

EAST AFR. PROT

44782

Rec<sup>d</sup>  
Res<sup>d</sup> 19 SEP 16

44782

400 ~  
Belfield  
copy  
99

1916

19 Aug.

Last previous Paper.

GOVT OFFICIALS IN E.A. MAXIMS  
SENTENCED BY COURT MARTIAL

FOR JOINING IN A MUTINY.

See papers re to cases of Messrs  
Netcalfe, Elliott, Horro, Moon & McKay. Submits  
observations. General Smuts is of opinion they should  
not be allowed to continue in Govt employ but  
Exec. Council considers they should be continued in  
emplt. Agrees and trusts this ill be approved.

Mr. Read

It is no good writing at length on this despatch.  
The whole story will be gathered from the despatch  
itself and from the last two enclosures, namely Sir  
Henry Belfield's letter to General Ewart, dated the 17th  
July and General Ewart's reply of the 27th July.

The following remarks may, however, serve to  
call attention to one or two distinctive features of the  
case. The East Africa Maxims was a volunteer company  
formed immediately on the outbreak of war from settlers  
and Government officials.

In April last, the Company - <sup>men</sup> - consisting of  
twenty ~~seven~~ non-commissioned Officers and men as against  
a paper strength of ninety-six - failed to obey an  
order of their Commanding Officer to "saddle up". It is  
quite clear that they did this <sup>under</sup> in a sense of grievance  
at the insufficient numbers of the Company to perform  
their duties, lack of clothing, and <sup>lack of</sup> shelter in the field.

In

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Next subsequent Paper.

40/55298

In paragraph 4 of the despatch, the Governor calls attention to certain discrepancies in the evidence at the Court Martial, which leave it in doubt whether the men were really afforded a proper opportunity of complying with the order and whether there was deliberate conspiracy on their part to refuse to obey. In the event, the Field Court Martial imposed on the whole Company sentences varying from four years penal servitude, in the case of the Sergeant Major, to three months hard labour, in the case of the most lightly punished private. In forwarding the papers for confirmation of the sentences, the Court represented to the confirming Officer their impression that the charge of mutiny would not have arisen had the Officer Commanding the Company handled the situation with proper tact and consideration and recommended all the men in the strongest possible manner to mercy. General Smuts reduced the sentences to dismissal from the Army, and General Ewart, on finding that this punishment was applicable only to officers, apparently on his own authority altered the sentences to discharge with ignominy from His Majesty's Service.

Among the men sentenced were the five Government officials named in this despatch, and it is their cases alone which are now in question.

I feel strongly, after reading the evidence, that the view taken by Sir Henry Belfield in paragraph 3 of this despatch is the correct one, namely, that the action of the men was not in the nature of deliberate insubordination, but was taken as a means of conveying to the authorities the serious nature of the deficiencies of which they complained and which they had reason to believe had not been adequately represented by their Commanding Officer. However, it is no question of reversing the sentence of discharge with ignominy.

The Governor has pointed out, in his letter of the 17th July

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*John  
H. V.*

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In all the circumstances of the case I cannot help agreeing with the Governor that it would be a great hardship to these five men if they were allowed to revert to their former positions in the Protectorate Service. One of them has been in the Service since 1908, the second since 1911, and the other three since 1912 and 1913. It is probable that of their Company 100 men, including the five in question, doubt have gone back to civil life since the outbreak of the war.

I think it would be desirable that the Government should consider the possibility of allowing these five men to return to their former positions in the Protectorate Service, subject to the condition that they should be allowed to do so only if they are found to be capable of performing the duties of their former positions. It will be necessary to make such a provisionally allowed them to return to their former positions.

