

The 1874 Trial of Langalibalele of the Amahlubi

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Abstract

This article aims to discuss the actions leading up to the trial, and the 1874 Langalibalele trial itself, by including both the perspectives of Langalibalele and the colonial government. It sets out how the acquisition of guns from the diamond fields by the flourishing and largely independent Hlubi, their Chief Langalibalele's failure to adhere to a meeting request with colonial government officials, and the killing of three British soldiers outside the colony by fleeing Hlubi created the opportunity for nervous colonists and punitive leaders in a struggling colony to escalate the unfortunate events into the slaughter of hundreds of Africans and the destruction of their property without any negative personal consequences. The results for the colonists were overwhelmingly positive: access to more land, the availability of cheap labour and improved security.

Although the colonial government had the support of the colonists, questions were raised in England about the excessive bloodshed of the Hlubi and Putini tribes. After the capture of Langalibalele, his trial was an opportunity for the justification of the colonists' actions. The authorities resorted to deceitful methods and a sham and unlawful trial to ensure the intended outcome, that Langalibalele was found guilty.

The article highlights the problems with the trial itself. These include that the Lieutenant-Governor had no power to establish an African court and that the choice of law was inappropriate and contrary to applicable legislation. The law and procedure applied during the trial did not adhere to any specific legal system but was a convenient amalgamation of African and Natal law. Most of the members of the bench were not independent, were clearly prejudiced and were hostile towards the accused. The charges were not in accordance with the chosen law, they were unclear, and the accused's plea explanation was erroneously interpreted as a plea of guilty. He was found guilty before any evidence was led. He had no legal representation, no right to cross-examine witnesses and no right to call his own witnesses. The evidence did not support the crimes he was accused of committing and the punishment imposed was unlawful and exceeded the powers of the court. The appeal process was fraught with intimidation and those hearing the appeal were involved in the original trial.

Even after this travesty of justice had been exposed in England and discussed in Parliament, justice was not done for those who suffered the most (Langalibalele, the Hlubi and the Putini). Although Langalibalele was allowed to leave Robben Island, he was not restored as chief, the Hlubi's land and property were not restored, and the Putini did not receive their full compensation. There were some negative personal and career consequences for the unfortunate scapegoat (Pine), but also for the whistle-blower (Colenso) and the individual who unsuccessfully fought for reparations for the Putini reparations (Dunsford). The main conspirators, however, were rewarded with career advances and imperial awards (the Shepstone brothers).

This saga emphasises how "gun control formed a large part of an emerging struggle over land and citizenship" and the underhand methods and exceptional power the British used to cement imperial rule. The discovery of diamonds inland increased the economic potential and political importance of the colony, resulting in better security and a more structured, but less autonomous regulatory system for Africans, their chiefs, customs and laws.

Keywords

Trial of Langalibalele; Hlubi; Putini; Natal Colony; British Imperialism

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1 Introduction

1.1 Context

Most versions of the events in the Natal Colony leading up to the 1874 trial of Langalibalele, the trial itself and its aftermath in both Natal and England are viewed either from the side of the British occupiers or alternatively that of the supporters of Langalibalele. Informing these differences are the underlying perspectives about the place of Africans in British imperialism, their independence, and the role of African law and custom in the settlers' overarching Western legal system. It is one of the first examples of the underhand British misuse of legal processes to subdue and control the African population.¹ The only reason the travesty of a trial did not fade into obscurity was the relentless efforts of Bishop Colenso to persuade the authorities to right the wrongs that had been committed, his detailed commentary on the record, and his continuous direct communications with the British government.²

This article aims to honour Professor Willemien du Plessis by discussing these events and by incorporating both sides of the narrative. The focus is ultimately on the trial itself, highlighting how the principles of a right to a fair trial at the time were blatantly violated at the altar of political expediency and how the trial eventually impacted on the various role players, the Hlubi tribe and the future of the colony in the British empire.

1.2 *The background to the 1873 Natal Colony and the main protagonists*

A group of economically frustrated white settlers had to live in close proximity to a large, comparatively independent African population, that bred the particular racial animosity and tension so characteristic of Natal's history.³

It was the time of British colonisation in Southern Africa with Natal being annexed in 1843 and becoming a British colony in 1856.⁴ By 1871 there were at least 300 000 Africans living in Natal with about 16 000 white settlers.⁵ Of the 12 million acres of land in Natal, two million were demarcated as African reserves with another five million occupied by

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¹ Lobban *Imperial Incarceration* 121; Colenso 2011 *African Research and Documentation* 3.

² Colenso *Langalibalele and the Amahlubi Tribe*. This could be regarded as a "minority report" (Mokoena 2019 *Journal of African History* 68).

³ Guy *Heretic* 196.

⁴ Letters Patent (Charter of Natal), 15 July 1856.

⁵ Guy *Heretic* 194; Guest *Langalibalele: The Crisis in Natal* 12.

Africans⁶ as part of the colonial policy of reserving extensive pieces of land for Africans.⁷ The Africans were mostly politically independent in these areas and were ruled by their chiefs in terms of African customs.⁸ However, they did not have the same political rights as the white settlers in the colony.⁹

The colonial system artificially retained tribal customs and structures,¹⁰ but maintained control of and authority over the chiefs through the appointment of the Lieutenant-Governor (Lt-Gov) as the Supreme Chief of the Zulus, and under him, the Secretary of Native Affairs (SNA).¹¹ The Supreme Chief in turn invested certain aspects of his powers to local (White) magistrates to "control the Native population, and to administer justice according to Native Law."¹² Subordinate to the Magistrates were the African chiefs, each of whom managed his tribe "on behalf of the Supreme Chief."¹³

The imperial policy was mainly hands-off and marked by "indecision and hesitancy".¹⁴ Security was a concern as the settlers felt vulnerable with only a small garrison of soldiers and a few voluntary regiments of inexperienced men to defend them from possible African hostilities.¹⁵ Unlike the situation in other British colonies, the settlers in Natal did not immediately flourish economically as they were short on immigrants,¹⁶ capital and cheap labour.¹⁷ The colonial authorities introduced forced labour measures that were unpopular amongst Africans.¹⁸ Storey describes the settlers as "fearful and jealous".¹⁹

⁶ Guy *Heretic* 194.

⁷ Storey *Guns, Race and Power* 147. This policy, ascribed to the SNA Theophilus Shepstone, was controversial in the eyes of the settlers, as much of the fertile land remained in African hands (Storey *Guns, Race and Power* 147; Guest *Langalibalele: The Crisis in Natal* 20).

⁸ Colenso 2011 *African Research and Documentation* 4; Guy *Heretic* 195.

⁹ Lobban *Imperial Incarceration* 80.

¹⁰ Guest *Langalibalele: The Crisis in Natal* 18.

¹¹ Keith and Co "Minutes" (hereafter Minutes of the Langalibalele Trial) 33.

¹² Minutes of the Langalibalele Trial 33.

¹³ Minutes of the Langalibalele Trial 33.

¹⁴ Guy *Heretic* 221.

¹⁵ Pearse *Barrier of Spears* 229.

¹⁶ Guy *Heretic* 194, 196; Guest *Langalibalele: The Crisis in Natal* 12.

¹⁷ Guy *Heretic* 194.

¹⁸ Slater 1974 *Seminar Papers* 42. *Isibhalo* was a forced six-month labour system whereby chiefs had to provide one labourer per 11 huts per year with pay (Lambert 1995 *Journal of Southern African Studies* 280; Wright and Manson *Hlubi* 41).

¹⁹ Storey *Guns, Race and Power* 148; Wright and Manson *Hlubi* 47.

In 1873 Benjamin Pine was reappointed as Lt-Gov and Supreme Chief of the Zulus.²⁰ Theophilus Shepstone was still the SNA,²¹ a position he held for decades.²² He spoke both Zulu and Xhosa and had some knowledge of African law and custom and "dominated all aspects of 'native' administration in the Colony".²³

Langalibalele²⁴ was the hereditary²⁵ chief of the Hlubi tribe from around 1836.²⁶ After fleeing Zululand in 1849, he and his tribe were granted land by the colonial authorities in what is now northern KwaZulu-Natal²⁷ for themselves and their cattle.²⁸ Their obligations included protecting the colony from the San,²⁹ which officials admitted was loyally done.³⁰ The Hlubi were (ironically) presented with some guns for that purpose.³¹ The Hlubi were at peace with the colonists for decades and flourished,³² growing from 7 000 to 10 000 souls eventually, with 15 000 head of cattle.³³ The original

²⁰ Pine's career was in the British Colonial Services, and he was a Lt-Gov in Natal twice: from April 1850 – March 1955 for the first time and July 1872 – April 1875 for the second time with other colonial appointments in Australia and the Caribbean in between. (Luscombe 1997 www.britishempire.co.uk/maproom/antigua/antiguaadministrators.htm; Luscombe 1997 <https://www.britishempire.co.uk/maproom/goldcoast/goldcoastadmin.htm>; Luscombe 1997 www.britishempire.co.uk/maproom/leewardislands/leewardislandsadmin.htm; Luscombe 1997 www.britishempire.co.uk/maproom/natal/nataladmin.htm).

²¹ Minutes of the Langalibalele Trial 1.

²² Shepstone came to Natal as a public servant in 1845, first as the Diplomatic Agent to the local tribes, and from 1856 as SNA (Guest *Langalibalele: The Crisis in Natal* 15).

²³ Guest *Langalibalele: The Crisis in Natal* 15. The colonial government regarded him as the "foremost authority ... on African matters ..." (Meredith *Diamonds, Gold and War* 67).

²⁴ He was born circa 1818 and died in 1889. He was regarded as a rainmaker (Pearse *Barrier of Spears* 226), also referred to as an *Inyang*a or expert witch doctor (Pearse *Barrier of Spears* 252) or a "sorcerer" (Bergtheil 1875 *Journal of the Society of Arts* 481). His name was described as meaning "the sun is hot" in IsiHlubi (Pearse *Barrier of Spears* 226), "the sun is killing" (Storey *Guns, Race and Power* 145) or "the glaring sun" (Morris *Washing of the Spears* 165). The colonials called him "Old Longbelly" (Pearse *Barrier of Spears* 226).

²⁵ Wright and Manson *Hlubi* 442; Guy *Heretic* 197; Morris *Washing of the Spears* 216.

²⁶ Pearse *Barrier of Spears* 226.

²⁷ McClendon *White Chief, Black Lords* 94; Keith and Co "Introduction" iii; Colenso *Langalibalele and the Amahlubi Tribe* 1.

²⁸ Colenso noted, though, that this was not done in the case of Langalibalele when he moved into the colony: The practice at the time was that although refugees would be safe in the colony, their cattle belonged to the Supreme Chief and would be restored to the place from which they originated (Colenso *Langalibalele and the Amahlubi Tribe* 5).

²⁹ Wright and Manson *Hlubi* 38.

³⁰ Colenso *Langalibalele and the Amahlubi Tribe* 13; Keith and Co "Introduction" v; Cox *Life of John Williams Colenso* 320.

³¹ Storey *Guns, Race and Power* 149; Guest *Langalibalele: The Crisis in Natal* 19-20.

³² Guy *Heretic* 199; McClendon *White Chief, Black Lords* 84; Herd *Bent Pine* 60.

³³ Wright and Manson *Hlubi* 50.

364 km² extended to more than 700 km².³⁴ Langalibalele became an influential chief, travelling with a large entourage of well-mounted men.³⁵

The relationship between the British and Langalibalele was soured through a series of disagreements. On the one hand, Langalibalele distrusted the colonial authorities after the deceitful behaviour of John Shepstone during the 1858 so-called Matshana affair, which resulted in the death of dozens of Africans.³⁶ On the other hand, he fell afoul of the expectations of the colonial administration.³⁷ He was originally reluctant to move to the colonially-allocated location³⁸ and was sometimes recalcitrant in supplying labourers or in collecting hut tax for the colonial authorities, although he inevitably acquiesced.³⁹ Langalibalele feared that these colonial labour and tax obligations would ultimately disperse his tribe and erode his power base.⁴⁰ There was also a difference in opinion about treating lung sickness in cattle,⁴¹ the planned counting of cattle in African hands,⁴² and implementing an African marriage tax with a fixed lobola scale of ten head

³⁴ Wright and Manson *Hlubi* 50.

³⁵ Lambert 1995 *Journal of Southern African Studies* 280; Guy *Heretic* 197; McClendon *White Chief, Black Lords* 84.

³⁶ Langalibalele cooperated with the colonial authorities by supplying warriors for a (perceived) peaceful excursion to Chief Mashana. John Shepstone (the brother of the SNA and subsequently the prosecutor in the Langalibalele trial) lured Matshana into a trap, persuading him and the members of his tribe to leave their weapons outside for this peaceful meeting, while Shepstone and his men concealed firearms. This resulted in the death of thirty of Matshana's tribesmen (Lobban *Imperial Incarceration* 83; Guy *Heretic* 200; Guest *Langalibalele: The Crisis in Natal* 37; Mokoena 2019 *Journal of African History* 74-75; Cox *Life of John Williams Colenso* 367).

³⁷ Guy *Heretic* 199; Wright and Manson *Hlubi* 48. Pearse notes that he was regarded as *mauvias sujet* even before the trial (Pearse *Barrier of Spears* 227).

