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FURTHER PAPERS

RELATING TO THE

KAFIR OUTBREAK IN NATAL.

(In continuation of Command Paper C. 1119 of 1875.)

Presented to both Houses of Parliament by Command of Her Majesty,
February 1875.

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Further Papers relating to the late Kafir Outbreak in Natal.

No. 1.

Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—
(*Received August* 24.)

My Lord, *Government House, Natal, July* 20, 1874.

REFERRING to my despatch in which I informed your Lordship that I was about to send Mr. Shepstone to England on public service, I have now the honour to report to you that that gentleman leaves the Colony by this mail.

2. The object of his mission is twofold:—

First, to give your Lordship on the spot any further information which may be required regarding the late revolt in this Colony and its suppression.

Secondly, to explain to your Lordship more fully than could be done in written communications the grounds which render it necessary that an outlet should be afforded to the overwhelming Kafir population of this Colony by the acquisition of some territory intervening between the occupied country of Cetywayo, the King of the Zulus, and the Transvaal Republic, as mentioned in my despatch on the subject of Mr. Shepstone's expedition into the Zulu country for the purpose of installing the new King.

3. I think your Lordship will concur with me in thinking that Mr. Shepstone's journey to England will be of important public service. I think it further right to add that, after the harassing work occasioned by the late proceedings, the state of Mr. Shepstone's health seems to require change. It is fifty-four years since he visited England, having left when a child.

I have, &c.
(Signed) BENJ. C. C. PINE.

No. 2.

Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—
(*Received September* 4.)

My Lord, *Government House, Natal, July* 10, 1874.

REFERRING to my despatch of the 18th April, 1874,* forwarding an account of the proceedings at the public meeting held in Durban on April 1, 1874, I have now the honour to forward to your Lordship a memorial adopted at that meeting, and since signed by 1,683 European colonists.

I have, &c.
(Signed) BENJ. C. C. PINE.

* Not printed.

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Inclosure in No. 2.

Petition.

To the Right Honourable Her Majesty's Principal Secretary of State for the Colonies:

The Petition of the undersigned inhabitants of the Colony of Natal,

Humbly showeth—

1. THAT your petitioners have read with the greatest astonishment and indignation a manifesto purporting to emanate from the Peace Society, London, copies of which have been sent to the English newspapers for publication, wherein the Natal Colonists are accused of having taken part in what is therein described as a series of "cruel and dastardly outrages perpetrated on a host of women and children. Not content with stealing from 8,000 to 9,000 head of cattle, and large numbers of sheep, goats, and horses, the Colonial authorities kidnapped 1,500 of helpless Kafir women, the wives, sisters, and children of the fugitives and others. And now comes the worst part of this disgraceful business. It is stated in the latest dispatches that the wretched creatures thus torn away by wholesale from their homes are to be distributed and 'apprenticed' out at a distance from their former homes. Applications have been received for 5,000 of them, if procurable, from persons willing to employ them. All who are acquainted with the relations of Colonists and natives (especially as illustrated by the brutalities of the Queensland Colonists towards their enslaved kidnapped Polynesian Islanders—slaves under the guise of 'apprenticeship') will know well that this apportionment of Kafir women and children must naturally result in the grossest cruelties and abuse."

2. That your Petitioners lose no time in giving, in the most emphatic manner possible, a denial to such wholesale and reckless slanders, as being accusations totally unwarranted by facts, the fullest details connected wherewith being already in possession of Her Majesty's Government, it is needless to occupy your Lordship's time by recapitulation. Suffice to it to say, that had grounds existed for such charges, your Petitioners, as humane and loyal British subjects, would themselves have been the first to denounce the acts to Her Majesty's Government, as abhorrent to their own feelings, and calling for reprobation and instant reparation.

3. That your Petitioners, referring to the more specific charges of kidnapping and enslaving as utterly groundless, would point out that up to the present time the people of the rebel tribe, including the women and children basely deserted and left to their fate by their natural protectors, have been, and still continue to be, fed and sheltered by the Colonial Government; and your Petitioners can conceive no more merciful mode of providing for such than that originally contemplated, though not carried into effect, viz., placing them out under similar regulations to those in force in the case of Indian or African immigrants, when they would have been clothed, housed, fed, paid wages, and in every way well-treated by their employers.

4. That your Petitioners are now more than ever convinced that the prompt action taken by Governor Pine saved Natal from severe bloodshed, and was the means, under Providence, of averting another Kafir war, and of establishing a lasting peace, thus saving the Imperial Treasury from vast outlay. That in the prosecution of the operations from first to last, no unnecessary severities were inflicted; on the contrary, that every forbearance was shown to the natives throughout, as was fully evinced in the course of the subsequent proceedings connected with the trial of the rebels; and last, though not least, by their own unqualified admission, as well as that of the principal native Chiefs in the Colony, of the justice and lenience of their sentence. It must not be lost sight of that three of our gallant fellow-Colonists and two loyal and trusted natives had, at the outset, been murdered by the rebels in cold blood, nor that during subsequent engagements a considerable number of loyal natives were killed.

5. That your Petitioners cannot withhold an expression of surprise that any section of their fellow-countrymen should be so ready to attribute to Her Majesty's British-born subjects in this Colony acts and conduct unworthy the name of Englishmen. Your Petitioners deny that they parted with the instincts and attributes of their nation when they left the shores of the mother country, and would respectfully remind your Lordship that the recent expeditions against the rebel tribes were carried on in the main by Colonial resources, and wholly at the cost of the Colony.

6. That your Petitioners challenge contradiction when they assert that in no portion of Her Majesty's dominions—nay, in the world—are coloured people more kindly treated than in Natal; where, in fact, they enjoy privileges that are not accorded even to their European fellow-subjects. Whilst free to come and go as they choose, the natives enjoy complete protection to life and property, a state of things unknown to the neighbouring tribes, from which, principally, they originally entered Natal as refugees, in order to escape aggression.

Your Petitioners therefore pray that your Lordship and Her Majesty's Government will cordially approve of the action taken by the Lieutenant-Governor in putting down the rebellion and in punishing the offenders, and will hold all the charges levelled against his Excellency and the Colonists by the Peace Society, or other parties, as uncalled for, unfounded, and untrue.

Your Petitioners desire to add the expression of their unbounded loyalty to Her Majesty's Person and Throne, and, as in duty bound, will ever pray, &c.

Natal, April 1874.

(Here follow 1,683 signatures.)

No. 3.

Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—(Received September 4.)

My Lord, *Government House, Natal, July* 10, 1874.

REFERRING to my despatch of the 1st June, 1874,* forwarding your Lordship a copy of a letter addressed to the London "Times," and numerously signed by Christian Ministers and Missionaries labouring in this Colony, I have now the honour to transmit for your Lordship's information, a copy of a letter received from the Reverend W. H. Mann, the Secretary of the Ministers' Committee, and from this your Lordship will learn that additional signatures have been appended to the protest referred to, and that the number who have signed now amounts to seventy-four.

I have, &c.

(Signed) BENJ. C. C. PINE.

Inclosure in No. 3.

Sir, *Durban, July* 2, 1874.

I HAVE the honour to forward to you, for the perusal of His Excellency in Council, the accompanying memorial from seventy-four Christian Ministers in Natal. Since I last had the honour of transmitting this memorial to you it has received the adhesion of several whose signatures had not then come to hand. His Excellency will observe that this document, in expressing warm approval of the policy lately pursued with reference to the rebel chief Langalibalele, at least indirectly protests against the attempt that is being made to set aside the sentence of the rebel. I wish also to direct His Excellency's attention to the very large proportion of the Christian Ministers in this Colony who have signed this protest, and also to point out that (with the exception of the two or three whose positions have made them diffident about signing) the few who have not done so nearly all compose the Clergy of the Bishop of Natal.

I have, &c.

(Signed) W. H. MANN, *Secretary to Ministers' Committee.*

To the Hon. Her Majesty's Colonial Secretary,
Natal.

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* *Vide* No. 18 of Command Paper [C. 1119] of 1875.

No. 4.

Lieutenant-Governor Sir B. C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—(Received September 4.)

My Lord, *Government House, Natal, July* 15, 1874.

I HAVE the honour to inform your Lordship, that the appeal of the Bishop of Natal, on behalf of Langalibalele, has been heard before myself and the Executive Council.

Two Counsel were employed by the appellant; and, after a long and patient hearing, the Council unanimously advised me to affirm the decision of the former Court, and to dismiss the appeal.

2. I have further to inform your Lordship, that the Bishop, by his Counsel, applied, yesterday, to the Supreme Court, for an interdict to prevent my carrying the sentence into execution, and that the application was refused; and the Court decided that the proceedings and sentence were valid, and justified under the Ordinance No. 3, 1849.

3. I will endeavour to send the record of the proceedings by the next mail.

I have, &c.

(Signed BENJ. C. C. PINE.

No. 5.

Lieutenant-Governor Sir B. C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—(Received September 4.)

My Lord, *Government House, Natal, July* 16, 1874.

I HAVE now the honour to submit to your Lordship the explanations called for, by the Despatches mentioned in the margin, relative to the late revolt in this colony, and its suppression.* For this purpose I inclose three very able minutes. The first is written by Mr. Shepstone, the Secretary for Native Affairs;† the second by Mr. Ayliff, the Treasurer of the Colony, who formerly filled the office of Interpreter to the High Commissioner, and other important offices on the Cape Frontier;‡ the third is by Mr. Shepstone, on the Bishop of Natal's Pamphlet, forwarded by your Lordship for my consideration.§ Mr. Shepstone writes from personal knowledge of the recent proceedings, in which he took part. Mr. Ayliff's view of the subject is from a different stand-point, that of a mere observer, who took no part in the proceedings, and who looked at them with the light of experience gained among other tribes of the Kafir race.

2. These documents, and my former despatches, as noted in the margin,‖ afford such full explanations of the questions on which your Lordship desires information, that it will be unnecessary for me to trouble your Lordship, on this occasion, with any lengthened report of my own.

3. I feel, however, my Lord, that had I, at an earlier period, furnished your Lordship's department with fuller and more complete reports, especially setting forth the grounds of our proceedings, from our own, and, as I believe, the true point of view, your Lordship would have been able at once to answer most of the objections which have occurred to yourself, or been urged upon you by others.

4. I think it, therefore, advisable to present your Lordship with a brief statement of the laws and principles under which the native Government of the Colony has been conducted.

5. By the 28th Section of the Royal Instructions, issued under Earl Grey's advice in 1848, the laws, customs, and usages of the native population, were retained in full force as to themselves, except so far as they might be repugnant to the general principles of humanity, as recognized by the civilised world, and subject to the same limitation the power of the Chiefs over their tribes was retained.

This clause in the Royal Instructions was confirmed, so far as it required confirmation, by an ordinance of the local legislature, No. 3 of 1849, by which the Lieutenant-Governor was invested with all the power and authority of a supreme and paramount native Chief. By this enactment the Ordinance No. 12, 1845, declaring the Roman-Dutch to be the common law of the Colony, was expressly repealed, so far as

* March 10, No. 43 of Command Paper [C. 1025] of 1874; April 7, No. 47 ibid.; April 9, No. 48 ibid.; April 13, No. 50 ibid.; April 15, No. 52 ibid.; April 28, No. 56 ibid.; May, No. 2 of Command Paper [C. 1119] of 1875.

† Inclosure 1. ‡ Inclosure 2. § Inclosure 3.

‖ October 30, 1873, No. 6 of Command Paper [C. 1025] of 1874; November 13, No. 11 ibid.; November 22, No. 12 ibid.; December 14, Nos. 26 and 27 ibid.; December 19, No. 28 ibid.; January 10, 1874, No. 35 ibid.; January 10, No. 36 ibid.; March 17, Nos. 54 and 55 ibid.; May 9, No. 10 of Command Paper [C. 1119] of 1875; May 11, No. 11 ibid.; June 1, Nos. 17 and 18 ibid.

it was at variance with, or repugnant to, the Letters Patent, or the provisions of the new Ordinance.

The native laws and customs, with the limitations mentioned, became, therefore, as to the natives, to all intents and purposes, the common law of the Colony.

The native law was the Zulu Kafir under which the native population had lived in the country now constituting this Colony, or which they had brought with them from Zululand proper, and this native law, as modified and expounded by Mr. Shepstone, and successive Lieutenant-Governors, having Executive, Judicial, and Legislative Authority as native Chiefs, is now the common law of the Colony as to the natives living within it.

6. I cannot help pausing to express to your Lordship my admiration of the sound statesmanship of Earl Grey, which instead of bringing savage men, just released from a grinding despotism, under laws which are the result of centuries of progress and civilization, retained as to them, as far as possible, their own laws, which, though rude and stern, were suited to their condition and habits of thought.

7. I will now endeavour to explain to your Lordship such principles and rules of the native law as seem to bear directly on the questions under discussion.

1st. It is an undoubted rule of native Law that a subject Chief, or private person is bound at once to obey the summons of his Supreme Chief, or any one representing him, to appear before him, to answer personally any charges or matters which in the Supreme Chiefs opinion, may require explanation. The refusal or neglect to obey such summons is considered as an act of contumacy and rebellion. It is tantamount on the part of the recusant, to saying that he is no longer a subject, and that he renounces his allegiance. This maxim is, in principle, in accordance with the practice of all civilised laws, which compels, under pain of outlawry, or some other penalty, the subject to appear before the judicial tribunals as representing the sovereign authority. The native law indeed emphasises the maxim, and carries it out with greater force and stringency, as is required by the condition and views of a barbarous people.

2nd. The mode of executing these summonses is clearly prescribed by native law; instead of sending to the party whose attendance is wanted a written document, an accredited and well-known messenger of the Court of the Supreme Chief is sent to summon such party personally. In this respect, so far as the advantage of the subject is concerned, the native is superior to civilized law, which sends written documents even to those who cannot read them, not a very small number in some so-called civilized countries. The legality of a personal summons, and the illegality of a written summons, was, I think, clearly laid down in a Minute written and promulgated by myself twenty years ago, copy of which I inclose,* which has ever since been accepted as a fair and sound exposition of the native law.

3rd. It is a well-recognized maxim of native law that a Chief or tribe cannot leave the jurisdiction of the Supreme Chief without his sanction. This maxim rests on three sound bases: First, to leave the jurisdiction without such sanction is universally regarded, among, at least, the Zulu Kafirs, as an act of open determined rebellion, and if the Government were to overlook it, it would thereby encourage rebellion generally among the savage subject tribes, which might manifest itself in a more serious form; second, such unauthorized removal would destroy all the control of the Government over the native people, and afford a ready means of disobeying its injunctions with impunity; third, there is, if possible, a more important and practical ground for enforcing the maxim. If a tribe leaves this Colony it must go into some one of the surrounding territories. This it could not do without creating confusion and disturbances among the people of the country to which it went, so that we owe it to our neighbours to prevent tribes from leaving our borders without our consent. If, indeed, a tribe were to go by invitation into a country under barbarous rule, such as Zululand proper, the consequences might be still more serious if they went without our sanction. On every ground, therefore, of justice and expediency, the enforcement of this maxim is necessary. I may remark that I am not aware that the sanction has every been refused, nor is it likely to be.

4th. I now come to the most important principle, I may say the corner stone, of the fabric of native law, viz., the principle of collective, or tribal, as distinguished from mere individual, responsibility. The grounds upon which this important part of native law rests, and its existence in the earlier law of England, and in that of most other nations of the world, are, I humbly think, so clearly set forth in a Minute written by myself nearly twenty years ago,† that I would respectfully invite your Lordship's attention to the copy of that document herewith inclosed. The law is,

* Inclosure 4. † Inclosure 5.

as I have shown, substantially the ancient institution of the "Frank-pledge," which Mr. Hallam calls the great police of mutual surety. And it is under this great police that the Government, with a mere handful of troops, and these not adapted to native warfare, and with no other police, has for more than a quarter of a century been enabled to govern its barbarous native people. Without this great police I do not hesitate to say that, if the Imperial Government had wished to retain possession of this Colony, they would have been obliged to keep here at least two full regiments and a strong and well-organized white police. To have expected the handful of poor struggling colonists to pay the expense of these forces, would have been simply out of the question.

It may not be without interest to your Lordship to observe that the earliest Charter of Sierra Leone, framed as I have been lead to believe under the auspices of Granville Sharp, and other philanthropists, made provision for the introduction into that Colony of the Frank-pledge. Had that provision been carried out, that Colony would not have presented the abominable scandal reported by myself, when Acting-Governor, that some of the merchants warehoused their goods out of the jurisdiction of English law, and under that of native law for greater safety. Had that institution been introduced into the West India Islands, after emancipation, they would, to a great extent, have been spared the expense of establishing and keeping up police forces and gaols quite out of proportion to the number of the population, and beyond what those impoverished islands could bear; whilst the negro population would have been taught to respect the rights of property, by the fact that any individual would be responsible for their violation.

5. By the Letters Patent and the Ordinance referred to, the Lieutenant-Governor is invested, as to the Chiefs and natives of the Colony, with all the power and authority which, according to the laws, usages, and customs of the natives, belong to a supreme or paramount native Chief. Now, by the native law, as always recognized in this Colony, a supreme Chief possesses in himself not only all executive, but also all judicial authority. He is by that law at once supreme Governor and Judge. This principle has been upheld by the Supreme Court on former occasions, and even so lately as yesterday.

7. Such, my Lord, is a brief outline of such of the maxims of the native law as seem to bear most directly on the subject of the late revolt and its suppression. I have, I think, shown that most of these maxims are substantially in accordance with the principles of even civilized law. I will now briefly state the grounds on which we are perfectly justified in appealing to them, and relying upon them in our recent action against the revolted tribe.

1st. The native law, of which these maxims form a part, has, as I have said, under every disadvantage, preserved the peace of this Colony for more than a quarter of a century.

2nd. Under that law, as a whole, the natives have enjoyed rights and privileges which they highly prize, but which are denied to their white fellow-subjects, such as polygamy, chieftainship, tribal association, free use of land, &c. I will not inquire whether some of these rights and privileges are, or are not, objectionable. I think some of them are so; but the natives themselves, after so long enjoying these exceptional rights in a British Colony under their own law, have no ground to complain that under that self-same law they are coerced and punished for violating it, to the imminent peril of the Colony in which they have lived in peace and security. And least of all does it become men who have supported the natives in the enjoyment of these privileges—I allude particularly to polygamy—now to turn round and try to withdraw them from the jurisdiction of their law, when it is used to coerce and punish.

8. The foregoing statements will, I think, clear the ground for the explanations called for by your Lordship, or, I could almost say, will render such explanations unnecessary. The points, however, in which explanation seems to be necessary are as follows:—1st, the causes of the revolt and the offence of the Chief and tribe; 2nd, the proceedings taken by the Government to suppress the revolt; 3rd, the manner in which the prisoners, and especially the women and children, were dealt with; 4th, the trial and sentence; and, 5th, the alleged cases of cruelty. The greater part of these questions are fully discussed in Mr. Shepstone's Minutes, and in my own former despatches.

9. The first question as to the origin of the revolt and the offences of the Chief and tribe, are fully discussed in Mr. Shepstone's Minutes, in the despatches above referred to, and in the Judgment of the Court already sent to your Lordship.

10. I have little to add to the statements and views therein contained.

11. It was clearly brought out in evidence at the trial that firearms were brought

into the Location from the Diamond Fields; that the magistrate under whose jurisdiction the tribe was, repeatedly ordered them to bring their arms in for registration; and that these orders were directly and repeatedly disobeyed.

12. The Law No. 5, 1859, Sections 2 and 3, prohibits, under pain of severe punishment, the natives from possessing firearms without the written permission of the Lieutenant-Governor. This Law was perfectly well known to the natives, and the Circular of the 14th February, 1872, copy of which is inclosed,* written expressly to meet the case of natives acquiring firearms at the Diamond Fields, was carefully explained to the natives generally, and certainly to Langalibalele and his tribe. They had, therefore, no excuse for acquiring firearms without permission, and still less excuse for refusing to have them registered at the order of their magistrate. It is a very small extenuation of their conduct in the first case to say that other tribes committed a similar offence. There is no excuse or extenuation whatever for their conduct in the second case, for no other tribe did, nor would have refused to obey the order to register the arms. Moreover, the first case would simply be one of violation of the Law of 1859, under which, indeed, heavy penalties were incurred; the latter case is one of contumacy, and defiance of the Government itself.

13. This was the remote cause of the difficulties, but the subsequent persistent and contumacious refusal on the part of the chief to appear before Mr. Shepstone and the Lieutenant-Governor to explain his conduct, was as I have shown, an act of open defiance and rebellion, and left my Government no alternative except that of promp and decided action, or that of, as Mr. Shepstone expresses it, throwing up the reins of Government. The rest of the native population were anxiously waiting to see what we should do, and if we had exhibited any hesitation in enforcing the law our prestige would have been lost, and the safety of every settler would have been imperilled. For your Lordship will never forget the natives are as twenty to one as to the white population; that we rule, not by physical force, but only by prestige.

14. What was our obvious course? Clearly to arrest the contumacious chief and tribe to answer for their conduct. And the safety of the Colony, and regard for the tribe itself, required that we should proceed to do so with such a force as would, if possible, disarm resistance and save bloodshed.

15. The plan of the operations, and the manner in which they were executed, are detailed in my former despatches, and especially in Mr. Shepstone's Minute, paragraphs 32 to 53.

16. I have admitted that there were errors in the plan arising from want of sufficient knowledge of the localities. But, in spite of reverses and difficulties, we stamped out resistance in the Colony, and organized a flying column in pursuit of the fugitive tribe, and scarcely six weeks had elapsed after our operations had commenced before the chief and the head men of his tribe were prisoners.

17. As to the third question, as to the treatment of the prisoners, and especially as to the women and children, is clearly explained in Mr. Shepstone's Minute, paragraphs 54 to 56, and in my despatch of 17th March, 1874.†

18. As to the subject of the trial and sentence of the chief and his tribe, I would beg to refer your Lordship to Mr. Shepstone's Minute, paragraphs 57 to 64, and to my despatch of the 14th February last,‡ forwarding the record of the trial of the chief, and also the record which I am about to forward to your Lordship of the hearing of the appeal by the Executive Council.

19. As to the cases of alleged cruelty, I have to refer your Lordship to Mr. Shepstone's Minute, paragraph 51, and to my despatch of the 17th March,§ in which I say "that some excuse is to be found for the unfair allegations made on this subject, in some very silly letters, written by one or two of the volunteers, who were on the expedition, giving with singularly bad taste exaggerated accounts of scenes of violence. In the most regular warfare, and still more in suppressing a revolt among savage tribes, things are unavoidably done in hot blood, which no man of good feeling can think about without a shudder, much less write about."

20. I should mention to your Lordship that the people of Langalibalele's tribe never lost, as far as I know, an opportunity of firing upon our forces from inaccessible holes and caves, though always invited to surrender on the promise of mercy. The loss sustained by our loyal natives by this reckless resistance was considerable, and I could not but marvel at the temperance and forbearance which they showed under such provocation. I question whether white troops would have exhibited as much.

21. It has been stated that in some cases the innocent have suffered with the

* Inclosure 6.
‡ Not printed.
† *Vide* No. 54 of Command Paper [C. 1025] of 1874.
§ *Vide* No. 55 of Command Paper [C. 1025] of 1874.

guilty in loss of property. Upon such occasions this is almost inevitable; but this is one of the evils which rebellion always entails, and which makes such crime particularly odious. My Government have, however, been doing their utmost to inquire into any alleged cases of wrong, and we shall make full reparation wherever it is in our power to do so.

22. It is not necessary that I should trouble your Lordship in this despatch with any remarks on the Bishop of Natal's pamphlet, sent for my consideration in your despatch of 4th May, 1874*; I will, therefore, simply refer your Lordship to my despatch of 13th May, 1874,† written from Cape Town, and especially to Mr. Shepstone's able Minute on the subject herewith inclosed. I cannot, however, help drawing your Lordship's attention to the fact, that many of the statements which were contained in that pamphlet, which professes to be the "proposed defence of Langalibalele," the Bishop has not dared to reiterate in his actual written defence presented to the Executive Council.

23. I do not know whether it is necessary for me to make any further remarks regarding the forfeiture, or rather the resumption of the lands occupied by the rebel tribes. The justice of this resumption has not been denied, even by Bishop Colenso. It was absolutely necessary for the security of the Colony that people, who had proved themselves so hostile, should be removed from such natural fastnesses as these lands present. It was also necessary for our security, considering the smallness of our police and military forces, that a part of those lands should be occupied by settlers holding them under strict military tenure. A small force of this kind, stationed on an exposed frontier, will be far more serviceable than any volunteer or even military force.

24. The Colony will gain little pecuniary advantage from this arrangement, but even if it do so it would be justified in accepting it, considering the very large expenditure which this revolt has thrown on its very limited resources.

25. I have now, my Lord, by my own explanations, and those contained in the inclosures and in former despatches, given your Lordship all the information regarding our recent proceedings which you seem to require. I hope that these explanations will remove the painful impression which, not unnaturally, may have been made on your Lordship's mind, by the rash and intemperate statements which have been made to you as to our proceedings. These statements, containing accusations of the most serious character against my humanity and my honour, have necessarily caused me great pain. But I cannot sufficiently thank your Lordship for expressing, in presence of these hostile statements, your confidence as to the manner and spirit in which I would exercise the powers entrusted to me under the trying circumstances which had arisen in this Colony, and I humbly trust that, after reading these explanations, your Lordship will see that your confidence has not been misplaced. I believe that under God's providence the action taken by my Administration has saved the Colony from bloodshed and ruin, and Her Majesty's Government from a large expenditure of money.

26. I am glad to call your Lordship's attention to the part of Mr. Shepstone's Reports in which he states that the loss of life has not been nearly so great as was supposed, and formerly reported. There are always exaggerations on this subject, and it is very difficult to form a correct estimate on the spot, especially as the field of operations was so extensive.

27. I take the liberty of inclosing a leading article from the "Empire" newspaper, published in England.‡ The article contains a fair statement of facts, and a just, though somewhat fiery, denunciation of the attacks made on the Colony and the Administration.

I have, &c.
(Signed) BENJ. C. C. PINE.

Inclosure 1 in No. 5.

Minute by the Secretary for Native Affairs on the late Operations against Langalibalele and Tribe.