*John G. ...*

*The ...  
July 15 (copy ...)*

*Altho' Gen. Smuts left the question of reinstatement to the civil authorities, I take it that the papers sh<sup>d</sup> go to the W.C. as per ...*

In paragraph 4 of the despatch, the Governor calls attention to certain discrepancies in the evidence at the Court Martial, which leave it in doubt whether the men were really afforded a proper opportunity of complying with the order and whether there was deliberate conspiracy on their part to refuse to obey. In the event, the Field Court Martial imposed on the whole Company sentences varying from four years penal servitude, in the case of the Sergeant-major, to three months hard labour, in the case of the most lightly punished private. In forwarding the papers for confirmation of the sentences, the Court represented to the confirming Officer their impression that the charge of mutiny would not have arisen had the Officer Commanding the Company handled the situation with proper tact and consideration and recommended all the men in the strongest possible manner to mercy. General Smuts reversed the sentences to dismissal from the Army, and General Ewart, on finding that this punishment was applicable only to officers, apparently of his own motion altered the sentences to discharge with ignominy from His Majesty's Service.

Among the men sentenced were the five Government officials named in this despatch and it is their cases one which are now in question.

I feel strongly, after reading the evidence, that the view taken by Sir Henry Belfield in paragraph 5 of this despatch is the correct one, namely, that the action of the men was not in the nature of deliberate insubordination, but was taken as a means of conveying to the Authorities the serious nature of the deficiencies of which they complained and which they had reason to believe had not been adequately represented by their Commanding Officer. However, it is no question of reversing the sentence of discharge with ignominy. The Governor has pointed out, in his letter of the 17th July

July to General Ewart, the grounds on which he considered the conviction bad, and General Smuts has nevertheless adhered to his decision. In doing so, however, General Smuts admits that the question of the further civil employment of the five Government officials here mentioned is for the consideration of the civil authorities, though he adds his opinion that they should be barred from returning to their former appointments.

In all the circumstances, I cannot help agreeing with the Governor that it would be a great hardship to these men if they were allowed to revert to their civil employment in the Protectorate Service. One of them has been in the Service since 1908, the second since 1904, and the shorter periods since 1907 and 1911. It is not of their Company and they would naturally have no doubt have gone back to civil life if they had been

I think the Governor's view in this despatch is the correct one and I am glad to see that the Secretary of State has decided that a measure of leniency should be shown in their duties. It will be a pity that they were provisionally allowed to return to their

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In all the circumstances of the case, I cannot help agreeing with the Governor's view that it would be a great hardship to these five officials if they were allowed to revert to their civil appointments in the Protectorate Service. One of them has been in the Service since 1908, the second since 1911, and the other three shorter periods since 1912 and 1913. It is not of their own fault, but because of the exigencies of their Command, that they have not been able to obtain their civil appointments, and I have no doubt that they would be glad to return to their former occupations.

I think the conclusions reached in paragraph 5 of this despatch are well founded, and I am glad to see that the Government officials have been treated with the same leniency as the other men who were concerned in the same duties. It will be understood that the Governor has provisionally allowed that the five Government officials should be permitted to return to their former occupations.

to G. Smuts

The sentence imposed on the five Government officials by the Court Martial on 17 July 1915 is hereby cancelled and they are to be treated as if they had never been sentenced. (copy inserted) of 16 July 15 (copy inserted).  
Altho' Gen. Smuts left the question of reinstatement to the civil authorities, I take it that the papers should go to the C.O. as per

may be creating an awkward precedent for them. I also assume that, in handling the papers, we shall not ask the W.O. to review the sentences passed by the military. It is improbable that the W.O. will take a more lenient view.

That being so the awkward part remains that we are being asked to reconstitute in one branch of H.M.S. Service men who have been discharged with impunity from another branch.

I think that it had better stand open for the W.O. to say that, as the Joint War Service Council had announced that the men should be reconstituted, they have accordingly been allowed to return to their posts. The S.P.S. purposes to refer to the action of the local authorities & to state that, in ~~the absence~~ of a further right to have been exercised by the action of the C.O. of the 3rd Corps and action was taken - to ~~reconstitute~~ pay of some £6000 of 16 July/15 pending ~~the~~ the ~~provision~~ referred to in the ~~last~~ ~~document~~.