³⁸ His move from his original settlement at Mnambithi (subsequently allocated to white farmers) to the location between the Bushmans and Bloukransrivers had to be postponed as he insisted on first reaping his crops (Colenso *Langalibalele and the Amahlubi Tribe* 10 clarifying the reason for the delay, not noted in the Keith and Co "Introduction" iv). This ended in the payment of a fine of 40 cattle (Wright and Manson *Hlubi* 38-39, 41; Guy *Heretic* 197; Guest *Langalibalele: The Crisis in Natal* 24; Herd *Bent Pine* 4).

³⁹ Guest *Langalibalele: The Crisis in Natal* 28; McClendon *White Chief, Black Lords* 85. Langalibalele refused to provide labour after his men were not paid for their participation in British military excursions (Wright and Manson *Hlubi* 41-43; Herd *Bent Pine* 7; Lambert 1995 *Journal of Southern African Studies* 280).

⁴⁰ Wright and Manson *Hlubi* 48-49.

⁴¹ In 1855 he originally refused but was later forced to follow the culling instructions of the colonial authorities to curb cattle lung sickness. Some of the members of his tribe were tried and sentenced for their resistance (Wright and Manson *Hlubi* 43; Guest *Langalibalele: The Crisis in Natal* 27).

⁴² Langalibalele refused to cooperate with the colonial government's failed attempt to count African-owned cattle (Wright and Manson *Hlubi* 41-43).

of cattle.⁴³ The proverbial final straw that broke the accord was the non-regulation of guns in the hands of the Hlubi.

1.3 Guns

From a colonial perspective, Law 5 of 1859 prevented Africans from possessing firearms without the Lt-Gov's written permission.⁴⁴ They regarded it as the duty of the chiefs to ensure the registration of firearms in the hands of members of the tribe.⁴⁵ The colonial government saw little need for guns in African hands as inter-tribal warfare and war with the authorities were forbidden.⁴⁶ In practice, although denied by the authorities,⁴⁷ applications for the registration of the possession of guns were often equivalent to confiscation without compensation, as few Africans received such licences, except for chiefs or those with letters from their White employers.⁴⁸ Guns brought in for registration were "either retained indefinitely or rendered useless before return."⁴⁹

In the 1870s during the Kimberley diamond rush guns became easier to obtain and were highly prized, including by the Hlubi labourers who received guns in part payment for their services in the mines.⁵⁰ These guns were

⁴³ The British argued that some members of the tribe hastened their weddings before the law came into effect (Herd *Bent Pine* 9; McClendon *White Chief, Black Lords* 89; Wright and Manson *Hlubi* 48). The colonial authority viewed this as an attempt to "defraud the Government of its dues" (McClendon *White Chief, Black Lords* 85; Lt-Gov in the Minutes of the Langalibalele Trial 34; Wright and Manson *Hlubi* 48). Langalibalele was fined £10 (Colenso *Langalibalele and the Amahlubi Tribe* 16). Colenso, however, argued that this interpretation was nonsensical as the number of animals paid for lobola in the Hlubi was less than the number set by the colonial government and that they had a tradition of marrying large groups of girls of marriageable age together (and not individually). In addition, non-adherence to the regulation would negatively impact on the marriage fee income of the Chief (Colenso *Langalibalele and the Amahlubi Tribe* 14-15. However, see Wright and Manson *Hlubi* 48).

⁴⁴ Section 2 of Law 5 of 1859; Pearse *Barrier of Spears* 227; Fox Bourne *Blacks and Whites in South Africa* 26; Dominy 1991 *Natal Museum Journal of Humanities* 49; Lobban *Imperial Incarceration* 84; Guest *Langalibalele: The Crisis in Natal* 34; Wright and Manson *Hlubi* 42, 51.

⁴⁵ Wright and Manson *Hlubi* 52.

⁴⁶ Guest *Langalibalele: The Crisis in Natal* 33.

⁴⁷ This contrasted with the official colonial government version that obtaining registration was not problematic if the correct procedure was followed (Storey *Guns, Race and Power* 152; McClendon *White Chief, Black Lords* 92; Keith and Co "Introduction" ix; Colenso *Langalibalele and the Amahlubi Tribe* 20).

⁴⁸ Colenso *Langalibalele and the Amahlubi Tribe* 20; Morris *Washing of the Spears* 216; Storey *Guns, Race and Power* 149; Cox *Life of John Williams Colenso* 319. See Colenso *Langalibalele and the Amahlubi Tribe* 19-20 for a description of a letter that William Shepstone supplied to one of his employees to have his gun registered.

⁴⁹ Morris *Washing of the Spears* 216; Cox *Life of John Williams Colenso* 319.

⁵⁰ Storey *Guns, Race and Power* 149; Morris *Washing of the Spears* 216; Cox *Life of John Williams Colenso* 317; Colenso *Langalibalele and the Amahlubi Tribe* 18;

brought back to Natal.⁵¹ Before 1873 few guns were registered in African hands.⁵² With the reappointment of Pine in 1873 as Lt-Gov, the slack gun control enforcement was about to change.⁵³

The increase in the trade of guns⁵⁴ and the number of armed Africans caused alarm among the settlers, who feared a change in the status quo.⁵⁵ Rumours circulated that Langalibalele was encouraging members of his tribe to obtain guns and not to register them, and was persuading other tribes to do the same.⁵⁶ He denied this.⁵⁷

1.4 Summons to appear before the SNA and the immediate consequences

... the vessel in which your offences are kept is overflowing.⁵⁸

In early March 1873 John Macfarlane, the Escort Magistrate, singled Langalibalele and the Hlubi out⁵⁹ and demanded the registration of their guns in terms of Law 5 of 1859.⁶⁰

Langalibalele was requested to ensure the registration of the Hlubi guns but was preoccupied.⁶¹ He refused, claiming illness,⁶² and later noted that he

Dominy 1991 *Natal Museum Journal of Humanities* 49; Turrell 1981 *Journal of Southern African Studies* 210, 217.

⁵¹ Dodds *A Cradle of Rivers* 47.

⁵² Statistics of the time showed that in 1871 only one gun was registered. In 1872 13 were registered, of which 9 were those of the Hlubi. In 1873 7 were registered, of which 4 were from the Hlubi (Colenso *Langalibalele and the Amahlubi Tribe* 29). Macfarlane did not seem to seek out unregistered guns until later in 1873 (Colenso *Langalibalele and the Amahlubi Tribe* 30). Permits were even suspended in the early 1870s for a short period as there was uncertainty about how to deal with the new influx of guns (Guest *Langalibalele: The Crisis in Natal* 32).

⁵³ Storey *Guns, Race and Power* 149.

⁵⁴ Guest *Langalibalele: The Crisis in Natal* 32.

⁵⁵ Morris *Washing of the Spears* 216.

⁵⁶ Keith and Co "Introduction" ix; Storey *Guns, Race and Power* 149.

⁵⁷ Minutes of the Langalibalele Trial 3; Colenso *Langalibalele and the Amahlubi Tribe* 22.

⁵⁸ Magistrate Macfarlane's sentiment in a letter to Langalibalele (Wright and Manson *Hlubi* 52; McClendon *White Chief, Black Lords* 97).

⁵⁹ Cox *Life of John Williams Colenso* 320. Other tribes under Macfarlane such as the Zikali were known to have large numbers of unregistered guns (Colenso *Langalibalele and the Amahlubi Tribe* 17).

⁶⁰ It is unclear why he was singled out, but presumably the argument was that if they could get the perceived troublesome Langalibalele to adhere, the other tribes would follow (Wright and Manson *Hlubi* 52). The Act was followed up with a circular on 14 February 1872 directing magistrates to conform with the Act (Minutes of the Langalibalele Trial 34).

⁶¹ Langalibalele's elder brother died in late 1872 or early 1873, to the alarm of the tribe. He had planned a series of ceremonies to be held from the end of February 1872 to placate the tribe (Wright and Manson *Hlubi* 51).

⁶² Dodds *A Cradle of Rivers* 47; Dominy 1991 *Natal Museum Journal of Humanities* 49; Guy *Heretic* 199.

did not know which of his 2 000 men spread over a large area had firearms and even if he had known, he could not enforce the registration.⁶³ Internally the dynamics in the tribe were changing, with the younger members objecting to the registration process that resulted in the forfeiture of their prized guns earned on the diamond mines.⁶⁴ Wright and Manson note that Langalibalele showed a serious lack of judgment.⁶⁵ Although he regarded the requirement of registration as a minor inconvenience, the authorities did not.⁶⁶ Macfarlane was angry, adding fuel to the fire of an already prickly relationship,⁶⁷ and referred the matter to the SNA with a request for firm action.⁶⁸

Between April and October 1873 Langalibalele was summonsed numerous times to appear personally before the SNA.⁶⁹ This instruction was deliberately framed to diminish Langalibalele's status amongst the tribes and was perceived by him as such.⁷⁰ He refused the request in April, claiming illness and wanting to first consult with the elders.⁷¹ Attempting to mend fences, Langalibalele visited Magistrate Macfarlane about two weeks later to explain.⁷² Macfarlane was absent, but a quarrel ensued with his secretary/interpreter, one Rudolph, that further strained the relationship between Langalibalele and the colonial government.⁷³ During the delivery of the second summons to appear in May, the messengers were humiliated by having to wait for an extended period and were asked to remove some clothing to ensure that they had no hidden weapons⁷⁴ before they could see Langalibalele - only to be told that the request to appear before the SNA

⁶³ Wright and Manson *Hlubi* 51; Guy *Heretic* 199; Morris *Washing of the Spears* 216. Langalibalele complained that it was like "counting the maggots on a piece of meat" (McClendon *White Chief, Black Lords* 95). Colenso noted that the tribe was around 10 000 souls living in an area "as large as the county of Middlesex" (Colenso *Langalibalele and the Amahlubi Tribe* 25).

⁶⁴ Storey *Guns, Race and Power* 151; Colenso *Langalibalele and the Amahlubi Tribe* 28. He also notes that the issue caused internal disagreements in the tribe mainly on generational grounds (Storey *Guns, Race and Power* 152, 5). The younger gun-owning tribe members became more confident as the guns added to their prestige (McClendon *White Chief, Black Lords* 84, 96).

⁶⁵ Wright and Manson *Hlubi* 52.

⁶⁶ Wright and Manson *Hlubi* 51.

⁶⁷ Herd *Bent Pine* 11.

⁶⁸ Wright and Manson *Hlubi* 51-52; Herd *Bent Pine* 9; Lobban *Imperial Incarceration* 84.

⁶⁹ Pearse *Barrier of Spears* 228.

⁷⁰ Wright and Manson *Hlubi* 53-34.

⁷¹ Wright and Manson *Hlubi* 53; Herd *Bent Pine* 11.

⁷² Colenso *Langalibalele and the Amahlubi Tribe* 50.

⁷³ Wright and Manson *Hlubi* 52; Colenso *Langalibalele and the Amahlubi Tribe* 9.

⁷⁴ There are two versions of the clothing: one, that he was stripped naked (Herd *Bent Pine* 12); the other that he was asked to remove a topcoat to see whether he was concealing a gun (McClendon *White Chief, Black Lords* 99). As will be noted later, both versions served before the trial.

was denied.⁷⁵ By July there were reports of British soldiers assembling at Estcourt and this caused panic amongst the Hlubi.⁷⁶ A third request came in early October⁷⁷ and included an ultimatum with a threat of dismemberment of the tribe, yet Langalibalele still did not obey the request.⁷⁸ At this time a further attempt to defuse the situation was made by Langalibalele to show that he was still a loyal subject. He sent high-ranking tribe members to Magistrate Macfarlane to pay a fine for his tardiness, but the Magistrate refused to accept it, insisting on his physical appearance before the SNA.⁷⁹

It remained unclear whether his refusals were wilful (as the British argued)⁸⁰ or due to fear (as Langalibalele argued). Langalibalele noted that his fear stemmed from the Matyana affair and the fact that two previous summonses of this nature had led to the chief and his tribe being "eaten up" by being dismembered and absorbed into other tribes.⁸¹

But his open defiance and independent spirit,⁸² combined with his growing wealth, influence⁸³ and access to guns,⁸⁴ were a concern for the colonial

⁷⁵ Storey *Guns, Race and Power* 155; Guy *Heretic* 200; McClendon *White Chief, Black Lords* 82; Herd *Bent Pine* 11.

⁷⁶ Wright and Manson *Hlubi* 57.

⁷⁷ The reason for the time lapse was that the SNA left for Zululand at the end of July to attend the coronation of Cetuywayo as King of the Zulus and returned only on 16 September (Colenso *Langalibalele and the Amahlubi Tribe* 56).

⁷⁸ Wright and Manson *Hlubi* 54. Again the messengers were required to wait although they were fed well (Keith and Co "Introduction" xv noted 17 days, whilst Colenso noted that it could have been only 10 days (Colenso *Langalibalele and the Amahlubi Tribe* 64)). The group of 20 men were fed with five head of cattle from the Hlubi and Putini (Colenso *Langalibalele and the Amahlubi Tribe* 93).

