Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of The Attorney-General for the Colony of the Cape of Good Hope v. *Van Reenen, and of The Attorney-General for the Colony of the Cape of Good Hope* v. *Smit, from the Supreme Court of the Colony of the Cape of Good Hope; delivered the 9th December* 1903.

Present:

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD DAVEY.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by the Lord Chancellor.*]

THESE are Appeals from two Orders of the Supreme Court of the Colony of the Cape of Good Hope by which two convictions made under Martial Law were ordered to be quashed, and the sentences set aside.

Their Lordships are of opinion that an error has been committed. The two convictions in question appear to have taken place before a Mr. Broers, who, besides being the Deputy Administrator of Martial Law, was also a Resident Magistrate. Now what has been called over and over again in the course of these proceedings a "Record," was nothing but a written memorandum of what the charge against the Respondents was, the charge being in each case, on the face of it, one of contravening certain regulations of Martial Law. The learned Chief Justice appears to have been under the apprehension that if that memorandum were allowed to stand in the form in which it was

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drawn up—the printed forms of the Magistrate's Court having been used, the words "Ordinary Jurisdiction" and "In the Court of Resident Magistrate" were by mistake left standing in the memorandum—the persons who purported to be so convicted might afterwards be subject to some disability or disrepute, or some penal consequences by reason of the form in which the convictions were drawn up; and he appears to have been under the idea that, because this memorandum was a Record, and because those irregular words were not deleted from it, some evil consequences might arise to the persons charged. It is only fair to the Chief Justice to say that he pointed out, in very distinct terms, that the Supreme Court had no jurisdiction to deal with, or to affect, the judgments of Martial Law Courts. He says so in terms, both in his original judgment, and in the explanation he has subsequently given, and of course the Supreme Court had no such jurisdiction. But it is unfortunate that he thought proper, notwithstanding his own judgment, to say that the Court granted the application, quashed the convictions, and set aside the sentences, which he had no jurisdiction whatever to do. It is difficult, in view of the very clear statement he had made, to understand how the learned Chief Justice came to the conclusion that the Supreme Court had jurisdiction to do this. The truth is that the whole matter rests upon the initial mistake of calling the memorandum a "Record," and treating it as if it were a Record of a Court of Justice. There would be no necessity, certainly in point of law, and probably not in practice, to have a written memorandum of each sentence, or judgment, of the Martial Law Court; certainly no such principle applies as is known to the Courts of ordinary criminal jurisdiction in respect of Records, the Record

being itself the official and operative Order which the judgment demands. Their Lordships are of opinion that the convictions were made by Mr. Broers in his capacity of Deputy Administrator of Martial Law, and not in his capacity of Resident Magistrate at all, and they will, therefore, humbly advise His Majesty to reverse the Orders quashing such convictions.

Their Lordships have heard these Appeals *ex parte*, but the Attorney-General not asking for his costs, there will be no Order against the Respondents.