I feel a good deal of sympathy with the men but I fear that we are in very weak ground ~~at~~ ~~the~~ ~~W.O.~~

V. J. R.  
30/9/16

I don't agree. Putting on active service - under military prosecution - is impossible. To prevent it by releasing men from military duty & reconstituting them - isn't civil employment - farical.

I agree with ~~the~~ ~~Council~~.  
I don't see the drop ~~in~~ ~~pay~~ ~~to~~ ~~W.O.~~ ~~to~~ ~~be~~ ~~paid~~ ~~to~~ ~~the~~ ~~men~~ ~~who~~ ~~are~~ ~~being~~ ~~discharged~~ ~~to~~ ~~be~~ ~~reconstituted~~ ~~to~~ ~~return~~ ~~to~~ ~~their~~ ~~posts~~.  
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No. 99

CONFIDENTIAL.

44782

19th August 1916.

Rec'd  
Rec'd 10

Sir,

I have the honour to submit for your consideration the case of certain Government Officials who were serving in the East Africa Maxims and were sentenced by a Field General Court Martial on the 13th of May, 1916, to terms of imprisonment with hard labour varying from eighteen months to six months under Section 7(3) of the Army Act for joining in a mutiny in forces belonging to His Majesty's Protectorate. The names and occupations of the Government Officials referred to above and the sentences imposed upon them are as follows:-

Mr G. Brown  
7.7.16  
copy  
Gen. Swart  
17.7.16  
Gen. Swart  
27.7.16

- 5502 W. Metcalfe. Employed by the Uganda Railway. 18 months Hard Labour.
- 6042 R. Elliott. Employed by the Land Office. 18 months Hard Labour.
- 1400 H.W. Borrow. Employed by the Land Office. 6 months Hard Labour.
- 3546 J.L. Moon. Employed by the Forest Department. 12 months Hard Labour.
- 1346 J. McKay. Employed by the Survey Department. 6 months Hard Labour.

2. The facts are sufficiently set out in the evidence contained in the copy of the proceedings and in the memoranda enclosed in Mr George Brown's letter

of

*Alfred E. Moody - see his file*

THE RIGHT HONOURABLE

ANDREW BONAR LAW, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES

DOWNING STREET, LONDON, S.W.

EAST AFRICA PROTECTORATE.

No. 99

CONFIDENTIAL.

123  
GOVERNMENT HOUSE

NAIROBI

BRITISH EAST AFRICA

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SECRETARY OF STATE FOR THE COLONIES

DOWNING STREET, LONDON, S.W.

EAST AFRICA PROTECTORATE.

No. 99

CONFIDENTIAL,

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HONOURABLE  
ANDREW BONAR LAW, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES  
DOWNING STREET, LONDON, S.W.



of the 7th of July, 1916, addressed to the Reverend J. T. Scutter. These documents are forwarded herewith. I would also draw your attention to the enclosed copy of a letter which I wrote to General R.H. Smart after considering the evidence, and of his reply conveying to me the opinion of the General Officer Commanding-in-Chief.

3. In dealing with the evidence I would point out that the Commission of Enquiry was reserved for superior authority to the court. Following the Court and that the evidence was submitted to the General Officer Commanding-in-Chief, Lieutenant General Sir Robert Borden, G.C.B., G.C.M.G., for confirmation. On the 23rd of July, 1916, he was reduced to his rank from the army, and being a gentleman applicable only to officers in the Army Act Section 44, Brigadier General R.H. Smart, of the same day issued the following order:-

"Findings confirmed. Sentences confirmed."

"to be discharged with ignominy."

subject's name

H. B. Smart  
 Brigadier General  
 G.O.C. 1st Division  
 C. I. B. C.

particulars of the evidence taken before the court and the order of the court. The court found that the order was not a lawful order, and that the men were not lawfully arrested. The court also found that the order was a breach of the Army Act, and that the men were entitled to be discharged with ignominy.