TO form a correct judgment of the measures taken by the Government of Natal for the suppression of the recusant Chief Langalibalele and tribe, it is necessary to bear in mind that, as far as the native population are concerned, native law, so modified as to suit the circumstances of the Colony and the character of a civilized Government is the law of the country; that the natives have always been, and still are, governed by

* No. 2 of Command Paper [C. 1119] of 1875. † Not printed. ‡ Inclosure 7.

it, and that it is recognized by them as the rule of their action and as that of the action of the Government towards them.

2. The question whether it is a good or bad law cannot properly be discussed in connection with the subject under consideration; it is the law of the Colony established, and, I humbly think, wisely so, by Her Majesty's authority as far back as 1848, and has been acknowledged by every Secretary of State from the date of its promulgation until now.

3. It has been the means by which a native barbarous population, in excess of the white inhabitants in the proportion of twenty to one, has been kept under control, and the peace of the Colony maintained amidst wars at different times on all sides.

4. It has supplied the place of a large military force at Imperial expense, and an enormous police establishment at the cost of the Colony; its distinctive controlling features are tribal or collective responsibility, from which no Chief or common man can relieve himself, except by reporting unusual events or seditious movements to his superiors.

5. It is impossible to do more than simply refer to these principles in a Memorandum such as this, but it is only fair to add that the native population have much more than paid for their own management.

6. At the head of this population stands the Lieutenant-Governor, in his capacity of Supreme Chief, conferred upon him by Ordinance 3, 1849, and for the purposes of this paper it is necessary only to state generally such of his recognized powers and functions as were affected by the conduct of Langalibalele and his tribe, and which it was impossible he could, without risking the safety of the Colony, allow to be trampled under foot.

7. The natives are bound to submit themselves to all laws ordained by him, to obey his orders and his summonses, and the Chiefs and headmen to carry out all existing laws, rules, and regulations, and to report if they are not properly respected; the jurisdiction of the Supreme Chief is in all matters original as well as appellate, and he is equally entitled to obedience whether he issues an order to an individual, a tribe, or a number of tribes.

8. On the first establishment of the Government of Natal in 1846, the point was raised whether, in the case of an hereditary Chief being summoned to appear personally before the Supreme Chief, it would be a sufficient compliance with such summons for him to send his principal man or men to appear for him.

9. This question was, after full consideration, decided in the negative in two remarkable cases. In the first, the Chief had attacked and put some persons to death; he was summoned to appear to give an account of his conduct, but declined to obey; an expedition, military and native, was sent to arrest him; he retired from the Colony, was outlawed, and his tribe broken up and placed under another.

In the second, a Chief of higher rank than Langalibalele had omitted to pay his respects to the Supreme Chief; he sent his principal men to do so for him. This was, after full consideration, decided to be insufficient, and his personal attendance was insisted upon. After much hesitation, from mistrust of the good faith of the Government, he complied and presented himself at the seat of Government, and has ever since been thoroughly obedient and loyal.

10. It is scarcely necessary to say that the risk of maintaining such a position was very reluctantly undertaken during the first year of the establishment of British rule in Natal, but it was felt to be a question upon the solution of which all future real authority depended; that it was requiring the only sign of submission which, among natives is looked upon as undoubted; and that it is always insisted upon by a Supreme Chief from an inferior; and these considerations admitted of no hesitation.

11. Since then, twenty-seven years ago, out of the 150 heads of tribes in Natal, but two cases of serious disobedience have occurred, and in each the tribe was implicated with its Chief; both Chiefs were called to account, and both refused to appear. Expeditions were sent to arrest them; their people shielded them; the Chiefs escaped out of the Colony, were both outlawed, and their tribes broken up.

12. One of these cases happened in 1857, the other in the following year. In both instances the rebellious Chiefs have ever since lived out of the Colony, and have no wish, as far as it is known at present, to re-enter it to reside. One fled across our northern, the other across our southern boundary; both have repeatedly applied for the removal of the outlawry, because they find it to be a disability even outside Natal. Their personal surrender has been made an indispensable preliminary to the favourable consideration of their prayer.

13. Since the Langalibalele matter, one of them has entered the Colony for the

special purpose of surrendering himself to the Magistrate of a county, and he did so unconditionally, praying for the withdrawal of the outlawry upon any terms which it might be thought fit to impose; his prayer was granted upon his paying a fine. The correspondence on this subject is so interesting that it is appended.

14. In the other case, the Chief fled to Zululand, were he now is and has ever since been. It happened on the day I installed Cetywayo as King of the Zulus last year, that the first request made to me by the new King, was to do him the personal favour of removing the sentence of outlawry from this fugitive Chief, now a Zulu subject. Cetywayo said, he did not wish to palliate his offence or justify his conduct which he knew to be deserving of punishment, all he asked for was that he might live as other men in Zululand, without this disability hanging over him.

15. Langalibalele's tribe formed part of the force employed to reduce this very Chief to obedience in 1858, on the occasion of his flight into Zululand.

16. When, therefore, Langalibalele decided to decline obedience to a summon from the seat of Government, he knew that he was entering upon a course which must, if persisted in, end in collision with the Government, and which had never before been persisted in by any Chief in Natal, without such a result; and when the principal men of his tribe encouraged him, as they did, to take this course, they showed that they understood the issue they were risking, by storing all the caves and fortresses of their location with corn, before the use of force had been shown to be intended. It was no new law applied for the first time, or an obsolete one revived for the occasion, but an old established rule of action universally known and acknowledged and acted upon.

17. Under these circumstances it was not necessary to discuss what legal technical definition would best describe the offence that was evidently about to be, and eventually was committed; it was clear that the Chief and tribe had made up their minds to refuse obedience to established law, and it was equally clear, that without such obedience, no Government could exist; whether, therefore, it can be correctly called rebellion or not, it was unquestionably incumbent on the Government to maintain, at any risk, its legitimate authority or abdicate its functions altogether.

18. The next point to consider is, whether the Chief's removal from the Colony, with the men and cattle of the tribe, without permission, was under any circumstances, a lawful act.

19. Any one much acquainted with the customs of most of the tribes of South Africa, especially those which belong to the Zulu race, will know that desertion is looked upon and treated as treason, and the further north-east from the Cape Colony, the more serious is the view taken of it; desertions weaken and expose the tribe to danger from without, the people as well as the cattle, are looked upon as the property of the Chief, that is, of the State; so that the whole community is damaged and its existence imperilled in proportion to the number of desertions.

20. This shows and accounts for the native view of the act, and the grounds upon which it has always been considered by them to be a serious crime; other but equally weighty reasons, induced the Government of Natal strictly to maintain the law founded upon this view, from the first moment of its establishment, and the following are among the most important:—

(1.) Desertion of the jurisdiction being, as above shown, to be the case, universally among the Zulu races, looked upon as an act of treason or rebellion, to overlook it, especially when undertaken on such a scale, would be to encourage rebellion generally.

(2.) Situated as these countries are, particularly Natal, to allow a tribe to suddenly throw itself into a neighbouring territory, would create confusion and disorder, and we owe it to the general as well as to our own security, to restrain them.

(3.) Desertion or unauthorized removal, would destroy all control, an unpalatable order would always be avoided by removal, and obedience of any kind would soon cease to be rendered; so necessary has the restraining effect of this law been found to secure control, that no native has ever been allowed to remove from the Colony, or from one county to another, without special permission and the registration of his removal.

21. No magistrate is empowered of his own mere motion to grant such permission; he receives and forwards the requests, with his recommendation, to the office of the Secretary for Native Affairs, where they are granted or withheld, as the case may be; nor has this been found to work any hardship, because the movements of the natives are usually made in a slow and deliberate manner, and permission, when asked for to remove, either from the Colony, or from one county to another, is, as a rule, invariably granted.

22. Numbers of these applications are weekly forwarded for decision by the magistrates, showing, not only that the law is in full force and effect, but that it is well

known and daily acted upon; nor is this all, the Chiefs themselves insist upon it, and complain to the magistrate if their people leave them without their permission. Langalibalele himself has acted upon it, and he knew that it applied as between him and the Supreme Chief as well as between him and the members of his tribe.

23. The custom is that the man who wishes to leave his Chief and has received his permission, makes a farewell gift to the Chief after such permission has been sanctioned at the seat of Government; but if it be complained that permission is arbitrarily or unreasonably withheld by the Chief, the Government steps in and grants it direct.

24. There can be no doubt, therefore, that in leaving the Colony without permission Langalibalele and his people committed a serious crime according to the law under which they were living, and that they knew they were so doing, and further that this crime was aggravated by the fact that they were committing it to avoid compliance with a lawful summons.

25. Another point suggested is, that not only should the messengers sent to the Chief, but the commanding officer at Bushman's River Pass also, should have been furnished with written warrants; it is urged that their acts, not having had them, were invalid, and the conduct of the Chief and tribe is justified because no such warrants were presented to them.

26. This is also a question which was discussed and settled during the early days of the Colony; Sir B. Pine, then Mr. Pine, Lieutenant-Governor of Natal, issued a Minute on the subject, for the guidance of magistrates, as far back as November 4, 1853 (it will be found marked No. 5, among the inclosures to my Memorandum, dated April 7, 1873, upon Mr. Ridley's complaint). This Minute sufficiently shows the groundlessness of the objection. If written warrants to natives were substituted for trusty messengers, the native would soon become the victim of any unscrupulous demand made upon him, backed by the production of a written or printed document however false.

27. A race that can read and write insists upon summonses and demands being made in writing, for the obvious reason that precise and authentic information is conveyed thereby to the person concerned; but among savages such a process is illegal, simply because it bewilders, and is incapable of conveying information in an available form.

28. Another point is the objection, that the men of the tribe were intercepted after they had passed the boundary of the Colony; here, again, native law, as admitted by the natives themselves, and in force in this Colony, must decide.

29. The broad difference between native and English law on this point is, that the jurisdiction of the latter is territorial, while that of the former is personal; unless a native leaves his tribe with the Chief's permission, he is liable to his authority wherever he goes; this authority over members of their tribes is, of course, not allowed in its full extent to the subject Chiefs of this Government, but it is one of the many prerogatives which have been transferred from them to the Head of the Government as Supreme Chief, and it is remarkable that the circumstances of this country long ago forced the British Government to apply this same personal jurisdiction to British subjects in South Africa up to the 25th degree of south latitude, as was done by the Act William IV, subsequently amended and extended by an Act passed during the reign of Her present Majesty. It is evident, therefore, that the right of a paramount Chief to follow his fugitive subjects, is limited only by considerations of prudence.

30. The above are all the points which appear to be involved in the action of the Government against Langalibalele and his tribe, the examination of which is necessary to show that there was no choice left between attempting to coerce, and listlessly or criminally allowing the reins of Government to be dragged in the dust.

31. A Chief who had been lawfully summoned to the seat of Government, had declined to obey; the summons had been repeated again and again with a like result; it was ultimately found that, so far from any sign of obedience appearing, the cattle of the tribe were being driven to the mountains, while the fastnesses of the locations were being stored with corn; the whole native population of the Colony were fully aware of what was going on, and were watching to see what action the Government would take; to them the meaning of these tribal acts was definite and unmistakeable; the Government, however, reluctant to proceed to extremities, were unwilling to believe that they were the result of a feeling of defiance.

32. But some measure was demanded by the circumstances, and it was determined to invest the location and demand obedience in the presence of a force; to do this

completely, it was necessary that the Bushman's River Pass over the Drakensberg, 8,000 feet sheer higher than the general level of the location, should be held, although it was scarcely expected that the Chief had any intention of using it. The force sent to do this found the main body of the tribe with the cattle going over it; the Chief had already passed on, and had left his military Induna at the head of a sufficient number of men to see the cattle of the tribe safely up. The commanding officer of the small Government force, being ignorant that the Chief was already in front, at once set about endeavouring to persuade the people to return and submit themselves to the Supreme Chief; he found the Induna in charge, spoke frankly and kindly to him, reasoned with him, remonstrated with him on the folly of their proceedings, and thought that he had succeeded in bringing them to a sense of their duty; for two hours or more it was believed that loyal considerations would prevail, but such was not to be the case.

33. In the meanwhile the Government Commander observed that his handful of men were being placed at a disadvantage by the accession of numbers on the side of the tribe, and ordered his force to slowly change its position; while performing this movement, the tribe opened fire, killed five and wounded the Commanding Officer himself, who a minute before had been engaged in friendly conversation with them.

34. This was the practical interpretation given by the men of the tribe themselves to the removal of their cattle to the mountains and the storing of the fastnesses of their location with corn, circumstances which the Government thought might be attributed to some other cause, but which the natives generally denounced at the time as defiance.

35. It remains to describe the operations themselves. The location lies at the base of a portion of the Drakensberg, between two of its most remarkable peaks, that to the south is called "Grant's Castle," the one to the north "Champagne Castle," distant about 35 miles from each other; between these points the range falls back and forms a large recess facing Natal. The Bushman's River Pass is nearer to the southern than to the norther peak, and is perhaps 8,000 feet above the general level of the inhabitable portion of the country below.

36. The lowland boundary of the Location is also an irregular semi-circular line, forming, with that of the mountains, a rough oval, bulging into the Colony.

37. The Colonial forces were ordered to take positions under their respective magistrates at a given time, so as to form a line of occupation facing the mountain range, the right and left of which line should rest on the base of the two peaks above described, and be between 40 and 50 miles long.

The Lieutenant-Governor himself went with the left and I with the right, which it had been arranged should feel each other on the Bushman's River about the centre.

38. Heralds were sent into the Location, from centre and both flanks, to proclaim to Langalibalele and all concerned that there was yet time for submission, and to direct that all who wished to be loyal should separate themselves and property from those who still persisted in their contumacy.

39. The heralds did their perilous duty well, but very few men of the tribe could be seen, and these refused to be spoken to except at a distance; a few individuals were however surprised, and to them full explanations were made.

40. The women had taken up their positions in the rocky caves and fastnesses of the Location, and these they had well stored with corn and the means of preparing it for food; in most of them conveniences for making beer, and in many quantities ready for use were found.

41. The Government message was successfully made known to such men and women as could be found, as well as proclaimed on the hill tops, and subsequent evidence has shown that it was heard, understood, and discussed; no response was however made to this appeal, and orders were issued from head-quarters for a general advance to be made on the 6th November.

42. On the 5th I went with the magistrate, Mr. Macfarlane, and an escort of a few mounted burghers, accompanied by some natives on foot, to reconnoitre the position and issue orders personally to the native force, whose advance was to take place the next day. These orders were in accordance with the Lieutenant-Governor's views and my own, so framed as to check as far as possible any disposition to shed blood. After their positions had been pointed out and the work they had to do explained, I impressed upon them that the object of the Supreme Chief was not to take life, but to require obedience—that therefore they were not to kill, unless the men of the tribe actually fought against them—that they were not to harm women and children, that to kill a disarmed or wounded man was the act of a coward, and that

any one who transgressed these rules would be severely punished; while, on the other hand, every man who captured an able-bodied rebel in arms would receive a reward of 20*s.* for each such capture. These orders were fully understood, and rewards for captures made under the conditions of this promise, have since been claimed and paid.

43. On our way to where these orders were issued, some men of Langalibalele's tribe appeared on the top of a hill near enough to hold conversation with us. I took the opportunity of explaining to them the message proclaimed by the heralds, and requested them to convey what I had said to their Chief, who we did not then know had already left the Colony by the Bushman's River Pass; these men recognized me, but refused submission, saying, that they might come some other day.

44. On our return to camp, we being on horseback, outpaced the natives on foot, some of these went back by a shorter cut, their attention was directed to a bush, near which some goats were grazing, and on going to them they saw men of the rebel tribe among some rocks on the hill-side; they accosted these men, asked them to come down and talk with them, the rebels refused; the Government natives repeated the proclamation and required them to submit, but the rebels fired upon them; exasperated by this they brought away the goats and some women whom they found in the bush; upon this being reported to me the same afternoon, I ordered that both women and goats should be at once taken to where they had been removed from, because, as I explained the period of grace had not yet expired, and the orders I had been issuing were not to come into force until the day after, and besides this, it was necessary to offer the members of the disobedient tribe every encouragement to return to their duty. The goats were taken back, but upon my decision being made known to the women, they begged to be allowed to join their relatives who lived in another part of the Colony, and who although belonging to the tribe, had not been mixed up in its present proceedings; they said they had been on a visit, and had been refused permission to return; of course I complied with their request, gave them a written passport, and saw that they were provided with a safe escort.

45. I have been thus particular in stating these preliminary events, because they immediately preceded the advance of the forces into the Location, and because the Government has been charged with unnecessary bloodshed.

46. On my return to the camp I received a communication from the Lieutenant-Governor at head-quarters, requiring my presence, and informing me of the disaster at the Bushman's River Pass, which had occurred early the morning before; this at once accounted for the attitude of the people which we had just returned from observing in the Location. The intelligence of this disaster, which they considered to be a total defeat of the Government forces, could easily have reached them on the day it took place, that is, the evening before the day we reconnoitered the Location; and we afterwards found that it had reached a greater distance that same night.

47. The Colonial forces, white and native, then advanced as had been ordered into the Location, and reached the base of the Drakensberg. No stand to oppose them was made in the open, but every rocky fastness and cave was occupied, and the approaches guarded by men. With few exceptions, every summons to surrender was answered by shots, or defiance in some other form equally unmistakeable. Most, if not all, the casualties on both sides occurred in the attempts to overcome this defiant conduct; and in every instance, as far as the information I could gather on the spot went, the holders of the caves fired first.

48. Where Langalibalele was, or what proportion of the tribe had accompanied the cattle, or by what strength the numerous strongholds in the Location were held, were particulars which were not known, and could not be ascertained. Judging from the tactics natives usually adopt, it was not probable that the Chief had accompanied the cattle, because possession of the cattle is the only decisive sign of victory according to native notions in native contests; therefore the conclusion that the cattle would certainly be followed involved the danger that their tracks would lead to the capture of the Chief. All the loyal natives, therefore, disbelieved that he had left with the cattle.

49. Those of the tribe who were made prisoners, refused all information on these points, while from the hill tops and rocks, threats and defiance were continually shouted. What then was to be done? Was the Government to retire its forces and confess itself beaten by a handful of its own subjects, in its own territory?

50. The consequences sure to follow such imbecility, were far too serious to allow of so hazardous a step being for a moment thought of. The Lieutenant-Governor therefore decided that the only course calculated to secure for the Government the

respect of the Colony and of its neighbours, was to re-establish at all hazards and without loss of time, its authority in the Location. I am unable even now to suggest a safer or more suitable course under the circumstances.

51. It was carrying out the necessity thus laid upon the Government, that the casualties already referred to, took place; assaulting caves occupied by women and children, when stoutly defended by even a few men, is a serious matter, and in such operations, it is as impossible to avoid accidents in savage as in civilized warfare; but I do not believe that a single woman or child was intentionally harmed; and although all loss of human life is to be deprecated, and was as far as possible guarded against in these operations, it is idle to suppose that such a mode of resistance can be persisted in without creating an indiscriminating excitement and irritation on both sides; but it should always be remembered that every man of the rebel tribe who lost his life, might have saved it by submitting, even at the last moment, to what he knew was the lawful authority over him; that those who fell on the Government side died doing their duty in supporting that authority, and that a verdict against the Government under such circumstances is a condemnation of the action and sentiment of every loyal native in the Colony, to say nothing of the whole white population.

52. I must add, that from my observation of the conduct of the native force on the Government side on this occasion, that they proved themselves much more amenable to restraint and control than I had expected they would or could have done.

53. The result of these operations was the discovery that the Chief and cattle of the tribe had been escorted by the bulk of the men out of the Colony; the supposed intention, afterwards found true, was, that after reaching some safe place of retreat for the two former, the men would return to the Location; this discovery gave rise to another difficult question, whether the women should be left in their well-stored fastnesses to be shortly joined by the whole strength of the tribe, or should they be removed? this seemed to admit of but one solution; if left, all the work just done would inevitably have immediately to be done again, with a loss of life on both sides far exceeding that which had already taken place; for one combatant which had inflicted the loss already suffered, ten would be present for that which was to come, and besides this, the larger resisting force might indefinitely prolong the resistance and in proportion endanger the general peace of the Colony, for it was impossible to overlook what experience has shown to be the case, that such operations are always liable to new, unexpected, and dangerous developments at every stage.

54. To remove the women, therefore, seemed an imperative necessity, when viewed from either a civil or military standpoint, and the Government had to bow to this necessity. But what was to be done with them? How were they to be maintained? The answer that suggested itself under the first pressure of the difficulty, was that they should be distributed among such white settlers as might consent to be bound to feed and clothe them in return for the services they might be able to render on farms, until arrangement could be made with their rebellious men, when they were to be released.

55. Upon further consideration, it was thought that this course was liable to be misunderstood or misrepresented, and it was decided that they should be removed to near the seat of Government, where stores of food were available, be there placed among friendly tribes, and be fed at the expense and under the immediate protection of the Government, until some arrangement could be made by which the men could join their families and relieve the Government of the burden; this course was adopted in preference to the first, and a Proclamation of Amnesty has been issued with the view of carrying it fully out, but it is intended to prevent these people from again living together as a tribe.

56. The history of the expedition under Captain Allison and Mr. Hawkins through the high cold rugged regions of the Double Mountains has been already fully written; the admirable discretion by which it was guided, the loyal and persevering spirit which enabled the European volunteers and the native column to overcome the difficulties and hardships of a march through a country uninhabitable, unknown to all perhaps, except their adventurous commander and hitherto considered impracticable, have been acknowledged, and these, together with the complete success of the expedition, in rescuing the Colony from the humiliation of having in the eyes of the natives suffered a defeat, are achievements which their fellow Colonists can never forget, nor can they be too thankful to the High Commissioner and the Government of the Cape Colony for the valuable assistance readily and heartily given at a moment when it was yet a matter of doubt in the minds of the natives, whether the white Governments of South Africa were sufficiently united to practically help each other: this timely co-operation

dispelled that doubt by sending back to Natal, as a prisoner in the custody of the Natal Column, the Chief Langalibalele.

57. The record of the subsequent trial of the prisoner, his conviction and sentence, has been printed, and need not, therefore, be restated here. Seven of his sons and 223 of the people of the tribe have also been tried.

58. One of the sons was sentenced to transportation for the term of five years, he having fired upon the Government forces, who captured him on his return from Molapo's, where he had gone with his father and brothers. Another son was sentenced to imprisonment with hard labour for two years and a-half. Three of the other sons of Langalibalele were sentenced to two years' imprisonment with hard labour; two younger sons, in consideration of their age, to six months' imprisonment with hard labour. An Induna was sentenced to one year's imprisonment with hard labour; and another native, indicted as an Induna, was acquitted, as it appeared that he did not hold that position. The printed record will give further particulars in reference to the above cases.

59. One member of the tribe, found guilty on his own admission and the evidence adduced, of having fired upon and killed a native, one of Her Majesty's subjects, sent to enforce his surrender, was sentenced to twenty years' imprisonment with hard labour.

60. Seven other members of the tribe were found guilty of withdrawing into fastnesses for the purpose of avoiding obedience to the laws of the Colony. and setting at defiance the lawful orders of the Supreme Chief, and resisting his authority. According to the circumstances of each case, the Court sentenced three of the prisoners to seven years' imprisonment, three others to five years' imprisonment, and the seventh to three years' imprisonment, with hard labour in each case.

61. One hundred and forty-six prisoners were found guilty of having wrongfully and illegally, and with rebellious intent, removed, or assisted to remove, the cattle of the tribe, and of having persisted in defying and disobeying lawful authority until they were captured with arms in their hands, and they were each sentenced to three years' imprisonment, with hard labour.

62. Twenty-four prisoners found guilty of agreeing and conspiring to withdraw into fastnesses, or other places of concealment, for the purpose of avoiding obedience to the laws of the Colony, and setting at defiance the lawful orders of the Supreme Chief, and ten other prisoners convicted of having wrongfully and illegally, and with rebellious intent, removed, or assisted to remove, the cattle of the tribe without the sanction and in defiance of the authority of the Supreme Chief, were each sentenced to two years' imprisonment, with hard labour.

63. The cases of ten of the prisoners are still under consideration. The Court held that the guilt of fifteen prisoners was not proved, and found eight others not guilty. These twenty-three men were, therefore, discharged.

64. It is contemplated to relieve such of these men as were not guilty of any serious personal crime from the severity of confinement in jail, by allowing them to elect service on farms for the period of their sentences, where they can serve out their term with their families, under special rules laid down under the authority of a local law by the Lieutenant-Governor. The number likely to avail themselves of this privilege will most probably reach three-fourths of the whole, and the object of allowing it is to insure their not again collecting as a tribe in the Colony by encouraging local ties and attachments to spring up in different places.

65. It will be seen from the foregoing that it was necessary to subdue a rebellious spirit in one tribe to secure future obedience in all the others, and that in undertaking this task, and in carrying out the operations necessary to accomplish it, the Government was beset by difficulties peculiar to the Colony and its population. It must always be with the greatest reluctance and anxiety that a Government decides to disturb any part of the population under its rule, and that reluctance and anxiety will be increased tenfold, when, as in a Colony like this, it cannot be sure that it will not disturb the whole.

66. That there were individual acts of unnecessary harshness and cruelty there can be no doubt, but, as far as I can judge, I do not believe that there were more than is the natural, and I must add, inevitable consequence of men, white or black, suddenly finding themselves in circumstances which inflame their passions, and for the moment destroy their self-command, and almost obliterate the sense of moral responsibility; in fact, there were but few, but few or many they can be dealt with only on their own special merits, because they are isolated cases, unconnected with, and contrary to, any

authorized course of proceeding laid down for the guidance of those employed to carry it out.

67. The foregoing faithfully represents the position of the Government at all the important turning points which it encountered before and during these operations; the details are for the most part to be found in the records of the Chief's trial; if operations such as these had to be undertaken again, and may God forbid the necessity! some mistakes might be avoided, perhaps only to substitute others in their place; but it would be impossible for them to be entered upon with a deeper and more painful sense of responsibility, or a greater desire to act with every possible forbearance, than was felt on this occasion.

