from which Marais had been deported. The Court did actually sit there on September 27th, and tried a heavy list of cases. Marais was subsequently refused leave to appeal to the Privy Council on the ground that there was "an actual state of war raging," when he was arrested and imprisoned. Marais and his four fellow-prisoners are still, it is believed, in gaol at Beaufort West, untried. The other prisoners left at the Paarl were released a few days before the Circuit Court arrived, but only—as reported in the Press—"upon their signing a document undertaking not to bring any action against the Imperial Government for damages for unlawful arrest and imprisonment."—(CAPE TIMES, *September 11th and 18th*; SOUTH AFRICAN NEWS, *September 11th, 18th and 25th.*)

*Arrest, Liberation, and Re-arrest of Dr. Reinecke.*—The case of Dr. Reinecke is perhaps less defensible than that of Mr. Marais. He was a doctor in large practice at Ceres, a small town about 100 miles from Cape Town. On the evening of August 27th he and his wife suddenly received notice from the Commandant that they would be sent away at ten o'clock the next morning. Upon their asking the reason for this order, the Commandant said that he knew of no charge against them. On account of her young baby the lady was allowed to remain in Ceres, but the doctor was taken off the next morning with a Mr. Reynolds, under an armed escort, to the neighbouring town of Malmesbury, a circuit town, at which the assizes were to be held in a few weeks. The two gentlemen were put in the common gaol. On September 18th, just three weeks after his arrest, Dr. Reinecke was brought before the Military Commandant at Malmesbury, and charged with a breach of a Martial Law regulation which made it an offence "to be guilty of an act of misconduct, disorder, or neglect, to the prejudice of good order or public safety." No evidence was produced, and the doctor was remanded for a week. In the meantime his wife came to Cape Town and applied to the Supreme Court for an order for his release. Her petition stated that "the ordinary courts of law were exercising full, free, and undisturbed jurisdiction in the districts of Ceres and Malmesbury"; and [it appeared from the evidence that, in reply to an application by the doctor's solicitor that he might see him, Captain Collier, the Commandant, had said, "I cannot allow the solicitor to hold interviews with any of the 'Martial Law' prisoners confined in the gaol here."

Upon the solicitor appealing to General Wynne, the reply was, "General Wynne is not disposed to interfere with the discretion of the Commandant at the present stage." The gaoler at Malmesbury swore that he detained Dr. Reinecke and sixteen other prisoners in obedience to the order of a Captain Watson "for commandant," and that they were all charged with "contravention of Martial Law Regulation No. 26 par. 2." Mr. Currey, counsel for the petitioner, pointed out to the Supreme Court that not only were the civil courts in uninterrupted exercise of their jurisdiction in the districts of Ceres and Malmesbury, but that at the very moment the Circuit Court was sitting to try prisoners in Malmesbury. The Attorney-General said he would submit to any order the Court might make. The Court accordingly made an order upon the gaoler at Malmesbury to release Dr. Reinecke, the acting Chief Justice, Sir J. Buchanan, concluding his judgment with the significant sentence, "What the military authorities can do afterwards I do not know, and the Court is unable to restrain them."

The learned Judge had not long to wait to have his curiosity satisfied. Dr. Reinecke was released by his Lordship's order at 4 p. m., and at 9 p. m. the same night the unfortunate man was safely lodged again in gaol by order of the military. He is now believed to be a prisoner in a military camp.—(CAPE TIMES, *October 2nd*; SOUTH AFRICAN NEWS, *October 2nd and 3rd.*)

*Imprisonment of the Rev. Mr. Alheit.*—On the same day as that on which Dr. Reinecke was arrested "the highly respected and much beloved clergyman of the Dutch Reformed Church" at Ceres was also arrested and thrown into gaol. As he did not go through the form of appealing to the Supreme Court it is impossible to find out what is the charge against him, but it is stated in the Press that "he expressed from his pulpit the opinion that this was no time for dancing," in allusion to some festivity of the Commandant. He is believed to be still in prison untried.—(SOUTH AFRICAN NEWS, *September 18th.*)

## RESTRICTIONS ON THE PRESS.

On April 29th, 1901, there was issued in the Paarl District, which is within thirty miles of Capetown, the following notice in Dutch and English. It was headed :—