4. With regard to the evidence there is a discrepancy in the summary of evidence taken before the trial in the statements of Captain Myles and Lieutenant Mackey regarding the lapse of time between the order "saddle up" and placing the men under arrest. The

former

former puts it at four or five minutes and the latter at half an hour. There is a direct conflict between the evidence given for the prosecution and that adduced for the defence. Sergeant Major Macrae and Sergeant Geeson deny that they warned Captain Myles the night before the alleged offence happened that the men might refuse to obey orders. The evidence for the defence shows that at most there was hesitation on the part of the men and that the Officer Commanding gave them very little opportunity to obey what is alleged to be an unusual order when the men are on parade unless accompanied by an order to "dismiss" which was not given. Further it was not usual to parade before the order "saddle up" was given.

5. There is no doubt that the men had genuine grievances in that there was an insufficient number of men for the guns and mules, the men were over-clothed and were in the field in the rainy season without any shelter at night. The Officer Commanding appears to have been singularly wanting in tact otherwise the alleged offence would not have occurred. There is no evidence whatever of any conspiracy to disobey lawful order and no evidence that the men at any time endeavoured to shirk their duty. The men were civilians the majority of whom joined the East Africa Regiment at the very beginning of the war and who have borne the brunt of the anxious and trying months when we were on the defensive in a low lying and unhealthy country. As civilians it may reasonably be presumed that they have the least accurate knowledge of military discipline than regular soldiers. The action of the men who did in fact hesitate was not in the nature of deliberate insubordination but a means to convey to the authorities the serious nature of the deficiencies of which they complained and which they had reason to

believe

believe had not been adequately reprobated by their Officer Commanding. The course taken was mistaken and wrong but in my opinion that it falls far short of meeting.

6. In forwarding the papers relating to the Court Martial to the confirming officer the Court expresses the opinion that the charge would not have arisen if the Officer Commanding had handled the situation with proper tact and consideration and submits that under all the circumstances the cases of all the men concerned may justifiably be approached with the maximum of clemency and further recommends in the strongest possible manner all the men to mercy. The result, as I have stated above, was that the sentences were eventually reduced to discharge with ignominy from His Majesty's service, a sentence which with all it connotes would be most severe on the class of men concerned.

7. General Smuts has stated that in his opinion the Government servants implicated should not be allowed to continue in their civil employment and it is in connection with this opinion that I am now addressing you. It will follow that they will receive a far more severe punishment than their unofficial comrades. They will be deprived of their means of livelihood and will be prohibited from obtaining further employment in the service. They will also of course forfeit any claim to pension or gratuity on retirement. The other offenders on the other hand can, and no doubt will, return to the employment which they carried out prior to their enlistment, and will thus suffer no pecuniary disability whatsoever. The members of my Executive Council have unanimously expressed their dissatisfaction at the result of the proceedings and in view of General Smuts' opinion

have

have recommended that the whole record be submitted for your consideration. I entirely agree with the view taken by my Executive Council and am of the opinion that the men have been more than sufficiently punished and that those in Government employment should be continued in such employment. I therefore hope that after full consideration of the case you will be able to agree with my views.

9. My Executive Council, pending your decision, Government should be allowed to continue in their ordinary business. I hope that the men who have returned to their employment will have the honor to be

*[Handwritten signature]*

FOR.

Summary of Cases

- 3501 Sgt. [Name]
- 3506 Sgt. [Name]
- 3504 Sgt. [Name]
- 3507 Sgt. [Name]
- 3508 Sgt. [Name]
- 3509 Sgt. [Name]
- 3510 Sgt. [Name]
- 3511 Sgt. [Name]
- 3512 Sgt. [Name]
- 3513 Sgt. [Name]
- 3514 Sgt. [Name]
- 3515 Sgt. [Name]
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- 3517 Sgt. [Name]
- 3518 Sgt. [Name]
- 3519 Sgt. [Name]
- 3520 Sgt. [Name]
- 3521 Sgt. [Name]
- 3522 Sgt. [Name]
- 3523 Sgt. [Name]
- 3524 Sgt. [Name]
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- 3537 Sgt. [Name]
- 3538 Sgt. [Name]
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- 3548 Sgt. [Name]
- 3549 Sgt. [Name]
- 3550 Sgt. [Name]
- 3551 Sgt. [Name]
- 3552 Sgt. [Name]
- 3553 Sgt. [Name]