68. Since writing this I have read the Lord Bishop of Natal's pamphlet on the trial of Langalibalele and its accompanying documents, which were forwarded to the Secretary of State by Mr. Bunyon, and has been referred to the Lieutenant-Governor by Earl Carnarvon. I shall reserve what I have to say on this for a separate paper.

(Signed) T. SHEPSTONE,
Secretary for Native Affairs.

Office of Secretary for Native Affairs, Natal,
June 12, 1874.

Sub-Inclosure 1 in Inclosure 5.

Sir, *Resident Magistrate's Office, Alfred, May* 4, 1874.

I HAVE the honour to report, for the information of his Excellency the Administrator of the Government, that Mr. Strachan, the Griqua Magistrate, came here to-day, bringing the outlawed Mhlangwini Chief Sidoi with him, who stated that he had several times sent to you to beg that he might be pardoned, and that you had always told him that, before his request could be entertained, it would be necessary for him to give himself up. He states that he sent messengers lately with 5*l.* to condone his offence, but that you had again told him that he must give himself up before he could be listened to, and that his offence was too serious to be condoned by a fine of 5*l.*

Sidoi stated that he now gave himself up to me, to abide by the decision of the Government, and trusting to the clemency and mercy of the Supreme Chief, under whose displeasure he could no longer live, obliged as he was, like a wild animal, always to hide from him who was his father. He added, that his sense of the magnitude of his offence, aggravated by his flight, was so great that he hitherto feared to follow your advice, and give himself up, but that he did so now, and he prayed that, in considering his case, the Supreme Chief would bear in mind that, when this happened, now nearly twenty years ago, he was a very young man, and therefore hardly aware of the full magnitude and extent of his offence, but that he saw and acknowledged it now, and earnestly prayed that his Excellency would favourably consider his petition for pardon, and a removal of the sentence of outlawry against him.

Ever since I have been in this country I have been aware that Sidoi was extremely anxious for pardon, but that he was afraid to come and sue for it, and I know that he has now come against the advice of his headmen, who feared that he may be imprisoned or killed, but he has been induced to do so by his own earnest wish to condone his offence, and to be at peace with the Government, seconded by the representations of Mr. Strachan, who came with him, otherwise I think he would not have had the courage to come alone.

I have accepted his surrender, and have told him that I would represent his case for the favorable consideration of his Excellency, and urge that, upon the imposition of a fine, he may be pardoned, as he had now acknowledged his offence, and had submitted himself for judgment.

Pending the decision of his Excellency on this application, I have allowed Sidoi to return home, on Mr. Strachan undertaking to bring him again before me when required to hear the decision.

I have, &c.
(Signed) H. C. SHEPSTONE,
Acting Resident Magistrate, Alfred.

The Hon. the Secretary for Native Affairs,
Pietermaritzburg.

Minute.

Office of Secretary for Native Affairs, May 11, 1874.

The Secretary for Native Affairs to the Resident Magistrate of the County of Alfred.

SIDOI, the outlawed Enhlangwini Chief, having voluntarily surrendered himself to you in the Court-house of Harding, as reported in your communication of the 4th instant, and having craved the clemency of the Supreme Chief, acknowledging the magnitude of his crime, expressing his regret, and pleading his youth and inexperience at the time he committed it, you are hereby authorized to inform him that, taking into account his plea, and the punishment he has already suffered, his Excellency has been pleased to decide that, upon his paying to you, or to the Magistrate who succeeds you in the county of Alfred, a fine of 50*l.*, the Proclamation of December 29, 1857, will be cancelled and withdrawn, so far as his personal liability to further punishment thereunder is concerned; but you will be careful to explain to him that such cancellation and withdrawal will not entitle him to claim any right to exercise Chieftainship in this Colony, and that he will not be allowed any such claim or right.

(Signed) T. SHEPSTONE,
Secretary for Native Affairs.

Sir, *Resident Magistrate's Office, Harding, May* 17, 1874.

I HAVE the honour to inform you that, on receipt of your letter of the 11th instant, informing me of the decision of his Excellency the Supreme Chief in Sidoi's case, I wrote to Mr. Strachan, requesting him to bring Sidoi before me to hear the judgment.

Mr. Strachan arrived with Sidoi and several of his headmen to-day, and I personally, in the Court-room here, informed him fully of the contents of your letter, and that his Excellency, having taken all the circumstances of his case into his most favourable consideration, could not grant the pardon without some mark of his disapproval of his previous conduct, and that he had therefore imposed a fine of 50*l.* upon him, on payment of which a Proclamation would be issued cancelling that of the 29th December, 1857.

Sidoi, and his headmen who accompanied him, expressed great gratitude at the leniency of his Excellency, and begged me most earnestly to convey to him their appreciation of it.

They also warmly thanked Mr. Strachan and myself for what we had done on their behalf.

The Hon. the Secretary for Native Affairs,
Pietermaritzburg.

Proclamation.

By his Excellency Thomas Milles, Esquire, Colonel, Administrator of the Government in and over the Colony of Natal, Vice-Admiral of the same, and Supreme Chief over the Native Population.

WHEREAS Lieutenant-Governor Scott, acting in his capacity of Supreme Chief, did, by Proclamation issued under his hand, dated the 29th day of December, 1857, declare Sidoi, then Chief of the Inhlangwini Tribe, to be deposed from his Chieftainship and an outlaw, for divers acts of a rebellious nature, and for refusing to obey the summons of the Supreme Chief to appear before him and answer the charges brought against him:

And whereas the said Sidoi there and then fled from the Colony, and has ever since resided beyond the boundaries thereof:

And whereas he has on various occasions prayed that his offences may be forgiven,

and the sentence of outlawry against him revoked, but has been told that no such prayer could be entertained until he had surrendered himself to this Government, to be dealt with as might to the Supreme Chief seem right:

And whereas the said Sidoi did, on the 4th day of May instant, surrender himself unreservedly to H. C. Shepstone, Esquire, Resident Magistrate of Alfred, in the Court Room at Harding, craving the clemency of the Supreme Chief, acknowledging the magnitude of his crime, expressing his regret therefor, and pleading his youth and inexperience at the time:

And whereas I thought fit to decide, that in consideration of the punishment he has already suffered, his surrender, plea, penitence, and prayer, thus humbly made, and the payment by the said Sidoi of a fine of 50*l.* to the Crown, I would revoke certain of the disabilities imposed by the Proclamation aforesaid:

And whereas the Magistrate has certified that this fine was instantly, and with the expression of much gratitude, paid:

Now, therefore, I do hereby proclaim and make known that I have revoked and cancelled, and do hereby revoke and cancel, the said Proclamation of Lieutenant-Governor Scott, dated the 29th December, 1857, in so far as it decrees outlawry and further punishment to the said Sidoi for the offences of which he then stood charged, and from the consequences of which he then fled, and he is hereby relieved from all liability to such punishment as aforesaid. But it must be clearly understood that nothing herein contained shall be construed to give him any license, or permission, or conntenance, to resume the position of Chief, or to exercise any authority whatsoever in the Colony of Natal.

God save the Queen!

Given under my hand and the public seal of the Colony, at Pietermaritzburg, this 22nd day of May, 1874.

(Signed) T. MILLES, *Colonel.*

By his Excellency's command,
(Signed) T. SHEPSTONE, *Secretary for Native Affairs.*

Inclosure 2 in No. 5.

Minute of the Colonial Treasurer of Natal on the subject of Langalibalele, submitted for the consideration of his Excellency Sir B. C. C. Pine, K.C.M.G.

HAVING been officially connected with or intimately concerned in the administration of Native Affairs in South Africa for nearly thirty years, and having taken no active part whatever in the late operations in this Colony I think I may fairly claim a right to express an opinion upon recent events in which Langalibalele has been the chief actor.

2. The opinion which reflection and experience have led me to form is, that any delay on the part of the Executive Government of a Colony in which the native element preponderates, to suppress any indication of contumacy or turbulence by any native Chief is fraught with peril to the peace and material progress of that Colony, and the conclusion at which I have arrived in the case now under consideration is, that the conduct of Langalibalele was contumacious and turbulent, and, in Kaffir estimation, amounted to rebellion.

3. The hostile criticism with which the action of the Governor has been assailed by no means alters my view of the case, but a most careful reconsideration of the facts which have been disclosed has deepened the conviction I entertain, which is, that the action taken by the Governor was justifiable, humane, and necessary, because punitive and precautionary.

4. Indecision where prompt action is demanded is regarded by the natives of South Africa as weakness; and they are prepared at any moment to take advantage of its exhibition, and shake off the yoke of the ruling race. Easily controlled when in repose and in the pursuit of their peaceful avocations, contented with their condition under our benign rule, which secured to them both life and wealth, when once their passions are aroused and their hostility inflamed they become changed creatures; submit to no control but superior force, acknowledge no supremacy but that of the house which has for ages presided over the destinies of their tribe, recognize no bond but expediency

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between themselves and the power under which, for reasons of their own, they have voluntarily placed themselves, forget the advantages they have enjoyed, recalling only the restraints, and eager to regain the quasi-liberty they formerly enjoyed, they ignore its numerous concomitant ills and record only its sweets; and, in their wild excitement, are prepared to rush blindly into any change; hence arose the danger to the peace of the Colony from the disturbing elements which Langalibalele introduced.

5. The facts of the case have been so clearly stated, confirmed by evidence and published so generally, that I need not here recapitulate them, but briefly refer to a few leading ones, and add a few observations in support of the views which I have here advanced in regard to Langalibalele and his tribe.

6. Closely connected as this tribe was by nationality, by marriage and other social ties, not only with those located in its vicinity but with those occupying more remote localities, its Chief regarded with veneration, as one invested with supernatural powers, by a race whose tribal distinctions disappear in the exercise of superstitions common to all, it is absurd and puerile to assert that the conduct of Langalibalele was blameless or would have proved harmless, for there can be no doubt that it would have led to the direst results, and therefore demanded prompt repression in order to maintain peace in the Colony.

7. To any reflecting mind, the disparity in numbers between the two races, the paucity of Her Majesty's troops, and the isolated manner in which its sparse white population was dotted over the Colony, the conviction is irresistible that our maintained dominancy, and the security to life and property we had so long enjoyed, resulted from the exercise of some latent influence other than mere force, and observation would have shown that this opinion was well grounded, and that the potent influence so successfully exercised was none other than a moral suasion imposed by the head officer and magistrates of the Native Department, backed in extreme cases by such authority as the Governor, as Supreme Chief of the natives, saw fit to grant, unless in direct breach of local laws.

On this barrier rested the lives and property of the colonists of Natal, and to resist the authority exercised at any one point was to loose or remove the source of order, to let in anarchy and bloodshed, and to spread ruin over the entire Colony, this, the conduct of Langalibalele would have induced, and this the action of the Governor was to prevent.

8. Glancing for a moment at the past, it may not be out of place here to say that in governing this people, the object of the Government has been gradually to elevate them by carefully avoiding the imposition of irritating restraints, by recognizing the operation of their own laws, permitting the exercise of certain customs which, though objectionable to us, yet prescription had familiarized them, repressing by degrees the exercise of obnoxious customs and their warlike tendencies, and thus gradually to qualify them for all the benefits of our laws, to develop in them a higher civilization, and induce the conviction that wealth acquired in an industrious and pacific manner was preferable to that acquired in warlike forays.

9. One means adopted by the Government in order to repress their warlike tastes and promote the pursuit of peaceful avocations, was the imposition of certain restrictions upon the acquisition of firearms by them; for, sprung from the warlike Zulu races, they were keenly alive to the advantage which firearms conferred, and an inordinate desire to possess these became an overpowering passion. Measures taken to arrest this impulse were mild and easily conformed to, merely requiring a permit prior to purchase, and in other cases merely requiring the registration of some which had been irregularly acquired.

10. It is difficult to indicate with accuracy the immediate cause of disaffection or the moment at which resistance was determined upon, but the first overt act of resistance to authority arose from a breach of the above regulations by the tribe of Langalibalele. The local Magistrate was informed that certain of its members had acquired some firearms, these he required to be produced before him in order to be duly registered, they refused to comply with his summons, which was repeated and again disregarded.

11. The matter was then duly referred to the Government but action was delayed, as at this juncture the Governor was transferred to another Colony, and important duties demanded the presence elsewhere of the Head of the native Department at the same time, while in the interval the Chief mustered his warriors, proceeded with the performance of certain incantations and national ceremonies designed to impart invincibility to his soldiers, entered upon negotiations with a distant Chief for an asylum for his cattle, and avowed his intention of resisting the authority of the Colonial Government.

12. A new Governor now assumed the administration, and soon became conscious of having inherited a difficulty which required to be promptly solved. He accordingly summoned the Chief Langalibalele to appear before him and justify his alleged contumacy. The summons was disregarded; repeated, and disobeyed. The cattle of the tribe then, as is usual before entering on hostilities, were driven to places of security, and the warriors were collected and so ostentatiously paraded as to cause the greatest alarm and confusion among the neighbouring Colonists.

13. To allay this feeling, to punish contumacy, to restore order, and reassert our perilled rule, was then the manifest duty of the Governor, who accordingly moved troops, volunteers, and native levies to the disaffected district, when operations were entered upon which resulted in the capture of the disaffected Chief in Basuto territory, and his subsequent trial and condemnation in Natal.

14. I myself sat as a member of the Court which tried the Kafir Chief Umhala in British Kaffraria, whose sentence to banishment was duly carried out; and I can safely assert that the trial of Langalibalele was as fairly conducted, and the sentence passed upon him was a more lenient one than that passed upon Umhala. Umhala was not defended by counsel; and to have forced counsel upon Langalibalele would have been to convince the native population that, although satisfied of the guilt of the Chief, we dared not punish him, and were, therefore, anxious on any terms to secure an acquittal.

15. His escape from the Colony in itself was in defiance of the law which allowed no native to change his location without permission, and the attempt to force himself and his tribe into the Basuto Settlement without the permission of Her Majesty's High Commissioner, implied either that he was prepared to incite the Basuto Chief to act in defiance of the High Commissioner's Agent or deemed that the crime he had committed was so heinous as to place him beyond the hope of pardon by the Governor of Natal.

16. It is impossible to estimate with precision the extent to which the revolt, if unrepressed, would have spread, or the effect which its spread would have had upon British interests in South Africa, for native policy in Natal has happily heretofore been so successfully conducted that peace has been maintained, and we have, therefore, no data whereon such an estimate could be based, but a reference to the past history of the neighbouring Colony of the Cape of Good Hope shows that in 1846 the rescue of a prisoner by the Kafirs resulted in a war which lasted nearly two years, at a cost to Great Britain of 1,500,000*l.* sterling, and that in 1852 an attempt to capture a Kafir Chief led to a war which spread from Kafir to Basuto land, incited British subjects to rise against and murder their employers, tainted a British native regiment which abandoned its colours, joined the rebels, and aided in carrying on a war which demanded no less than ten British regiments to suppress, which taxed their energies for two years, and cost Great Britain upwards of 2,000,000*l.* sterling.

17. Here, however, we have a revolt suppressed by the aid of a mere handful of Her Majesty's troops, at no cost to the Imperial Treasury; the head of the revolt captured, tried by his peers, convicted, and peace and good order restored to the greater part of the Colony.

18. I think I have now said enough to sustain the views which I entertain, and will only add that I have all my life been familiar with the natives of South Africa, have exercised that free intercourse with them which a knowledge of their language facilitates, have ever been regarded as their friend. At the present time I take the deepest interest in their welfare, and earnestly desire their moral and social elevation, but I feel convinced that the intentions of Langalibalele were so hostile to the Government that had the action of the Governor been less prompt and effective, disaffection would have spread from one tribe to another until it had reached the Zulu country, when a sudden and general rising would have deluged the country with blood and demanded an English army to recover our lost predominance.

(Signed) JOHN AYLIFF, *Treasurer.*

Treasury, Natal, June 18, 1874.

Inclosure 3 in No. 5.

THE pamphlet described as the "Proposed Defence of Langalibalele," by the Lord Bishop of Natal, was, as appears from the introductory note, written to be used by an advocate for the prisoner, in his address of defence to the Court. The advocate selected declined to act, on account of the restrictions which it was found necessary for the quiet of the Colony to impose upon him, and they were the same as experience has

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shown to be necessary under similar circumstances, where advocates appear at Courts-Martial in the highly disciplined army of England.

2. When this occasion failed, these remarks were not sent to the Head of the Government to inform his mind, or it may be, guide his conduct; but were printed in the shape of a pamphlet, and appear to have been privately circulated in Natal, the Cape Colony, and England; and it has become my duty, with much pain and reluctance, to remark upon them, in compliance with a direction from the Lieutenant-Governor, who received them by last mail from the Secretary of State for the Colonies, and it is the first opportunity I have had of seeing or reading them.

3. The extreme tone and high colouring of facts, or alleged facts, for which they are remarkable, are, of course, to be attributed to the use for which they were written, and cannot be looked upon as an attempt to state calmly, or with judicial discretion, the merits of both sides of the case; they wholly blame the Government and wholly excuse every act of the prisoner.

4. I fully agree with most of the Bishop's remarks in support of his conclusion that, "Kafir law" is, as a matter of course, to be here administered according to the first principles of justice and equity, as recognized by all civilized nations; and I should be sorry to admit that the existence of native law in this Colony, so necessary, in my opinion, for the effective control of its largely preponderating native population, could be even technically urged as a warrant or excuse for injustice of any kind, under any circumstances, other than is universally admitted to accompany the operation of every law, human or divine, in which communities become adversely involved.

5. The Bishop thinks that these first principles have been outraged in the treatment and trial of the prisoner Langalibalele. I have already shown in my Memorandum of the 12th instant, the acts which this Chief undoubtedly committed, and which he himself admitted to have been committed either by himself, or by his people in consequence of his acts. I have shown what those acts amounted to, according to the law under which he was living, which he himself knew, and had personally assisted in enforcing in the case of others.

6. Such being the case, he must be held to be as directly responsible for the consequences of these acts, as if he had been personally present and assisted at every one of them; among others, the deaths on the mountain pass, and those which occurred in the location. This is not, I apprehend, contrary to the first principles of justice and equity, nor is it peculiar to native law, for I find the principle itself clearly laid down as a guide to the jury in the celebrated trial of O'Connell and others for conspiracy, by the Lord Chief Justice of Ireland, as the law of the realm, in the following words:—"It is not necessary that it should be proved that the several parties charged with the common conspiracy met to concoct this scheme, nor is it necessary that they should have originated it. The very fact of the meeting to concoct the common illegal agreement it is not necessary should be absolutely proved to you; it is enough, and you are to say whether, from the acts that have been proved you are satified that these defendants were acting in concert in this matter. If you are satisfied that there was a concert between them, that is, an illegal concert, I am bound to say that, being convinced of the conspiracy, it is not necessary that you should find both the traversers doing each particular act, as after the fact of conspiracy is once established in your minds, whatever is either said or done by either of the defendants in pursuance of the common design, is, both in law and in common sense, to be considered as the act of both."

7. One excuse urged for the prisoner, generally stated, is that he cannot be held responsible for acts at which he was personally not present, or did not directly order; the view taken by the Court was, that there was an illegal concert and design, in both of which the prisoner and his people participated, and that, in the words of the Lord Chief Justice, "what was said or done by either in pursuance of the common design must, both in law and in common sense, be considered the act of both."

8. The Bishop takes exception to the constitution of the Court by which, as he at first supposed, the prisoner was being tried. He objects to the whole of the Executive Council, because they must needs pronounce the prisoner guilty of rebellion to justify measures already carried out, and because it was, in fact, as much an examination into the conduct of the Government officers towards the prisoner as into his conduct towards the Government.

9. These objections, so warmly and earnestly stated, impute such unworthy motives and incapacity to every member of the Executive Government that, if true, not one, from the Lieutenant-Governor downwards, is capable of rightly discharging the responsibilities attached to the position he holds; but, notwithstanding all this,

and after the discovery of the mistake of supposing that the Executive Council formed the Court, the reflections in the text have been allowed to remain and circulate, and the Bishop asks that he himself may be allowed to appeal on behalf of the prisoner from the Court which did try him, to this untrustworthy body, the Executive Council.

10. But by what Court could the prisoner have been tried, except by one constituted under native law? And, provided that the members of it were, from the functions they commonly exercised, connected with the administration of native law, the Supreme Chief's selection was unlimited; he himself possessing original as well as appellate jurisdiction, might sit or not as he chose.

11. What cognizance could the Supreme Court of the Colony take of the separate circumstances, which together made up the crime of rebellion under native law? Removal without previous sanction from the Colony, with his cattle and men, was not a crime known to civilized law, any more than disobedience to the summons of the Supreme Chief, or the disregard of an order, unaccompanied by a written warrant, or the firing upon and killing Her Majesty's subjects, supposing these acts to have been committed outside the Colony.

12. The Bishop says that, heretofore, all serious crime, such as murder, rape, &c., has been tried in the ordinary Colonial Courts, and that it is remarkable that the very first case in which the rule has been departed from for a quarter of a century is this, in which the crime charged is the greatest of all crimes, but his Lordship forgets probably that murder, arson, rape, &c., are crimes known to the ordinary Colonial law, while the ingredients which make up rebellion, according to native law, and which would soon desolate the Colony, if not checked, are not known. He also overlooks the fact that the Chiefs Fodo in 1846, Sidoi in 1857, and Matyana in 1858, were outlawed and banished (for outlawry involves banishment), by the same authority, for the same offence.

13. The Bishop describes, in strong terms, the treatment which the tribe received; he says, hundreds of men killed, and many hundreds more imprisoned, many women and children killed, and thousands taken captive and announced by Proclamation as doomed to three years of forced servitude; his kraals burnt, his goats, and oxen, and horses, as many as could be, seized, confiscated, and sold, &c.

14. This is certainly highly coloured. Natives estimate their own prowess by the number of men they kill in battle; and of course the number they claim to have killed is never less than the actual fact; and I have frequently heard in discussions among old warriors such statements denied flatly and proved to be untrue. I have tried to ascertain the actual number that fell on this occasion, and I do not believe that the whole on both sides exceeded 100. I at first thought, from the number of encounters, that double this had fallen, for parties of the Government force were frequently repulsed in their attacks on the caves.

15. Two hundred and twenty-three men of the tribe and seven sons were made prisoners and tried, and 190 sentenced, as described in my Minute of the 12th instant, the great majority of whom would now be living with their families under the conditions described in the 64th paragraph of that Minute, but for the embarrassing position in which the Government is placed with reference to the whole of this matter.

16. A few women and children were killed and wounded, but, in every instance that came to my knowledge, by accidental shots fired at the men defending the strongholds. The women of the tribe were taken away from their location for the reasons stated in paragraphs 53, 54, and 55 of the same Minute, and not one of them has been forced into servitude.

17. The kraals were ordered not to be burnt, and were not until after it was decided that they should not again be occupied, and the women and children had been removed; and it is a fact that none of them had been tenanted for upwards of a month before. It should be known, also, that what is called a kraal consists of a collection of huts, built of twigs covered with grass, and containing nothing of any value.

18. The cattle of a tribe are like guns under the Gun Law, forfeited by the fact of being seized under certain circumstances; and, in the case of cattle, seizure after leaving the jurisdiction is forfeiture. Those of this tribe were seized 150 miles from the boundary of the Colony.

19. The Bishop's remarks on the native members of the Court will be best answered by my annexing the summons issued to the Magistrates, in which the selection of these native Chiefs or headmen was directed; it will be seen that there was no desire or attempt to select for the purpose, in the sense which seems to be suggested

by his Lordship, but that, as far as the Government was concerned, it was a matter of perfect indifference who the Magistrates chose.

20. Then, again, the severe strictures upon these men, that "without caring to hear any proofs, before even the enquiry begins, they rattle off one after another their volleys of abuse," and, "without a particle of proof, assume at once his guiltiness on all the charges," are, I must think, not merited.

In the first place their remarks can scarcely be properly described as abuse; and, in the second, they considered that when the prisoner pleaded, as he did, that the trial was at an end, and no one was more astonished than they that further enquiry was to take place; they recommended no particular punishment, but the substance of their speeches was, to us this is a novel proceeding, according to what we have seen in olden times, and among ourselves there would be no enquiry, the facts would have spoken for themselves, and extermination would have followed; your ideas are more humane than ours, we cannot suggest to you, follow the course which seems to you best.

21. I shall pass over the questions involved in Mahoiza's evidence. I am ready to admit that he was treated with less incivility or insult than he describes, and that his story of having been stripped was, in so far as its literal meaning is involved, exaggerated to a great extent; all that it is necessary to believe as regards the Chief's case is, that Mahoiza delivered the summons to him, and that the Chief positively and definitively refused to obey it; of these facts there can be no question, nor is there any doubt that such portion of the tribe as was assembled on the occasion treated Mahoiza with disrespect in several ways, for one of the principal headmen present, Umhlaba, remonstrated at the time. The question therefore is, whether or not this was in pursuance of a common illegal design; the Court thought it was.

22. Allusion is made more than once to the alleged fact that the sons of the Secretary for Native Affairs, among others, did not hesitate to pay the labourers from this tribe at the Diamond Fields with guns; it is true that the circumstance of some of the men employed by them did bring guns into the Colony, and that this fact was frequently mentioned during the trial; it is therefore taken for granted that the men in question received those guns from the sons of the Secretary for Native Affairs. This, if true, might fairly be urged as a ground for consideration when the application for license to possess those guns was asked for, but it is wholly untrue, as will be seen from a letter dated 24th February last,* published in the newspapers of the Colony, which I append, and can therefore form no ground for any argument whatever in the case.

23. It may be quite true that other tribes were equally chargeable with the illegal possession of fire-arms, and since the operations against Langalibalele, one of those most actively employed against him, has brought in a considerable number to have them registered, but it would have been the height of folly and imprudence to have assumed this fact merely for the sake of dealing with the whole native population at once, or, to use a native expression, of setting fire to the grass everywhere on the same day.