### “PROHIBITED PAPERS AND BOOKS

#### “MARTIAL LAW NOTICE—No. 9.

“The following papers, magazines, and books are contraband in this district, and anyone found in possession of any of them will be punished under Martial Law :—

- “Ons Land,”
- “Ons Week Blad,”
- “South African News,”
- “Onze Courant,”
- “Het Oosten,”
- “Middellandsche Africander,”
- “Truth,”
- “Reynolds' Newspaper,”
- “Review of Reviews,”
- “Weekly Freeman,”
- “With the Boer Forces ”

(by Howard Hillegas),

and five Dutch and German papers.”

This was signed by Major Wedgwood, Commandant of the Paarl District, and a notice in similar terms was issued in many other districts of the Colony.—(SOUTH AFRICAN NEWS, *May 22nd*, 1901.)

The first six papers on the list are colonial papers, and all opposed to the policy of the Government.

On February 16th, to take another instance, the Commandant of the Cradock District, Major Wiseman Clark, issued a Martial Law notice prohibiting the circulation of the following papers in addition to those named in the Paarl Notice :—*Lloyd's* and the *Morning Leader*, and adding, “All are warned that any person in whose possession a copy of any proclaimed paper may be proved to have been since the date of this Proclamation is liable to penalty.”—(SOUTH AFRICAN NEWS, *February 27th*.)

On August 11th, 1901, the Commandant of the Graaff Reinet District, Major H. Shute, issued the following notice :—

“The circulation of unauthorised reports of military operations, whether true or false, is strictly prohibited. Any person either

originating or repeating such reports in writing, or by word of mouth, will be severely dealt with. Authorised reports are those only which have been passed by the Censor."

On August 21st Reuter's agent at King William's Town telegraphed :—

"The Proprietor of the Native Paper *Imvo* has been ordered to cease publication of the paper on the ground of articles of an objectionable nature appearing recently."

This is the only Native Paper in South Africa, and has been edited for some years by a highly educated Native, Tengo Jabavu.

About the same time the Officer Commanding the Southern area issued to District Commandants the following order :—

"Please note that circulation of all newspapers in your district is prohibited. Selling or circulating newspapers from this date will come under breach of Martial Law regulations. Please instruct all newsagents, post contractors and railways accordingly."—(MOSSEL BAY ADVERTISER, *September 3rd.*)

On September 3rd there was issued from the Traffic Manager's Office of the Cape Government Railways, headed "Martial Law Restrictions," the following notice :—

"It is hereby notified that the officer commanding the Western District empowered under Rules for Press, Censors, etc., has put into operation a prohibition that no foreign newspapers or periodicals or South African newspapers not three weeks old may be read or circulated in the district (*i.e.*, Durban Road to Orange River, Stellenbosch, and Sir Lowry Pass, N.C.C.R. to Nuy), and you must advise the newsagents in your district to the effect that any foreign newspapers or periodicals or South African newspapers consigned to places in the above district will be stopped by the District Commandants until the papers are three weeks old."

This was addressed, "To all concerned—Western System," by "A. Difford, Traffic Manager for I.M.R.," *i.e.*, for the Imperial Military Railways.—(SOUTH AFRICAN NEWS, *September 11th, 1901.*)

## SOME MARTIAL LAW REGULATIONS.

A sample of these regulations may be seen in those which, according to Reuter's agent at Queenstown, in the Eastern Province of the Colony, the Commandant there, Colonel E. H. Llewellyn, issued on January 20th, 1901, to the following effect:—

- “(1) No one to be allowed to enter or to leave the district without a pass.
- “(2) Political meetings, or gatherings which might result in a breach of the peace, to be prohibited.
- “(3) Letters, telegrams, and Press matter to be subject to censorship, and goods to examination.
- “(4) The sale of liquor to troops and natives forbidden, and bars to be closed at 10 p.m.
- “(5) Possession of firearms or ammunition forbidden unless registered.
- “(6) *Persons under suspicion of assisting the enemy, exciting dissatisfaction, or disturbing the peace to be liable to arrest without warrant.*
- “(7) *Suspicious persons liable to be arrested, or ordered to leave the district.*
- “(8) Persons using language with the intention of raising or fomenting disaffection, or of promoting hostilities between the different classes of the Queen's subjects to be liable to six months' imprisonment, and a fine of £100.” (The italics are mine.)