Plea  
 all the accused in a  
 case (3) (a) joining in a  
 plea of guilty to the  
 charge of desertion from  
 His Majesty's Forces.  
 Not Guilty.

Ref. Charge Sheet  
 attached  
 marked A.

Alternatively

Sec 7(3)(b). Being  
 present at, did not  
 use their utmost en-  
 deavour to suppress,  
 a Meeting in Forces  
 belonging to His  
 Majesty's Protector-  
 ate Forces.

Ref. Charge Sheet  
 attached  
 marked A.

Finding and if  
 Convicted sentence

All accused with  
 exception of 3518  
 Pte Dalgleish are  
 adjudged guilty.  
 Sentences on  
 remainder on  
 Schedule marked D  
 Sec.7(3)a.

Recommendation  
 attached and  
 marked E.

----- Acquitted

*Conf*  
 No. 99 of 19 16

How dealt with by  
 Confirming Officer

I reserve confirmation for  
 superior authority, at the  
 same time pointing out  
 Recommendation attached by  
 Court and marked E.

G. F. Parker, Major,  
 Post Comdt.,  
 Aruscha,  
 Convincing Officer.

13.5.16.

Sentences all reduced to  
 dismissal from Army.

J. C. Smuts, Lt. Genl.,  
 GOC-in-C.

12 June 1916.

Findings confirmed.  
 Sentences commuted to "to  
 be discharged with ignominy"  
 from His Majesty's Service.

R. H. Ewart, Brig. Genl.,  
 D.A. & Q.M.G.,  
 for C.-in-C.,  
 E.A.E.F.

To date  
 12/6/16

At Aruscha, G.E.A., this 10th May 1916

WHEREAS it appears to me, the undersigned, and Officer in command of Aruscha Post on Active Service, that the persons named in the annexed Schedule, and being subject to Military Law, have committed the offences in the said Schedule mentioned,

AND I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial, I hereby convene a Field General Court Martial to try the said persons and to consist of

President  
Major W. Whittall, Comdg. B Coy, A. Mounted  
Cavalry

Members  
Capt. T. P. Atkins, 8th S.A.I.  
Capt. D. Drury, East African Carrier  
Corps

G. F. Porter, Major,  
1st Royal Rgt.,  
P.C., Aruscha.

12th May 1916.

I certify that the above Court assembled on the 12th day of May 1916 and duly tried the persons named in the said Schedule, and that the plea finding and sentence in the case of each such person were as stated in the 3rd and 4th columns of that Schedule.

Signed this 13th day of May 1916.

W. Whittall, Major,  
President of the Court  
Martial

I have dealt with the findings and sentences in the manner stated in the last column of the above Schedule, and subject to what I have there stated I hereby confirm the above findings and sentences.

Signed this 3 day of July 1916  
To date 12/8/16

Field (or General) Officer in the  
Field

R. H. Ewart, B.C.,

for C.O.C.-in-C.,  
G.E.A.

Note.

Confirming certificate endorsed by the C.O.C.-in-C. in the field and in accordance with the procedure in the A.A.

2.

ad to the witness in presence of all the prisoners).

(Signed) J. M. Myles, Capt.

R. A. MAXIMS.

Before me,

W. Thompson, Major,

with J. A. [unclear]

and.

11/8/18.

RECEIVED  
11/10/18

530

Summary of Evidence.