24. I have, in my Minute of the 12th instant, anticipated many of the objections raised in the Bishop's Pamphlet, and among others, the relative legal positions of the two parties on the 4th November, at the top of the Bushman's River Pass; I observe, however, that his Lordship justifies the conduct of the tribe on that occasion by saying that the Government force knocked one on the head, seized a number of their guns and assegais, killed one ox, and stabbed five or six others; this is the first I have heard of one of the tribe having been hurt by the Government force, except in self-defence, and this part of the statement is wholly without foundation. I was aware that on the evening before, the Basuto Scouts of that force had come upon some of the tribe sleeping under a rock, and had while asleep removed some of their arms, but that was all; the next morning, the force being in a starving condition, came upon thousands of the cattle belonging to the tribe, and one was ordered to be killed for food, to be eaten while the commanding officer was engaged in endeavouring to bring the tribe to a sense of the folly it was, in its own interests, committing; the commanding officer at the time guaranteed full payment for this animal.

25. Can it be said that this was a sufficient provocation, or any provocation at all, to the treacherous act of firing upon and killing five of the Government force when their backs were turned, and when the Commanding Officer believed that his arguments and exhortations were being favourably listened to by those very men?

26. If the killing of this ox, even without such a guarantee, or the stealing away of these weapons, had occurred under ordinary circumstances in the Colony, restitution

* Sub-Inclosure 2 in Inclosure 3.

or compensation would have been demanded, and, if not given, the authorities would have been quickly enough applied to for their interference; why, supposing the guarantee to have been ignored, was not this course followed on the mountain top, where they saw the Commanding Officer on the spot, and might have appealed to him? simply because the men of the tribe were there to resist interference with the illegal design which they had undertaken to carry through, and which had been entrusted to them by their Chief.

27. I now notice the ground which, upon the face of it, appears from a moral point of view to be the most tenable of all the positions which the Bishop has advanced in defence of the prisoner, although legally it is valueless, namely, the alleged treacherous murderous conduct of Mr. John Shepstone in the matter of Matyana in 1858. The story upon which statement and argument are founded is said to be the native story of the affair; none of the authorities for which were, however, present.

28. I cannot help expressing my deep regret that his Lordship should have thought it right to circulate this story without having taken the precaution to verify it, or of asking explanation respecting it from the person who was present, and whose reputation he has so compromised among strangers by the manner in which he has told it. Mr. John Shepstone is in the Colony, might have been readily communicated with, and would no doubt have as readily furnished an explanation from his point of view; and although his explanation might have weakened the argument involved in the Bishop's question: "If he (Mr. John Shepstone) could think it right to kill a criminal in this way, why might not Mahoiza do the same?" it was scarcely fair to omit the reference before circulating the story.

29. The facts as stated in the official reports at the time are as follow: Mr. John Shepstone was not then in the service of the Government, but happened to be living in the county adjoining that in which Matyana was located; when the Magistrate, Dr. Kelly, found that his authority was contemned by the Chief and tribe, he recommended to the Lieutenant-Governor the use of force and the appointment of Mr. John Shepstone to command the native portion of it. The Lieutenant-Governor sanctioned this arrangement, and proceeded himself to the county town of Ladysmith to direct operations. Summonses to appear were repeatedly sent to the Chief, but to no purpose; he and his tribe, with the exception of a small section, took to the fastnesses which abound in that part of the Colony; the location was traversed by the Government force, the cattle of the tribe taken, two were killed on the Government side, and thirteen on that of Matyana, but the Chief and tribe still refused to submit; the main force was, however, withdrawn, and Mr. J. Shepstone was left with a body of natives on the border of the location to keep the tribe in check, and endeavour to open communication with the members of it. I was then sent by the Lieutenant-Governor to accomplish the latter object, and after having succeeded in meeting and explaining with John Shepstone the state of things to the principal men of the tribe, came away, leaving Mr. John Shepstone still there.

30. After this the Magistrate appears to have issued his warrant for the apprehension of Matyana, on a charge of murder, and to have addressed it to Mr. J. Shepstone, who was under his orders. The Lieutenant-Governor directed Mr. J. Shepstone to execute this warrant, in the belief that no force would be necessary, beyond a few of the tribe itself, and the persons Mr. J. Shepstone then had with him.

31. It should be stated, that in a letter dated the 16th February, 1858, four weeks before the arrest was attempted, Mr. John Shepstone officially wrote as follows: after describing an interview he had had with Matyana, on that day, he says, "I beg leave further to state that my opinion, drawn from the evidence of the many witnesses produced, is that Matyana is innocent of the murder. I should have apprehended him had it not been for the reasons I have given, viz., that he was attended by upwards of 300 armed men, was himself armed, and did not any of them lay down their arms during the interview, which must have lasted some hours;" while Mr. J. Shepstone and his three attendants had no weapons at all, this being the condition on which alone Matyana consented to meet him. Mr. J. Shepstone then adds, "But should the Government still see it necessary, I can seize him at once, but will require an armed force to do so; but believe that with time I may do so without bloodshed, or even succeed in getting him to stand his trial at Ladysmith."

32. Mr. John Shepstone therefore attempted Matyana's arrest, under the instructions of his superiors, and in the belief that inquiry would prove him to be innocent He knew that no such inquiry as would settle the matter could be made until Matyana appeared before the Magistrate; and he felt that, if by any means he could, even by considerable personal risk to himself, secure his appearance, he would also secure his

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acquittal, and quiet that part of the Colony. It is therefore incredible that, under such circumstances, and with such convictions, a man with any sense of responsibility resting upon him, could have acted as the "story" in the pamphlet describes; but I append his own report of what took place on that occasion, written the day after the event, while he way lying wounded in a native hut. It is dated the 17th March, 1858,* and is addressed to his immediate superior, the Magistrate who was on the spot early on the morning of the 18th, from which it appears that he did not fire at Matyana, or, in fact, at anyone.

33. It is inadmissible that the belief in an untrue story should be successfully urged as a grouud of defence by a native Chief who, like Langalibalele, has been in the Colony for more than twenty years, has repeatedly known of Chiefs obeying summonses to appear before Magistrates, has appeared himself in compliance with such summonses, but never had seen an instance in which advantage was taken of the obedience thus yielded to detain or imprison any of them.

34. In two instances the substance of private conversations has been introduced into this matter—one in the printed, the other in the manuscript portion of these papers. I can only say that I spoke in the confidence of private friendship, without sense of responsibility and without reserve, and if, in the instance in which Captain Lucas is mentioned, I conveyed the idea that he had intentionally done what he is charged with in the statement alluded to, I did him injustice, because the interpreter used on the occasion has denied that such a meaning could be put on Captain Lucas's words, and I am at a loss to understand the object of mentioning, as a fact, that which could only have been spoken of as apparently true, especially when the conversation that conveyed the knowledge of the evil or supposed evil, conveyed at the same time the information that it had been prevented.

35. I trust that this Minute, taken with that of the 12th instant, sufficiently answers every position in these papers which it is necessary to answer, and it remains only to notice the last paper by which the pamphlet is accompanied, viz., extract from a letter by Mr. Thomas Eastwood, of Natal, to his brother in England, dated March 2, 1874.

36. This document appears to have been added to serve as a key to the whole of the occurrences connected with the Langalibalele operations, as well as to the contents of the Bishop's pamphlet and other papers, and except for this intention being so plain, I should take no notice of it. Mr. Eastwood, appears, however, in the capacity of the Bishop's interpreter and his interpretation has to all appearance been accepted, because it is attached to the papers sent to the Secretary of State.

37. He speaks of me as in his "fancy too deeply involved by culpable neglect, or perhaps worse, to dare befriend the native;" of the Lieutenant-Governor as having been "regularly led into it, knowing nothing of the matter;" and of the Court, as "a regular family party acting as judges, interpreters, &c.," and concludes as the Bishop does, that "they were bound to find him guilty." He had, when he wrote, "not a doubt in his own mind that a gross blunder had been perpetrated from the commencement; he did not believe that 'Balele ever had been a rebel," &c.

38. What special knowledge Mr. Thomas Eastwood possessed to entitle him to pen these remarks, or what claim the remarks themselves possess to be used as they have been used, I know not; I believed he occupied a respectable position at home, came to this Colony many years ago to farm, was disappointed in his expectations, became a candidate for Holy Orders, and has lately been ordained Deacon by the Bishop of Natal; in the meanwhile, he seems to have devoted his spare time to the study of politics, and his letter to his brother in England is the result. He lives at the seaport, is not acquainted with the native language, knows very little of their customs and laws; and of the late operations, he is personally wholly ignorant. The value of his opinion or judgment either way, in this matter, is therefore extremely small, and the members of the Court will be able to bear his criticisms with becoming composure.

39. I do not know to what "culpable neglect, or perhaps worse," on my part, Mr. Eastwood refers, but if it be hesitation to adopt a course, most of the consequences of which could not be unknown to me after so many years of experience, or indulging the hope that on my return from the Zulu country last year, I should find the Chief and tribe more inclined to render obedience to constituted authority, or if it be endeavouring to avoid, during the administration of an Acting Governor, the precipitating of measures, the responsibility of which could, except under very pressing circumstances, be properly undertaken only by a permanent ruler, I must

* Sub-Inclosure 3 in Inclosure 3.

plead guilty. I admit fully the reluctance with which I bowed to the necessities of the case, as they appeared to me then, and as they appear to me still, and I trust I may be permitted to say that, if I could have seen any alternative by which the Government could have avoided the use of force, without compromising its position, I would gladly have suggested and urged the adoption of that alternative.

(Signed) T. SHEPSTONE,
Secretary for Native Affairs.

Office of Secretary for Native Affairs, Natal,
June 1874.

Sub-Inclosure 1 to Inclosure 5.

Sir, *Office of Secretary for Native Affairs, January* 5, 1874.

I AM directed by the Supreme Chief to inform you, that he proposes to nominate you to be a member of a Court to sit under the provisions of native law, for the trial of the late Chief Langalibalele, and such other prisoners of the Amahlubi and Amangwe tribe (Putili's) as may be presented for that purpose.

You will be pleased to summon one of the most steady and respectable Chiefs under your jurisdiction to be present at the trial, who will be entitled to sit with the members of the Court, and to give his opinion as a juror in each case.

It is desirable that the Court should assemble early next week, and that you should be in town by Monday evening next if possible.

I have, &c.
(Signed) T. SHEPSTONE,
Secretary for Native Affairs.

The Resident Magistrate, Pietermaritzburg, Umvoti,
Division of Upper Umkomansi, and Division of
Inanda, by Victoria.

Sub-Inclosure 2 to Inclosure 5.

Sir, *Maritzburg, February* 24, 1874.

IN a communication taken over from your paper by the "Natal Witness" of the 13th instant (copy sent herewith), and described as being from "a gentleman who probably knows more of native affairs and border policy than any other man now living, unless it be with the exception of the Secretary for Native Affairs himself," the following statement occurs:—

"As for the guns, the natives say, and it is the fact, that the Natal whites gave them authority to purchase guns at the Fields, and notably Mr. Shepstone's sons, and that when they returned they were ordered to bring them to the Magistrate, which meant confiscation."

However much your correspondent may know of native affairs and Cape border policy, he tells you that what "the natives say" is the foundation of the offensive statement above quoted; but he adds, "and it is the fact."

Upon what evidence this guarantee is volunteered he does not tell us; either he thinks he knows more than what "the natives say," or his statement has only that for its foundation; in either case he could not feel sure that what he wrote was the fact, and, therefore, he had no right to add the weight of his personal testimony, whatever that may be, to a statement which, after all, might be wholly untrue, and which really is so.

Three of us, "Mr. Shepstone's sons," worked at the Diamond Fields for upwards of a year. We employed about twenty-five natives, some of whom belonged to Langalibalele's tribe. We had not been long there before we, and they too, observed how easy it was to obtain guns. They spoke to us on the subject. We advised them not to purchase, pointing out that the prices were enormous, that the guns would most likely be confiscated in Natal, where they knew as well as we did that no native was allowed to have a gun without first getting the Lieutenant-Governor's license. They assented to our reasoning; but, as it turned out, could not resist the temptation, for, after all we had said, first five, and ultimately eight of them, purchased guns without our knowledge.

When we discovered this we remonstrated with them, advised them to try and

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induce the sellers to take the guns back, at a loss rather than risk confiscation in the Free State and Natal, and one of us went to one of the sellers to negotiate for their return, but without success.

As the natives had made these purchases without our knowledge and against our advice, we declined to assist them to get the guns into Natal by mentioning them in the passes we gave them.

They did, however, succeed in reaching Natal with them, and we endeavoured to induce them to take them to the magistrate for registration, and we believe that they did so take them, and that they were duly registered.

Although many Natal natives, knowing who we were, came to us at the fields to beg our assistance in getting guns, we never gave them any encouragement or assistance, and on no occasion did either of us give authority to any native to purchase a gun.

(Signed) WILLIAM SHEPSTONE.
GEORGE SHEPSTONE
ARTHUR SHEPSTONE.

To the Editor of the "Cape Argus,"
Capetown.

Sub-Inclosure 3 to Inclosure 5.

Sir, *Job's Berg, March* 17, 1858.

I BEG leave to report, for the information of his Excellency the Lieutenant-Governor, that in pursuance of instructions received, authorizing me to carry the warrant of the Magistrate for Ladysmith into execution for the apprehension of Matyana, after repeated messages and waiting nine days without receiving any answer from him, I received on the morning of the tenth day intimation from him, saying that he was coming and armed; I, therefore, sent to tell him I would not see him with them; he sent back repeatedly to say he was afraid and would not come without; similar messages continued to be sent backwards and forwards, until 4 o.clock in the afternoon, when he sent to say he was coming without them. Notwithstanding this, they were brought, some to within a hundred yards of where I was sitting. He had about 300 men with him; they approached in the most insolent manner, using expressions of great contempt, for which I at once took them to task. I then called the three prisoners for him to question (which had been left here for the purpose); after his doing so for some time, in anything but a proper manner, I, according to a previously arranged plan, gave the order to sieze him, and at the same time for half a dozen men on horseback to ride up at full speed and secure all the assigais, in which they fortunately succeeded. At the moment my men attempted to lay hold of him, short assigais were raised on all sides to rescue him, and one of my men narrowly escaped being stabbed. Matyana at that instant sprang clear over the heads of those sitting behind him; my men gave chase, some of them without arms; his ran and fought alternately, covering his escape, and it soon became a general skirmish, my 30 against his 300; one of my men was severely wounded through the lungs, and another slightly so in the head. I am sorry to add, notwithstanding all my efforts to prevent bloodshed, several of his men lost their lives, among whom is "Tobe," his chief adviser in the late disturbances. After running about 50 yards they all turned and gave the shout of defiance and said, "Let us go up to the huts and arm with their assigais." My men were determined to prevent this, but had to fight hard, during which time several of his men were killed. I fired over their heads, thinking it would frighten them, but of no avail; whilst in pursuit of Matyana, and in the act of shouting to my men to spare them, I felt myself suddenly stabbed in the right side just above the hip; the wound is a couple of inches long, and had it not been for the thickness of my coat, causing the assegai to glance aside, it must have been fatal, owing to the size of the weapon used. Although I had a loaded gun and a brace of pistols at the time, I permitted the man to escape, wishing thereby to show them that Matyana's apprehension was my only object. I have since heard that Matyana was near the spot at the time. It is also rumoured that he is wounded in the leg, but in what manner is not known; his shield with two of his own assegais was found where he had been sitting talking to me.

Since writing the above I have been informed, that his army has rejoined him, and is preparing to attack us. I have therefore, as a means of precaution, sent for Cenguzi's people, and a few of Nodada's, as I have no doubt of its truth.

I shall act only on the defensive until I hear further his Excellency's instructions, which I humbly hope will be forwarded at his earliest convenience.

I have, &c.
(Signed) W. SHEPSTONE.

T. T. Kelly, Esq.,
Resident Magistrate, Ladysmith.

Inclosure 4 in No. 5.

(Circular.) *Office of Government Secretary for Native Affairs, November 7, 1853.*

Sir,

I AM directed by his Honour, the Lieutenant-Governor, to transmit, for your information and general guidance, the inclosed Minute on the position which native law occupies in regard to the general law of the district.

You will observe from the principles it lays down, that in cases clearly within the jurisdiction of Native Law, it is not needful to superadd any of the forms or usages required only by the general law, with a view to strengthen the position or authority of the Magistrate, but that, on the contrary, such a course is rather calculated to produce the opposite effect.

I am also directed to request that you will be careful to keep the records of cases adjudicated under Native Law in a separate book.

I have, &c.
(Signed) T. SHEPSTONE,
Government Secretary for Native Affairs.

To the Resident Magistrates.

Minute of his Honour the Lieutenant-Governor on the Position when Native Law occupies in regard to the General Law.

The following case has occurred :—

A native has been killed by another native whom he was attempting to arrest, by order of a Magistrate, acting, as is alleged, in accordance with Native Law.

2. It is assumed that the proceedings of the Magistrate and the murdered man were in accordance with Native Law, but it has been argued that because the murdered man was not provided with such documents to show his authority as are required by the Roman Dutch Law in similar cases, therefore the resistance to his authority was legal, and his death justifiable homicide.

3. I believe this view of the case to be so at variance with sound legal principle, as well as so mischievous in its tendency, that I think it right to endeavour to point out its fallacy, for the information and guidance of the Magistrate acting under Native Law.

4. The Letters Patent of 8th March, 1848, the Ordinance No. 3, 1849, and the Letters Patent of the 19th June, 1850, form part and parcel of the law of the district, and every act done in accordance with their provisions is just as much a legal act as if it were done under the Roman Dutch Law, or any other law which may be in force in the district.

All Courts within the district are, therefore, bound judicially to notice and uphold these enactments, and, where necessary, to lend their assistance to carrying their provisions into effect.

5. These enactments recognize and sanction Native Law, under certain circumstances, to the exclusion of the ordinary, or Roman Dutch Law.

Therefore all process carried on under these enactments in accordance with Native Law is legal, whether such process be, or be not, in accordance with Roman Dutch Law, or ordinary law.

6. It follows from these principles that any resistance to such process is illegal, not only in the eye of tribunals administering Native Law, but also in the eye of all Courts in the district, since, as I have shown, they are all bound to notice and uphold these enactments.

7. The course which the District Court, I doubt not, would pursue in a similar case to that under discussion is, first, to ascertain the precise nature of the process

adopted by the Magistrate; secondly, to ascertain by competent evidence whether that process was in accordance with Native Law. These points being satisfactorily settled, the Court would proceed to deal with the case precisely as if the crime had been committed in resisting a process under the Roman Dutch Law.

8. It seems to me that some misapprehension has arisen on this subject, from the consideration that the Native Law is to be administered by the Lieutenant-Governor and officers appointed by him for that purpose, and not by the District Court; hence seems to arise the erroneous notion that because this Court cannot administer Native Law, therefore it cannot recognize its legality in cases coming under its own jurisdiction. No argument can be more unsound, and its fallacy may be shown by an illustration taken from our own jurisdiction.

The Court of Queen's Bench, and other Common Law Courts of England, cannot administer Admiralty, Ecclesiastical, or Chancery Law, which are administered by separate tribunals; and yet no man can contend that if a murder is committed in resisting the process of these latter Courts, the former Courts could not take cognizance of the crime.

9. It perhaps may be said, that in order to bring his officers within the protection of the ordinary law, the Lieutenant-Governor should direct them to use warrants and other process of the ordinary law. But, first, it may be asked what right has one tribunal to impose its own process on another independent tribunal, and to say to it: "We will not assist you and protect you, unless you use our process." What would be thought of the Court of Queen's Bench refusing its support and protection, where necessary, to the officers of the Court of Admiralty, because they did not use the process of Common Law. All the former Court would in such a case ask, "Is the process in accordance with the law and custom of the Court out of which it issued; and if it be so it is legal, because it issued from a Court equally with our own recognized by the Constitution under which we derive our authority." So the superior Court of this district must, and doubtless, will say, "Show us this process was in accordance with Native Law and usage, and we will protect it, and punish the man who has resisted it, because it emanates from a tribunal deriving its authority from the self-same Charter under which we ourselves are sitting."

Secondly. Let us suppose in this case that a warrant had been issued, and the process of the Common Law followed in every respect. The case was one within the cognizance of Native Law, the usages of which the Magistrate was bound to observe, and it might then have been urged in favour of the accused that morally he did not know what these to him unmeaning forms meant, nay, that he might suppose that they were a new process of witchcraft; and, legally, it might, in my opinion, be irresistibly urged in his defence, that the process was not in accordance with the law and usage of the Tribunal from which it issued, and, therefore, was void *ab initio*.

10. All the misapprehension on this subject arises from not fully realizing the fact that the Letters Patent, and the Ordinance, further confirmed by other Letters Patent, are just as much part and parcel of the law of this Colony as the Roman Dutch or any other law, and that all acts done under these enactments are in every way as legal as acts done under the ordinary law. Once understood, this, and all the difficulties herein referred to, vanish.

(Signed) BENJN. C. C. PINE.

November 4, 1853.

By command of his Honour the Lieutenant-Governor,

Signed) T. SHEPSTONE,

Government Secretary for Native Affairs.

Inclosure 5 in No. 5.

Extract from Minute of his Honour the Lieutenant-Governor to the Legislative Council, dated November 27, 1854.

21. The section substantially embodies, in the form of a legislative enactment, one of the fundamental principles of the native law, which recognizes tribal or collective, as distinguished from mere individual, responsibility for crime, and especially that of theft, which, so far as the party aggrieved is concerned, is capable of being atoned for, by the restitution of the property.

22. This law has existed, in various forms, among almost all nations on the earth, while in a barbarous, half-civilized, or primitive state, and its principle, as I shall

hereafter show, is still recognized in the code of the most civilized nation in the world.

Its foundations are laid deep in the nature of man, whose first instinct is that of self-preservation, and it springs naturally out of the state and requirements of every imperfectly settled community.

23. In the native code of the Kafirs, the principle is applied with peculiar stringency in regard to the crime of cattle-stealing, because this crime is by them regarded as nearly the greatest that a man can commit. Cattle is the greatest, nay, almost the sole species of property known to the Kafir. In his mind it occupies the same place as houses, money, and lands do among civilized men. Its possession is necessary, not only to his comfortable subsistence, but even to the formation of the marriage tie. In fact the whole fabric of Kafir society rests on the foundation of property in cattle. It is not wonderful then that the Kafir should seek to guard this foundation by every means in his power; that he should not only severely punish the cattle-stealer, but that he should provide the most stringent police for detecting the offender. The best police he conceives to be, to make every man possessed of property a policeman; to pledge the property of the community as a security for the property of individuals; to make every village or kraal to which property is brought, bound to discover to whom it belongs, and how it was obtained. Doubtless, among a people far advanced in civilization, such a system of police would be unnecessary. Feelings of propriety, of honour, respect for public opinion—in short, all those moral restraints which in civilized communities, in so many cases, supply the place of, and are more powerful than, positive law render it unnecessary to make a man answerable for stolen goods which come into his habitation or before his notice. No man would dare to deposit stolen property with persons of the most ordinary respectability, or even to exhibit it to such persons. The Kafir, however, knows well that his countrymen are uninfluenced by these moral restraints, and that, unless compelled by positive law, they would not feel bound to denounce the thief, nay, that in many cases their inclinations would prompt them to participate in the plunder, more especially of a kind of property they so eagerly covet. He knows, moreover, that close observers as his countrymen are of each other's actions, and interested as they are in everything which concerns cattle, it is next to impossible for a man to bring such kind of property to any village or kraal without the inhabitants being able readily to detect circumstances which may give rise to suspicion that it was improperly obtained.

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26. The native law, therefore, is, in their present circumstances, reasonable and necessary; and it is more so with regard to the white inhabitants; for, in addition to its being necessary to preserve the property of the white settler, it is necessary to secure peace between the two races.

27. Every one, whether on the Cape frontier or in this Colony, who has had any experience of Kafir wars, is perfectly aware that cattle-stealing has been, in most cases, the origin of them, and at all events that it has generally been the first overt act of rebellion.

It will be sufficient, in this Council, to refer to the opinion of our friend Mr. Shepstone on the subject, as recorded in the Report of the Location Commissioners, and elsewhere.

28. The offence of cattle-stealing among Kafirs may, therefore, without great impropriety, be compared, as to its turpitude, and especially as to its consequences, to the crime of high treason among civilized men.

29. Having endeavoured to show that the principle of native law in this respect, that of collective, as distinguished from mere individual, responsibility, is, in certain states of society, and especially in the present state of the natives of this district, reasonable and necessary, I shall now attempt to show that this principle of jurisprudence has largely pervaded the early laws of nations now arrived at a high stage of civilization; and further, that it is still, in certain cases, recognized in the modern code of the greatest nation of the world.

30. I believe it might be shown that this principle of law has been recognized in the codes of nearly all barbarous and half-civilized nations in the world, of whose existence and history we have any knowledge.

I have, however, neither the time nor the learning requisite to the execution of of such a task; but, referring you for a general confirmation of the fact, to the second volume of Mr. Hallam's "History of the Middle Ages," page 286, I shall proceed to adduce abundant proof of the existence of this principle in the jurisprudence of England.

31. The clearest application of the principle of collective responsibility for crime is found in the Anglo-Saxon institution of Frankpledge. Although you are doubtless well acquainted with the general outlines of this institution, I shall lay before you an accurate description of it in the words of historians and legal writers of great authority, because, in some points, it closely resembles, even in detail, the native law now under discussion.

32. Dr. Lingard, in his "History of England," vol. i, page 484, states: "Ingulf has attributed to Alfred the institutions of tythings, which by the name import either a subdivision of the hundred, or an association of ten neighbouring families. By law every freeman was to be enrolled in one of these associations, all the members of which were made perpetual bail for each other. If one of the number fled from justice, the remaining nine were allowed the respite of a month to discover the fugitive; when, if he were not forthcoming, the pecuniary penalty of his crime was levied on his goods and in case of deficiency, on the goods of the tything, unless it could be proved that its members had not connived at his escape."

Again, in "Blackstone's Commentaries," vol. i, page 114, is this passage: "The civil division of England is into counties, of these counties into hundreds; which division as it now stands seems to owe its origin to King Alfred, who, to prevent the rapines and disorders which formerly prevailed in the realm, instituted tythings, so called from the Saxon because ten freeholders and their families composed one. These all dwelt together, and were sureties or free pledges to the King for the good behaviour of each other, and if any offence was committed in their district, they were bound to have the offender forthcoming; and therefore, anciently, no man was suffered to abide in England above forty days unless he were enrolled in some tything."