(SOUTH AFRICAN NEWS, *January 30th, 1901.*)

The following notice, issued on February 25th, 1901, by the Commandant of the Hanover district, Lieutenant Gedge, illustrates how the unfortunate Dutch farmers were placed between the devil of high treason and the deep sea of exile and loss of home. A similar notice was issued in other districts:—

### “MARTIAL LAW.

#### “NOTICE TO INHABITANTS.

“Whereas it is expedient to afford persons—who for any or various reasons may desire to avail themselves of it—protection against the Commandos of the enemy now roaming in and about this district, the following notice is promulgated, viz. :—Men allowing themselves to fall into the enemy's hands will be guilty of high treason, even if compelled to join him. They should, therefore, if not belonging to a branch of the defence force, remove to districts not threatened by the enemy, or come for protection into one of the places occupied by the Imperial forces. Persons who fail to take one or other of these precautions do so at their own risk, and no compensation will, under any circumstances, be given for losses suffered by those who allow themselves or any member of their families to be commandeered by the enemy. Such persons as wish to take advantage of the foregoing are invited to place themselves in communication with the Commandant with a

view to making satisfactory arrangements in regard to their families, stock and belongings. Each case will be dealt with on its merits, and the military authorities will afford all reasonable assistance to *bona fide* applicants."

(SOUTH AFRICAN NEWS, March 20th, 1901.)

The following is a Martial Law Notice issued on July 8th, 1901, by the Commandant at the Paarl, Major Wedgwood:—

“MARTIAL LAW NOTICE No. 12.

“It having been brought to the notice of the Commandant that certain cases of malicious damage to fruit trees, wire fences and other timber have occurred in the Dal and Klein Krakonstein, it is hereby notified that no one is allowed off their farms in these districts unless for the purpose of coming to Paarl or Wellington for market or urgent necessity, such as fetching a doctor, and that after sundown no one is allowed out of their houses on any pretext whatever. This does not apply to members of the District Mounted Troops, or Field Cornets of these districts.

“Every resident in these two Field Cornetries will have posted on the door of their houses, in clear and distinct writing, a list of the names of the members of their household, and will be liable to account for any of them to the District Mounted Troops or other patrol.”

(SOUTH AFRICAN NEWS, July 17th, 1901.)

The Colesburg correspondent of the *Midland News*, commenting upon “the severe restrictions placed upon the farming community,” wrote:—

“The farmer is prohibited from being out of doors on his farm between the hours of 6 p.m. and 7 a.m. From 5 a.m. to 7 a.m., the usual busy hours, I presume he will have to drown his feelings in moderate doses of coffee. Once a fortnight he is permitted to send his wagon into town with produce, and to return with a limited supply of rations: and, moreover, there is to be no visiting one another’s farms *en route*.”—(SOUTH AFRICAN NEWS, June 26th, 1901.)

On August 19th Reuter’s agent at Queenstown telegraphed that—

“A fresh Martial Law order came into force, closing all stores in the Queen’s Town district, and requiring all goods likely to be of use to the enemy to be taken to the towns specified. Another order forbids delivery by rail of civil supplies to any stations on the Eastern line, save Queen’s Town, King William’s Town (and six others named) except under permit from Commandant of area. Country residents are forbidden to possess more than one week’s supply of provisions.”—(SOUTH AFRICAN NEWS, August 23th.)

The Martial Law Regulation under which in August Mr. Marais and his friends at the Paarl were imprisoned and deported to Beaufort West provides that any person in a Martial Law District who shall—

- “(1) Be actively in arms against His Majesty, or
- “(2) Directly incite others to take up arms against His Majesty, or
- “(3) Actively aid or assist the enemy, or
- “(4) Commit any overt act by which the safety of His Majesty’s forces or subjects are endangered,

“Shall immediately on arrest be tried by a Military Court . . . and shall on conviction be liable to the severest penalties. These include death, penal servitude, imprisonment and fine.