⁷⁹ Colenso *Langalibalele and the Amahlubi Tribe* 65; Wright and Manson *Hlubi* 56; McClendon *White Chief, Black Lords* 98; Cox *Life of John Williams Colenso* 321; Herd *Bent Pine* 12.

⁸⁰ Bergtheil, one of the largest colonial landowners (Slater 1974 *Seminar Papers* 43) argued that his refusal was part of a deliberate plan "designed for resistance and defiance" that could later include other tribes in the area (Bergtheil 1875 *Journal of the Society of Arts* 481).

⁸¹ Wright and Manson *Hlubi* 53; Cox *Life of John Williams Colenso* 320; Colenso *Langalibalele and the Amahlubi Tribe* 52-53. Dominy 1991 *Natal Museum Journal of Humanities* 49 based Langalibalele's hesitancy on Shepstone's history of "treacherous behaviour" in the Matyana. Also see Colenso *Langalibalele and the Amahlubi Tribe* 81-82; Pearse *Barrier of Spears* 228-229; Herd *Bent Pine* 85-86; Storey *Guns, Race and Power* 154; Morris *Washing of the Spears* 225. In addition, Langalibalele's brother was killed when summoned to attend a meeting with Dingane (Guy *Heretic* 200; Colenso *Langalibalele and the Amahlubi Tribe* 2).

⁸² Wright and Manson *Hlubi* 52; Mokoena 2019 *Journal of African History* 77; Guest *Langalibalele: The Crisis in Natal* 26.

⁸³ Lambert 1995 *Journal of Southern African Studies* 281. There were some suggestions that he was colluding with other chiefs to do the same (Guest *Langalibalele: The Crisis in Natal* 38).

⁸⁴ Herd *Bent Pine* 10.

government.⁸⁵ His public refusal could not be seen to go unpunished.⁸⁶ The SNA feared that it could destroy his precarious control over the other chiefs and lead to the loss of their respect.⁸⁷ The situation also unsettled the settlers,⁸⁸ and fearful white farmers suspended farming and started sending their families and property to safety.⁸⁹

On 27 October 1873, on the evidence presented by Lt-Gov Pine of Langalibalele's rebellious conduct, the Executive Council⁹⁰ gave Langalibalele 24 hours to surrender "or be punished for rebellious conduct in disobeying the order of the Supreme Chief and defying the authority of the Government of Her Majesty the Queen."⁹¹ Langalibalele did not do so, and Lt-Gov Pine ordered his arrest.⁹²

Having expected retribution for his refusals, Langalibalele earlier started preparations to flee.⁹³ He left the Hlubi women, children and elderly with the Putini⁹⁴ and his tribesmen started moving their cattle towards the Drakensberg.⁹⁵ The colonial government believed that Langalibalele requested safe refuge for himself, his men and cattle from the Basotho,⁹⁶ but Langalibalele himself denied this, noting that their fleeing from Natal was without a fixed plan.⁹⁷

⁸⁵ Morris *Washing of the Spears* 216.

⁸⁶ Pearse *Barrier of Spears* 229; McClendon *White Chief, Black Lords* 82.

⁸⁷ Morris *Washing of the Spears* 217; Lobban *Imperial Incarceration* 85; McClendon *White Chief, Black Lords* 113.

⁸⁸ Bergtheil 1875 *Journal of the Society of Arts* 480; McClendon *White Chief, Black Lords* 92.

⁸⁹ Guy *Heretic* 200; Wright and Manson *Hlubi* 60; Guest *Langalibalele: The Crisis in Natal* 22, 37; Pearse *Barrier of Spears* 229; Herd *Bent Pine* 13.

⁹⁰ Herd *Bent Pine* 14; Wright and Manson *Hlubi* 63.

⁹¹ Guy *Heretic* 201; Wright and Manson *Hlubi* 59; Herd *Bent Pine* 19.

⁹² Wright and Manson *Hlubi* 62.

⁹³ Rumours about his intended flight had already surfaced in July 1873 (Wright and Manson *Hlubi* 54; Guest *Langalibalele: The Crisis in Natal* 39).

⁹⁴ Langalibalele had family bonds with the Putini (Lambert 1995 *Journal of Southern African Studies* 280; Herd *Bent Pine* 5). He was the son of Putini's sister (Keith and Co "Introduction" iii; Colenso *Langalibalele and the Amahlubi Tribe* 4; Wright and Manson *Hlubi* 59; Morris *Washing of the Spears* 217; Guest *Langalibalele: The Crisis in Natal* 39). The tribe is also referred to as the Putili (Minutes of the Langalibalele Trial 33; Preston *South African Diaries* 115) and the Ngwe (Wright and Manson *Hlubi* 37).

⁹⁵ Guy *Heretic* 200.

⁹⁶ Guest *Langalibalele: The Crisis in Natal* 38; Herd *Bent Pine* 12. The SNA noted that the Basotho relayed Langalibalele's request to the Cape Government, which in turn notified the colonial government in Natal (Keith and Co "Introduction" xi; Colenso *Langalibalele and the Amahlubi Tribe* 57; Pearse *Barrier of Spears* 228; Herd *Bent Pine* 13).

⁹⁷ Colenso *Langalibalele and the Amahlubi Tribe* 57-61.

1.5 *Bushman's Pass Incident*

The decision to quit the tribal area was prompted by Langalibalele's fear of the vengeful spirit which infected the colonial administration, he declared. And if the Government, in its turn, seriously believed the amaHlubi were threatening the security and peace of the colony why not let them withdraw unhindered to more distant pastures, thus removing the threat? It was deplorable that Langalibalele had been kept in ignorance of his right to remove his tribe in peace, provided he obtained official permission to do so.⁹⁸

Langalibalele fled with some of the members of his tribe at the end of October 1873, whilst others followed with the last cattle within days.⁹⁹ British troops in the form of young settlers in the Natal Carbineers under Captain Dunford were sent to intercept the fleeing Langalibalele. They met a small group of Hlubi under the leadership of Mabuhle with some cattle on Bushman's Pass.¹⁰⁰ Langalibalele himself was there, having already escaped inland.¹⁰¹ There was a tense stand-off between the parties with both groups having been ordered not to shoot first.¹⁰² The Carbineers were in disarray, exhausted and hungry.¹⁰³ Dunford had to slaughter one of the Hlubi cattle to feed his remaining men, as many of the volunteers had already left the Pass.¹⁰⁴ In addition, there was discord between Dunford and the Carbineers, about the standoff as the latter wanted to use force whilst Dunford resisted it.¹⁰⁵

Dunford requested the Hlubi to return to Natal, but Mabuhle refused.¹⁰⁶ Mabuhle also had trouble containing the younger gun-armed and more aggressive tribesmen and urged Dunford to leave.¹⁰⁷ The standoff became tense and a single Hlubi shot was fired.¹⁰⁸ This resulted in further shots and

⁹⁸ Herd *Bent Pine* 66, paraphrasing the opinion of Colenso at the time. The retreat of the tribe was also subsequently highlighted in the House of Lords by the Lord Chancellor (UK Parliament *Hansard House of Lords* 12 April 1875).

⁹⁹ Wright and Manson *Hlubi* 60-61; Herd *Bent Pine* 63.

¹⁰⁰ Herd *Bent Pine* 21. This pass is now called the Langalibalele Pass.

¹⁰¹ Dodds *A Cradle of Rivers* 48; Cox *Life of John Williams Colenso* 336; Morris *Washing of the Spears* 221-222.

¹⁰² Keith and Co "Introduction" xxi.

¹⁰³ Part of the blame was placed on faulty maps, lack of knowledge of the terrain, a breakdown of morale as there was a lack of packhorses carrying ammunition and provisions early in the expedition, and exhaustion leading to some falling behind and fleeing when the first shots were fired (Pearse *Barrier of Spears* 229, 233-234, 239-240, 242-243).

¹⁰⁴ As the use of guns was prohibited, the Carbineers had to use an assegai to kill the animal, and, in the process they stabbed several Hlubi cattle, to the anger of the tribesmen (Herd *Bent Pine* 25).

¹⁰⁵ Herd *Bent Pine* 24.

¹⁰⁶ Herd *Bent Pine* 26.

¹⁰⁷ Herd *Bent Pine* 27. Dunford himself later noted that the younger Hlubi were (unsuccessfully) restrained by the elder tribesmen (McClendon *White Chief, Black Lords* 99-100).

¹⁰⁸ Herd *Bent Pine* 29.

the death of three British troops and two British loyalists.¹⁰⁹ There is some dispute as to exactly what it was that happened on the Pass to precipitate an actual skirmish. The British painted the losses as the result of a planned ambush even though Dunford himself denied that.¹¹⁰

Langalibalele was saddened by the loss of life when he heard about it a few days later¹¹¹ but this failed expedition and the five deaths did nothing to ease the tensions between the Hlubi and the settlers.¹¹²

But it was defeat, utter and final, a more serious defeat than the casualty list indicated. Shepstone had failed, Langalibalele's tribe had defied the Administration, killed three white men, got clean away, and Langalibalele had escaped to Lesotho.¹¹³

1.6 Martial law and the massacre of the Hlubi and the Putini

This was the first time British blood had been spilled at the hands of Africans in Natal.¹¹⁴ Martial law was declared on 11 November 1873 through two proclamations signed by both Lt-Gov Pine and the SNA. They motivated the declaration on the deaths on the Pass, open revolt and rebellion against the authority of the Queen.¹¹⁵ The proclamations deposed Langalibalele of his chieftainship and his tribe was disbanded (broken up). The Hlubi ceased to exist, their location was de-proclaimed, and they were outlawed and dispossessed of their assets.¹¹⁶ The Putini were declared guilty by association as sympathisers as they had harboured some of the Hlubi, and they suffered the same fate.¹¹⁷

¹⁰⁹ Bourquin 1985 *Military History Journal* 9-11; Dodds *A Cradle of Rivers* 48; Wright and Manson *Hlubi* 66, 69; McClendon *White Chief, Black Lords* 100. For a full discussion of the failed operation, see Pearse *Barrier of Spears* 230-242 onwards and Morris *Washing of the Spears* 218-222. A Military Court of Enquiry was established and found that the Volunteers were guilty of "disorganised and precipitate retreat, with, however, mitigating circumstances" (Pearse *Barrier of Spears* 244).

¹¹⁰ Lobban *Imperial Incarceration* 85; McClendon *White Chief, Black Lords* 99.

¹¹¹ Herd *Bent Pine* 30.

¹¹² Bourquin 1985 *Military History Journal* 12, 15; Guest *Langalibalele: The Crisis in Natal* 43.

¹¹³ Pearse *Barrier of Spears* 242.

¹¹⁴ Wright and Manson *Hlubi* 60; Lobban *Imperial Incarceration* 82.

¹¹⁵ Both Proclamations are quoted in full in the Keith and Co "Introduction" xxv-xxvi.

¹¹⁶ Keith and Co "Introduction" xxxvi; Colenso *Langalibalele and the Amahlubi Tribe* 173, 303; Pearse *Barrier of Spears* 246; Herd *Bent Pine* 32; Wright and Manson *Hlubi* 67. There was also a bounty of 100 head of cattle on his head (Guest *Langalibalele: The Crisis in Natal* 45).

¹¹⁷ Morris *Washing of the Spears* 222; Lobban *Imperial Incarceration* 85; McClendon *White Chief, Black Lords* 101; Dominy 1991 *Natal Museum Journal of Humanities* 49; Herd *Bent Pine* 32; Wright and Manson *Hlubi* 64.

The locations of the Hlubi and Putini were destroyed by both settlers and African volunteers in what was seen as revenge.¹¹⁸ about 200 Hlubi and Putini tribesmen and women were killed,¹¹⁹ others were apprehended and tortured, with 500 jailed prisoners eventually allocated to work on white farms.¹²⁰ The livestock and property seized were sold for £25 000.¹²¹

It was obvious that this was not a military expedition so much as the pursuit and killing of non-combatants by an armed force which justified looting and rapine in the name of revenge.¹²²

There have been sad sights – women and children butchered by our black allies (too often, unhappily, but with the permission and encouragement of the white leaders ...), old men too ... The burnt villages – dead women – it was all horrible. And the destitution of the women and children left fearful. The women are all made slaves! What will England say?¹²³

By mid-November 1873 the Hlubi and Putini tribes had ceased to exist.¹²⁴ Langalibalele's actions gave the colonial authorities and the settlers what they wanted: land, cattle and cheap labour.¹²⁵ There were no consequences for the attackers as Lt-Gov Pine proclaimed an Act of Indemnity for all actions taken during the putting down of the rebellion.¹²⁶

1.7 Arrest and detention

Langalibalele was eventually arrested after a cross-border pursuit into the protectorate of Basutoland with the assistance of Chief Molapo, although Mabuhle escaped.¹²⁷ Langalibalele arrived in Pietermaritzburg in chains on

¹¹⁸ Lobban *Imperial Incarceration* 81; Wright and Manson *Hlubi* 67; Storey *Guns, Race and Power* 156; Guy *Heretic* 202; Morris *Washing of the Spears* 222; Cox *Life of John Williams Colenso* 325.