Again, in vol. iv., page 252, Blackstone says: "By the Saxon constitution these sureties were always at hand, by means of King Alfred's wise institution of Frankpledges, wherein, as has been more than once observed, the whole neighbourhood or tything of freemen were mutually pledges for each other's good behaviour."

Mr. Hallam's "History of the Middle Ages," vol. ii, page 279, gives a detailed account of this institution, which that eminent and philosophical historian calls "the great police of mutual surety."

33. The wisdom of the law of frankpledge, and its adaption to the circumstances of its age, are admitted by the most enlightened men of modern times; as the country, however, advanced in civilization, the institution fell into disuetude; but still the principle of collective responsibility for the criminal acts of individuals has since, at various times, been recognized and enforced in the law of England, and it is to this very hour in force, in certain cases, and is recognized by very recent Acts of Parliament.

34. The most obvious illustration of the principle is seen in the law making the hundreds liable to make compensation for injuries done by individuals in certain cases. A hundred, as you are aware, is a division of a county, very similar to a ward in this Colony.

35. In Blackstone's Commentaries, vol iv, page 293, it is stated:—

"There is yet another species of arrest, wherein both officers and private men are concerned, that is, upon a hue and cry raised upon a felony committed. An hue and cry is the old common law process of pursuing with horn and with voice, all felons and such as have dangerously wounded another.

"It is also mentioned by statute, Westminster 1, 3 Ed., 1 Cap., 9 and 4 Ed. 1st, Stat. 2; but the principal statute relative to this matter is that of Winchester 13, Ed. 1, which directs that from henceforth every country shall be so well kept, that immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and from county to county; and that hue and cry shall be raised upon the felons, and that they that keep the town shall follow with the hue and cry with all the town and the towns near; and so hue and cry shall be made from town to town until they be taken and delivered to the Sheriff. And that such hue and cry may more effectually be made, the hundred is bound by the same statute to answer for all robberies therein committed, unless they take the felon, which is the foundation of an action against the hundred in case of any loss by robbery."

In Comyn's Digest, vol. iv, pages 467-468, it is laid down:—"If the county does not apprehend the felon within forty days, an action lies against the inhabitants of the hundred where the robbery was committed for the money or goods whereof the party was robbed."

By the common law of England, and various statutes, the hundred was also liable for all damages done to individuals by riots.

36. This principle of the liability of the hundred, even for robberies has been retained and confirmed as to Ireland by a very recent Act of Parliament.

In England, however, this liability of the hundred for robberies has fallen into desuetude, and its liability for damages done by rioters has in many cases been abolished by statute, but still the liability for damage done by rioters to chapels, houses, and other buildings, and to machinery, and ships and vessels, has been retained and recognized by Acts of Parliament, passed respectively in the reigns of George IV, William IV, and Her present Most Gracious Majesty.

37. It is scarcely necessary to point out how singularly these enactments support the principle and the application of the native law in question. In Ireland, you see, where society was unsettled, and the habits of the people, in some respects, lawless, the law of a primitive age, which makes a community liable for the acts of its individual members, is in full force, where in more peaceable England such laws have been allowed generally to pass into desuetude; but still, even in that country, whenever particular communities, by suffering tumults or riots to occur in their midst, assimilate themselves to the condition of a half-civilized people that moment the stern law of a half-civilized age springs into activity, to save individuals from loss, and society from anarchy.

38. Mr. Cloete has said in his letter that "he has yet to learn that, while Her Majesty has graciously declared it not to be her wish directly to abrogate Native Law, it has ever been Her Majesty's will or intention that we should borrow from the Kafir code principles which are directly in conflict with the fundamental rules of justice, as established in every civilized community; rules which direct that every person is liable to punishment for his own misdeeds, but not for those of another."

39. How groundless is the latter part of this sweeping statement the foregoing examples abundantly prove. Some of the illustrations and examples I have quoted from the jurisprudence of England are not, in their details, quite similar to the Native Law under discussion; some are singularly so; but they all support the principle of collective responsibility for crime, and show that the principle is not "directly in conflict with the fundamental rules of justice as established in every civilized community."

40. In regard to the former part of the Recorder's statement, I would observe that in embodying the Native Law in the form of an Ordinance, we are not borrowing from the Kafirs, but simply confirming it in a modified form; and that we are empowered, and, in case of necessity, instructed by Her Majesty's Order in Council of the 19th June, 1850, and the Secretary of State's accompanying despatch, to repeal, alter, or amend the native law as established by the previous Letters Patent. I suppose the Recorder means to say this is one of the native laws, which, if Her Majesty did not intend directly to abrogate, she did not intend to be confirmed or sanctioned by this Government. Now, I will ask, what right has any man to suppose that Her Majesty did not wish, and would not desire, that the person she has appointed to govern this Colony should confirm and uphold a native law which has been found adapted to the state and habits of the people, and which, moreover, is substantially in accordance with an institution said to have been established by one of the wisest and greatest of Her Majesty's predecessors, for the government of a nation much further advanced in civilization than the natives of this Colony, a law, moreover, which accords in principle with part of the modern legislation of Her Majesty's Imperial Government?

41. Mr. Cloete next proceeds to attack the 5th section of the proposed Ordinance, which defines the punishment to be inflicted on individual offenders. The learned Recorder deals particularly roughly with this section. He finds fault with one part of it for introducing the Roman-Dutch Law, and with another part of it for discarding it.

42. His first objection is, that while the Ordinance is declared to be to define more clearly the Kafir law, by which, as he states, "it is notorious the punishment of death is inflicted on every person guilty of cattle-stealing, the punishment as set forth in this section is in nowise a definition of Kafir law, but an introduction of the ordinary Roman Dutch as Kafir law."

43. Mr. Cloete is in error in stating that the Kafir law inflicts the punishment of death in all cases of cattle-stealing. I had inserted such a statement in the preamble of the first draft of this Bill, but on consulting high authorities on the subject, I found that so general a statement could not be supported.

44. Supposing, however, that this statement is correct, Mr. Cloete's objection is more specious than solid. By the Order in Council of the 19th of June, 1850, this Council is empowered to repeal, alter, or amend any of the provisions of the 28th Article of the Royal Instructions of the 8th March, 1848, which confirms the existence of the Native Law in this district.

In defining, therefore, the Native Law by Ordinance, are we not justified under this Order in Council in altering any of its provisions which we may deem unnecessarily severe, and in substituting others for them? And will Mr. Cloete, who in this letter has shown so much tenderness for the natives, object to our abolishing the punishment of death in this instance, and substituting a milder punishment in its place? As to the substituted punishment, that of imprisonment and whipping, being an introduction of the Roman-Dutch Law, I have to remark that it might with equal propriety be called an introduction of English Law; but whatever it is, the Legislature has full authority to make it part of the code of laws applicable to the natives.

45. It is unnecessary to occupy your time in discussing the trivial question, whether this section is strictly in accordance with the preamble; if you think it is not, you have only to make a slight verbal alteration.

46. I proceed to a more important subject. Mr. Cloete further objects to this section on the ground of its "containing the extraordinary clause (borrowed, as it would appear, from the Kafir law) of declaring all the property of the offender of every kind forfeit to the Crown, while the provisions of the Roman-Dutch law have expressly abrogated all forfeiture to the Crown of private property, for all offences except that of high treason, upon the just principle that such forfeitures do not punish the offender, but his family, wife, and children, reducing them to beggary for a crime of which they may even be unconscious."

Now I would ask Mr. Cloete why, if this principle is so just, it should not be applied to the crime of high treason as well as to other offences? What reason is there to punish the wives and children of a traitor for his crime, more than those of any other offender? Surely a traitor is not, morally, a worse offender than a murderer, or a housebreaker, or a thief. These latter are urged on to crime by the vilest and lowest passions of humanity, while the traitor, however mistaken in his objects, has very often been actuated by the highest and holiest feelings of our nature. Look at the Puritans, who lifted their arms against Charles I, and the gallant men who, in the rebellions of 1715 and 1745, sought to restore the throne of Britain to the descendants of its ancient Sovereigns; who will for a moment compare those men with thieves and murderers? Moreover, does it not depend on mere accident whether a man shall be called a traitor, or a hero and patriot? Truly does the poet say of treason:—

> "How many a spirit born to bless,
> Hath sunk beneath that withering name;
> Whom but a day's, an hour's success,
> Had wafted to eternal fame!"

Why then have all Governments inflicted on the traitor a punishment more terrible than that awarded to the lowest of ordinary criminals, and have morever visited his crime upon his children? It is because this offence, from whatever motive committed, is in its consequences so mischievous; because it strikes at the very foundation of the existing order of society. Therefore society from motives of self-preservation is right, not only in inflicting the severest punishment on the person of the offender, but also in confiscating his property; in the hope that forfeiture, to use the words of Blackstone, "whereby his posterity must suffer, as well as himself, will restrain a man, not only from a sense of his duty and dread of personal punishment, but also by his passions and natural affections, and will interest every dependent and relation he has to keep him from offending."

47. Now I have shown that the real nature of the crime of cattle-stealing among natives, and its consequences, are nearly identical with those of high treason among civilized men. Both offences strike at the foundation of society and cause war and bloodshed. If we look indeed beneath their outward form we find that in substance and spirit they are one and the same crime, so far as society is concerned.

There is this moral difference, however, between the perpetrators of these two offences. The traitor, in disturbing the peace of society, may be, and often is, influenced by pure and lofty motives; the cattle-stealer is not only a common thief, but he endangers the safety of the community to gratify the most sordid of passions.

48. If the Roman-Dutch law then is right in confiscating the property of the traitor, surely the Kafir law is not wrong in confiscating that of the cattle-stealer; and in reply to Mr. Cloete's expressions of his doubts whether Her Majesty intended to sanction this native law, I would again ask, What right has any man to suppose that Her Majesty did not intend to confirm such of the Kafir laws as are not only found to be necessary for the efficient Government of the natives, but are also substantially in accordance with the laws of civilized nations?

49. Mr. Cloete states that the law of the natives was intended by Her Majesty to

be retained for their own benefit. No doubt this was so, but in the highest and best sense of the expression.

The great Statesman who, at the period of the issuing of the Royal Instructions, held the seals of the Colonial Office, saw the danger and the folly of at once attempting to govern savage men by laws made for highly civilized nations. He saw that such laws would not only interfere with their cherished institutions, but that they would be powerless to control them; he saw that the laws of enlightened nations, all-sufficient as they are to bind civilized men, who are controlled by moral influences more powerful than statutes, are unable to restrain men who are strangers to such influences. Therefore, with a wisdom worthy of the greatest legislator of any age, Lord Grey advised Her Majesty to retain and confirm, as to the natives of this district, their own rude and stern laws, except so far as they might be repugant to the general principles of humanity recognized throughout the whole civilized world.

These laws, temperately and mercifully executed by the local Government, have, in my opinion, under Providence, been one of the means of preserving the tranquillity of this district up to the present time.

50. Having adverted to the most important principles discussed in Mr. Cloete's letter, I do not consider it necessary to make any remarks on the Recorder's strictures on the remaining sections of the Ordinance. With some of his objections I fully agree; with others I entirely differ. Many of them relate to matters of detail, fully worthy of your careful attention in Committee.

51. I cannot close these remarks without saying that I consider this discussion will not be without its use in many ways. It will, I think, tend to show that the laws and customs which rule even barbarous men, are not unworthy of the attention and study of statesmen and legislators, and are not wholly beneath the notice even of learned judges. It will be also useful in directing the attention of this Legislature to the striking analogy which exists between the native laws and customs of this district, and those of England and other countries in past ages, and to the importance of studying and understanding both.

By so doing, and by modifying and gradually altering the native laws by the light of precedents thus afforded by institutions framed for people in a comparatively barbarous age, and which have led them on to civilization, we may legislate more wisely and more safely for the natives than, on the one hand, by at once sweeping away laws and institutions which they understand, and substituting for them others which, however good in themselves, are not adapted to their present state; or, on the other hand, by following the views of mere theorists, and adopting measures the efficacy of which has not been tested by experience.

(Signed) BENJ. C. C. PINE, *Lieutenant-Governor.*

Inclosure 6 in No. 5.

(Circular.) *Office of Secretary for Native Affairs,*
February 14, 1872.

Sir,

IT has been reported to the Lieutenant-Governor, that natives belonging to this Colony, who enter into engagements of service at the Diamond Fields, are in the habit of receiving fire-arms in lieu of money for their wages; his Excellency desires you will be so good as to take advantage of every opportunity of informing such natives, and the tribes generally under your supervision, that all fire-arms, however obtained, are liable to be seized and confiscated, unless the natives obtaining them first receive the Lieutenant-Governor's permission in writing, to possess them; so that, in addition to paying a much higher price for fire-arms at the Diamond Fields than they can be had for in this Colony, they render themselves liable to punishment for committing a breach of the law, and to the certain confiscation of the fire-arms so purchased.

Such natives as have voluntarily taken and delivered to you guns so purchased, in the hope of being recommended by you to be allowed to retain them, will receive the Lieutenant-Governor's licence to possess a gun, if you consider them in other respects fit and proper persons to have the privilege granted to them.

I have, &c.

(Signed) T. SHEPSTONE,
Secretary for Native Affairs.

To the Resident Magistrates.

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Inclosure 7 in No. 5.

Natal and the Peace Society.

("Empire," May 16.)

THE people of Natal, it seems, have received and read the circular issued by the Peace Society. That document, on the authority of Reuter's telegrams, denounced the colonists as guilty of atrocities such as disgraced the name of Englishmen. They had robbed, ravaged, devastated, and enslaved. They had laid rapacious hands on the herds and flocks of unoffending natives. They had carried into captivity and bondage hosts of helpless women and innocent children. They were unworthy the name they bore. These charges, thus pitilessly piled up, have caused some amusement, but more indignation amongst our South African fellow-countrymen. They are inclined to laugh at the utter absurdity of the allegations, but they cannot refrain from anger at being thus frivolously but venomously denounced by a body anomalously called the Peace Society.

Let us try to put ourselves in the shoes of these same colonists, and picture to ourselves the emotions we should feel were we, under the circumstances, to be thus accused. It is one of the aims of this journal to make Englishmen at home and Englishmen in the Colonies better acquainted with each other, and, by destroying ignorance on the part of the former, to help in the establishment of a better understanding between both. Consider, then, the actual relation in which the colonists stand toward the recent disturbances.

For years past the mother-country has been preaching the maxim of self-reliance and the duty of self-defence to her scattered Colonial offspring. Upon South Africa, in particular, as upon a land which has already drawn largely upon the military resources of the Empire, has this duty been impressed. Natal, however, has been able to listen lightly to these admonitions, as from the first she had been a self-supporting Colony. Although in 1844 the settlers at Port Natal were assured of military protection as a result of British rule there, the performance of the promise has been merely nominal so far as actual need is concerned, and has been adequately secured by the maintenance of a small garrison of about 400 regular troops there. The colonists and natives have been upon the whole a respectable and well-behaved set of people, and have given no trouble whatever to the War Office, whatever trouble local legislators may have caused to Downing Street. In other words, a yearly outlay of less than 40,000*l.* for the maintenance of the same garrison has been the sole charge borne by the Home Government on account of Natal. The Colony has for years contributed 4,000*l.* per annum, out of its local exchequer, as a special allowance to the troops in view of presumably higher local charges.

At last the hour of danger arises. Thirty years of peace threaten to come to an end. A powerful tribe, long suspected of disaffection, assumes an attitude of downright rebellion. It must be remembered that this was a moment long foreseen, if not anticipated. Natal has as many natives within her borders, small though her territory is, as the whole Cape Colony; they outnumber the whites by twenty to one. They are divided into tribes, being under their own chiefs, and enjoying, perhaps, a greater degree of independence than falls to the lot of any other section of Her Majesty's subjects. These people live so much among themselves, are so secluded from contact with their European neighbours, and have so many immunities and privileges of a semi-barbaric nature, that there are few means of ascertaining how far their loyalty may be depended upon, or whether the virus of disaffection was to any extent at work amongst them. In saying this we open up several questions of great future importance. Our present purpose, however, has not to do with any discussion of the domestic policy of the natives. We desire to show that the colonists felt themselves confronted, when their volunteers were treacherously shot by Langalibalele's people, by vague, indefinite, and immeasurable peril. This might be the first spark, precursor of a wide-spreading conflagration. These shots might prove the signal of a long and bloody war. For days men's faces were clouded, and their minds oppressed, by the apprehension of coming troubles. What if a policy of overmuch indulgence, of overscrupulous respect for the liberties of the savages, were about to bear its bitter fruits and prove its own condemnation?

This was the crisis the colonists had to face, and they did it manfully. Help was asked from no outside quarter, though it came unsought from the Cape. The Governor relied upon the resources at his command and under his actual control for

the suppression of the rebellion. In doing so he was gladly and loyally aided and sustained by the Legislature and the colonists. The history of no community supplies a more perfect instance of unanimity and good feeling than was presented by Natal at this period. It is true that a portion of the small garrison stationed at Maritzburg went to the front, and the local resources of the military were called into requisition. But the real work was done by the colonists and the native levies. The latter vied with the Europeans in their natural enthusiasm and patriotic spirit, and it cannot be too distinctly understood that the natives of Natal, in a body, stood loyally by the Government in its time of trial, and fully recognized the justice and extolled the mercy of all that was done.

The specific charges of the Peace Society are easily dismissed by the Natalians. They deprived the tribe of its cattle, only because without such deprivation the victory would virtually have remained with the rebels. Any one versed in South African affairs, knows that the herds of the native are his most vulnerable and vital point. In seizing the cattle the Government adopted the only effective form of punishment open to them. According to native law, the whole property of the tribe belongs to the Chief, and, after him, to the Governor as Supreme Chief. By their act of rebellion they had, according to their own usages, forfeited all claim to their cattle, unless they could by force of arms keep them. As for the women and children, said to be "kidnapped," their treatment implies no discredit upon the Colonial Authorities. They were deserted by their male protectors, and left upon the hands of the Government. Doubtless it was intended to return for them, when the fugitive tribe had organized its plans for that system of forays and depredations which probably entered into their calculations. As it was, the Government has had to provide for these unfortunate people as best they could, and when the last mail left (March 26th), they were still being fed and sheltered at the cost of the country.

The so-called "trial" of Langalibalele, about which so much is being said, was really no "trial," but a Court of Inquiry into the facts of the Chief's rebellion; just such a court, in fact, as would be summoned under the Mutiny Act, and far fairer and more considerate as regards the prisoner than would have been convened for a like offence, had only natives been included. It was presided over by the Governor in person, as Supreme Chief, and comprised the Secretary for Native Affairs, three Magistrates, and four Native Chiefs. One mistake, unfortunately, was made. Yielding, as he admitted, to "outside opinion," as expressed by certain individuals—for public opinion was dead against it—the Governor agreed to invite counsel to represent the prisoner. As, however, the gentleman nominated declined to accept a position hedged round by so many restrictions, no other was selected, and happily, this well-meant, but ill-judged concession to a false sentimentality, fell through. The natives express unbounded astonishment at the gentleness and fairness with which the Chief was treated, and the public of Natal, as well as of all South-East Africa, approve the sentence.

The matter, from our present point of view, may thus be summed up: the Government and colonists of Natal had suddenly to face what might have been a long and widespread rebellion. They did so without asking for any extraneous aid. They crushed the rebellion and punished the offenders without burdening the tax-payers of this country with one additional penny of expenditure. At their own cost they have placed the peace of their country on what seems a sure and lasting basis, and have re-established the prestige of the British name in South Africa. They have, by their prompt and decisive action, saved the native races from the terrible consequences of future war. And for doing this they get—what? Thanks? Appreciation? Friendly sympathy? Nothing of the kind. They are branded with the guilt of "atrocities," denounced as "robbers," held up to odium as "kidnappers," and likened to the pirates of the South Seas, by—the Peace Society! Is this the way to knit the bonds of union throughout the Empire—to show brotherly kindness towards our fellow-countrymen struggling in distant colonies—to stimulate the joy and pride of far-off Englishmen in their national name and origin! That Bishop Colenso has to some extent echoed the strain of the Peace Society is no proof of guilt. Throughout South Africa, where facts and experience have made men wiser than we can possibly be on such matters, the Bishop's assertions are held disproved, his arguments held to be invalid and fallacious, and his whole line of conduct stigmatized as little less than treasonable. There we are told the popular theory is, that the Pentateuch being played out, Dr. Colenso seeks a new sensation.

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No. 6.

Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—
(*Received September* 5, 1874.)

My Lord, *Government House, Natal, August* 1, 1874.

REFERRING to my despatch of 15th of July last,* I have now the honour to transmit to your Lordship the following documents:—

The Bishop of Natal's Petition of Appeal to the Executive Council in the case of Langalibalele.

The judgment of that body.

The proceedings taken before the Supreme Court in order to procure an interdict to prevent me from carrying the sentence into effect.

2. As these documents speak for themselves, it is not necessary for me to trouble your Lordship with any comments upon them.

3. I will only observe that two Counsel addressed the Executive Council in support of the petition, that the case was heard with great patience and attention, and that the judgment embracing every point in the case was framed with great care. I think it right to add, that I took no part in drawing up the judgment, which was entirely the work of the Executive Council.

4. Your Lordship will see that the Supreme Court generally upheld our proceedings, and it gives me much satisfaction to say that the Chief Justice, publicly and privately, has expressed his opinion that it was right that I should myself have sat as Judge at the trial of Langalibalele, and that I could not with propriety have delegated my authority to another in such an important case.

I have, &c.
(Signed) BENJ. C. C. PINE.

P.S.—I think it right to add that my Government not only allowed Counsel to appeal for the Chief, but paid Counsel a very heavy fee out of the public funds for such service.

B. C. C. P.

Inclosure 1 in No. 6.

Office of Secretary for Native Affairs, Natal,
My Lord, *June* 15, 1874

I AM directed by the Lieutenant-Governor to acknowledge the receipt of your Lordship's letter of the 12th instant, and to appoint Wednesday, the 24th instant, noon, at the Executive Council Chamber, Government House, for the reception of the written appeal on behalf of Langalibalele, which you propose to present.

I have, &c.
(Signed) T. SHEPSTONE, *Secretary for Native Affairs.*

The Lord Bishop of Natal,
Bishopstowe.

Inclosure 2 in No. 6.

Sir, *Bishopstowe, June* 24, 1874.

IN accordance with his Excellency's desire, I have the honour to forward a written appeal on behalf of the prisoner Langalibalele, which I beg you to lay before his Excellency.

I inclose also a copy of the "Kafir Laws and Customs" of the Cape Colony, referred to in the appeal, and I shall be obliged by your returning it when the appeal is decided.

I shall be happy to give, in writing or in person, explanations of any portions of the appeal, or any further information which his Excellency may desire.

I trust that, should it be necessary, Counsel may be permitted to argue, on behalf of the prisoner, any points that may require elucidation.

I have, &c.
W. H. Beaumont, Esq., (Signed) J. W. NATAL.
Clerk to the Executive Council.

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* No. 4.

Sub-Inclosure 3 in Inclosure 6.

To His Excellency Sir Benjamin Chilley Campbell Pine, K.C.M.G., &c., &c., &c., Lieutenant-Governor of the Colony of Natal, Vice-Admiral, and Supreme Chief over the Native Population, acting with the advice of the Executive Council of the said Colony as the Court of Appeal in all cases whatsoever, between Natives, and which have been tried according to Native Law.

The humble Petition of Langalibalele, late Chief of the amaHlubi Tribe, in the said Colony, appearing by the Bishop of Natal,

Sheweth—

THAT Petitioner has been tried under Kafir law, convicted of certain crimes, and sentenced to banishment for life:

That certain members of Petitioner's tribe, feeling themselves aggrieved by such trial, conviction, and sentence, prayed that Petitioner might be allowed to appeal from the said sentence under the Ordinance No. 3, 1849, to your Excellency, acting with the advice of the Executive Council of the Colony, which leave was graciously allowed to be exercised by the Bishop of Natal on Petitioner's behalf, in accordance with which permission Petitioner begs leave respectfully to represent as follows:—

First:—Petitioner submits that the appeal in the present instance is not from a judgment pronounced by an inferior Court between two litigant parties, in which case it would be right and necessary that all arguments should be strictly confined to the evidence or documents produced on the trial, but is an appeal from a judgment and sentence pronounced on a prisoner, and resembles therefore more a reference from a sentence of death pronounced in a Criminal Court of England to the Secretary of State. In such a case the Secretary of State would not refuse to receive and allow due weight to any trustworthy evidence in favour of the prisoner, which might be laid before him, though it might not have been produced in Court. And so Petitioner had hoped that, even if the strict letter of the law, as laid down by the Hon. the Attorney-General, did not authorize it, yet, considering the irregularities committed in the course of his trial, *e.g.*, the admission of fresh evidence on the fifth day, five days after the Crown Prosecutor had closed his case, and the Supreme Chief had said "he had now heard all Petitioner had to say on the whole case," some indulgence might have been shown to him in this respect, and that, in fact, the Supreme Chief would be rejoiced if trustworthy proofs were laid before him to show that the children, whom he had so severely punished, were not so guilty as he had supposed.

And Petitioner had especially hoped that he might have been allowed the liberty of appealing to the official record of the trial of his sons, inasmuch as the Court itself has appealed to it, having found him guilty of an offence, viz., of having "on one occasion insulted the Magistrate's Messenger" (p. 36), without a particle of evidence before it, even so much as mentioning, much less proving, the offence in question, the charge resting only on the evidence of Umtyityizelwa on the fifth day of the trial of his sons (p. 65), a man who had a blood-feud with Petitioner and his tribes—stated when Petitioner was not himself present to answer the charge, and had been, in fact, already condemned, and sentenced—and virtually contradicted by the "loyal" Induna Umpiko, who says (p. 82) that, though present on the occasion, "it did not occur to him" that any such insult was offered to the Messenger.

Being restricted, however, closely to the record and proceedings of the first trial, and being required in the first instance to place before the Executive Council "a plain and concise written statement of the grounds on which he considers the sentence objectionable, and his reasons in support of such grounds," Petitioner says:—

1. That the Court, by which Petitioner was tried, was wrongfully and illegally constituted:—

(i.) Because the Ordinance No. 3, 1849, does not give his Excellency the Lieutenant-Governor any power, as Supreme Chief over the native population, nor has he derived the power from any other source, to form a Court such as that by which Petitioner was tried, consisting of his Excellency himself as Supreme Chief, the Secretary for Native Affairs, certain Administrators of Native Law, and certain Native Chiefs and Indunas.