*"Any person reasonably suspected of such offences is liable to be arrested without warrant, or sent out of the district, to be hereafter dealt with by a Military Court."* (The italics are mine.)

Mr. Marais was charged, when at last, three weeks after his arrest, a warrant was made out, with contravening section (2) of the above regulation, and was, by the terms of the regulation, entitled to be "immediately tried," but, like so many others arrested under like circumstances, he has been kept for months without trial.

*Confined to their Farms.*—Over large parts of the Colony the farmers are or were prisoners on their farms. On April 12th, Reuter's agent at Somerset East telegraphed the arrest and imprisonment for twelve days without trial of a wealthy farmer named Gert Scheefers, of Upsal, in the Somerset Division. He was then summarily tried by the Commandant for failing to deliver two horses to him and also failing to report the arrival of the enemy on his farm, and also for twice leaving his farm without the Commandant's leave. He was found guilty only of the last charge and fined £20.—(SOUTH AFRICAN NEWS, April 17th, 1901.)

*A Year's Imprisonment without Trial.*—On April 26th, 1901 (according to the *Uitenhage Times*), a Cape Member of Parliament, Mr. C. J. Lotter, his son, and a Mr. Fourie, *having been arrested on January 24th*, were brought up after several weekly remands before the acting Resident Magistrate. In the meantime their farm was going to rack and ruin, and an application was made—repeatedly made before—that Fourie, the manager, or the son, might be allowed out on bail to look after it, the accused not having been charged or examined in any way. The Magistrate adjourned the Court for half-an-hour to consult the military, and returned, saying, "The military will not entertain any such proposition, and the Court has to be guided by them." They offered, however, to allow some "approved person" to look after the farm, in reply to which the defendants said that a complete stranger might be worse than useless. In the *Times*, of *January 9th*, 1902, appeared a telegram from Reuter's agent at Uitenhage, saying that "Mr. C. J. Lotter had been committed for trial on a charge of high treason."

On August 9th Reuter's agent at Worcester telegraphed that "for failing to comply with a Martial Law order to bring in their horses by a certain day, two farmers named Latagan had all their animals confiscated, and that this fact had been published in the local *Standard* as a warning to others."

*Deportation of "Undesirables."*—On August 11th Reuter's agent at Middelburg telegraphed that "six Dutch residents had been sentenced by the Commandant to one month's imprisonment each for withholding important information concerning the enemy"; and on August 21st that, in addition to "over forty political prisoners, fifty-nine men and six women had to report themselves daily to the military authorities, and were not allowed to leave the town."

On September 11th the same agency telegraphed :—

“Thirty-four undesirables have just been sent off to the refugee camp at Port Alfred. Among them is the Hon. M. J. Pretorius, of the Legislative Council, who had all his horses confiscated for disobeying a Martial Law order.”—(CAPE TIMES, September 11th.)

*Sufferings of Natives.*—It is not only upon the Dutch farmers that Martial Law regulations fall so heavily, but upon the King's native subjects also. On October 4th Reuter's Queen's Town correspondent telegraphed :—

“The Natives of Kamastone and Ox Kraall Locations, owing to Martial Law regulations closing all country stores and trading stations, have been very seriously put to it. During the last few years their flocks and crops have failed, and they were almost without foodstuffs. *Some of them have now to walk forty miles to Queen's Town to obtain the week's provisions allowed.*” (Italics mine.) (CAPE TIMES, October 9th.)

*New Crimes.*—Martial Law regulations have covered still more curious and novel offences. Thus on January 24th Reuter's agent at the Paarl recorded the infliction of two months' imprisonment upon one Webbe, “for stating that the military would commandeer pigs, and that he himself in the meantime was buying them at half-price.”—(SOUTH AFRICAN NEWS, January 30th, 1901.)

And on January 21st, a Cradock farmer named Botha (according to Reuter) was “let off with a fine of £1 on the plea that he had not seen the proclamation on the subject,” the charge against him being, “using seditious language on the occasion of a visit of the Town Guard to his farm.”