¹¹⁹ Wright and Manson *Hlubi* 68; Lobban *Imperial Incarceration* 86; Guest *Langalibalele: The Crisis in Natal* 46; Bourquin 1985 *Military History Journal* 13-14, 16; Pearse *Barrier of Spears* 249; Herd *Bent Pine* 36.

¹²⁰ Law 18 of 1874 allowed the Lt-Gov to assign convicts to farms, but these assignments were subsequently "disallowed" and revoked (Proc 38 of 14 June 1875).

¹²¹ Wright and Manson *Hlubi* 73. The Putini lost about 200 horses and between 8 000 and 10 000 head of cattle, estimated to have been worth between £16 000 and £20 000 (Colenso *Langalibalele and the Amahlubi Tribe* 176).

¹²² Guy *Heretic* 203.

¹²³ Dunford in a letter to Colenso as quoted in Herd *Bent Pine* 37; Wright and Manson *Hlubi* 68; Cox *Life of John Williams Colenso* 329.

¹²⁴ Wright and Manson *Hlubi* 67-68; Knox 1976 *Historical Journal* 899; Morris *Washing of the Spears* 224; Herd *Bent Pine* 33.

¹²⁵ Keith and Co "Introduction" xxvii; Wright and Manson *Hlubi* 65.

¹²⁶ Guy *Heretic* 202; Cox *Life of John Williams Colenso* 330; Wright and Manson *Hlubi* 67-68. The colonists lauded Lt-Gov Pine as a great man for his actions (Herd *Bent Pine* 40).

¹²⁷ Pearse *Barrier of Spears* 249; Guest *Langalibalele: The Crisis in Natal* 51. The force consisted of armed Basotho supported by the Frontier Armed and Mounted Police (Pearse *Barrier of Spears* 249). Molapo's payment was 2 000 of the 7 000 Hlubi cattle (Storey *Guns, Race and Power* 156; Wright and Manson *Hlubi* 71; Herd *Bent Pine* 45). Molapo also managed to show his allegiance to the British, fearing their

31 December 1873,¹²⁸ where he was kept in solitary confinement for two weeks before his trial, with no access to friends, family or possible legal representatives.¹²⁹

2 The trial¹³⁰

And it must be admitted that it was a most extraordinary trial, a disgrace to British justice.¹³¹

A mockery of justice.¹³²

Few more disgraceful farces have ever been staged in a British courtroom.¹³³

The brutal actions against the Hlubi and the Putini occurred about two months before the trial. It has been argued that the trial was set up to prove rebellion and treason in order to justify the harm already inflicted on the tribes.¹³⁴ If the trial had been unsuccessful the colonial government would have had to explain the brutal actions taken against the tribes to their British superiors – actions for which there was little or no justification.¹³⁵

2.1 Preliminary observations

A few preliminary observations are necessary to provide a broader context of the trial wherein the prosecutor, rather ironically, assured that the accused that they would be given a full and fair trial.¹³⁶

2.1.1 Recordkeeping

The official record of the trial, the "Blue Book", was published and attested to by the Clerk of the Court, WB Morcom.¹³⁷ Added to the publication of the official record, a 41-page Introduction was added, *prima facie* by the publishers Keith & Co.¹³⁸ Although this was seemingly done without governmental authority,¹³⁹ there were subsequent admissions made to

expansion into his territory (Wright and Manson *Hlubi* 70; Guest *Langalibalele: The Crisis in Natal* 51). This was important as, after the Pass incident, the British dispatched three companies to Natal, and both the Griqua chief Adam Kok and the Free State President Burgers sent forces to assist in the capturing of Langalibalele (Herd *Bent Pine* 43).

¹²⁸ Pearse *Barrier of Spears* 249; Guy *Heretic* 205.

¹²⁹ Storey *Guns, Race and Power* 158; Wright and Manson *Hlubi* 73; Herd *Bent Pine* 47, 75.

¹³⁰ There were three trials: the Langalibalele trial, one for his sons, and the third for other Hlubi tribe members. Only the first trial is discussed here.

¹³¹ Pearse *Barrier of Spears* 251.

¹³² Wright and Manson *Hlubi* 73.

¹³³ Morris *Washing of the Spears* 223.

¹³⁴ Guy *Heretic* 208.

¹³⁵ Cox *Life of John Williams Colenso* 372.

¹³⁶ Minutes of the Langalibalele Trial 2.

¹³⁷ Minutes of the Langalibalele Trial 6, 14, 19, 27, 32.

¹³⁸ Minutes of the Langalibalele Trial xli.

¹³⁹ Colenso *Langalibalele and the Amahlubi Tribe v.*

Colenso that it had been approved by the SNA as it contained the colonial government's version of events.¹⁴⁰ Colenso viewed this Introduction as unfair, unjust and biased against Langalibalele¹⁴¹ and proceeded to write his own narrative of the trial as well as a critical review of the record of the trial itself.¹⁴² These documents form the basis of the duality in information and interpretation of the events and the trial.

2.1.2 *The Prosecutor and the Bench*

Apart from the accused Langalibalele and the prosecutor John Shepstone, eighteen other persons presided over the hearing at different times:¹⁴³ Sir Benjamin Pine (referred to as President in the Minutes, the Lt-Gov and Supreme Chief of the Zulus who eventually penned the judgment), Theophilus Shepstone (SNA), six members of the Executive,¹⁴⁴ three magistrates¹⁴⁵ and six (later seven) African Chiefs/Indunas¹⁴⁶ nominated by the Administration.¹⁴⁷ No Supreme Court judge served on the bench. This was anomalous as a charge of treason could be heard only by the Supreme Court.¹⁴⁸ All members of the bench did not sit continuously during the trial.¹⁴⁹ The six Executive Council members and magistrate Paterson withdrew at the end of day four.¹⁵⁰

¹⁴⁰ Colenso *Langalibalele and the Amahlubi Tribe* vi fn 1.

¹⁴¹ Colenso *Langalibalele and the Amahlubi Tribe* vi, viii. He regarded the record as self-serving (Mokoena 2019 *Journal of African History* 68).

¹⁴² Mokoena argues that Colenso's "vindication became vindictiveness" as he also was not independent but biased in favour of Langalibalele (Mokoena 2019 *Journal of African History* 68).

¹⁴³ Minutes of the Langalibalele Trial 1; Pearse *Barrier of Spears* 251.

¹⁴⁴ The Executive was the Supreme Council of the Colony. Present were Lt-Col Milles (75th Regiment, Commandant), Hon D Erskine (Colonial Secretary), Hon John Ayliff (Colonial Treasurer), Hon MH Gallwey (Attorney-General), the Hon Charles Barter and Hon JT Polkinghorne.

¹⁴⁵ John Bird (Pietermaritzburg), AC Hawkins (Upper Umkomanzi) and P Paterson (Inanda).

¹⁴⁶ Zatsuke (Head Induna of the Natal Government), Mafingo (Induna at Durban), Hemuhemu (Chief of the Mafunzi tribe), Nondomise (Chief of the Amatuli tribe), Teteleku (Chief of the Amapumiza tribe) and Manxele (Induna of the SNA). Shepstone regarded Teteleku as an authority on African Law (Lambert 1995 *Journal of Southern African Studies* 276). Hlokolo (Chief of the Amancolosi) joined only on day two (Minutes of the Langalibalele Trial 1, 7). Colenso notes that three of these appointees were not chiefs but merely Indunas (Colenso *Langalibalele and the Amahlubi Tribe* 178).

¹⁴⁷ Pearse *Barrier of Spears* 251.

¹⁴⁸ Pearse *Barrier of Spears* 251; Herd *Bent Pine* 51. See s 1 of Law 3 of 1868 and UK Parliament *Hansard House of Lords* 12 April 1875 (Lord Chancellor).

¹⁴⁹ Only the Lt-Gov, the SNA, Bird, Hawkins and six of the seven African Chiefs/Indunas sat all six days.

¹⁵⁰ Minutes of the Langalibalele Trial 27. Barter sat on days one and four only. Guy *Heretic* 206 argues that the withdrawal of the Executive was a result of a potential appeal that could be lodged in terms of Ordinance 3 of 1849.

Most appointments were inappropriate. The prosecutor was the brother of the SNA;¹⁵¹ had no knowledge of Native law¹⁵² and had been the cause of African mistrust due to his actions during the Matshana affair.¹⁵³ In addition, he held a position in the Volunteer Defence Force and had led one of the units up the Pass during the pursuit of the Hlubi.¹⁵⁴

Most of the persons on the bench had a close association with the colonial administration and/or the events leading to the trial:¹⁵⁵ The Lt-Gov and the SNA (and the Executive Council members) had already publicly announced Langalibalele's guilt before the trial in the Executive Council leading to the declaration of martial law.¹⁵⁶ In addition, the Lt-Gov had little knowledge of native law¹⁵⁷ and relied on the SNA for the interpretation thereof.¹⁵⁸ Most importantly, in terms of the Ordinance there was a right to appeal to the Lt-Gov acting on the advice of the Executive Council.¹⁵⁹ The Lt-Gov, the SNA and the Executive Council members should thus have been disqualified from taking part in the original hearing.

The same argument applies to others on the bench. The son of the Colonial Secretary Erskine, one of the Executive Council members, had died on the Pass at the hands of the Hlubi;¹⁶⁰ one of the Magistrates, Hawkins, had led a group in the original pursuit of the Hlubi;¹⁶¹ and three of the chiefs (Zatshuke, Mafingo and Manxele) were compliant defenders of the colonial government and paid employees.¹⁶² In addition, Teteleku and two of the indunas had participated in the actions against the Hlubi¹⁶³ and some of these chiefs had also lost relatives in the incident on the Pass.¹⁶⁴ Most importantly, none of the Africans Chiefs and Indunas would have dared to

¹⁵¹ Pearse *Barrier of Spears* 251.

¹⁵² McClendon *White Chief, Black Lords* 110.

¹⁵³ Wright and Manson *Hlubi* 74; Guest *Langalibalele: The Crisis in Natal* 57.

¹⁵⁴ Herd *Bent Pine* 17, 19.

¹⁵⁵ Wright and Manson *Hlubi* 74.

¹⁵⁶ Lobban *Imperial Incarceration* 90; Herd *Bent Pine* 51.

¹⁵⁷ Morris *Washing of the Spears* 224.

¹⁵⁸ Herd *Bent Pine* 50.

¹⁵⁹ Section 3 of Ordinance 3 of 1849 states: "And be it enacted, that they shall be an appeal to the Lieutenant-Governor, acting with the advice of the Executive Council of this District, for the time being, in all cases whatsoever, between natives, and which have been tried according to native law, and that the decision of the said Lieutenant-Governor, so acting as aforesaid, shall be final."

¹⁶⁰ Lobban *Imperial Incarceration* 86.

¹⁶¹ Herd *Bent Pine* 51. He had led a force of 500 Africans and a volunteer unit that had participated in the exercise (Herd *Bent Pine* 19).

¹⁶² McClendon *White Chief, Black Lords* 109; Cox *Life of John Williams Colenso* 363; Herd *Bent Pine* 2.

¹⁶³ Herd *Bent Pine* 51-52.

¹⁶⁴ Preston *South African Diaries* 114; Guy *Heretic* 206. Mafingo was also resentful of Langalibalele's higher status since arriving in Natal (Minutes of the Langalibalele Trial 4-6).

speak their minds and oppose the colonial government that had just obliterated two African tribes.¹⁶⁵

In the light of this background it is not surprising that the attitude of the bench against Langalibalele was described as "naked hostility".¹⁶⁶

2.1.3 *Applicable legal systems*

It is difficult to summarise the essential features of the trial, which contained such a mix of contradictory procedures, forms and precedent.¹⁶⁷

A dual legal system applied in Natal at the time. Colonial law was based on Roman-Dutch Law¹⁶⁸ as amended by statute and judicial precedent. The statutory criminal procedure was in line with English law, whilst the criminal law and crimes themselves were based on Roman-Dutch law except if amended by statute.¹⁶⁹ Then there was the mainly unwritten African law used in African courts, where "Africans [could be] ruled by 'their own' laws, administered both by government-sanctioned chiefs and by white 'Administrators of Native Law.'"¹⁷⁰

The trial was said to have been conducted in terms of Native law,¹⁷¹ but it was unrecognisable as such.¹⁷² There are various arguments as to why Natal law should rather have been applied.

One, the Lt-Gov did not have the power in terms of Ordinance 3 of 1849 (or otherwise) to form an African court of this nature.¹⁷³ The Act was designed to make provision for the use of African law in tribal courts by Africans for Africans in limited instances in the colony.¹⁷⁴ It was reserved for Africans only and not the government. "It is only by the fiction of considering Sir B Pine a Native ... that a crime against him [can be] brought within Native Law at all."¹⁷⁵ Adding insult to injury, Pine's lack of knowledge of African law was clear throughout the proceedings.¹⁷⁶

¹⁶⁵ Colenso *Langalibalele and the Amahlubi Tribe* 178; Guest *Langalibalele: The Crisis in Natal* 59.

¹⁶⁶ Herd *Bent Pine* 80.

¹⁶⁷ Guy *Heretic* 206.

¹⁶⁸ Ordinance 12 of 1845.

¹⁶⁹ Wessels *History of the Roman-Dutch Law* 394-395. See Ordinance 18 of 1845 and Law 16 of 1861.