JAMES McDONALD MYLES states :-

I am O.C., E.A. Maxims. Know all the prisoners. They all belong to the Company At Kumbulum on 14/4/1916. I received orders to move at 7 a.m. on 15/4/1916. I gave the necessary orders to the Orderly N.C.O. for the Company to be ready to move at 6.45 a.m. on 15/4. About 9 p.m. Sergt. Major Macrae, Sergt. Johnson, Sgt. Gesson, and Sgt. Rebb came to me and asked if an inquiry could be demanded into the state of the Battery, as to the shortage of men and their medical fitness, as there were several men who said they were not fit. I said I had already sent a statement to Brigade Headquarters, through the Brigade Major, pointing out the shortage of men. About 5.30 a.m. on 15/4 I noticed no preparations had been made for the move. I went down to the Company lines with Sergts. Batcheler and Mackey. It was quite patent that no attempt had been made to move. I had the Company fallen in and had the roll called. I told the men what a serious thing it was to disobey an order and asked each N.C.O. and man if he understood the seriousness of the offence. Each man answered by nodding his head. I then gave the order to 'saddle' and no man moved or made any attempt to obey the order. I asked for the N.C.Os. and asked the reason for the refusal. The general statement was shortness of men, medical fitness, and bad boots. I warned the N.C.Os. that the lot would be under arrest, and reported the matter. About 4 or 5 minutes elapsed between my order to 'saddle' and the placing under arrest. I omitted to state that the 14th Sergt. Major Macrae said that the men were not to go against military discipline but they would not obey a direct order.

No questions.

6





Questions by the Accused through Major E. D. Browne at their request.

Do I understand that the warning was given before or after the order to "saddle up" ?

The warning was before the order.

Was there any time between the giving of the order and the placing under arrest of the men ?

Yes, about 1/2 hour.

What were the men doing during this 1/2 hour ?

Nothing in particular, standing about and talking.

How many times did you hear the order "saddle up" ?

Once and 1/2.

Do you say that you saw the men the order to refer back on the 1st of the 1942 ?

Yes.

Did Capt. Myles refer to the seriousness of discipline and that they had fallen in on parade ?

When they were paraded.

Did the Brigadier refer to Capt. Myles the seriousness of the discipline at that time ?

Yes.

Did the Brigadier refer to the Brigadier to see the Brigadier Major about the condition of the men ?

I did not hear it.

Did Capt. Myles go and see the Brigadier Major about the

mat.

Questions by the Accused through Major E. D. Browne at their request.

Q. Do I understand that the warning was given before or after the order to "saddle up" ?

A. The warning was before the order.

Q. Was there any time between the giving of the order and the placing under arrest of the men ?

A. Yes, about 1/2 hour.

Q. What were the men doing during this 1/2 hour ?

A. Nothing in particular, standing about and talking.

Q. How many times was the order "saddle up" ?

A. Once and 1/2.

Q. Do you say that you told the men the order to refer back on the 1st of the 1st ?

A. Yes.

Q. Did Capt. Myles specifically mention the seriousness of discipline when they had fallen in on parade ?

A. When they were marching.

Q. Is it the impression of the witness that Capt. Myles the seriousness of the discipline was made to the men ?

A. Yes.

Q. Did the witness see the Brigade Major about the condition of the men ?

A. I did not hear it.

Q. Did Capt. Myles go and see the Brigade Major about the

matter

matter ?

A. He went to the Staff, presumably to see them about something; I cannot say for certain what.

Q. Did you have any conversation with Capt. Myles with reference to the deputation after he saw the Brigade Major or Staff?

A. No.

Q. As far as you know any conversation between Capt. Myles and the Brigade Major had produced no tangible result ?

A. No.

Q. After the order to "saddle up" was disobeyed, did Capt. Myles and the other officers leave the parade immediately ?

A. Yes, immediately, and the men fell out themselves.

Read over and signed in the presence of the accused

F. Mackey, Lt.,

E.A. Maxims.

The accused having been asked declined to make any statement.

No further evidence available Arusha at this stage.

Witnessed and signed in my presence

V. W. Dunman, Lt.,

A.P.M., Arusha

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