And on January 16th, one John Reath, a farmer, residing near Border Siding, was arrested and lodged in gaol at Fourteen Streams as being “suspected of decidedly pro-Boer proclivities.”—(SOUTH AFRICAN NEWS, January 16th, 1901.) On August 23rd, Reuter's agent at Swellendam telegraphed :—

“A number of local pro-Boers have been arrested by order of the Commandant and lodged in the town gaol, where they are now in custody of the town guard. This step has given great satisfaction to the loyalists.”

On September 25th, at Fraserburg, a boy of sixteen, Hendrik de Waal, was sentenced to pay a fine of £3, or suffer a month's hard labour, for using abusive language towards the Town Guard.”—(Reuter's Agent at Fraserburg.)

*Division of Families.*—In May, Mr. Scholtz, of Cape Town, wished to live with and assist his aged parents in the Kimberley district. He was forbidden to fulfil this natural wish, as the following letters show :—

“Cape Town, May 17th, 1901.

“The Commandant, Kimberley.

“DEAR SIR,—I have approached the chief Permit Officer on behalf of Mr. G. O. J. Scholtz, for leave to proceed to Moritzfontein, in district of Kimberley (the property of Mr. G. Scholtz, sen.), with his family, goods and chattels, as well as his cattle. He intends taking up his residence there, and care for his aged father and mother, as well as carrying on farm-

ing operations. The chief Permit Officer recommends my applying to you for the necessary permission for Mr. Scholtz to take up his permanent residence in your district.

“Mr. Scholtz has been resident in the Cape Division for over twelve years, and is well known here, as well as in the district of which you are Commandant.—I am, etc.”

The following was the reply:—

“A. P. O. C.’s Office, Kimberley, *May 25th*.

“DEAR SIR,—I regret to inform you that Mr. Scholtz’s request cannot for the present be entertained. There will, of course, be no objection to his coming here at the end of the war.

A. H. DEVENISH, CAPT. R.A., A.P.O.C.

—(SOUTH AFRICAN NEWS, *June 5th*, 1901.)

*What is a Meeting?*—On Monday, June 10th, Mr. Cillie, a Member of the Cape Parliament, and seven other gentlemen, were charged by the Military before the Resident Magistrate at Wellington with having infringed a certain Martial Law regulation by holding a meeting. The principal witness for the prosecution was the Commandant, Captain Eyre, who stated that he went one afternoon to Mr. Cillie’s farm and saw five of the accused on the farm, and met some of the others driving to the farm. *Under the regulations more than four persons constituted a meeting.* He had given no permission for such a meeting. Mr. Cillie having given evidence that the gentlemen seen by the Commandant were friends visiting him and people on business, of whom many came to see him as the Member of Parliament, the Magistrate said he wished to hear no further evidence, and dismissed the case.—(SOUTH AFRICAN NEWS, *June 12th*, 1901.)

*Deportation of Ladies.*—On June 28th Mrs. Rousseau, the wife of a much-respected Dutch Reformed Minister at Pietermaritzburg, was staying at Graaff Reinet, in the Cape Colony, to nurse her aged invalid mother, when she was suddenly presented with an order from the Commandant that she was to leave at once for Port Alfred, a village on the south-eastern coast of the Colony. To her entreaties to be allowed to stay, and her promise not to leave the house if she might stay with her mother, the Commandant’s reply was, “Madam, I cannot accede to your request.” The lady had never been even accused of any breach of Martial Law regulations or any offence whatever. She, however, had to leave Graaff Reinet, and on arrival at Port Alfred, where they were told to report themselves every twenty-four hours, was conducted, with three other ladies and twenty-one men, under an armed foot and mounted guard, to the office of the Commandant at the Court House. After being kept waiting for some time, the ladies were permitted to go to the station for their luggage and make such arrangements as they could for their board and lodging.—(SOUTH AFRICAN NEWS, *July 10th*, 1901.)

*A Midnight Visit to a Dutch Parsonage.*—On July 17th the Rev. Mr. Scholtz, minister of Colesberg, was staying at the Paarl, on his way to Cape Town and Europe, with his friend, the Rev. Mr.