¹⁷⁰ Carton, Laband and Sithole *Zulu Identities* 283.

¹⁷¹ Minutes of the Langalibalele Trial 2.

¹⁷² Herd *Bent Pine* 50.

¹⁷³ Colenso *Langalibalele and the Amahlubi Tribe* 100.

¹⁷⁴ Carton, Laband and Sithole *Zulu Identities* 283.

¹⁷⁵ Morris *Washing of the Spears* 224.

¹⁷⁶ For example, Lt-Gov Pine was under the impression that legal representation was not allowed under African law (Herd *Bent Pine* 49).

Two, serious criminal cases at the time, such as the treason and sedition which Langalibalele was accused of, should have been tried in the colonial courts in terms of the laws of the colony.¹⁷⁷

Three, the main incident leading to the trial, namely the killing of British soldiers on the Pass, occurred outside the borders of Natal and any crimes as a result thereof should have been prosecuted in the Ordinary Civil Court of Natal under the Imperial Act (26 and 27 Vict Cap xxxv).¹⁷⁸

Four, the maximum penalty under Native law had already been inflicted on Langalibalele and the Hlubi, making no further punishment upon conviction possible and a trial unnecessary.¹⁷⁹

Having said that, had Native law proper been applied, there would also not have been a trial as Langalibalele would have been dead. Under African law, being guilty of treason he would have been automatically and immediately killed in battle.¹⁸⁰

Why then choose African law and an African court? Native law was used to provide a "vener of legality".¹⁸¹ Lt-Gov Pine admitted that it was held in conformity with English ideas of justice.¹⁸² The colonial authorities wished to avoid the formalities of Natal law.¹⁸³ Had Langalibalele been prosecuted in the Natal courts, certain aspects of law and procedures would have been unavoidable. A few examples would suffice: arrests and prosecutions would be limited to offences that occurred within the jurisdiction of the district;¹⁸⁴ Langalibalele would have had access to legal representation with the freedom to defend himself in full;¹⁸⁵ the right to silence would have applied;¹⁸⁶ and sworn evidence by witnesses proving all the elements of the crime would have been required,¹⁸⁷ as would the right to cross-examination and the non-admissibility of irrelevant and hearsay evidence.¹⁸⁸ In particular, it would have been impossible to prove a fleeing Langalibalele's

¹⁷⁷ Section 1 of Law 3 of 1868; Guest *Langalibalele: The Crisis in Natal* 56; Bergtheil 1875 *Journal of the Society of Arts* 482-483.

¹⁷⁸ Colenso *Langalibalele and the Amahlubi Tribe* 12 correcting the information in the Keith and Co "Introduction" iv.

¹⁷⁹ Section 2 of Ordinance 3 of 1849. The maximum penalty permissible under African law was deposing a chief, breaking up his tribe and confiscating his property (Herd *Bent Pine* 49, 100).

¹⁸⁰ Minutes of the Langalibalele Trial 2 in the submission made by Lt-Gov during the trial; Pearse *Barrier of Spears* 251.

¹⁸¹ Lobban *Imperial Incarceration* 122; Mokoena 2019 *Journal of African History* 79.

¹⁸² Minutes of the Langalibalele Trial 3.

¹⁸³ Morris *Washing of the Spears* 223.

¹⁸⁴ Sections 22 and 39 of Ordinance 18 of 1845 and s 4 of Law 16 of 1861.

¹⁸⁵ Sections 43-44 of Ordinance 18 of 1845 and s 4 of Law 16 of 1861.

¹⁸⁶ Section 2 of Law 14 of 1864.

¹⁸⁷ Law 17 of 1959 specifically applied the English rules of evidence to the courts in Natal.

¹⁸⁸ Section 1 of Law 17 of 1959.

treason as there was no evidence that Langalibalele ever intended to invade the colony or overthrow the colonial government as required by the statute.¹⁸⁹

Be that as it may, having decided to use African law, sections 2 of Ordinance 3 of 1849 entitled "Native Law" applied:¹⁹⁰

And be it enacted, that it shall and may be lawful for the Lieutenant-Governor to appoint any fit and proper person or persons, with authority to control, revise, and direct the administration of justice, according to the native law throughout this District, or in such parts of the same as to him may see fit; provided, however, that all such fines and forfeitures as, according to the native law or usage, would accrue to the Supreme Chief, or such person or persons as aforesaid, shall be paid into the treasury of the District.

The wording of the Ordinance itself was vague and imprecise as to the authority and powers of the Supreme Chief to establish a Native (African) court.¹⁹¹ As African law was not designed to deal with Western-styled courtroom procedures, the bench could organise the courtroom and create the procedure to suit themselves.¹⁹²

Once the trial started, however, the bench discarded African law and applied the legal principles they felt the circumstances demanded,¹⁹³ resulting in a weird combination of Native and English laws.¹⁹⁴ In short, Langalibalele "was subjected to a [colonial] systematic prosecution and denied the 'laxity of the native law.'"¹⁹⁵

2.1.4 *The right to counsel*

The accused was denied counsel as the court was of the opinion that this right did not exist under African law.¹⁹⁶ This was incorrect.¹⁹⁷ On day three of the trial, however, the Lt-Gov noted that the bench had decided to implement a "great innovation" for African law, namely that the accused could have legal representation even though it may be contrary to African law.¹⁹⁸ The Lt-Gov warned that this concession should not be considered as a precedent.¹⁹⁹ Mr Escombe, a Durban attorney, was selected as counsel, but he eventually declined the appointment due to the limits placed

¹⁸⁹ Section 1 of Law 3 of 1868.

¹⁹⁰ Section 2 of Law 28 of 1865 made provision for relieving male Native residents from the operation of this Law.

¹⁹¹ Lobban *Imperial Incarceration* 87.

¹⁹² Morris *Washing of the Spears* 224. Morris notes that even though Native law was not codified, it had an age-old trial procedure (Morris *Washing of the Spears* 224).

¹⁹³ Guy *Heretic* 207; Guest *Langalibalele: The Crisis in Natal* 57.

¹⁹⁴ Guest *Langalibalele: The Crisis in Natal* 56.

¹⁹⁵ Herd *Bent Pine* 52.

¹⁹⁶ Minutes of the Langalibalele Trial 15.

¹⁹⁷ Guest *Langalibalele: The Crisis in Natal* 58.

¹⁹⁸ Minutes of the Langalibalele Trial 15.

¹⁹⁹ Minutes of the Langalibalele Trial 15.

on him: he had no right to interview his client, could not defend him as he saw fit, and had no right to cross-examine any of the witnesses.²⁰⁰ Adv Moodie SC, an expert in Native law proceedings and a Zulu linguist, also volunteered to assist Langalibalele at short notice, but his assistance was declined²⁰¹ as in another U-turn the right to counsel was revoked.²⁰²

This lack of representation had two negative consequences for the accused: one, his version of the events and accompanying corroborating witness evidence was not placed before the court; and two, there was no testing of the evidence of the colony's witnesses.²⁰³

2.2 The court proceedings

2.2.1 Court

The trial, officially called a Court of Enquiry in the Minutes, commenced on 16 January 1874 in Pietermaritzburg²⁰⁴ in a marquee on the grounds of Government House.²⁰⁵

2.2.2 The charges

The charges resembled charges in English law and related to treason,²⁰⁶ sedition²⁰⁷ and rebellion.²⁰⁸

That Langalibalele, and the Hlubi Tribe, having been refugees from Zululand in 1849, and having received by the Government of Natal, and allowed to live in the Colony, on condition that they occupied a portion of the base of the Drakensberg, and discharged certain duties necessary for the protection of the County of Weenen: Did wickedly, seditiously, and traitorously conspire to

²⁰⁰ Minutes of the Langalibalele Trial 21; Morris *Washing of the Spears* 224; Pearse *Barrier of Spears* 251; Herd *Bent Pine* 68.

²⁰¹ Herd *Bent Pine* 71.

²⁰² Minutes of the Langalibalele Trial 1, 15.

²⁰³ This resulted in a "glaring absence of Langalibalele's words and defence" (Mokoena 2019 *Journal of African History* 68; Wright and Manson *Hlubi* 74). The right to counsel is not merely a technical issue. Colenso noted that if Langalibalele had counsel the lies of one Mahoiza, one of the messengers, and could have been used to lead to a description of the facts that may have changed public perception as to the conduct of Langalibalele and the Hlubi (Cox *Life of John Williams Colenso* 363).

²⁰⁴ Minutes of the Langalibalele Trial 1.

²⁰⁵ Guy *Heretic* 205.

²⁰⁶ Law 3 of 1868 re-enacting sections of the Imperial Act 11 and 12 Victoria c 12 (*Treason Felony Act*, 1848) into Natal law, reducing the punishment for certain treasonous actions from the death penalty to life imprisonment. In terms of this Act, treason is aimed at criminalising actions to deprive the Sovereign *inter alia* of her dominions; or to levy war against her or to plan to invade her territories (Stephen *Digest of the Criminal Law* arts 61-62).

²⁰⁷ Sedition is an English common law offence to incite discontent or ill-will against the state or to promote hostility between different classes of such subjects (Stephen *Digest of the Criminal Law* art 93).

²⁰⁸ Bergtheil 1875 *Journal of the Society of Arts* 482. The charge of rebellion was not a common law or statutory crime under English or Natal law (Lobban *Imperial Incarceration* 122; Mokoena 2019 *Journal of African History* 79).

abandon that position, and those duties, and in carrying out the object of such conspiracy, did leave the Colony, and cross the Drakensberg, as an armed force, taking their cattle with them, well knowing that to do so was a deviant contravention of the Law under which they live, and rebellion against the authority of the Supreme Chief.

That in carrying out this seditious and rebellious design they pointed their weapons of war against the Supreme Chief, and wounded his person by killing the subjects of Her Majesty the Queen, sent by the Supreme Chief to turn them back to their allegiance and duty.

That Langalibalele, having been entrusted with the management of the Hlubi Tribe, as Induna, or Lieutenant of the Supreme Chief, did encourage, and conspire with the people under him to procure firearms, and to retain them, as he and they knew, contrary to Law, for the purpose and with the intention of, by means of such firearms, resisting the authority of the Supreme Chief; and that, with the same purpose and intention, he did enter into and carry on treasonable communications with others at present unknown; and that, emboldened by the possession of such firearms, and encouraged by expectation of aid and comfort from others, he proceeded to disobey and defy the Magistrate placed over him, to insult and treat with violence and contumely the Messengers sent to him on behalf of the Supreme Chief, and to kill the subjects of Her Majesty the Queen, sent directly, by the Supreme Chief, to cause him, and the people placed under him, to return to their allegiance.

Whereby he wickedly and traitorously placed himself, and the people committed to his care, in open rebellion against the Supreme Chief, and the authority of Her Majesty the Queen.

In short, the charges included several counts of traitorous and seditious intent towards rebellion against the Supreme Chief and the Queen for turning his back on their alliance:²⁰⁹ first, by deciding to leave the colony with an armed force and cattle contrary to the alliance;²¹⁰ two by killing British subjects sent to turn them back; three, by conspiring with others to obtain firearms and to disobey the authority of the Supreme Chief; and four, by mistreating the Supreme Chief's messengers through insult and a threat of violence.²¹¹

2.2.3 *Plea explanation*

Langalibalele was required to plea to the charges, a process which was foreign in African law.²¹² It was clear that he did not understand much about

²⁰⁹ Herd *Bent Pine* 53.

²¹⁰ This charge was premised on the assumption that leaving the colony was an act of rebellion under African law (Minutes of the Langalibalele Trial 36 (Pine judgment); Lobban *Imperial Incarceration* 86). It is interesting to note that the Lt-Gov in his judgment noted that under colonial law the mere act of leaving the colony with cattle was not an act of treason as it was under African law (Minutes of the Langalibalele Trial 36).

²¹¹ The charges together could have been a charge of high treason (Lobban *Imperial Incarceration* 86).

²¹² Wright and Manson *Hlubi* 74.

the indictment or what he had to do.²¹³ His plea was a combination of admissions, requests to call his witnesses and explanations of his actions:²¹⁴ He admitted that he and his tribe did go over the Drakensberg, that some were armed and they took the cattle with them. He noted that they were driven to flee by circumstances caused by others, not him. He admitted he treated colonial messengers with disrespect, but argued it was a precautionary action caused by fear. He stated that there were certain witnesses that he wanted to call, including Mabuhle who was in command during the Pass incident (as he was not), to explain what happened.²¹⁵ The minutes note that Langalibalele did not reply to the charge that he encouraged tribesmen to arm themselves for purposes of resistance, but that he specifically denied that he ordered them to obtain guns. He denied any treasonable communication with the Basotho chief or any other. He had left the colony as he had heard he was in danger.

