

when it was not evident to themselves. They reserve any further remarks upon this correspondence which they may hereafter feel it their duty to make.

Auckland, 8th May, 1865.

W. D. MANTELL,  
H. A. ATKINSON.

Ministers in Auckland were not aware of all the facts of the case when this Memorandum was written.

18th July, 1865.

W. D. MANTELL,  
H. A. ATKINSON.

---

No. 15.

MEMORANDUM by MINISTERS.

Ministers recommend that the prisoners forwarded to Wellington from Tauranga by the military authorities, should be dealt with by them under the ordinary powers of military law. Ministers think it desirable that the said prisoners should be brought to trial under martial law, on a charge of endeavouring to incite Her Majesty's subjects to join the present rebellion.

Wellington, 1st March, 1865.

F. A. WELD.

---

No. 16.

MEMORANDUM by the ATTORNEY-GENERAL.

In the case of the Native prisoners captured by the Arawas and handed over to the military authorities at Tauranga, His Excellency, under the advice of Ministers, has intimated his opinion that such persons should be tried by court-martial. The Lieut.-General asks, under what authority this can be done? I will not undertake to define the exact limits of the military authority in such a case. These prisoners, who were taken by Colonel Greer's directions, are not it is true within the provisions of the Mutiny Act, but there now being an armed insurrection of the Natives in various parts of the Colony,—the military power being actually engaged in quelling such insurrection, and these prisoners having been captured by direction of Colonel Greer on account of the part supposed to have been taken by them in aiding such insurrection; it will be, I conceive, in accordance with established practice to try them by court-martial. I refer to former instances in this Colony, such as the trial of the murderers of the Gilfillan family, by Major Laye. (See also the case of Lord Torrington, in Ceylon: Lord Grey's Colonial Policy, vol. ii, p. 185.) And the case of the prisoners referred to in Governor Grey's despatch to Earl Grey of the 28th December, 1847. (See Parliamentary Papers 1848, p. 65.) In the latter case the question as to the power to try such prisoners by court-martial was fully discussed, and the opinion of the then Attorney-General of the Colony was given expressly recommending that course, which was adopted and sanctioned by the Secretary of State (see despatch from Lord Grey to Sir George Grey, June 8, 1848: Parliamentary Papers 1848, p. 161). The only difference between that case and the present is that, in that case Martial Law had been actually proclaimed in the district, and might have been considered as in itself a warrant to the military authorities for their proceeding by court-martial. In this case the express instructions of the Governor to the military authorities would have like force.

It is true that all exercise of military power beyond the law requires the indemnity of the Legislature. The power of taking human life or destroying property, in a case of intestine war, is a power not known to the law. When the Civil Government requires the intervention of military force, and calls in aid the military authorities, under such circumstances it makes itself responsible for the consequences; and the practice is to obtain from the Legislature an Act of Indemnity, which will be done in the present instance.

But the power of trying by court-martial and inflicting punishment under a judicial form, is at least as reasonable and consistent with law as the power of taking life and destroying property (necessarily exercised without such form) in the ordinary operations of war. So far as any proceedings by court-martial or any punishment inflicted under it may be in excess of the ordinary law, it will require to be and will be covered by Act of Indemnity. The reasons given by Governor Grey (in his despatch of the 28th December, 1847) for adopting this course of proceeding apply with equal force to the present case. It is a case with which practically the ordinary civil tribunals find themselves unable to deal; and yet to allow prisoners taken under circumstances like the present to go at large unpunished would be attended with the worst possible results.

5th April, 1865.

H. SEWELL.

---

No. 17.

MEMORANDUM by MINISTERS.

Ministers take the earliest opportunity after conference with the Governor, to recommend that measures be adopted to inflict punishment upon those concerned in the murder of the Rev. C. Volkner a crime, which not only calls for signal retribution on account of the unparalleled atrocity of the attendant circumstances, but which was committed with cool and premeditated deliberation in a peaceful district.

It appears that the chief murderers were sent forth by the fanatics of the Taranaki and Wanganui country, and started originally from Warea, carrying with them the cooked head of a soldier, killed at Mataitawa. Having taken it to Pipiriki, on the Wanganui river, and there celebrated their barbarous rites, they thence proceeded to the East Coast and murdered Mr. Volkner.

In the opinion of Ministers, it would be highly desirable that Warea should be taken possession of. The recent occupation of Pipiriki by the militia and friendly Natives, will doubtless be viewed