Moorrees, at the Dutch Reformed Parsonage. His arrival was duly reported by Mr. Moorrees according to the regulations, and entered in the police-book. At half-past twelve at night on the 18th, according to Mr. Scholtz's own account:—

"I was fast asleep when I heard a thundering noise at my window. I had left the candle burning, as I had not felt well through the evening. When I awoke with the noise I blew out the candle, thinking that it was past the hour for lights to be burning. I heard a voice at the window say: 'Light the candle, or I'll smash the window.' After I had lit the candle, the voice was again heard: 'Open the window at once.' I did so, and immediately a man in khaki jumped through my window and stood in the room. I saw several men in khaki outside the window. One asked me, 'Where is Mr. Moorrees?' I said, 'In his bedroom.' He asked where it was? I said I was a stranger and did not know. 'Tell him to get up and open the front door, as the military wish to go through the house.' Just then Mr. Moorrees came, very much annoyed at the disturbance, as his wife is a very delicate lady. He opened the front door."

Mr. Scholtz was submitted to some rough cross-examination by a Major Baker, who then left with his men. The next day, Friday, the Parsonage was surrounded by guards, and Mr. Scholtz was forbidden to leave. On Monday the guards were removed, and a note sent to Mr. Scholtz as follows:—"By order of the Commandant, your guards have been removed, and you are permitted to proceed to Cape Town."

On September 7th Reuter's correspondent at Piquetburg telegraphed that "a young and inexperienced farmer, named Maritz," had been fined £5 by the Commandant for "not bringing up his horses to be sent away for protection, and for his insolence," and that another farmer, named Basson, was fined 10s. for "using unbecoming language to Mr. Fick, a loyalist."—(CAPE TIMES, *September 11th.*)

*Dangerous Traitors.*—On September 11th nine girls aged from 15 to 20 and one married woman were sentenced to 30 days' imprisonment for "harbouring with the King's enemies and supplying them with food." The alleged offence had been committed six months before at Maraisburg, on the occasion of a Boer commando passing through the village. The girls, who knew some of the Boers well, welcomed them with food and singing, for which they were sent for a month to herd with the common criminals in the county gaol. Two of the girls, after 10 days' imprisonment, were discharged, "for want of evidence."—(*Reuter's Special Service, September 11th*; SOUTH AFRICAN NEWS, *September 18th.*)

*Recruiting the District Mounted Troops.*—The following description of Martial Law in September in the Aberdeen district, given by a correspondent in the *Eastern Province Herald*, a strong Government paper, is suggestive:—

"The work of clearing farms in this district is being admirably executed by the District Mounted troops, a body mainly composed of loyal farmers,

who, having thoroughly grasped the advisability of such procedure, show their co-operative willingness in a practical way. Their number is daily increasing. *Those who do not join are kept under supervision by reporting their presence hourly, also by assisting in maintaining cleanliness throughout the town.* A steady exodus of undesirables takes place. . . . The least contravention of Martial Law regulations is stringently dealt with. During last week a patrol visited several houses after 9 p.m. The inhabitants were counted, and anyone present whose name did not appear ticketed on the door was fined, from £5 upwards. *Three persons were fined £10, £7 and £5 respectively for trying to evade censorship in their correspondence.*" The italics are mine.—(SOUTH AFRICAN NEWS, September 11th, 1901.)

#### VIEWS OF THE "LOYALISTS" ON THE EFFECTS OF MARTIAL LAW.

Perhaps the most eloquent testimony of all to the suffering inflicted by Martial Law is the opposition by the "loyalists" to its extension to Cape Town. It was strenuously opposed by the Cape Government, the war press, and prominent civil officials. On August 31st, when it was known that the Imperial authorities were urging its extension to Cape Town, even the *Cape Times* was constrained to write:—

"Knowing what Martial Law means and what it inevitably must mean, we have an *a priori* objection to any proposal for its extension, especially for its extension to a populous coast city, where social life is more complex, where the civil government has its head-quarters, and where its influence upon trade may possibly be disastrous."