During his explanation the Lt-Gov told Langalibalele he was answerable for any wrongs committed by his tribesmen and if he could not control them he had to relieve himself of the responsibility as chief by going to the government and asking for assistance.²¹⁶ As an aside, Herd explains that this African law principle of collective responsibility could not be applied arbitrarily but only after a hearing where every member had the right to involve himself as an advocate of the accused and examine the evidence – a right not afforded to Langalibalele.²¹⁷

2.2.4 *Speeches by Native Chiefs and Indunas at the end of day one*

After the plea explanation, the Chiefs and Indunas were given an opportunity to speak. And speak they did, hurling abuse at Langalibalele, reiterating his duty to obey the colonial government²¹⁸ and finding no justification for what he has done.²¹⁹ They pronounced him guilty.²²⁰

²¹³ McClendon *White Chief, Black Lords* 110; Herd *Bent Pine* 54. Storey refers to the story in the *Natal Witness* of the time that Langalibalele made it clear that he did not understand the charges (Storey *Guns, Race and Power* 164).

²¹⁴ His reported plea explanation can be seen in full in the Minutes of the Langalibalele Trial 3.

²¹⁵ Lobban *Imperial Incarceration* 88; McClendon *White Chief, Black Lords* 110.

²¹⁶ Minutes of the Langalibalele Trial 3; McClendon *White Chief, Black Lords* 10. This argument of strict liability was subsequently frowned upon in the House of Lords (UK Parliament *Hansard House of Lords* 12 April 1875 (Lord Chancellor)).

²¹⁷ Herd *Bent Pine* 73.

²¹⁸ Herd *Bent Pine* 55.

²¹⁹ Hemuhemu further noted that Langalibalele should have obeyed the order to appear in person (Minutes of the Langalibalele Trial 4). Teteleku included that although he may not have desired his tribesmen to buy guns, he knew that a licence was required and that he was the master of his own fate through his disobedient actions (Minutes of the Langalibalele Trial 4-5).

²²⁰ Morris *Washing of the Spears* 224. Nondonise added that Langalibalele regarded himself "higher" than he was (Minutes of the Langalibalele Trial 5) and Mafingo

On day four Lt-Gov Pine noted the following about the speeches of the Chiefs made on day one:

I want to say one word with regard to the speeches the Chiefs made to me on the first day of the trial. Some fault has been found with their giving their opinions at that stage by persons who do not exactly understand the usages and customs of Kafirs; but from their point of view, from which I am bound to view it, they were right. Langalibalele had confessed his guilt, and stated circumstances which he considered were an extenuation of his guilt, and according to Kafir Law and usage the trial was over. In their point of view the Chiefs were quite right, and I thank them for the opinions they gave. All the subsequent proceedings which have taken place are in conformity with our own ideas of justice; we wanted to find out what extenuating or mitigating circumstances there might be that would not have occurred in a strict Kafir Court, but, according to our own notions of justice and propriety, we found it proper to go on and ascertain any circumstances which might mitigate or extenuate his conduct.

This explanation ironically noted that the African chiefs and indunas did not understand their own African law and customs and that the proceedings were according to "our own ideas of justice", presumably English justice.²²¹

2.2.5 *Plea of guilty*

The court noted that the plea "was regarded as ... one of guilty".²²² This guilty plea was recorded before any evidence was presented²²³ even though it clearly should have been one of not guilty if they considered the explanations of "extenuation or justification".²²⁴

2.2.6 *Witnesses for record purposes*

Although the trial was in effect over, the court "proceeded to hear evidence, not because the plea of yesterday was regarded as anything but one of guilty, but for the purpose of placing on record the extent of the prisoner's crime."²²⁵ The evidence related mainly to the experience of the messengers and the incident on the Pass.

The messengers, Umyembe and Mahoiza gave contradictory evidence of their attempts to deliver the messages to Langalibalele to appear before the

added that his conduct disgraced every black man in the Colony (Minutes of the Langalibalele Trial 5). Zatsuke highlighted the fatal mistake through his treatment of the messengers and refusal to obey the order to appear and thinking that he was the "head of all the natives and master of the white man too..." (Minutes of the Langalibalele Trial 5-6). Manxele concurred (Minutes of the Langalibalele Trial 6). See Herd *Bent Pine* 55.

²²¹ Minutes of the Langalibalele Trial 3.

²²² Minutes of the Langalibalele Trial 7.

²²³ Guest *Langalibalele: The Crisis in Natal* 58.

²²⁴ Bergtheil 1875 *Journal of the Society of Arts* 482.

²²⁵ Minutes of the Langalibalele Trial 7.

SNA, his stalling, the response claiming illness²²⁶ and their treatment.²²⁷ Mahoiza indicated that he was "stripped" to ensure that he was not concealing any guns, as was the case in the Matyana affair, and prodded by an assegai, and recounted how badly they had been treated.²²⁸ He clarified this evidence later, as a result of a meeting outside the hearing, that he had not been stripped naked but merely asked to remove his coats.²²⁹ [As an aside, Colenso arranged for a meeting with the SNA in his office on the 27th of January 1874, during the trial period, with evidence that Mahoiza had lied on the stand. During the discussion, the SNA himself discredited Mahoiza's evidence and found that he had not been stripped naked, that he had not been prodded with an assegai and that five beasts had been slaughtered to feed the messengers while they waited. However, when the trial continued, the SNA ignored what he knew and dismissed it as irrelevant.²³⁰]

The trial continued with the evidence of two other messengers, Umhlaba and Gayed,²³¹ who explained what happened at the kraal when one of the messages was delivered. They described what happened inside and outside the hut, how they were treated and how Langalibalele had excused himself due to illness. Umhlaba noted that the messengers had not been badly treated outside the hut.²³² Gayed focussed on the lack of food. The tribe had said that they had no more cattle to slaughter as these had already been moved to the mountain, although Umvembe had testified that they had been fed whilst waiting.²³³ Gayed confirmed that there had been no threat to kill the messengers.²³⁴ Chief Homoi subsequently gave evidence that messengers were sacred in African custom and mistreatment could be viewed as a challenge to war.²³⁵

Mahoiza gave evidence of the death of four of his people during the incident in the pass through shots fired by the Hlubi.²³⁶ The next day he produced a gun apparently taken from Langalibalele's men after the incident in the pass. The gun had been used to shoot at the SNA's men.²³⁷ Makatise also gave

²²⁶ Minutes of the Langalibalele Trial 8-9 (Umyembe evidence).

²²⁷ Umyembe and Mahoiza (Minutes of the Langalibalele Trial 7-14).

²²⁸ Minutes of the Langalibalele Trial 13.

²²⁹ Minutes of the Langalibalele Trial 26.

²³⁰ *Herd Bent Pine* 77.

²³¹ Minutes of the Langalibalele Trial 16.

²³² Minutes of the Langalibalele Trial 15-16.

²³³ Minutes of the Langalibalele Trial 7.

²³⁴ Minutes of the Langalibalele Trial 16. This last statement was noted in reply to the SNA cross-examination.

²³⁵ Minutes of the Langalibalele Trial 31; *Herd Bent Pine* 77.

²³⁶ Minutes of the Langalibalele Trial 11-14.

²³⁷ Minutes of the Langalibalele Trial 16. The Attorney-General Gallwey (from the bench) produced evidence that the gun was a registered Wildridge and Pringle from

evidence of the incident on the pass as he was part of Major Dunford's and the Carbineers' group.²³⁸ He confirmed the slaughtering of the Hlubi cow, the tense standoff, and that the first shot had been fired by Jantje of the Hlubi, resulting in more gunfire and the death of several people.²³⁹ Although Mabuhle himself had not had a gun, the Hlubi had also been armed with spears and had been dressed in warlike clothes.²⁴⁰ They had sworn allegiance to their Chief Langalibalele and had "asked why they were followed now that they had left the country of taxes."²⁴¹

Langalibalele had a few questions for these witnesses. He agreed that he had asked them to remove clothing out of fear, but could not ask them any questions about the incident on the pass without the presence of Mabuhle, as he had not personally been present during the incident.²⁴² On the last day the SNA asked Langalibalele if he had heard about the incident on the pass, and Langalibalele replied in the affirmative, but said he had heard about the incident only a few days after it had happened. He admitted that it was Mabuhle's duty as the person in charge to take the cattle over the pass.²⁴³

On day four the prosecutor called for a statement by the SNA to "complete the chain of evidence."²⁴⁴ The SNA confirmed the discord between Langalibalele and the Weenen Magistrate, MacFarlane, about the registration of guns and produced a letter he had written to Langalibalele on 4 October 1873 noting his delaying tactics relative to appearing before him (as SNA), the bad treatment of the messengers, and the reports from the Basotho seeking protection from Langalibalele's tribe and cattle.²⁴⁵ Langalibalele had nothing to say to the SNA and noted that he was waiting for the decision so that he could collect his tribe and move on.²⁴⁶ It should be noted that he denied in his plea explanation that he had made treasonable communications to the Basotho.²⁴⁷

Two further issues were noted by the SNA on questions by his fellow bench members: one, that he (as SNA) was unsure whether Langalibalele always

Griqualand with several permits to transfer it through Natal (Minutes of the Langalibalele Trial 17).

²³⁸ Minutes of the Langalibalele Trial 17.

²³⁹ Minutes of the Langalibalele Trial 17.

²⁴⁰ Minutes of the Langalibalele Trial 18.

²⁴¹ Minutes of the Langalibalele Trial 18.

²⁴² Minutes of the Langalibalele Trial 14, 18.

²⁴³ Minutes of the Langalibalele Trial 31-32.

²⁴⁴ Minutes of the Langalibalele Trial 19.

²⁴⁵ Minutes of the Langalibalele Trial 21-23.

²⁴⁶ Minutes of the Langalibalele Trial 23. The Minutes note that he referred to himself as *Umtagati*, thus admitting that he had sinned (Minutes of the Langalibalele Trial 23).

²⁴⁷ Minutes of the Langalibalele Trial 3.

paid his taxes;²⁴⁸ and two, that he was not aware of any incident that could cause Langalibalele to fear coming to see him personally.²⁴⁹ This was untrue as his brother had been involved in the Matshana affair and this was noted by several witnesses. Two of the chiefs on the bench, Manxele and Teteleku, disagreed about whether Langalibalele's fear was possible.²⁵⁰ The SNA confirmed that not obeying a summons of the government to explain conduct was a grave offence²⁵¹ and that "when people run away with cattle, it is an offence punishable with death ..."²⁵²

The prosecutor noted at the end of day four that there was no need for further evidence.²⁵³ The Lt-Gov reserved judgment. On day five, however, further evidence was given by Magistrate MacFarlane of Langalibalele's disobedient conduct with reference to the Marriage Law and the gun registration, and stated that he had refused to appear before him and the SNA.²⁵⁴ In addition, one James Perrin, the Chief Clerk of the SNA and the keeper of the gun register, noted that as of May 1873 47 Hlubi tribe members were authorised to hold 48 guns with Langalibalele having permission for two guns.²⁵⁵ The last witness was one Allison, who stated that he had received 111 guns from one Bell, that apparently had been surrendered by the Hlubi.²⁵⁶ There was no explanation as to why Bell could not be present at the hearing.²⁵⁷

2.2.7 Procedural rights of the accused

Apart from the lack of legal representation discussed above, the accused himself did not have the right to cross-examine the witnesses²⁵⁸ although he was allowed to ask some questions as indicated above. Notwithstanding his requests he was also not allowed to present any evidence or call witnesses himself.²⁵⁹

²⁴⁸ Minutes of the Langalibalele Trial 24.

²⁴⁹ Minutes of the Langalibalele Trial 24.

²⁵⁰ Minutes of the Langalibalele Trial 25-26.

²⁵¹ Minutes of the Langalibalele Trial 25.

²⁵² Minutes of the Langalibalele Trial 25.

²⁵³ Minutes of the Langalibalele Trial 25.

²⁵⁴ Minutes of the Langalibalele Trial 29-30. There was some disagreement from Langalibalele on minor issues. The questions related to the acrimonious relationship between Langalibalele and the Magistrate's secretary/interpreter Rudolph and the impact thereof on the Magistrate's reporting Langalibalele to the SNA (Minutes of the Langalibalele Trial 31).

²⁵⁵ Minutes of the Langalibalele Trial 32.

²⁵⁶ Minutes of the Langalibalele Trial 32.

²⁵⁷ It is unclear why the court relied on hearsay evidence.

²⁵⁸ Guy *Heretic* 206.

²⁵⁹ See his plea explanation above.

2.3 Judgment and sentence

Although Langalibalele had already been found guilty after the first day of the trial, the judgment was delivered only on day six.²⁶⁰ The judgment set out the colonial interpretation of the events²⁶¹ and Langalibalele was as chief found to be the actual perpetrator of the murders of the British on the Pass even though he had not been there, as "Mabuhle was the commander of the military portion of the tribe."²⁶² Except for the charge of treasonable communication, he was found guilty of all the charges.²⁶³

The judgment (erroneously) noted that although Langalibalele could have received the death penalty, the consequences already suffered by him and the tribe served as extenuating circumstances.²⁶⁴ He was sentenced to imprisonment²⁶⁵ and banishment for life to such a place as the Supreme Chief might decide.²⁶⁶ This turned out to be Robben Island in the Cape Colony, after the adoption there of the *Natal Criminals Act* 3 of 1874.²⁶⁷

It should be noted that a colonial court was not competent to impose such a sentence, as the *Colonial Prisoners' Removal Act*²⁶⁸ prohibited the transportation of prisoners between British colonies without a formal address to the Queen.²⁶⁹

²⁶⁰ Minutes of the Langalibalele Trial 33-38. The document was signed by Lt-Gov Pine, the SNA, Bird, Hawkins, Teteleku, Nondonise, Manxele, Hemuhemu and Zatshuke. The last five signed by adding their mark. Other signatures that appear are those of the interpreters: Bennet, Hlokolo and Mafingo, the last two with marks; witness Gordon and Morcom the Clerk of Court.