(ii.) Because under that Ordinance his Excellency the Lieutenant-Governor was debarred from sitting as Judge in such a Court by section 3, which provides that he shall be the sole Judge in the Court of Appeal from all cases tried under Native Law.

(iii.) Because his Excellency the Lieutenant-Governor was already committed to a

decision adverse to Petitioner, by having issued the Proclamation of November 11, 1873, declaring that Petitioner and his tribe had "set themselves in open revolt and rebellion against Her Majesty's Government in this Colony," and "proclaiming and making known that the Petitioner and the amaHlubi tribe were in rebellion, and were hereby declared to be outlaws," and that "the said tribe were broken up and from that day forth had ceased to exist," and by further seizing and confiscating all the cattle and property of the said tribe within reach, deposing Petitioner from his chieftainship, and otherwise treating Petitioner and his tribe as rebels, and therefore could not possibly be considered an unprejudiced Judge of the first instance in Petitioner's case.

2. That, even if the Court was duly constituted, the proceedings under it were irregular and illegal:—

(i.) Because, by the practice of this Colony, up to the date of Petitioner's trial for "high treason," and "rebellion," described by his Excellency as "the greatest crime that can be committed, because it involves all other crimes," no serious crime has been tried in a native Court, in proof of which may be cited the statements of the Secretary for Native Affairs, in his answers to questions by Lieutenant-Governor Scott, despatch No. 34. 1864:—

"All serious criminal charges against natives have for some time past been tried according to the ordinary criminal law of the Colony, before the Supreme Court.

"It must be observed that all the more serious criminal offences, such as murder, rape, arson, &c., have been transferred to the Supreme Court of the Colony, to be tried under the general Criminal Law, and in accordance with civilized usages and rules of evidence, in the same manner as if such crimes had been committed by a white man."

(ii.) Because, with respect to the charge of "pointing his weapons of war against the Supreme Chief, and wounding his person by killing the subjects of Her Majesty the Queen," the act in question took place beyond the boundary of the Colony, which is declared in the Proclamation of Sir P. Maitland, August 21st, 1845 ("Moodie's Ordinances," II, p. 17), defining the boundaries of the district of Natal, to be "in a direct line along the south-eastern 'base' of the Drakensberg Mountains," and even took place beyond the watershed, upon one of the sources of the Orange River; and consequently, this charge under the Imperial Act, 26 and 27 Vict., cap. 34, could only have been tried in the Colonial Court, under the laws now in force in the Cape Colony, and not in a Kafir Court.

(iii.) Because, contrary to all Kafir law and usage, *e.g.*, that of the Cape Colony ("Kafir Laws and Customs," p. 38-40), Petitioner was not allowed the help of counsel, white or black, in the hearing of his case, even to watch the proceedings on his behalf, or to cross-examine the witnesses; and consequently the official record is merely an *ex parte* statement of the case, derived from witnesses selected by the Supreme Chief, examined by the Crown Prosecutor, and not cross-examined at all on Petitioner's behalf; whereas such assistance is distinctly recognized as in accordance with Kafir law by the Crown Prosecutor on p. 25, where he says "under Kafir law it was allowable to defend as well as prefer charges."

(iv.) Because the Court insisted repeatedly (pp. 7, 21) that Petitioner had pleaded guilty, when he had merely admitted that he had done certain acts, but desired witnesses to be called, whose "evidence would justify or extenuate what he had done," (p. 3), a plea which in any ordinary Court would be recorded as a plea of "Not Guilty;" and accordingly, after the prisoner had pleaded, one of the members of the Court, Zatshuke, assuming that Petitioner had admitted the truth of the charge of having "undressed and stripped the messengers," said that "he would have been better satisfied if prisoner had admitted the truth of all the other charges, for it appeared to him that a denial only aggravated the offence" (pp. 5, 6).

(v.) Because when one of the chief witnesses for the prosecution, Mahoiza, had stated in his evidence in chief on the second day that Petitioner's people had "taken all his things from him," (p. 11) and had "stripped and taken him naked" into Petitioner's presence, and on the fourth day, in answer to his Excellency, had said that they had "intended to strip him altogether, but had allowed him to retain his trowsers and boots" (p. 26), whereas, according to Mhlaba, they had merely said that "he must take off his clothes," and he "was told to strip" (p. 16), the Court being asked by his Excellency "whether it wished further evidence in support, or otherwise, of Mahoiza's evidence as to his being stripped," "required no further evidence on this point," and did not even ask his two companions, Mnyembe and Gayede, to describe this "stripping," though both these were examined, Mnyembe's evidence in chief having

been cut short before he came to that part of the story, and Gayede's taken up just after it.

(vi.) Because Petitioner was kept in solitary confinement from the day when he was brought down to Maritzburg, December 31, till the day when his sons were sentenced, February 27, not being allowed to converse with any of his sons or with any members of his tribe, or with any friend or adviser, white or black, so that it was utterly out of his power to find witnesses who would have shown, as Mnyembe and Gayede would have done, that Mahoiza's statements about the "stripping" were false; that he still wore his waistcoat, shirt, trowsers, boots, and gaiters, when he was taken to Petitioner, and that the "stripping" in question only amounted to this, that he himself put off his two coats, by Petitioner's order, "as a matter of precaution caused by fear," and not for the purpose of insulting the messenger or defying the Supreme Chief, and would have satisfied the Court also that other acts charged against Petitioner arose from fear and dread of the anger of the Supreme Chief and not from a spirit of defiance.

(vii.) Because the sentence was *ultra vires* of the Court to pronounce, inasmuch as Clause 4 of the Ordinance limits the power of the Supreme Chief to "appointing and removing the subordinate Chiefs or other authorities" among the natives, but gives him no power to sentence to death or to "banishment or transportation for life to such place as the Supreme Chief or Lieutenant-Governor may appoint." When Petitioner had been "removed" from his chieftainship, and himself and the bulk of his tribe "driven over the mountain out of the Colony" by the Government force, as announced in the bulletin of November 13, 1873, the cattle within the Colony seized, and many of the tribe killed in resisting the attempt to seize them, the Supreme Chief, under Kafir law, had expended his power.

(viii.) Because banishment is a punishment wholly unknown to Kafir law, as is plainly stated in "Kafir Laws and Customs," p. 39, "As banishment, &c., are all unknown to Kafir jurisprudence, the property of the people constitute the great fund out of which the debts of justice are paid." For Petitioner banishment to Robben Island would be a far more dreadful punishment than it was for Macomo and other rebel Chiefs of the Cape Colony, who indeed were not "banished" at all, but were merely imprisoned in a portion of their own Supreme Chief's territory, where, at proper times, they could be visited occasionally by members of their families and of their tribes. Moreover, those Chiefs were duly tried and convicted before the ordinary Courts of serious crimes committed by themselves individually, and they had actually resisted by force their Supreme Chief's force within his territory. Petitioner has not made any such armed or defiant resistance; he merely "stripped himself," "tore himself off" ("hlubuka") from the Supreme Chief of Natal, he was a runaway, or refugee, a "deserter," but not a "rebel;" he has not been tried and condemned for any crime in the Colonial Court, and banishment for life to Robben Island would be for him a separation from his wives and children, and all the members of his tribe, without the hope of seeing one of them again except his son Malambule, condemned also to transportation for five years.

(ix.) Because the seven native Chiefs and Indunas, who sat as members of the Court, and signed the judgment, the contents of which had been "interpreted" to them, and their signatures "witnessed," could not possibly, except under some strong influence, such as prejudice against Petitioner, or undue fear of the Supreme Chief or desire to please him—one of them being the "Head Induna of the Natal Government," and another the "Induna to the Secretary for Native Affairs"—have declared in that judgment that Petitioner "appeared before them convicted, on clear evidence, of several acts, for some of which he would be liable to forfeit his life under the law of every civilized country in the world," whereas they are totally ignorant of the law of any civilized country.

(x.) Because his Excellency the Supreme Chief, the Secretary for Native Affairs, and the two Administrators of Native Law, have also signed their names to the above statement, which seems to imply that the Court was predisposed to believe Petitioner to be guilty of heinous and capital crimes, inasmuch as five of the six charges on which he has been found guilty are not punishable with death, as he is informed, under the law of any civilized country whatever, namely:—

"(i.) Setting at nought the authority of the Magistrate, in a manner not indeed sufficiently palpable to warrant the use of forcible coercion according to our (civilized) laws and customs."

"(ii.) Permitting, or probably encouraging, his tribe to possess fire-arms, and to retain them contrary to law."

"(iii.) With reference to these fire-arms, defying the Magistrate, and once insulting the messenger."

"(iv.) Refusing to appear before the Supreme Chief when summoned, excusing his refusal by evasion and falsehood, and insulting his messengers."

"(v.) Directing his cattle and other effects to be taken out of the Colony under an armed escort."

There remains only the sixth charge, that of causing the death of Her Majesty's subjects at the Bushman's River Pass, for which Petitioner does not believe he would, under the circumstances, be held responsible under civilized law, as more fully explained below.

3. That under native law as "prevailing among the inhabitants of this district previously to the assertion of sovereignty over the said district," Petitioner could not be tried at all in a Kafir Court in this Colony, inasmuch as he had escaped out of the jurisdiction of the Supreme Chief of Natal.

This native law is laid down in the "Compendium of Kafir Laws and Customs," compiled by direction of Colonel Maclean, C.B., Chief Commissioner of British Kaffraria, and published under the authority of the Cape Government. Under this law Petitioner claims to be judged, whose principles are more humane than those derived from the savage practices of Zululand since Chaka's time, and are in accordance with those which prevailed in Natal and Zululand before the introduction of "the cruel policy pursued by the Zulu Chiefs," Chaka, Dingane, and Panda, as stated by the Secretary for Native Affairs, in Lieutenant-Governor Scott's despatch, No. 34, 1864, as follows:—

"The two countries at present known as the Colony of Natal and Zululand, were thickly inhabited by numerous native tribes closely bound together, and never, within the territory now known as the Colony of Natal, did war cause the destruction of a tribe. . . . . The lives of women and children were respected; prisoners taken in battle were not put to death, but detained till ransomed; and victory, rather than plunder and devastation, seems to have been the great object of these encounters" (p. 51).

Dingiswayo "never utterly destroyed or permanently dispersed any people with whom he went to war; they usually re-occupied their country and acknowledged Dingiswayo as their paramount Chief, until it suited them to do otherwise. Chaka disapproved of this policy, because he thought it would lead to dangerous combinations against the Supreme Chief. He thought that the only safe plan was to inflict such an injury as would thoroughly disorganize. Hence, when he acquired power, he adopted the uncompromising system which raised the Zulu power to such renown in South Africa" (p. 52).

"No doubt the Zulus show an utter disregard of the value of human life. But investigation has shown that this was a peculiarity which was introduced by Chaka." Answers appended to the above, p. 2.

And Petitioner says that under Native Law, properly so called, as above, he could not have been tried at all, because he would not have been delivered, either by the Basuto Chief Molappo, or by Mr. Griffiths, as Supreme Chief of British Basutoland, into the hands of the Supreme Chief of Natal, but would have been protected in person, himself and his tribe; his cattle, perhaps, some or all of them, being returned to the Supreme Chief of Natal, even as the Supreme Chief of Natal himself protects the persons, but restores the cattle, of all refugees from Zululand as soon as they have crossed his boundary.

"Refugees are always received by the Chief to whom they fly, whatever might have been the nature of the crime for which they fled from their own Chief; and they are never demanded, for if they should be they would not be given up."—"Kafir Laws and Customs," p. 75.

Petitioner, therefore, supposes that Mr. Griffiths must have surrendered him under civilized, not under Kafir Law, to the Lieutenant-Governor, not to the Supreme Chief, of Natal; and, therefore, he submits he should have been tried for the offences charged against him in the Colonial, not in a Kafir, Court.

4. That under Native Law Petitioner cannot justly be punished with severity for any of the offences of which he has been found guilty.

(i.) As regards his having, "for a considerable time past, set at naught the authority of his Magistrate, in a manner not, indeed, sufficiently palpable to warrant the use of forcible coercion according to our laws and customs, but perfectly clear and significant according to Native Law and custom," Petitioner would represent that he has been for twenty-five years the Chief of a large tribe in this Colony; that the

Magistrate himself has stated that "this was the first time the prisoner ever refused to appear before him when ordered to do so" (p. 29); and that for more than twenty years, from 1849, when he was removed to his late location, till after the new Marriage Regulations had been published in 1869, he had never been reported for any fault whatsoever; and he could explain, he believes, the matter then complained of, with respect to the Marriage Regulations, to the satisfaction of the Supreme Chief, if this were the proper time to do so.

(ii.) As regards his having "at least permitted, and probably encouraged, his tribe to possess themselves of fire-arms, and to retain them in direct violation of the law," Petitioner denied in Court that "his young men had procured the guns in consequence of an order from himself or with any purpose whatever" (p. 3), and he still denies it; and if he were allowed to appeal to the official record of his sons' trial, he would point to the fact that six of the seven sons captured with him had no guns (p. 45), as a proof that he did not "encourage his tribe to possess themselves of fire-arms."

That he "permitted" his young men to "possess themselves of fire-arms, and to retain them in direct violation of the law," is true; so far as that he did not actively exert himself to compel them to take them in for registration, when the Government Notice of February 14, 1872, gave free permission for natives to register and retain their guns. But he did not consider that it was his duty, as a Chief, to institute a search, by himself or his indunas, in the huts of his young men for unregistered guns; and he left them to suffer the consequences of a breach of the Colonial Law, viz., loss of the gun and a fine not exceeding 50*l.* in each case, if caught with guns unregistered. In any case he did no more or worse than many or most other Chiefs in the Colony, since it appears from Mr. Perrin's register that during the years 1871-72-73, which were those of greatest activity at the Diamond Fields, the following was the number of guns registered in eight of the principal northern tribes of the Colony, living for the most part in Weenen County, and Ndomba and Faku being indeed Mr. Macfarlane's indunas:—

	Huts.	Guns. 1871.	Guns. 1872.	Guns. 1873.
Ndomba	1,190	..	..	..
Faku	2,071	..	2	..
Mganu	1,277	..	..	1
Pakade	2,222	1	..	1
Zikali	1,651	..	1	..
Nodada	3,000	..	1	2
Putini	1,239	..	1	..
Langalibalele	2,344	..	9	4

From the above it will be seen that in the years 1871-73, Petitioner sent in for registration 13 guns (besides 5 others sent in but confiscated), while the other seven Chiefs together sent in only 10. It appears also from the register, that throughout the whole County of Weenen, for the year ending August 31, in 1871-72, only 24 guns were registered, and in 1872-73 only 21, including 13 from Petitioner; whereas "in the years 1871-72, large numbers of fire-arms were brought from the Diamond Fields into this Colony by members of Petitioner's tribe and others" (p. 34). And even since the destruction of Petitioner's tribe, during the first six months of 1874, only 11 guns have been registered throughout the whole Colony, viz., 7 by Goza, 2 by Faku, and 2 by Tinta, except that Zikali registered 36 on May 14, and 30 on June 16.

Further, Petitioner submits that any fault of his in respect of guns was not an offence under Kafir Law, and could only have been tried in the Colonial Court, under the ordinary law of the Colony.

(iii.) With respect to Petitioner's having, "with reference to the unlawful possession of these fire-arms, set the authority of the Magistrate at defiance, and, on one occasion, insulted his messenger," Petitioner has already represented that there is no proof whatever in the Official Record of his own trial, of his having "on one occasion insulted the messenger," nor is the fact of his having done so even mentioned in it. And Petitioner says that, if he could be allowed to appeal to the evidence produced on his sons' trial, it would be seen that the "defiance" in question consisted only in his having replied to the Magistrate that he could not send in five boys of Sibanda, who had been frightened by the course pursued by the Magistrate's messenger, Umtyityizelwa, and had run away he knew not whither; and that he could not find

eight other boys, who were said to belong to his tribe, and to have come into the Colony with guns, unless their names were given to him—though he did send in three of these very boys, with their guns, and two belonging to others of their party, as soon as their names were notified to him, besides sending in with their guns those who who worked for Mr. W. E. Shepstone; also that he excused himself at first from going to his Magistrate on the score of illness, but shortly afterwards went, found the Magistrate absent, and spoke with his clerk (p. 78).

(iv.) With respect to his having "refused to appear before" the Supreme Chief, when summoned, "excusing his refusal by evasion and deliberate falsehood," and "insulting his messengers," Petitioner desires to say that the very fact of his "excusing his refusal by evasion and falsehood," which he admits, was a plain sign that his refusal was dictated by fear, and not by a spirit of defiance, Petitioner's brother having been killed in Zululand, when he obeyed a summons to go to the Supreme Chief (p. 12). And that the "insults" in question have been greatly exaggerated, and were caused merely by Petitioner's fear that Mahoiza might attempt his life with a concealed fire-arm, as was formerly done in the case of Matyana, within the knowledge of his tribe, when Matyana in like manner had refused, through fear, to obey a summons to go to the Supreme Chief.

(v.) With respect to his having "directed his cattle and other effects to be taken out of the colony with an armed escort, thereby manifesting a determination to resist the Government with force and arms," Petitioner says that he had formed no such determination, but, on the contrary, if he were allowed to refer to the evidence produced on his sons' trial, it would be seen that he had given strict charge to his people "that in no case were the forces of the Government to be resisted or fired upon, not even if the men got in amongst the cattle of the tribe," pp. 48—51, 68, and that his men were merely carrying their arms as usual, and not with any idea of fighting with the Government.

But as to removing his cattle, Petitioner says that under Kafir law he was at liberty to do so if he could, though he and his people would be liable to be killed if resisting any attempt of the Supreme Chief to "eat up" their cattle within his territory.

"When a Kafir wishes to leave his own Chief and join another, he can only do so by flying at night in the most stealthy manner, if he has any live stock, for, should his intention be known, he would most certainly be 'eaten up.'"—"Kafir Laws and Customs," p. 75.

"When a kraal or clan is rebellious the custom of 'eating up' is resorted to. If they resist they are fired upon or assegaied without ceremony."—*Ib.*, p. 73.

"In times of peace, if a refugee is guilty of taking any of his neighbour's cattle with him, or if any lawsuit was pending before he fled, such case may be laid before the Chief to whom he has fled, and who generally settles such matters impartially, though there appears to be no international law binding him to do so."—*Ib.*, p. 75.

(vi.) With regard to the affair at the Bushman's River Pass, where five of Her Majesty's subjects were killed by Petitioner's men, he deeply regrets and very strongly condemns the conduct of his people in respect of that fatal occurrence, which he knew at once had destroyed him with the Supreme Chief, who would never believe that he was not himself a party to it. Nevertheless, the evidence on his sons' trial shows, as above stated, that the act in question was contrary to his own express orders, and though, of course, it would not have occurred if he had ordered his men, when they fled, to leave their arms behind, yet this could hardly have been expected, as they were about to make their way amidst unknown dangers, through a trackless wilderness; and not all the consequences of a thoroughly illegal act are to be charged on the offender, but only such as, if not inevitable, may reasonably and naturally follow it—not such as are "of a distinct and unconsequential nature." (Blackstone, iv, 37.) There was nothing unlawful in his men having their arms while driving their cattle from one place to another in the Location, much less when travelling beyond the boundary of the colony; and it was by no means a direct consequence of their carrying arms for use amidst the dangers of their journey, or when settled elsewhere, that they should attack the Government force, especially when Petitioner had strictly charged them on no account to do so.

But, while again expressing his grief for the occurrence, and protesting against being held responsible for it under the circumstances, Petitioner would observe that the Government force made the first attack upon his people, by killing a cow (p. 49), and "taking some guns from some of his young men whom they had found asleep" (p. 51), and that these acts, which may amount to little in the eyes of white men,

would be under native law a serious assault. Under civilized law, as the force had no magistrate or policeman with them, nor any sign of magisterial authority, it may be a question if they were justified in pursuing and attacking beyond the Colonial boundary men who had committed no crime whatever before leaving their Location, who had not killed or robbed, destroyed farm-houses, carried off cattle, sheep, or horses, or in any way injured their neighbours, white or black, not even the members of the tribe who remained behind; and under native law, when once they had escaped from the territory of their own Supreme Chief, his power over them ceased, and they had a right to defend themselves, and even to retaliate, if attacked.

Nevertheless, Petitioner from the bottom of his heart laments this occurrence, which appears to have been due to the wilfulness of some of his young men, led on by the example of the Induna Mabudhle, but which has added much bitterness to this disturbance. He can only trust that, looking at the actual facts as above stated, his Excellency will be disposed to consider that he and his tribe have been punished enough for the faults they have really committed, or, as far as appears in evidence, ever intended to commit; that the claims of justice have been satisfied, the authority of the Government sufficiently asserted, and the rightful demands of the white men complied with, by the ruin and dispersion of the tribe and the confiscation of all their property, and will now graciously permit Petitioner to sink into the obscurity of private life, and settle somewhere in the Colony, where he may collect around him his family, under the surveillance of the Government.

On behalf of the prisoner Langalibalele,
(Signed) J. W. NATAL.

Bishopstowe, June 24, 1874.

Inclosure 4 in No. 6.

My Lord, *Government House, June* 24, 1874.

I AM directed by his Excellency the Lieutenant-Governor to inform your Lordship, that your letter of this day's date, and its inclosure, have been received, and read at a Session of the Executive Council; and that Friday next, the 26th instant, at noon, in the Executive Council Chamber, has been fixed to hear anything you, or Counsel employed by you, may have to urge in support of the grounds of the appeal which you have lodged.

I have, &c.
(Signed) W. H. BEAUMONT, *Clerk of the Executive Council.*

The Lord Bishop of Natal,
Bishopstowe.

Inclosure 5 in No. 6.

Sir, *Bishopstowe, June* 25, 1874.

IN acknowledging the receipt of your letter of yesterday's date, in which you inform me that his Excellency has fixed to-morrow at noon to hear anything which I or Counsel employed by me may have to urge in support of the grounds of the appeal which I have lodged, I have the honour to say, in reply, that as it does not appear that his Excellency and the members of the Executive Council desire additional explanation on any point raised in the appeal, I do not think it necessary to urge in person anything further in support of the grounds of the said appeal.

I have, however, secured the services of the Senior Advocate of the Supreme Court to plead the case before his Excellency and the Executive Council, if permitted to do so. But, as he resides in Durban, it is, of course, impossible that he should attend for that purpose to-morrow. Under these circumstances I have the honour to request that his Excellency may be pleased to fix some later day, when Counsel may be heard on the prisoner's behalf; and also, since the cattle and other effects of the prisoner and his tribe have been confiscated, may be pleased to allow a moderate sum towards the said Advocate's expenses, as already requested in my letter of May 5, to the Honourable the Secretary for Native Affairs, with reference to legal and other small expenses incurred in preparing the written appeal.

I have, &c.
W. H. Beaumont, Esq., (Signed) J. W. NATAL.
Clerk to the Executive Council.

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[Inclosure 6 in No. 6.

My Lord, *Government House, June* 26, 1874.

I AM directed by his Excellency the Lieutenant-Governor to acknowledge your Lordship's letter of yesterday's date, declining to urge, in person anything further in support of the grounds of the appeal lodged by you on the 24th instant, and requesting that some later day should be fixed when Counsel may be heard on the prisoner's behalf.

In reply, I am to inform your Lordship, that Wednesday next, the 1st July, at noon, in the Executive Council Chamber, has been fixed for that purpose.

I am, however, to add, that the consequences likely to result from the continual delay in this matter, are of so serious a character, that no further extension of time can be allowed; and that, therefore, if Counsel is not present on the day fixed, the Council will proceed to consider its judgment on the case as it stands.

I need not remind you that Counsel will be restricted in his address to the record, and to the written statement presented by your Lordship.

I have, &c.

(Signed) W. H. BEAUMONT, *Clerk of the Executive Council.*

The Lord Bishop of Natal,
Bishopstowe.

Inclosure 7 in No. 6.

In the matter of Appeal by the Lord Bishop of Natal on behalf of the late Chief Langalibalele to the Lieutenant-Governor of Natal, acting with the advice of the Executive Council of the Colony, under Ordinance No. 3, 1849.

THIS is an appeal made by the Bishop of Natal on behalf, and as agent of, the late Chief Langalibalebe, against a sentence pronounced upon him by the Lieutenant-Governor, clothed with the functions and power of, and acting as a Supreme Chief, assisted by certain assessors summoned by him.

The prisoner pleaded guilty to all the most serious charges except one, but urged extenuating circumstances in excuse of his acts; these were taken into consideration by the Court, but they could not be accepted as affording any valid justification of his conduct.

The appeal is now made to the Lieutenant-Governor, acting with the advice of the Executive Council. The Council having fully considered the petition or statement submitted, together with the arguments of counsel thereon, proceed to examine *seriatim* the grounds of objection advanced, and the reasons given in support of those grounds, and this appears to be the more necessary because the petition itself, and the arguments by which it has been supported, show such serious misapprehension of the duties and responsibilities which the establishment of Native Law, customs, and usages in this Colony has imposed upon the Lieutenant-Governor, in whom is vested the executive power of the native Government.

The introductory paragraph is as follows:—

First.—Petitioner submits that the appeal in the present instance is not from a judgment pronounced by an inferior Court between two litigant parties, in which case it would be right and necessary that all arguments should be strictly confined to the evidence or documents produced on the trial, but is an appeal from a judgment and sentence pronounced on a prisoner, and resembles, therefore, more a reference from a sentence of death pronounced in a Criminal Court of England to the Secretary of State. In such a case the Secretary of State would not refuse to receive and allow due weight to any trustworthy evidence in favour of the prisoner, which might be laid before him, though it might not have been produced in Court. And so Petitioner had hoped that, even if the strict letter of the law, as laid down by the honourable the Attorney-General, did not authorize it, yet, considering the irregularities committed in the course of his trial, *e.g.*, the admission of fresh evidence on the fifth day, five days after the Crown Prosecutor had closed his case, and the Supreme Chief had said "he had now heard all Petitioner had to say on the whole case," some indulgence might have been shown to him in this respect, and that, in fact, the Supreme Chief would be rejoiced if trustworthy proofs were laid before him to show that the children, whom he had so severely punished, were not so guilty as he had supposed.