And on September 4th the Mayor of Cape Town is reported in the Press to have expressed the following views:—

"I think," said the Mayor warmly and with emphasis, "that the enforcing of Martial Law in Cape Town or in any other coast towns would be the very greatest blunder that the military could commit. If I thought for one moment that by having Martial Law in this city the war in the Transvaal or the Orange River Colony, or the invasion and rebellion in parts of this Colony would be abated in any way, I should be the first to hold up my hand in favour of it. Far from thinking that, I believe, on the contrary, that Martial Law in a city like Cape Town would not only not tend to bring the war to a close but would create ruin, crime, destitution, and poverty within our borders. . . ."

"Your point is that Martial Law would aggravate the present sorry condition of the better class of refugees?"

"Most certainly it would, most certainly," replied the Mayor deliberately.

"And what about trade?"

"Well, trade would be paralysed. And I will go further and say that the spirit and temper of the people would be sorely tried by such treatment, after having done, as they have done, so much in the past for those who have been concerned with the war."—(CAPE TIMES, September 4th.)

It may be added that the Mayor is an Imperialist beyond reproach, and has been recently decorated.

#### MARTIAL LAW IN THE COAST TOWNS.

Martial Law was only finally proclaimed on October 11th after the Prime Minister and the Attorney-General had journeyed to Pretoria to interview Lord Kitchener on the subject, and then subject to the following mitigation of military methods, issued in a *Government*

*Gazette Extraordinary* on October 11th, from the "Prime Minister's Office, Cape Town":—

"With reference to the above proclamation (of Martial Law) attention is directed to the following Army Order which applies to the whole Colony of the Cape of Good Hope.

"SYDNEY COOPER, *Secretary.*"

"SPECIAL ARMY ORDER.

"Pretoria, October 9th, 1901.

"MARTIAL LAW BOARD.

"A Board shall be established for the consideration of all complaints or grievances relating to the administration of martial law in the Cape Colony other than pecuniary claims against His Majesty's Government. Such Board shall consist of three members nominated by His Excellency the Governor of the Cape Colony, the Prime Minister, and the General Officer commanding Cape Colony respectively. All complaints and grievances, whether presented through or from the civil authority, or privately, shall be laid before the Board for consideration.

"By Order,

"W. F. KELLY, *Major-General Adjutant-General.*"

THE CONDITION OF THE PEOPLE.

The increasing sadness of the situation may be seen from the following admission made six weeks later by the leading Imperialist paper in Cape Town:—

"Meantime the condition of the people goes from bad to worse. The farmers in many parts, so far from cultivating their farms, are not even living on them, others are accumulating debts, from which they can scarcely hope to recover. Loss and disaster of every kind prevails, to say nothing of the penalties inflicted daily upon those misguided men who yield to the temptation of the roving commandoes."—(CAPE TIMES, *November 23rd.*)

DEPOSITION OF DISTRICT COMMANDANTS.

On December 5th a further curtailment of the military jurisdiction was achieved, as appears from the following telegram sent by Reuter's agent at Cape Town to the British Press:—

"The district commandants in Cape Colony are being abolished and their duties in connection with the administration of Martial Law are being taken over by the magistrates under military control."

The state of things thus created is a curious one. According to the *Midland News* of December 3rd, the Magistrate at Cradock was advised three days before—

"That he would have to assume the duties of Deputy Administrator of Martial Law in that district, acting under Captain Nelson, who had been appointed Administrator of that (No. 8) area."

The Editor adds:—

"As far as we can make out, the office of Commandant at seats of Magistracies is to be abolished, and the civil and military work connected with the military situation will be divided, the civil work connected with supplies, permits, and the trial of persons arrested under Martial Law being dealt with by the Magistrate and his staff, and the direction of all military operations and control of all military forces and other details being managed by a military officer."—(MIDLAND NEWS, *December 3rd.*)

THE INJUSTICE AND UNWISDOM OF APPLYING MARTIAL LAW TO THE CAPE DUTCH.

It has been my object to show the illegality, or rather the unprecedented illegality, of the way Martial Law has been applied and administered in the Cape Colony. But I cannot conclude without noticing also the folly and injustice of it. For the people who have been placed under the harrow were not in the main enemies or rebels, but British subjects who up to, and even since, the outbreak of the war had given remarkable proofs of being well affected to the Empire, and were entitled therefore to forbearance and not severity. For this there is the testimony of those members of the present Administration who should know them best. There is the still stronger testimony of their own acts. It was writing of these men in August, 1897, that Sir A. Milner, Governor of the Cape Colony, said to Mr. Chamberlain :—

“I have no doubt the same loyalty has been displayed in other parts of the Empire, but it appears to me of peculiar interest under the special circumstances of the Cape Colony, and in view of recent events which have caused a feeling of considerable bitterness among different sections of the community. All I can say is that, as far as I am able to judge, the racial differences have not affected the loyalty of any portion of the population to Her Majesty the Queen.”