²⁶¹ This finding was based on contradictory evidence of the treatment of the messengers where at least one witness (Mahoiza) was known to have lied and hearsay evidence (where the produced gun(s) came from) and notwithstanding that all the elements of the crimes had not been proved by evidence. There was no evidence of the intent to commit sedition or treason and no evidence of a rebellion.

²⁶² Minutes of the Langalibalele Trial 37.

²⁶³ Minutes of the Langalibalele Trial 37.

²⁶⁴ Minutes of the Langalibalele Trial 14.

²⁶⁵ Morris *Washing of the Spears* 224.

²⁶⁶ Herd *Bent Pine* 78.

²⁶⁷ This Act was adopted on 6 July 1874 by the Cape Parliament with a majority of 10 to 7 (Knox 1976 *Historical Journal* 899; Preston *South African Diaries* 191). Not quite the "overwhelming majority" Herd refers to (Herd *Bent Pine* 84). John X Merriman, the Cape Colony Government spokesman condemned the trial (Lobban *Imperial Incarceration* 91). The Act was repealed six months later after Carnarvon recommended to the Queen not to confirm the Act (Herd *Bent Pine* 106).

²⁶⁸ Section 4 of the *Colonial Prisoners' Removal Act*, 1869 (Imperial Act 32 and 33 Victoria c 10).

²⁶⁹ Pearse *Barrier of Spears* 251; Herd *Bent Pine* 78; Morris *Washing of the Spears* 224.

3 Post-trial reactions

The friends of Langalibelele, and his enemies, seem equally to think that wrong has been done, - or no better than imperfect justice.²⁷⁰

... fundamental legal principles shared by all societies had been violated and consequently a grave injustice had been committed.²⁷¹

If this is rebellion; it is the mildest rebellion ever hear of combined with the cruellest of punishments.²⁷²

3.1 Appeals to Shepstone and the Executive Council of Natal

Supporters of Langalibalele regarded the punishment as unjust.²⁷³ There were two legal post-trial procedures in Natal. Firstly, Colenso prepared a petition on behalf of two elderly Hlubi based on the Ordinance 3 of 1849 and the right of Langalibalele to appeal.²⁷⁴ Shepstone summonsed the two tribesmen to his office and although he threatened them with imprisonment, they confirmed their wish to appeal.²⁷⁵ On 9 April 1874 Colenso was permitted to appeal on behalf of Langalibalele to the Executive Council of Natal.²⁷⁶ With Shepstone being a member hereof too, it was unsurprising that the appeal was dismissed.²⁷⁷ The Executive Council specifically noted that as the Supreme Chief had the right to life and death, this included the right to banish.²⁷⁸

Secondly, Colenso approached the Supreme Court for an interdict to prevent Langalibalele's banishment from Natal, but it was rejected on 14 July 1874.²⁷⁹ Although African law had no extra-territorial powers the court found that the sentence was not unlawful as the Supreme Chief had the power to transport inferior chiefs to wherever he wanted.²⁸⁰ In addition, the court noted that the court would never interdict the Lt-Gov, leaving serious questions about the independence of the judiciary at the time.²⁸¹

²⁷⁰ Trollope *South Africa* 238.

²⁷¹ Guy *Heretic* 219 on the view of Colenso.

²⁷² Herd *Bent Pine* 67 with reference to Colenso.

²⁷³ Bergtheil 1875 *Journal of the Society of Arts* 482 opposite views in this regard.

²⁷⁴ Guy *Heretic* 210; Herd *Bent Pine* 88; Lobban *Imperial Incarceration* 90.

²⁷⁵ Guy *Heretic* 210; Herd *Bent Pine* 88.

²⁷⁶ Guy *Heretic* 213; Herd *Bent Pine* 92.

²⁷⁷ Guy *Heretic* 213; Herd *Bent Pine* 92; Wright and Manson *Hlubi* 76-77; McClendon *White Chief, Black Lords* 116; Morris *Washing of the Spears* 225.

²⁷⁸ Lobban *Imperial Incarceration* 90.

²⁷⁹ Wright and Manson *Hlubi* 77. The Supreme Court limited itself to the record of proceedings and refused to hear any new evidence (McClendon *White Chief, Black Lords* 114). Although he was allowed legal representation, the advocate was given a very short time to prepare (Cox *Life of John Williams Colenso* 353).

²⁸⁰ Lobban *Imperial Incarceration* 91.

²⁸¹ Lobban *Imperial Incarceration* 91.

3.2 Reaction in England

When the Lord Chancellor described the trial in the House of Lords, he was greeted by loud laughter from his assembled Peers.²⁸²

[A] man who was in front of a retreating force is made answerable for shots fired by men in the rear with whom he had no personal communication.... [and this made him] liable to forfeit his life under the law of every civilised country in the world.²⁸³

Colenso requested that the record and other correspondence be sent to the Secretary of State for the Colonies in London.²⁸⁴ By this time news of the violence against women and children and the (illegality of the) trial had been published in English media during a general election.²⁸⁵ These reports and those of the humanitarian lobby, the Aborigines Protection Society,²⁸⁶ required that Lord Carnarvon,²⁸⁷ as the new Colonial Secretary, had to answer to the enraged British electorate.²⁸⁸ The public demanded that the rule of law be honoured²⁸⁹ and the tribes be rehabilitated.²⁹⁰ Carnarvon agreed that the sentence seemed too severe and regretted that Langalibalele had not been represented by counsel.²⁹¹ Before Lt-Gov Pine could provide a detailed report to Carnarvon,²⁹² he (Carnarvon) received a detailed critique of the trial based on the work of Colenso.²⁹³ Both Colenso and Shepstone went to Britain to meet Carnarvon in person.²⁹⁴ It should be

²⁸² Pearse *Barrier of Spears* 251.

²⁸³ Noted with incredulousness in the UK Parliament *Hansard House of Lords* 12 April 1875 (Lord Chancellor).

²⁸⁴ Guy *Heretic* 211.

²⁸⁵ Herd *Bent Pine* 82; Wright and Manson *Hlubi* 76; Guest *Langalibalele: The Crisis in Natal* 64.

²⁸⁶ Colenso had already written to the Society on 14 December 1873 after the slaughter of the two tribes (Herd *Bent Pine* 38; Mokoena 2019 *Journal of African History* 69; Herd *Bent Pine* 37; Colenso 2011 *African Research and Documentation* 4; Guest *Langalibalele: The Crisis in Natal* 64; Cox *Life of John Williams Colenso* 326-327).

²⁸⁷ Guy *Heretic* 215. With a change in government in London in February 1874, a new Secretary of State, Lord Carnarvon, was appointed (Guy *Heretic* 215).

²⁸⁸ Herd *Bent Pine* 97.

²⁸⁹ Lobban *Imperial Incarceration* 92; Morris *Washing of the Spears* 225.

²⁹⁰ Wright and Manson *Hlubi* 78.

²⁹¹ Guy *Heretic* 216. Carnarvon originally ignored his legal team's advice that the sentence and the adoption of the *Natal Criminals Act* 3 of 1874 in the Cape were *ultra vires* (Herd *Bent Pine* 98).

²⁹² The Lt-Gov's initial reports were unsatisfactory (Guy *Heretic* 213; Herd *Bent Pine* 82-83; Wright and Manson *Hlubi* 76; McClendon *White Chief, Black Lords* 116). His comprehensive report was sent on 16 July 1874 with Shepstone's comments (Guy *Heretic* 217).

²⁹³ Guy *Heretic* 216. This was sent by Colenso's brother-in-law. The Colenso document noted, "the composition of the court which had tried the chief, the procedure it had adopted, the misleading evidence of Mahoyiza, the atrocities after the Bushman's pass affair, and the Matshana incident" (Guy *Heretic* 216).

²⁹⁴ Guy *Heretic* 217; Pearse *Barrier of Spears* 251; Herd *Bent Pine* 103; Morris *Washing of the Spears* 226.

noted that Shepstone "deftly managed to fix the blunders on his hapless superior [Pine]."²⁹⁵

The British Government intervened and the matter served before both the House of Commons and the House of Lords.²⁹⁶ In the House of Lords, Lord Grey spoke in favour of the retention of the *Natal Prisoners Act 3 of 1874* (Cape) and thus the continued incarceration of Langalibalele on Robben Island.²⁹⁷ Carnarvon disagreed and provided a "different colouring" to the incident.²⁹⁸ He argued that the colonial government should have dealt with Langalibalele differently, with less bloodshed, as Langalibalele had acted out of impulse and fear, and continued that the punishment suffered by the Hlubi and Putini was unnecessarily severe.²⁹⁹

Regarding the trial, "Carnarvon was deeply shocked by the manner in which the trial had been conducted ..."³⁰⁰ He highlighted the fact that the use of African law and an African court was incorrect, that the accused had had no legal representation and that the appeal had been heard by the same persons involved in the original hearing. In addition, he noted that the bench changed over the course of the trial and that the mix of African and English law used was a gross anomaly. He agreed that Langalibalele's plea had not been one of guilty, and that the evidence was flimsy, insufficient and contradictory for a conviction on the charges of treason, sedition and rebellion.³⁰¹ Most fundamentally, he regarded the ultimate sentence as illegal. He "expressed [his] strong view of the illegality, of the unwisdom, of the injustice of those proceedings."³⁰²

However, politics prevailed. The House of Lords discussion ended with the acceptance of three factors: one, the "well-founded suspicion of Langalibalele's complicity for treasonable practices with other chiefs having been advanced"; two, that three whites were killed by the Hlubi in a well-planned ambush and three, that the value of trade in the area was growing

²⁹⁵ Herd *Bent Pine* 107.

²⁹⁶ UK Parliament *Hansard House of Commons* 20 April 1875; 31 March 1879; 18 July 1881; 7 May 1883; 8 August 1883; 13 August 1883; 11 March 1887 and 8 August 1887; UK Parliament *Hansard House of Lords* 12 April 1875 "Motion for an Address" Vol 223.

²⁹⁷ UK Parliament *Hansard House of Lords* 12 April 1875 (Grey).

²⁹⁸ UK Parliament *Hansard House of Lords* 12 April 1875 (Carnarvon).

²⁹⁹ Grey disagreed with Carnarvon on this point. Also see Bergtheil 1875 *Journal of the Society of Arts* 482.

³⁰⁰ Preston *South African Diaries* 115; Bergtheil 1875 *Journal of the Society of Arts* 482.

³⁰¹ Bergtheil 1875 *Journal of the Society of Arts* 482; Lobban *Imperial Incarceration* 93. Single witness evidence ("of his defiant insolence") should have been corroborated (Bergtheil 1875 *Journal of the Society of Arts* 483).

³⁰² UK Parliament *Hansard House of Lords* 12 April 1875 (Carnarvon). Questions were asked whether it could be treason when the accused was not a British subject and when there was no law that denied him the right to emigrate (Morris *Washing of the Spears* 217).

exponentially, that could benefit the Crown.³⁰³ These factors informed Carnarvon's final decision.

Carnarvon concluded that although the trial had been improper, Langalibalele deserved punishment for "refusing to obey the summons and the lawful commands of the Natal Government, and for attempting to escape from the jurisdiction of that Government with his tribe and his cattle ..."³⁰⁴ The sentence was found to be too severe, however, and he ordered that Langalibalele should be released from Robben Island but that he might not return to Natal.³⁰⁵ As the return of the Hlubu to their location was impossible, he instructed that the effects of their sentences should be modified by employment in public works rather than being assigned to private employers.³⁰⁶ In addition, he advised the Queen not to confirm the *Natal Prisoners Act* 3 of 1874, which had legalised Langalibalele's confinement in the Cape.

About the Putini, Carnarvon found that there was no evidence of their complicity and noted that their possible mild transgressions did not justify the actions taken against them.³⁰⁷ He required that reparations should be paid to them without endangering the authority of the local government.³⁰⁸

He retired Pine from his position as Lt-Gov of Natal³⁰⁹ and replaced him with Wolseley.³¹⁰

Carnarvon felt he had the responsibility to "rehabilitate native justice", but in the process was forced to make a policy on "the nature and limits of imperial authority" in Africa "where racial conflicts gave the Imperial Government 'a responsibility that made interference a duty.'"³¹¹

3.4 Natal colonists

Colenso described the atmosphere during the trial, as "a tumult of popular excitement and frenzy" against Langalibalele.³¹² Although some questions were raised in the Natal media about the fairness and impartiality of the

³⁰³ Bergtheil 1875 *Journal of the Society of Arts* 483.

³⁰⁴ UK Parliament *Hansard House of Lords* 12 April 1875 (Carnarvon).

³⁰⁵ Herd *Bent Pine* 104.

³⁰⁶ Herd *Bent Pine* 105.

³⁰⁷ Herd *Bent Pine* 105.

³⁰⁸ Herd *Bent Pine* 105.