And Petitioner had especially hoped that he might have been allowed the liberty

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of appealing to the official record of the trial of his sons, inasmuch as the Court itself has appealed to it, having found him guilty of an offence, viz., of having "on one occasion insulted the Magistrate's Messenger" (p. 36), without a particle of evidence before it, even so much as mentioning, much less proving, the offence in question; the charge, resting only on the evidence of Umtyityizelwa on the 5th day of the trial of his sons, (p. 65), a man who had a blood-feud with Petitioner and his tribe,—stated when Petitioner was not himself present to answer the charge, and had been, in fact, already condemned, and sentenced,—and virtually contradicted by the "loyal" Induna Umpiko, who says (p. 82) that, although present on the occasion, "it did not occur to him" that any such insult was offered to the Messenger.

The Council remarked upon this, that there would have been no impropriety, nor indeed could there have been any objection to the Bishop, or any other person on behalf of the prisoner urging upon the consideration of the Lieutenant-Governor any circumstances, or any trustworthy evidence in favour of the prisoner, which might have become known to any person so acting on his behalf, although not produced at the trial, in the same manner as a reference from a sentence of death pronounced in a Criminal Court of England is made to the Secretary of State; but this professes to be, and is, an appeal from an inferior native Tribunal to an authority invested by Law (Ordinance 3, 1849) with appellate jurisdiction over that Tribunal, and the appeal is made under that Law.

It is one thing to make use of the right of Petition to Her Majesty, or Her Representative, on whatever grounds or evidence that may appear to the Petitioner to favour the prayer of such Petition, and another, but a very different thing, to appeal, under the provisions of a law, from the judgment of one Court to that of another, established by statute, having appellate jurisdiction. In the first case, every latitude is allowed of right; in the second, the administration of justice requires that certain rules, necessary to secure precision, shall be observed. It is impossible to combine the two as it has been attempted to do in this Petition.

Being restricted, however, closely to the record and proceedings of the first trial, and being required in the first instance to place before the Executive Council "a plain and concise written statement of the grounds on which he considers the sentence objectionable, and his reasons in support of such grounds," Petitioner says,—

1. That the Court, by which Petitioner was tried, was wrongfully and illegally constituted:—

(i.) Because the Ordinance No. 3, 1849, does not give his Excellency the Lieutenant-Governor any power, as Supreme Chief over the native population, nor has he derived the power from any other source, to form a Court such as that by which Petitioner was tried, consisting of his Excellency himself as Supreme Chief, the Secretary for Native Affairs, certain Administrators of Native Law, and certain Native Chiefs and Indunas.

(ii.) Because under that Ordinance his Excellency the Lieutenant-Governor was debarred from sitting as Judge in such a Court by Section 3, which provides that he shall be the sole Judge in the Court of Appeal from all cases tried under Native Law.

The Council remark, with regard to these two reasons, that the Lieutenant-Governor, clothed with the functions and powers, and acting as a Supreme Chief, is not restricted to the exercise of appellate powers; he is by Native Law invested with original jurisdiction, and can try and sentence under such law, either by himself or with such assessors, as he may summon, or by deputation; and in such trials is not bound by the opinions of his assessors, but may decide according to his own opinion, although those who sit with him may differ from it; while in the Court created by Ordinance No. 3, 1849, Section 3, he is bound to act "with the advice of the Executive Council." The argument, therefore, advanced in the second reason, that the Lieutenant-Governor was debarred from sitting as Judge in a Native Court, because the Ordinance makes him sole Judge in the Court of Appeal from all cases tried under Native Law cannot be sustained. In the one case he may, if he pleases, act as sole Judge, in the other he cannot.

Nor is it difficult to find in the more settled judicial system of England a similarity of circumstances with those complained of; and the course adopted in this case will certainly not suffer from the comparison. The Chancellor decides a case in the first instance; appeal lies from him as Chancellor to the House of Lords, and he almost invariably sits as Chairman of the House of Lords on such appeal.

The Master of the Rolls decides a case; appeal lies from him to the Chancellor; the Chancellor sustains the appeal; appeal is again made to the House of Lords against the Chancellor's decision. Often only two Law Lords are present, the Chancellor being

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one, the ex-Chancellor the other; the Chancellor sustains his own judgment, the ex-Chancellor differs, and the Chancellor's decision prevails. Here we have a judgment pronounced in a case by one Judge, two other Judges dissenting.

(iii.) Because his Excellency the Lieutenant-Governor was already committed to a decision adverse to Petitioner, by having issued the Proclamation of November 11, 1873, declaring that Petitioner and his tribe had "set themselves in open revolt and rebellion against Her Majesty's Government in this Colony," and "proclaiming and making known that Petitioner and the amaHlubi tribe were in rebellion, and were hereby declared to be outlaws," and that "the said tribe was broken up and from that day forth had ceased to exist," and by further seizing and confiscating all the cattle and property of the said tribe within reach, deposing Petitioner from his Chieftainship and otherwise treating Petitioner and his tribe as rebels, and therefore could not possibly be considered an unprejudiced Judge of the first instance in Petitioner's case.

The averment in the third reason cannot deprive the Lieutenant-Governor of the authority conferred upon him by Section 4, Ordinance 3, 1849, to "hold and enjoy over all Chiefs and natives in this district all the power and authority which, according to the laws, customs, and usages of the natives, are held and enjoyed by any Supreme or Paramount Native Chief," nor can it relieve him of the responsibility and duty imposed by that Ordinance, or of exercising the authority thus conferred to the best of his ability and the approval of his conscience.

The position of Administrator of the Government imposes executive duties which, as in the present instance, the safety of the Colony requires shall not be left unfulfilled, while the Law above cited has imposed judicial duties equally binding and imperative. The question whether the law should or should not be as it is, can be entertained and decided only by the Legislature. The law of the Colony as it stands must be the guide of this Council.

Prejudice in the mind of a Judge does not render a judgment invalid, while, on the other hand, pecuniary interest or benefit in the result of a case does; in this instance, however, such a ground of objection is removed by the Ordinance itself providing (Section 2, Ordinance 3, 1849) that all fines, forfeitures, and penalties which would accrue to the Supreme Chief shall be paid into the Treasury.

The Council do not wish to lay undue stress upon the technical objections which might be urged against the Petitioner's averment "that the Court by which the Petitioner was tried was wrongfully and illegally constituted;" but it is necessary to say that the prisoner pleaded before that Court, and pleaded guilty to most of the charges.

The second objection is:—

2. That even if the Court was duly constituted, the proceedings under it were irregular and illegal.

(i.) Because, by the practice of this Colony, up to the date of the Petitioner's trial for "high treason" and "rebellion," described by his Excellency as the greatest crime that can be committed because it involves all other crimes," no serious crime has been tried in a native Court, in proof of which may be cited the statements of the Secretary for Native Affairs in his answers to questions by Lieutenant-Governor Scott, despatch No. 34, 1864:—

"All serious criminal charges against natives have for some time past been tried, according to the ordinary criminal law of the Colony, before the Supreme Court. It must be observed that all the more serious criminal offences, such as murder, rape, arson, &c., have been transferred to the Supreme Court of the Colony to be tried under the general criminal law, and in accordance with civilized usages and rules of evidence in the same manner as if such crimes had been committed by a white man."

The Council remark that it is quite true that, as a rule, hitherto all serious criminal charges against natives have been tried under the ordinary criminal law of the Colony by the Supreme Court, but that fact does not abrogate the Ordinance No. 3, 1849, or the powers of Supreme Chief conferred thereby upon the Lieutenant-Governor.

The offences charged against the prisoner were offences specially known to native law, and, when taken together, amounted to rebellion against the native Government, and that Government was bound to vindicate its authority by its own inherent powers, or cease to exist.

Murder, rape, arson, &c., are crimes known to civilized law, and there can, therefore, be no difficulty in their being tried before the ordinary tribunals of the country should the Attorney-General so decide, but it may be questioned whether the removal of the Petitioner and that of the men and cattle of his tribe from the jurisdiction under

which he was living, without the permission required by native law, or his refusal to obey repeated summonses to appear at the seat of Government; or whether even firing at and killing Her Majesty's subjects outside the Colonial border, supposing this to have taken place, as is averred by the Petitioner, outside such border, could have been taken cognizance of by a Court whose guide is Colonial law established by Ordinance 12, 1845, which, as far as crimes committed by natives against native law are concerned, is repealed by the Ordinance 3, 1849, now under consideration, and whose jurisdiction is bounded by territorial limits; it might, therefore, have happened that the crime of rebellion, as charged, "the greatest that can be committed, because it involves all other crimes," would have remained unpunished, and thereby have been directly encouraged.

(ii.) Because, with respect to the charge of "pointing his weapons of war against the Supreme Chief, and wounding his person by killing the subjects of Her Majesty the Queen," the act in question took place beyond the boundary of the Colony, which is declared in the Proclamation of Sir P. Maitland, August 21, 1845 ("Moodie's Ordinances," II, p. 17), defining the boundaries of the district of Natal, to be "in a direct line along the south-eastern base of the Drakensberg Mountains," and even took place beyond the watershed, upon one of the sources of the Orange River, and, consequently, this charge under the Imperial Act, 26 and 27 Vict., cap. 35, could only have been tried in the Colonial Court under the laws now in force in the Cape Colony, and not in a Kafir Court.

It may be true that the killing of the subjects of Her Majesty the Queen took place beyond the boundaries of the Colony; but the Proclamation of Sir P. Maitland (August 21, 1845) quoted to prove this, does not describe the present boundary of Natal, which is the watershed on the summit, and not a line along the base of the Drakensberg Mountains. (See Proclamation, 5th June, 1858.) But supposing the act to have taken place beyond the border, the jurisdiction of the Tribunal by which the Petitioner was tried was not affected thereby; the special difference between Colonial and native law is that the jurisdiction of the latter is personal, and follows a criminal without reference to boundaries, while the former, with a special exception, is restricted by territorial limits. This exception is presented by the Act 26 and 27 Vict., cap. 35, which applies the Colonial Law of the Cape and Natal Colonies to British subjects in all territories between the boundaries of those Colonies and the 25th degree of south latitude, "not being within the jurisdiction of any civilized Government," and enacts that "every crime or offence committed by any of Her Majesty's subjects within any such territory shall be cognizable in the Courts of the Colony of the Cape of Good Hope or of the Colony of Natal, or of any of Her Majesty's possessions in Africa to the southward of the 25th degree of south latitude, &c." If the firing upon and killing Her Majesty's subjects did not take place in Natal, it could have happened only in British Basutoland, which is a British possession, and cannot, therefore, be affected by the Act of Parliament cited.

(iii.) Because, contrary to all Kafir Law and usage, *e.g.*, that of the Cape Colony ("Kafir Laws and Customs, p. 38-40), Petitioner was not allowed the help of Counsel, white or black, in the hearing of his case, even to watch the proceedings on his behalf or to cross-examine the witnesses; and, consequently, the official record is merely an *ex parte* statement of the case, derived from witnesses selected by the Supreme Chief, examined by the Crown Prosecutor, and not cross-examined at all on Petitioner's behalf; whereas such assistance is distinctly recognized as in accordance with Kafir Law by the Crown Prosecutor on p. 25, where he says, "under Kafir Law it was allowable to defend as well as prefer charges."

Upon this third reason the Council remark that the publication called "Compendium of Kafir Laws and Usages," and which is quoted as an authority by the Petitioner, is not, and never has been, recognized as such in this Colony. Native law knows of no such institution as that represented by a body of professional lawyers; every one present at a native trial is entitled to examine in favour of either side, and in the case of the Petitioner's trial this invitation was several times given and the right recognized. The question of allowing a member of the Colonial bar to attend in his professional capacity was, therefore, not a right which the prisoner could have claimed.

(iv.) Because the Court insisted repeatedly (p. 7, 21) that Petitioner had pleaded guilty, when he had merely admitted that he had done certain acts, but desired witnesses to be called, whose "evidence would justify or extenuate what he had done" (p. 3), a plea which, in any ordinary Court, would be recorded as a plea of "Not guilty;" and, accordingly, after the prisoner had pleaded, one of the members of the Court, Zatshuke, assuming that Petitioner had admitted the truth of the charge of

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having "undressed and stripped the messengers," said that "he would have been better satisfied if prisoner had admitted the truth of all the other charges, for it appeared to him that a denial only aggravated the offence" (p. 5, 6.)

When the prisoner was called upon to plead the first day he admitted all the acts charged against him, except that of having held treasonable communications with the Basuto Chiefs or any other person (Minutes, page 3.) He wished for certain witnesses to be called to justify or extenuate what he had done; he justified his order to undress the messengers by pleading fear; the other indignities offered to the messengers were so offered, he said, outside the hut, he (the prisoner) being inside.

The witnesses he required were all beyond the Colonial border, and the prisoner knew this; they were the leading men of the tribe, and among them was Mabuhle, the military head of the tribe, who commanded at the Bushman's River Pass.

The prisoner threw all the blame on Mabuhle, and wanted him and the others named, who were under him, to be brought before the Court, for they would justify him in reference to the charges brought against him; his obvious meaning being that it was these men who had led him to adopt the course he had followed, and that the establishment of their guilt would excuse his.

The Court accepted the plea as one of guilty to the charges particularized, and the native assessors proceeded to deliver addresses, in the belief that the trial had ended; but at its next Session the Court determined 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," as a Judge or Magistrate, knowing nothing of the circumstances of a charge to which a plea of guilty had been made, might read the preparatory examination. (See page 7.)

But whatever doubt there may be of the nature of the prisoner's plea on the first day, it is entirely removed by that which he made on the fourth day, when he "called himself an Umtakati (evil-doer), admitted that he had sinned, and had nothing to say; he confessed his guilt." Nor can the Council allow the explanations of an advocate to contradict the plea which appears upon the face of the record.

(v.) Because when one of the chief witnesses for the prosecution, Mahoiza, had stated in his evidence in chief on the second day, that Petitioner's people had "taken all his things from him" (p. 11), and had "stripped and taken him naked" into Petitioner's presence, and on the fourth day, in answer to his Excellency, had said that they had "intended to strip him altogether, but had allowed him to retain his trousers and boots" (p. 26), whereas, according to Mhlaba, they had merely said that "he must take off his clothes," and he "was told to strip" (p. 16); the Court being asked by his Excellency "whether it wished further evidence in support, or otherwise, of Mahoiza's evidence as to his being stripped," "required no further evidence on this point," and did not even ask his two companions, Mnyembe and Gayede, to describe this "stripping," though both these were examined, Mnyembe's evidence in chief having been cut short before he came to that part of the story, and Gayede's taken up just after it.

The Council remark on this the 5th reason that the prisoner himself admitted at his trial that he had caused the messengers to strip and undress (p. 3). Whether this order was dictated by fear, or by a desire to humiliate the messengers, it was equally an act of hostility and insult to the Supreme Chief, in whose name the messengers presented themselves; but the essence of the prisoner's offence was that the summons to appear was distinctly delivered to him, and that obedience on his part was as distinctly refused, and the refusal persevered in. Anything disrespectful done to the messengers over and above this was an aggravation of an offence already sufficiently serious; no weight, can, therefore, be attached to this reason.

(vi.) Because Petitioner was kept in solitary confinement from the day when he was brought down to Maritzburg (December 31) till the day when his sons were sentenced, February 27, not being allowed to converse with any of his sons or with any members of his tribe, or with any friend or adviser, white or black; so that it was utterly out of his power to find witnesses who would have shown, as Mnyembe and Gayede would have done, that Mahoiza's statements about the "stripping" were false; that he still wore his waistcoat, shirt, trousers, boots, and gaiters, when he was taken to Petitioner, and that the "stripping" in question only amounted to this, that he himself put off his two coats, by Petitioner's order, "as a matter of precaution caused by fear," and not for the purpose of insulting the messenger or defying the Supreme Chief, and would have satisfied the Court also that other acts charged against Petitioner arose from fear and dread of the anger of the Supreme Chief, and not from a spirit of defiance.

The sixth reason is founded upon no portion of the record, the Council have, therefore, requested the Lieutenant-Governor to direct a report on the subject to be furnished by the Keeper of the Gaol.

(vii.) Because the sentence was *ultra vires* of the Court to pronounce, inasmuch as Clause 4 of the Ordinance limits the power of the Supreme Chief to "appointing and removing the subordinate chiefs or other authorities" among the natives, but gives him no power to sentence to death or to "banishment or transportation for life to such place as the Supreme Chief or Lieutenant-Governor may appoint." When petitioner had been "removed" from his chieftainship, and himself and the bulk of his tribe "driven over the mountain out of the colony" by the Government force, as announced in the bulletin of November 13, 1873, the cattle within the colony seized, and many of the tribe killed in resisting the attempt to seize them, the Supreme Chief, under Native Law, had expended his power.

Section 4, of Ordinance 3, 1849, enacts that the Lieutenant-Governor shall hold and enjoy over all the chiefs and natives in this district, all the power and authority which, according to the laws, customs, and usages of the natives, are held and enjoyed by any Supreme or Paramount Native Chief, with full power to appoint and remove the subordinate chiefs or other authorities among them. The Council cannot consider the last sentence of this section as restricting the preceding portion, which invests the Lieutenant-Governor with much greater powers than those of the mere appointment and removal of subordinate chiefs, or authorities other than chiefs, among the natives; the powers of a Paramount Chief, according to the laws, customs, and usages of the natives certainly include that of putting to death; banishment or transportation is a less punishment than death, and the Petitioner, who claims to be tried under a law in which the powers of the Paramount Chief are thus described (page 75, "Compendium of Kafir Laws and Customs"), "The Paramount Chief of each tribe is above all law in his own tribe; he has the power of life and death, and is supposed to do no wrong," cannot reasonably complain of the power which has been exercised in the Petitioner's case, in the discharge of the functions and powers conferred by the law above quoted.

The Council are of opinion that the effect of the Proclamation alluded to was simply to declare outlawry against the tribe, and forfeiture and confiscation against its property; that is, the civil punishment attaching to the crime of rebellion; but there is in addition, a criminal punishment to which the chief and the individuals of the tribe remained liable when they should be apprehended and brought to trial personally. The civil process above described was carried out in 1846 against the Chief Fodo; in 1857, against the Chief Sidoi; and in 1858, against Matyana; and in the latter, a portion of Langalibalele's tribe was employed to enforce it; but the criminal process was not carried out in these cases, because the rebellious chiefs were not apprehended; and in the case of Sidoi he has, since the trial of Langalibalele, submitted himself to this process, and been pardoned on paying a fine.

A person found guilty of the crime of High Treason in England is subject to the same liabilities, civil and criminal.

(viii.) Because banishment is a punishment wholly unknown to Kafir Law, as is plainly stated in "Kafir Laws and Customs, p. 39:" "As banishment, &c., are all unknown to Kafir jurisprudence, the property of the people constitutes the great fund out of which the debts of justice are paid." For Petitioner banishment to Robben Island would be a far more dreadful punishment than it was for Macomo and other rebel chiefs of the Cape Colony, who indeed were not "banished" at all, but were merely imprisoned in a portion of their own Supreme Chief's territory, where, at proper times, they could be visited occasionally by members of their families and of their tribes. Moreover, those chiefs were duly tried and convicted before the ordinary courts of serious crime committed by themselves individually, and they had actually resisted by force their Supreme Chief's force within his territory. Petitioner has not made any such armed or defiant resistance; he merely "stripped himself," "tore himself off" (*hlubuka*) from the Supreme Chief of Natal; he was a runaway, or refugee, a "deserter," but not a "rebel;" he has not been tried and condemned for any crime in the Colonial Court; and banishment for life to Robben Island would be for him a separation from his wives and children, and all the members of his tribe, without the hope of seeing one of them again except his son Malambule, condemned also to transportation for five years.

Banishment cannot be said to be a punishment wholly unknown to Native Law; it was, in this case, the only alternative punishment to that of death; the latter is most frequently adopted by the Zulus; but the former is used among many tribes, and notably to the south of this Colony, where the chief, for some special reason, does not

wish to put to death; but it is impossible to argue that the power which can put to death, cannot, if it pleases, adopt the less severe alternative of banishment.

(ix.) Because the seven native chiefs and indunas, who sat as members of the Court and signed the judgment, the contents of which has been "interpreted" to them, and their signatures "witnessed," could not possibly, except under some strong influence, such as a prejudice against Petitioner, or undue fear of the Supreme Chief, or desire to please him—one of them being the "Head Induna of the Natal Government," and another the "Induna to the Secretary for Native Affairs"—have declared in that judgment that Petitioner "appeared before them convicted, on clear evidence, of several acts, for some of which he would be liable to forfeit his life under the law of every civilised country in the world," whereas they are totally ignorant of the law of any civilised country.

(x.) Because His Excellency the Supreme Chief, the Secretary for Native Affairs, and the two Administrators of Native law, have also signed their names to the above statement, which seems to imply that the Court was predisposed to believe Petitioner to be guilty of heinous and capital crimes, inasmuch as five of the six charges, on which he has been found guilty, are not punishable with death, as he is informed, under the law of any civilised country whatever, namely :—

(i.) "Setting at nought the authority of the Magistrate in a manner not indeed sufficiently palpable to warrant the use of forcible coercion according to our [civilised] laws and customs;"

(ii.) "Permitting, or probably encouraging, his tribe to possess fire-arms, and to retain them contrary to law;"

(iii.) "With reference to these fire-arms, defying the Magistrate, and once insulting the Messenger;"

(iv.) "Refusing to appear before" the Supreme Chief when summoned, "excusing his refusal by evasion and falsehood," and "insulting his messengers;"

(v.) "Directing his cattle and other effects to be taken out of the Colony under an armed escort."

The illegal and unprovoked firing upon and killing Her Majesty's subjects on the Bushman's River Pass—the resistance to the Government forces in the location which killed other of Her Majesty's subjects—are certainly acts for which any prisoner convicted of them would be "liable to forfeit his life under the law of any civilised country in the world;" and the Petitioner was convicted of these acts, because, although not present at either, it was plain from his own admissions, and from the evidence that they were done in pursuance of a common illegal design, of which he was the leader.

That the Petitioner was legally as well as morally responsible for these acts is clearly laid down by the Lord Chief Justice of Ireland as a rule for the jury at the trial of O'Connell and others for conspiracy in these words :—"It is not necessary that it should be proved that the several parties charged with the common conspiracy met to concoct the scheme, nor is it necessary that they should have originated it. The very fact of the meeting to concoct the common illegal agreement it is not necessary should be absolutely proved to you; it is enough, and you are to say whether, from the acts that have been proved, you are satisfied that these defendants were acting in concert in the matter. If you are satisfied that there was a concert between them, that is, an illegal concert, I am bound to say that, being convicted of the conspiracy, it is not necessary that you should find both the traversers doing each particular act, as, after the fact of a conspiracy is once established in your minds, whatever is either said or done by either of the defendants in pursuance of the common design, is, both in law and in common sense, to be considered as the act of both."

The Court was of opinion that the acts above described were done in pursuance of a common design, and that the Petitioner was a leading party therein, and most responsible therefor.

There remains only the sixth charge, that of causing the death of Her Majesty's subjects at the Bushman's River Pass, for which Petitioner does not believe he would, under the circumstances, be held responsible under civilized law, as more fully explained below.

3. That, under native law, as "prevailing among the inhabitans of this district previously to the assertion of sovereignty over the said district, Petitioner could not be tried at all in a Kafir Court in this Colony, inasmuch as he had escaped out of the jurisdiction of the Supreme Chief of Natal.

This native law is laid down in the "Compendium of Kafir Laws and Customs," compiled by direction of Colonel Maclean, C.B., Chief Commissioner of British Kaffraria, and published under the authority of the Cape Government. Under this law Petitioner

claims to be judged, whose principles are more humane than those derived from the savage practices of Zululand since Chaka's time, and are in accordance with those which prevailed in Natal and Zululand before the introduction of "the cruel policy pursued by the Zulu Chiefs," Chaka, Dingane, and Panda, as stated by the Secretary for Native Affairs, in Lieutenant-Governor Scott's despatch, No. 34, 1864, as follows:—

"The two countries at present known as the Colony of Natal and Zululand were thickly inhabited by numerous native tribes closely bound together, and never, within the territory now known as the Colony of Natal, did war cause the destruction of a tribe. . . The lives of women and children were respected; prisoners taken in battle were not put to death, but detained till ransomed; and victory, rather than plunder and devastation, seems to have been the great object of these encounters" (p. 51).

Dingiswayo "never utterly destroyed or permanently dispersed any people with whom he went to war; they usually re-occupied their country, and acknowledged Dingiswayo as their paramount Chief, until it suited them to do otherwise. Chaka disapproved of this policy, because he thought it would lead to dangerous combinations against the Supreme Chief. He thought that the only safe plan was to inflict such an injury as would thoroughly disorganize. Hence, when he acquired power, he adopted the uncompromising system which raised the Zulu Power to such renown in South Africa" (p. 52).

"No doubt the Zulus show an utter disregard of the value of human life. But investigation has shown that this was a peculiarity which was introduced by Chaka." Answers appended to the above, p. 2.

And Petitioner says that, under native law, properly so called as above, he could not have been tried at all, because he would not have been delivered either by the Basuto Chief, Molappo, or by Mr. Griffiths, as Supreme Chief of British Basutoland, into the hands of the Supreme Chief of Natal, but would have been protected in person himself and his tribe; his cattle, perhaps, some or all of them, being returned to the Supreme Chief of Natal, even as the Supreme Chief of Natal himself protects the persons, but restores the cattle of all refugees from Zululand as soon as they have crossed his boundary.

"Refugees are always received by the Chief to whom they fly, whatever might have been the nature of the crime for which they fled from their own Chief; and they are never demanded, for if they should be they would not be given up."—"Kafir Laws and Customs," p. 75.

Petitioner, therefore, supposes that Mr. Griffiths must have surrendered him under civilized, not under Kafir law, to the Lieutenant-Governor, not to the Supreme Chief, of Natal; and therefore, he submits, he should have been tried for the offence charged against him in the Colonial, not in a Kafir Court.