It was a Government supported by these Dutch Colonists who in the following year (November, 1898) proposed and carried without a dissentient voice the Cape Act, No. 20, of 1898, which bound the Colony to pay an annual contribution of £30,000 to the British Navy, and which by another Act provided increased facilities in their great Colonial harbour for the reception of British fleets.

It was of the Parliamentary party returned by these men that the First Lord of the Admiralty (Mr. Goschen) said publicly on May 18th, 1899 :—

“The motion to grant £30,000 a year was carried unanimously. The Afrianders were in power. The power had passed from Sir G. Sprigg. *The Bond party were at the helm. But it made no difference, and let the country understand it.*”—(TIMES, May 19th, 1899.)

It was of the most distinguished Cape Dutchmen that the present First Lord of the Admiralty (Lord Selborne), then Under Secretary for the Colonies, said on July 28th of the same year, in the House of Lords :—

“Although it is the misfortune of Her Majesty’s Government by no means always to see eye to eye with their distinguished fellow-countrymen, Mr. Schreiner and Mr. Hofmeyr, or with Mr. Fischer of the Orange Free State, yet I should be wrong if I did not acknowledge the assistance they have rendered in bringing the present proposals of the South African Republic to the point at which they are. I should be doing these eminent men an injustice if I did not suppose that they would have been willing to have done the same thing at any time during the last seven years.”—(HANSARD, Vol. 75, p. 650.)

It was of the rank and file of these Dutch subjects of the King that Mr. Chamberlain himself only last February 18th made the following declaration:—

“For my part, I am very glad to believe that a very large proportion, I believe the majority, of the Dutch may be reckoned among the loyalist population. From those, therefore, we have nothing to fear.”—(HANSARD, Vol. 89, p. 431.)

These, then, are the men who, by the sentences of military officers, destitute, by no fault of theirs, of all knowledge of law and of all judicial training, have been shot, hanged, transported and sent to penal servitude for life by the score, and condemned to long terms of imprisonment, heavy fines, exile from home, and occasionally corporal punishment. What will be the verdict of posterity upon the morality of this policy of His Majesty's Government a contemporary critic is perhaps not in a position to say, but that history will condemn the folly of it can hardly be matter for doubt.

#### FREDERIC MACKARNESS.

It was a Government supported by these Dutch Colonists who in the following year (November, 1898) proposed and carried without a dissentient vote the Cape Act No. 30 of 1898 which bound the Colonies to pay an annual contribution of £250,000 to the British Navy and which by another Act provided increased facilities in their great Colonial harbours for the reception of British battleships.

It was of the Parliamentary party returned by them that the first Lord of the Admiralty (Mr. Goschen) said publicly on May 18th, 1898:—

“The motion to grant £250,000 a year was carried unanimously. The Admiralty were in power. The House had passed the Bill. The Dutch party were of the bulk. It was an ill-omened day for the Dutch Republic.”—(Times, May 18th, 1898.)

It was of the most distinguished Cape Dutchmen that the present First Lord of the Admiralty (Lord Selkirk) then Under-Secretary for the Colonies said on July 28th of the same year in the House of Lords:—

“Although it is the misfortune of Her Majesty's Government by no means always to see eye to eye with their distinguished fellow-countrymen, Mr. Schreiner and Mr. Hofmeyr, or with Mr. Fisher of the Orange Free State, yet I should be wrong if I did not acknowledge the assistance they have rendered in bringing the present proposals of the South African Republic to the point at which they are. I should be doing them injustice were I not to suppose that they would have been willing to meet an opponent if I did not suppose that they would have been willing to have done the same thing at any time during the last seven years.”—(HANSARD, Vol. 75, p. 1050.)