³⁰⁹ Herd *Bent Pine* 105.

³¹⁰ Herd *Bent Pine* 111.

³¹¹ Preston *South African Diaries* 115.

³¹² Colenso *Langalibalele and the Amahlubi Tribe* ix; Herd *Bent Pine* 60.

trial,³¹³ most Natal colonists acclaimed how the Lt-Gov handled the trial and regarded the verdict as a model of justice softened by Christian mercy.³¹⁴

Carnarvon's subsequent decisions about the trial were met with anger in Natal.³¹⁵ The colonists in Natal sent a document to Carnarvon to the effect that no area "treated their coloured people more kindly and that the trial was humane, lenient, just, and urgently necessary."³¹⁶

4 Consequences

The trial and its aftermath had severe consequences for the persons and groups involved.

Langalibalele was allowed to move to the Cape mainland in August 1875.³¹⁷ He returned to Natal in 1886, confined to the Swartkop Location near Pietermaritzburg under the custodianship of Thetheleku, the Mphumuza chief.³¹⁸ He never regained his political power³¹⁹ and died in 1889.³²⁰ He received £50 per annum from the Natal government.³²¹ In the longer term, he was honoured by the Bushman's Pass being renamed in his honour.

Lt-Gov Pine was made the scapegoat.³²² He was recalled and retired for his mishandling of the Langalibalele affair: the hasty use of force and reckless cruelty permitted against the two tribes³²³ and as "he [had] made a mockery of Langalibalele's subsequent trial".³²⁴ His career was in ruins.³²⁵

Although it would have been reasonable to blame Shepstone in the light of his experience of African law and for being the *de facto* decision-maker

³¹³ These included rumours of incorrect translations during the trial, and acceptance of untrue prejudicial evidence (Mahoiza), whilst ignoring relevant evidence (Matyana trap) in favour of Langalibalele (Herd *Bent Pine* 81).

³¹⁴ Morris *Washing of the Spears* 224; Herd *Bent Pine* 78; Guest *Langalibalele: The Crisis in Natal* 52.

³¹⁵ Herd *Bent Pine* 105.

³¹⁶ Guy *Heretic* 216-217.

³¹⁷ UK Parliament *Hansard House of Commons* 20 April 1875. This was done after the repeal of the *Natal Criminals Act* 3 of 1874 (Cape).

³¹⁸ Lambert 1995 *Journal of Southern African Studies* 276. Pearse *Barrier of Spears* 251 said in 1887.

³¹⁹ Guest *Langalibalele: The Crisis in Natal* 101.

³²⁰ Pearse *Barrier of Spears* 251; Lobban *Imperial Incarceration* 97. The issue of Langalibalele's return was noted in the UK House of Commons no less than six times between 1881 and 1887 (UK Parliament *Hansard House of Commons* 18 July 1881; 7 May 1883; 8 August 1883; 13 August 1883; 11 March 1887 and 8 August 1887).

³²¹ UK Parliament *Hansard House of Commons* 11 March 1887. It was noted that he had been given lodgings in a block of buildings where he and his family were comfortable and satisfied with their accommodation and treatment (UK Parliament *Hansard House of Commons* 11 March 1887); Trollope *South Africa* 245.

³²² Guest *Langalibalele: The Crisis in Natal* 86.

³²³ UK Parliament *Hansard House of Lords* 12 April 1875 (Grey).

³²⁴ Bourquin 1985 *Military History Journal* 16; Pearse *Barrier of Spears* 252.

³²⁵ Pearse *Barrier of Spears* 226; Guest *Langalibalele: The Crisis in Natal* 67.

during the trial, he successfully shifted the blame onto his superior, Lt-Gov Pine.³²⁶ He retained the trust of Carnarvon and returned to South Africa.³²⁷ Although his reputation had been slightly dented in the English parliament,³²⁸ he was still knighted in 1876.³²⁹

John Shepstone was cleared of his actions in the 1858 Matyana affair by an official investigation demanded by Carnarvon³³⁰ and subsequently became a judge of the Natal High Court in 1884 and received a CMG in 1888.³³¹

Capt AW Dunsford, who led the disastrous expedition to the pass and criticised the courage of his soldiers, was placed on a disability pension and continued his cause in favour of the rehabilitation of the Putini, for which he was shunned by the colonists.³³²

Colenso became extremely unpopular with his white congregation for siding with the Zulus.³³³ He was labelled a liar for spreading nonsense.³³⁴

There was no justice for those who suffered the most.³³⁵ From being prosperous and self-supporting, the Hlubi lost their land and property, and the members of the tribe were scattered amongst other tribes or onto settler farms.³³⁶ There was a general amnesty for them,³³⁷ but they were not allowed to return to their original location as it had been divided into European farms. They could return to the broader area but were allocated smaller plots under other headmen.³³⁸ The convicted Hlubi assigned to settler farms were forced to complete their sentences.³³⁹ The

³²⁶ McClendon *White Chief, Black Lords* 121; Guest *Langalibalele: The Crisis in Natal* 87; Herd *Bent Pine* 107.

³²⁷ UK Parliament *Hansard House of Commons* 31 March 1879.

³²⁸ UK Parliament *Hansard House of Commons* 31 March 1879.

³²⁹ McClendon *White Chief, Black Lords* 121 as read with Anon Date unknown <https://honours.cabinetoffice.gov.uk/about/orders-and-medals/>. Herd *Bent Pine* 125.

³³⁰ McClendon *White Chief, Black Lords* 121. It is an Order of Companion of St Michael and St George for distinguished citizens in the British realm Anon Date unknown <https://www.royal.uk/order-st-michael-and-st-george>.

³³¹ Morris *Washing of the Spears* 226; Guest *Langalibalele: The Crisis in Natal* 92; Colenso 2011 *African Research and Documentation* 4; McClendon *White Chief, Black Lords* 123. He became amongst the colonists the "most hated man" in Natal for branding some of the soldiers as cowards (Bourquin 1985 *Military History Journal* 12).

³³² Dominy 1991 *Natal Museum Journal of Humanities* 49; Pearse *Barrier of Spears* 250; Draper *Eye of the Storm* 171; Guy *Heretic* 217; Herd *Bent Pine* 89-90; Cox *Life of John Williams Colenso* 356.

³³³ Preston *South African Diaries* 153. John Shepstone threatened him with a defamation suit for £1 000 (Preston *South African Diaries* 179; Herd *Bent Pine* 103).

³³⁴ Lobban *Imperial Incarceration* 82.

³³⁵ GN 116 and 117 of 15 April 1874; Bergtheil 1875 *Journal of the Society of Arts* 481.

³³⁶ Guest *Langalibalele: The Crisis in Natal* 82.

³³⁷ Wright and Manson *Hlubi* 76.

³³⁸ Guest *Langalibalele: The Crisis in Natal* 94.

dismemberment of the Hlubi had permanent consequences as the Commission on Traditional Leadership Disputes and Claims 2010 *Report* found that the Hlubi did not have a claim for kingship.³⁴⁰

Although there was no further enquiry into their complicity,³⁴¹ the Putini tribe was pardoned in August 1873, allowed to return to their old location³⁴² and awarded compensation in the amount of £12 000.³⁴³ They eventually received only about £2 262.³⁴⁴

The security of the colonists, on the other hand, was improved with an increase in imperial troops in Natal by the formation of the Natal Mounted Police.³⁴⁵ As already mentioned, they gained access to additional land and cheap labour in addition to suffering no legal consequences for their brutal actions against the two tribes.

In addition, structural changes were made to native administration³⁴⁶ by the adoption of the *Native Administration Law 26 of 1875*³⁴⁷ that effectively eroded the power and scope of the independence of the chiefs.³⁴⁸ This included that the court had jurisdiction over all criminal matters.³⁴⁹ An attempt was made to collate Native law in the "Code of Native Law"³⁵⁰ and the Native High Court was established.³⁵¹

Lastly, although the Langalibalele affair played a small part in the downfall of Gladstone's Liberal Government,³⁵² the discovery of diamonds and the promises of a wealthier Southern Africa resulted in increased British interests in the area and a more ambitious form of imperialism.³⁵³ Constitutional changes followed, and the *Natal Constitutional Amendment*

³⁴⁰ Commission on Traditional Leadership Disputes and Claims *Report* 553.

³⁴¹ Guest *Langalibalele: The Crisis in Natal* 33.

³⁴² Wright and Manson *Hlubi* 77.

³⁴³ Guest *Langalibalele: The Crisis in Natal* 81.

³⁴⁴ Herd *Bent Pine* 123.

³⁴⁵ Pearse *Barrier of Spears* 252; Guest *Langalibalele: The Crisis in Natal* 96; Herd *Bent Pine* 112.

³⁴⁶ UK Parliament *Hansard House of Lords* 12 April 1875 (Grey).

³⁴⁷ Herd *Bent Pine* 125; Lambert 1995 *Journal of Southern African Studies* 281; Carton, Laband and Sithole *Zulu Identities* 283. The aim of the statute is to define the official role of the chiefs, subject them to codified legal authority and strip them of power to try minor criminal infringements although they could still hear property, marriage, inheritance and other matters, with the addition of a right to appeal to the local magistrate (Lambert 1995 *Journal of Southern African Studies* 281).

³⁴⁸ McClendon *White Chief, Black Lords* 124.

³⁴⁹ McClendon *White Chief, Black Lords* 122.

³⁵⁰ Carton, Laband and Sithole *Zulu Identities* 283; McClendon *White Chief, Black Lords* 122.

³⁵¹ Pearse *Barrier of Spears* 252. This court finally deprived the SNA of his Native judicial functions (Herd *Bent Pine* 124).

³⁵² Pearse *Barrier of Spears* 252.

³⁵³ Storey *Guns, Race and Power* 144; Guy *Heretic* 220. A discussion hereof falls outside the scope of this article.

Act of 1875 was adopted, giving the imperial government greater control of the area.³⁵⁴

5 Conclusion

The intransigence of Langalibalele ... with some reputation as a rain-doctor who was arrested for failing to register arms, became the occasion for this ruthless act of summary punishment.³⁵⁵

This article has aimed to discuss the actions leading up to the trial, and the 1874 Langalibalele trial itself by including both the perspectives of Langalibalele and those of the colonial government. It sets out how the flourishing and largely independent Hlubi with their newly acquired access to guns from the diamond fields, how Langalibalele's failure to adhere to a request for a meeting with colonial government officials and how the killing of three British soldiers outside the colony by fleeing Hlubi created the opportunity for nervous colonists and punitive leaders in a struggling colony to escalate the unfortunate events into the slaughter of hundreds of Africans and the destruction of their property without any negative personal consequences. The results for the colonists were overwhelmingly positive: access to more land, the availability of cheap labour, and improved security.

Although the colonial government had the support of the colonists, questions were raised in England about the excessive bloodshed of the Hlubi and Putini tribes. With the capture of Langalibalele, the authorities resorted to deceitful methods and a sham and unlawful trial to justify the colonists' actions and ensure the predetermined finding of guilt.

The article highlights the problems with the trial itself. These include that the Lt-Gov had no power to establish an African court and that the choice of law was inappropriate and contrary to applicable legislation. The law and procedure applied during the trial did not adhere to any specific legal system but was a convenient amalgamation of African and Natal law. Most of the members of the bench were not independent, were clearly prejudiced and were hostile towards the accused. The charges were not in line with the chosen law and were unclear, and the accused's plea explanation was erroneously interpreted as one of guilty. He was found guilty before any evidence was led. He had no legal representation, no right to cross-examine witnesses and no right to call his own witnesses. The evidence did not relate to the crimes he was accused of having committed and the punishment imposed was unlawful and exceeded the powers of the court. The appeal process was fraught with intimidation and those hearing the appeal had been involved in the original trial.

³⁵⁴ McClendon *White Chief, Black Lords* 121; Guest *Langalibalele: The Crisis in Natal* 67, 71.

³⁵⁵ Preston *South African Diaries* 114.

Even after this travesty of justice had been exposed in England and discussed in Parliament, justice was not done for those who suffered the most (Langalibalele, the Hlubi and the Putini). Although Langalibalele was allowed to leave Robben Island, he was not restored as chief, the Hlubi's land and property were not restored, and the Putini did not receive their full compensation. There were some negative personal and career consequences for the unfortunate scapegoat (Pine), but also for the whistleblower (Colenso) and the individual who unsuccessfully fought for the Putini reparations (Dunsford). The main conspirators, however, were rewarded with career advances and imperial awards (the Shepstone brothers).

This saga shows how "gun control formed a large part of an emerging struggle over land and citizenship"³⁵⁶ and the underhand methods and exceptional power the British used to cement imperial rule.³⁵⁷ The discovery of diamonds inland increased the economic potential and political importance of the colony, resulting in better security and a more structured, but less autonomous regulatory system for Africans, their chiefs, customs and laws.

What was more profoundly ominous was the brutal and vindictive decision to detribalise the Amahlubi and Putili Locations and destroy the degree of black economic independence which was deemed subversive of the social and political order of the state.³⁵⁸

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³⁵⁶ Storey *Guns, Race and Power* 144.

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List of Abbreviations

CMG

Order of St Michael and St George

Lt-Gov
SNA

Lieutenant-Governor
Secretary of Native Affairs