It has already been laid down in a former part of this judgment that the jurisdiction of a native Chief is over the persons of his subjects, and that it is not bounded by territorial limits. His right to pursue and seize his fugitive subjects is limited only by considerations of policy and prudence. When the Petitioner was tried, he was within the territory over which the jurisdiction is undoubted, and the question where he had been apprehended, and by whom, or under what law he had been delivered up, could in no way influence his trial for the crimes with the commission of which he stood charged, most of which were committed within the territory, and the jurisdiction which he attempted to abandon.

4. That under native law Petitioner cannot justly be punished with severity for any of the offences of which he has been found guilty.

(i.) As regards his having "for a considerable time past set at nought the authority of his Magistrate in a manner not indeed sufficiently palpable to warrant the use of forcible coercion according to our laws and customs, but perfectly clear and significant according to native law and custom," Petitioner would represent that he has been for twenty-five years the Chief of a large tribe in this Colony; that the Magistrate himself has stated that "this was the first time the prisoner ever refused to appear before him when ordered to do so" (p. 29); and that for more than twenty years, from 1849, when he was removed to his late location, till after the new Marriage Regulations had been published in 1869, he had never been reported for any fault whatsoever; and he could explain, he believes, the matter then complained of with respect to the Marriage Regulations to the satisfaction of the Supreme Chief if this were the proper time to do so.

(ii.) As regards his having "at least permitted and probably encouraged his tribe

to possess themselves of fire-arms, and to retain them in direct violation of the law, Petitioner denied in Court that his young men had procured the guns in consequence of an order from himself, or with any purpose whatever" (p. 3), and he still denies it; and, if he were allowed to appeal to the official record of his sons' trial, he would point to the fact that six of the seven sons captured with him had no guns (p. 45), as a proof that he did not "encourage his tribe to possess themselves of fire-arms."

That he "permitted" his young men to "possess themselves of fire-arms, and to retain them in direct violation of the law," is true; so far as that he did not actively exert himself to compel them to take them in for registration when the Government Notice of February 14, 1872, gave free permission for natives to register and retain their guns. But he did not consider that it was his duty as a Chief to institute a search, by himself or his indunas, in the huts of his young men for unregistered guns; and he left them to suffer the consequences of a breach of the Colonial Law, viz., loss of the gun and a fine not exceeding 50*l.* in each case if caught with guns unregistered. In any case, he did no more or worse than many or most other Chiefs in the Colony, since it appears, from Mr. Perrin's Register, that during the years 1871-72-73, which were those of greatest activity at the Diamond Fields, the following was the number of guns registered in eight of the principal northern tribes of the Colony, living for the most part in Weenen County, and Ndomba and Faku being indeed Mr. Macfarlane's indunas:—

	Huts.	Guns. 1871.	Guns. 1872.	Guns. 1873.
Ndomba	1,190	..	..	..
Faku	2,071	..	2	..
Mganu	1,277	..	..	1
Pakade	2,222	1	..	1
Zikali	1,651	..	1	..
Nodada	3,000	..	1	2
Putini	1,239	..	1	..
Langalibalele	2,344	..	9	4

From the above it will be seen that in the years 1871-3, Petitioner sent in for registration 13 guns (besides 5 others sent in but confiscated) while the other seven Chiefs together sent in only 10. It appears also from the Register, that throughout the whole county of Weenen, for the year ending August 31, in 1871-2, only 24 guns were registered, and in 1872-3 only 21, including 13 from Petitioner; whereas "in the years 1871-2 large numbers of fire-arms were brought from the Diamond Fields into this Colony by members of Petitioner's tribe and others," (page 34). And even since the destruction of Petitioner's tribe, during the first six months of 1874, only 11 guns have been registered throughout the whole Colony, viz.: 7 by Goza, 2 by Faku, and 2 by Tinta, except that Zikali registered 36 on May 14, and 30 June 16.

Further, Petitioner submits that any fault of his in respect of guns was not an offence under Kafir law, and could only have been tried in the Colonial Court under the ordinary law of the Colony.

(iii.) With respect to Petitioner's having, "with reference to the unlawful possession of these fire-arms, set the authority of the Magistrate at defiance, and, on one occasion, insulted his messenger," Petitioner has already represented that there is no proof whatever in the official Record of his own trial, of his having "on one occasion insulted the messenger," nor is the fact of his having done so even mentioned in it. And Petitioner says that, if he could be allowed to appeal to the evidence produced on his sons' trial, it would be seen that the "defiance" in question consisted only in his having replied to the Magistrate that he could not send in five boys of Sibanda, who had been frightened by the course pursued by the Magistrate's messenger, Umtyityizelwa, and had run away he knew not whither, and that he could not find eight other boys, who were said to belong to his tribe and to have come into the Colony with guns, unless their names were given to him—though he did send in three of these very boys with their guns, and two belonging to others of their party, as soon as their names were notified to him, besides sending in with their guns those who had worked for Mr. W. E. Shepstone—also that he excused himself at first from going to his Magistrate on the score of illness, but shortly afterwards went, found the Magistrate absent, and spoke with his clerk (page 78).

These grounds represent a series of circumstances upon the occurrence of which it was thought necessary in the first instance to summon the Petitioner to the seat of

Government, with the view of preventing what has since taken place; for eight months ho had full opportunity of appearing and explaining any part of his conduct capable of explanation, but he declined, excusing himself, as he himself admits, "by evasion and deliberate falsehood."

The Petitioner was not specially found guilty of these minor offences; but the count in the indictment which charges him with more serious crime, sets forth these preliminary misdemeanours.

The Council cannot but attach considerable importance to the opinion of the native assessors, strongly expressed at the trial, as to the duty and obligation of the Chief to compel his people to submit to the provisions, well known to all the natives, of the Law No. 5, 1859; which, while they prohibit the possession of fire-arms by natives, yet sanction such possession upon compliance with certain very simple conditions.

(iv) With respect to his having "refused to appear before" the Supreme Chief, when summoned, "excusing his refusal by evasion and deliberate falsehood," and "insulting his messengers," Petitioner desires to say that, the very fact of his "excusing his refusal by evasion and falsehood," which he admits, was a plain sign that his refusal was dictated by fear, and not by a spirit of defiance; Petitioner's brother having been killed in Zululand, when he obeyed a summons to go to the Supreme Chief, p. 12. And that the "insults in question have been greatly exaggerated, and were caused merely by Petitioner's fear that Mahoiza might attempt his life with a concealed fire-arm, as was formerly done in the case of Matyana, within the knowledge of his tribe, when Matyana in like manner had refused through fear to obey a summons to go to the Supreme Chief."

The statement herein advanced as a reason in support of the fourth objection is wholly unsustained, no attempt to take Matyana's life, as is averred, is proved to have been made on the occasion referred to; it may be argued that Petitioner's tribe supposed it had, and that therefore the same effect was produced upon their minds, but it would be impossible to admit that alleged belief in a mere rumour is a valid excuse for deliberately disobeying a lawful summons.

(v.) With respect to his having "directed his cattle and other effects to be taken out of the Colony with an armed escort, thereby manifesting a determination to resist the Government with force and arms," Petitioner says that he had formed no such determination, but on the contrary, if he were allowed to refer to the evidence produced on his sons' trial, it would be seen that he had given strict charge to his people "that in no case were the forces of the Government to be resisted or fired upon, not even if the men got in amongst the cattle of the tribe," pp. 48-51, 68, and that his men were merely carrying their arms as usual, and not with any idea of fighting with the Government.

But as to removing his cattle, Petitioner says that under Kafir law he was at liberty to do so if he could, though he and his people would be liable to be killed if resisting any attempt of the Supreme Chief to "eat up" their cattle within his territory.

When a Kafir wishes to leave his own Chief and join another, he can only do so by flying at night in the most stealthy manner, if he has any live stock; for, should his intention be known, he would most certainly be "eaten up."—*Kafir Laws and Customs*, p. 75.

"When a kraal or clan is rebellious, the custom of 'eating up' is resorted to. If they resist, they are fired upon or assegaied without ceremony."—*Ib.* p. 73.

"In times of peace, if a refugee is guilty of taking any of his neighbour's cattle with him, or if any lawsuit was pending before he fled, such case may be laid before the Chief to whom he has fled, and who generally settles such matters impartially, though there appears to be no international law binding him to do so."—*Ib.* p. 75.

There is no doubt that Petitioner did direct his cattle and other effects to be taken out of the Colony with an armed escort, and the consequence of this was the firing by the men of this escort upon Her Majesty's subjects, killing five and wounding others, while the officer in command supposed that his advice to submit themselves to their duty and return to their allegiance, was being favourably entertained: the Court was, therefore, bound to take the facts as presented to them, and the intention which those facts disclosed.

To urge that Petitioner was at liberty under Kafir or native law to remove his cattle if he could, is to say that any subject is at liberty to break the law of the State to which he belongs, provided he is strong enough to resist or cunning enough to evade.

There are regulations which have long been in force in this Colony, to regulate the removal of individuals or tribes from one part of the Colony to another, or from the Colony altogether, which the Petitioner is fully acquainted with; these regulations are constantly acted upon, and are entirely at variance with those quoted in the petition.

(vi.) With regard to the affair at the Bushman's River Pass, where five of Her Majesty's subjects were killed by Petitioner's men, he deeply regrets, and very strongly condemns the conduct of his people in respect of that fatal occurrence, which he knew at once had destroyed him with the Supreme Chief, who would never believe that he was not himself a party to it. Nevertheless, the evidence on his sons' trial shows, as above stated, that the act in question was contrary to his own express orders; and though, of course, it would not have occurred if he had ordered his men, when they fled, to leave their arms behind, yet this could hardly have been expected, as they were about to make their way amidst unknown dangers, through a trackless wilderness: and not all the consequence of a thoroughly illegal act are to be charged on the offender, but only such as, if not inevitable, may resonably and naturally follow it—not such as are "of a distinct and unconsequential nature." (Blackstone, iv, 37.) There was nothing unlawful in his men having their arms while driving their cattle from one place to another in the location, much less when travelling beyond the boundary of the Colony; and it was by no means a direct consequence of their carrying arms for use amidst the dangers of their journey, or when settled elsewhere, that they should attack the Government force, especially when Petitioner had strictly charged them on no account to do so.

But, while again expressing his grief for the occurrence, and protesting against being held responsible for it under the circumstances, Petitioner would observe that the Government force made the first attack upon his people, by killing a cow (p. 49), and "taking some guns from some of his young men whom they had found asleep" (p. 51), and that these acts, which may amount to little in the eyes of white men, would be under native law a serious assault. Under civilised law, as the force had no Magistrate or policeman with them, nor any sign of magisterial authority, it may be a question if they were justified in pursuing and attacking beyond the colonial boundary men who had committed no crime whatever before leaving their location, who had not killed, robbed, destroyed farm-houses, carried off cattle, sheep, or horses, or in any way injured their neighbours, white or black, not even the members of the tribe who remained behind. And under native law, when once they had escaped from the territory of their own Supreme Chief, his power over them ceased, and they had a right to defend themselves, and even to retaliate, if attacked.

Nevertheless, Petitioner from the bottom of his heart laments this occurrence, which appears to have been due to the wilfulness of some of his young men, led on by the example of the Induna Mabuhle, but which has added much bitterness to this disturbance. He can only trust that, looking at the actual facts as above stated, his Excellency will be disposed to consider that he and his tribe have been punished enough for the faults they have really committed, or, as far as appears in evidence ever intended to commit; that the claims of justice have been satisfied, the authority of the Government sufficiently asserted, and the righful demands of the white men complied with, by the ruin and dispersion of the tribe and the confiscation of all their property, and will now graciously permit Petitioner to sink into the obscurity of private life, and settle somewhere in the Colony, where he may collect around him his family, under the surveillance of the Government.

"On behalf of the prisoner Langalibalele,
(Signed) "J. W. NATAL.

"*Bishopstowe, June* 24, 1874."

These concluding considerations are urged in extenuation of what took place at the Bushman's River Pass, and are for the most part more suited to a Memorial praying for remission of sentence, than to an appeal from the judgment of one Court to that of another; they cannot therefore be entertained by this Council.

Two grounds are, however, advanced which it is necessary to notice; it is assumed that the leaving of the Colony by the Petitioner and tribe, with their cattle and arms without permission, was a legal act, and specially that the taking of their arms with them was justified by the knowledge on the part of the tribe that they were about to make their way amidst unknown dangers, through a trackless wilderness; it has already been shown that leaving the jurisdiction without permission was an illegal act, it must therefore follow that to arm for the purpose of more effectually performing such illegal act was an aggravation; among the possible dangers, to defend themselves

against which, the guns were taken, was that of encountering the Government forces; and the affair at the Bushman's River Pass was the immediate consequence of their concerted plan and common design.

The other ground is the allegation that the Government force made the first attack upon Petitioner's people by killing a cow, and taking some guns from certain of his young men whom the force found asleep, and that therefore they had a right to defend themselves, and even to retaliate.

To estimate this at its proper value, it is necessary to consider the position of the two parties on the occasion alluded to; on the one side was the military strength of the Petitioner's tribe, under its military head, Mabuhle, armed and equipped for war, protecting the cattle of the tribe, in their exit from the Colony; that is, supporting by an armed force the performance of an unlawful act in which the Petitioner and the tribe were, acting in concert; while so engaged, a small party of the Government force, about thirty men, encountered them, announced their mission to them, reasoned with them, and urged upon them to return to their allegiance; and these friendly appeals were to all appearance, accepted in a like spirit by Mabuhle and others; but before this a cow had been killed by order of the commander of the Government party to feed his starving men, and the process of skinning it was being proceeded with during the long interview that took place between the leaders on both sides.

It became necessary for the Government party to change its position, and while so doing it was suddenly fired upon and several of its members killed and wounded.

To justify such an act by such a plea is to trifle with the principles of right and wrong; the plea shows almost as conclusively as the act itself that the tribal force on the mountain were in arms prepared to resist the Government, that they had made up their minds to rebel against its authority, and felt that they had cut themselves off from all right of appeal to the tribunals of the country in which they had been living in peace and security, and to which they had hitherto been in the habit of applying with the fullest confidence for redress on all needful occasions. Such a plea needs only to be stated to be condemned as an unbecoming and wholly indequate excuse.

The Council have now considered all the objections advanced, and the reasons upon which they are urged, and are of opinion that none of them can be sustained; they desire, however, to acknowledge the ability and moderation with which they were argued before them.

They have not thought fit to advise the rejection of this appeal upon any technical grounds, although it appears to them that the introductory and concluding paragraphs of the petition clearly admit the validity of the Court and its proceedings; they have preferred to examine and weigh carefully and separately each ground of objection presented in the petition, in which they have been much assisted by the arguments of counsel, and to base their opinion upon the result of such examination.

The Council, therefore, respectfully advise the Lieutenant-Governor to affirm the judgment of the Court below, and to dismiss this appeal.

Inclosure 8 in No. 6.

Extract from the "Natal Witness" of July 17, 1874.

Application in the Supreme Court.—In the Supreme Court on Tuesday morning, before the Acting Chief Justice and Mr. Justice Meller, Mr. Advocate Moodie applied, on behalf of the Lord Bishop of Natal, for an interdict to inhibit the Lieutenant-Governor from transporting or removing the prisoner Langalibalele out of the colony.

Mr. Moodie said the prisoner was about to be removed to Robben Island by a process which he believed to be unconstitutional and an infringement of the rights of this Court. The prisoner, a petty Chief, had been tried and sentenced to a punishment unknown to Kafir law, and which could not, therefore, be carried out; in fact, the punishment of transportation must be admitted to be unknown to native law, because the Kafir had no ship to transport prisoners in. He read an affidavit of the Lord Bishop of Natal, appended to which was a copy of the proceedings of the trial of the prisoner, and added that it was an open question whether the principal crime with which the prisoner was charged was not committed beyond the boundaries of this Colony, and in an uncivilized country. He quoted from 26 & 27 Vict., cap. 35, sec. 1, where it was laid down that crimes committed beyond the bounds of the civilized Government should be tried in the Courts of the Colony; also from 4 & 5 Geo. IV,

cap. 69, sec. 4, showing that before a sentence of transportation can be executed, a place for transportation must be set apart by the Queen in her Privy Council; also from 16 & 17 Vict., cap. 99, sec. 6, already quoted by Mr. Goodricke in the Executive Council. He stated that the prisoner might be sent away at a moment's notice. He would call their Lordship's attention to Ordinance 3, 1849.

The *Acting Chief Justice* said the law did not state that prisoners were not to be transported, but that they were to be sent to some place or places as might be directed. A native Chief had power to transport an inferior Chief to any place he pleased, and the Governor, in sentencing Langalibalele to be transported, only did what any native Chief could do. No Act had been quoted excluding an Ordinance of this Colony, which is law here, and which gave despotic power to the Governor.

Mr. Justice Meller said the authority quoted was merely permissive.

Mr. Moodie said surely the prisoner could not be transported till the place of transportation was fixed.

The *Acting Chief Justice* said it was admitted that there was no statute law against the prisoner's being transported to where the Supreme Chief pleased.

Mr. Moodie contended that the Governor had not the power to transport. He supposed it would be admitted that this Court had full jurisdiction in all cases, and that the only exception thereto, and the only law by which the Governor could take any authority from it, was this Ordinance 3, 1849. People held the case of Macomo out as a precedent to this; but he was not transported, for he was in a part of the same territory as that in which his offence was committed. It had been argued by the supporters of the Governor that he could do almost anything he liked, because he was Supreme Chief.

Mr. Justice Meller said surely if the Governor had the power to pass sentence of death, he could inflict a milder punishment, as had been done in this case.

Mr. Moodie differed from his Lordship, and said it was the business of this Court to pass sentence. Native law, established by this Ordinance, gave the Governor power only to interfere with cases between native and native.

The *Acting Chief Justice* asked whether under the 4th section the Supreme Chief could not remove an inferior Chief for an offence against himself?

Mr. Moodie replied in the negative, as this section must be read with the rest of the Ordinance. When the matter was argued before the Executive, and it was said, "You tried the prisoner, and the appeal is to you," it was said in reply, in one breath, "I am Supreme Chief, and can do as I like," and in the next, "I am bound by that section, and must take the advice of my Executive Council."

The *Acting Chief Justice* asked whether the 4th section did not apply to any act of the Supreme Chief?

Mr. Moodie said he argued that the Queen had not the power to sit in judgment. He asked their Lordships to take the whole of this Ordinance together. He referred to the appeal given in the 3rd section.

The Acting Chief Justice said:—Suppose under the 4th Section there was no obligation to allow an appeal, and that the Governor allowed the appeal, how would that act?

Mr. Moodie said by making a crime one against himself, the Governor could bring any case under Native Law and try it. If he was Supreme Chief, why was he to appoint fit and proper persons to try native cases, and why should there be an appeal to himself.

The Acting Chief Jvstice pointed out that the 2nd Section applied to crime throughout the whole Colony, but the 4th Section was quite distinct. The persons to be tried under the 4th Section were not natives generally, but only native Chiefs. It was not to be supposed that the Governor was to be constantly travelling over the Colony to try natives, therefore fit and proper persons were appointed to deal with all ordinary cases. If the 2nd Section controlled the 4th Section, then there were no other persons to be tried under this law than native Chiefs, whereas only the 4th Section was confined to the trial of these Chiefs.

Mr. Justice Meller said there was a machinery given to the Governor under which Native Law might be administered.

Mr. Moodie said he took an illegal machinery here, because he to whom the appeal lay tried this case; and he felt sure the learned men who would have to decide this question in England would take a common-sense view of the case, and throw our Ordinance aside.

The Acting Chief Justice said he would do what he believed to be right here, irrespective of what might be done at home.

Mr. Moodie said the indictment would show that the offences were not those which could be dealt with under Native Law, as their Lordships would see from the Report annexed to the affidavit. He quoted the case of the Queen *v.* Mount and Morris, from the "Times."

The Acting Chief Justice said, but Mr. Moodie was to show him that a native Chief could not transport till a place had been fixed.

Mr. Moodie said the prisoner had not been sentenced by the Supreme Chief, but by a Court of Inquiry, composed of "fit and proper persons," such as fathers of those who were killed, and men who fought at the Pass! The Governor had availed himself of the 2nd Section in appointing this Court.

The Acting Chief Justice said Mr. Moodie said so, but that did not make it so.

Mr Justice Meller said he fancied it was a principle of a native Court that every Chief had his own particular way of holding Courts and trying prisoners.

Mr. Moodie submitted again that the Supreme Chief did not try this man.

Mr. Justice Meller said the Governor acted of his own mere notion as a Paramount Chief, in the discharge of what he considered to be a duty.

Mr. Moodie, to show that the Supreme Chief did not sentence this man, alluded to the plural wording of the sentence.

The Acting Chief Justice said there had been a decision under the 3rd Section in appeal, and the Law said that such decision should be final.

Mr. Moodie said it was begging the whole question to admit that anything connected with this matter was between native and native, or could be dealt with according to Native Law.

Mr. Justice Meller said Mr. Moodie had shown that the Governor could not transport this man under English Law, but he had not shown that it could not be done under Native Law.

Mr. Moodie submitted that his argument would be borne out by the official record of the trial annexed to the affidavit.

The Acting Chief Justice pointed out that the Governor, according to his own opening Speech at the trial, constituted the Court alone, assisted, as he himself stated, by the Secretary for Native Affairs, by Magistrates, and by native Chiefs. If he himself has been Supreme Chief, and had called in these gentlemen to assist him at the trial, he did not know that he could more clearly show that he was sitting under the 4th Section than by the words of the Governor's opening address.

Mr. Moodie felt certain the Governor could not be Judge in his own Court, and when this matter came to be argued before the Privy Council, they would say that it was the spirit of the Law which should have been acted on, and not the letter. The spirit of it was that the appeal lying to the Supreme Chief——

The Chief Justice said the 4th Section gave no appeal.

Mr. Justice Meller asked how Mr. Moodie showed that the Governor was not competent to try this case?

Mr. Moodie said because even the Queen could not sit in judgment. Besides, the Executive Council did not stand upon the 4th Section, but on the fact that the person who sat in the Court below was not the person who heard the appeal, because in the latter case it was the Governor, with the advice of his Executive Council.

The Acting Chief Justice said Mr. Moodie had not shown him that the Acts he had quoted applied in any way to native law.

Mr. Moodie said there was no precedent under native law. He asked the Executive Council to show one, and they could not. He supposed native law was followed in this instance, though there was an indictment, and a prosecutor, which were unknown to native law.

Mr. Justice Meller said it seemed to him that the case was one which had occurred suddenly, and that it was one which was perhaps not entirely provided for by law; the Governor in this case used the power given him by law, and supplemented that power to the best of his ability. But before Mr. Moodie was entitled to the motion, he must show that there had been an infringement of the law.

Mr. Moodie again submitted that this was no case for trial by native law.

The Acting Chief Justice thought one of the fittest crimes to be tried by native law would be a case of this kind—rebellion by a petty Chief against a supreme Chief. His Lordship asked the Attorney-General whether he had had notice that this application would be made?

The Attorney-General replied in the negative.

The Acting Chief Justice asked whether he appeared without notice?

The Attorney-General replied: Certainly not.

The Acting Chief Justice said Mr. Moodie had not made it clear to him that the trial of Langalibalele was held under the 3rd section.

Mr. Moodie said that in the Judgment the Court continually used the plural pronoun.

Mr. Justice Meller said Mr. Moodie seemed to have first admitted the jurisdiction of the other Court, and then to have denied it. Still it would have been desirable to have heard counsel on the other side.

The Attorney-General said he only came here to see if the Court would entertain the application at all.

The Acting Chief Justice said he had no hesitation in saying that if this case had been tried under the 2nd and 3rd sections, and was not a case between native and native, then this Court would have jurisdiction, and could interfere to prevent the sentence being carried out. But he did not think there was any advantage in letting this case stand over. The application was for an interdict against the Lieutenant-Governor, but he apprehended the Court would never grant that; it had no authority to do so, and could not enforce an interdict except by imprisonment, and the Governor could release himself by his own sovereign power as soon as imprisoned. Therefore so far as the prohibition against the Lieutenant-Governor was concerned, it could not be granted; the only thing the Court could do would be to interdict the gaoler from parting with the prisoner. He might as well say that he utterly refused to be guided by technicalities in a case of this kind, or to believe that because in the sentence the words, "our unanimous judgment," &c., occurred, the Supreme Chief was not acting under the 4th section. If they took Mr. Moodie's interpretation of the 4th section it was utterly absurd; and, again, if a special person had been appointed under the 2nd section to try this case, what an outcry there would have been then! He saw nothing in this case, settling aside technicalities and matters of form, to show that the 4th section had not been properly acted upon. By that section the Governor might have put the prisoner to death, and there was nothing in the section to show that he could not banish him. He did not deny that cases might arise under this law, in which it would be proper for the Court to interfere; but here there was nothing whatever to show that the Court had any right to interfere with the sentence. He could not suppose that rebellion was a crime which would come under the 2nd section, as repugnant to the principles of humanity, because now-a-days this crime was not by any means considered in such a light—far from it; but it did seem to be a case in which the 4th section would apply. There was, therefore, nothing before him to show that the sentence was not in accordance with the powers of a native Chief under the circumstances. He had heard nothing whatever to satisfy him that in this case he had any right to interfere. It also had not been shown that a native Chief had not the power of transportation under the 4th section. It having been admitted that a sentence of death could have been passed upon this prisoner, presumption was in favour of the validity of a more lenient sentence, and against that presumption he had heard nothing which would justify him in interfering with the sentence in any way whatever.

Mr. Justice Meller had very grave doubts as to the force or meaning of the Ordinance, and pointed out that the 4th section was utterly inconsistent with the section giving the appellate jurisdiction. But this application was for the issuing of a prohibition against the Lieutenant-Governor, and on that ground alone he thought it must be refused. He added that he had no hesitation in saying that the punishment was a very light one compared with the position in which the prisoner had placed himself by his misdeeds.

The application was therefore refused.

No. 7.

Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—(Received September 5.)

My Lord, *Government House, Natal, August* 3, 1874.

I HAVE the honour to acknowledge your Lordship's despatch of the 25th June,* just received, transmitting printed documents from the Bishop of Natal relative to the late proceedings against the revolted tribe.

2. As I believe full answers will be found to most of the matter contained in these papers in the Minute of Mr. Shepstone, and in my despatch of the 16th

* *Vide* No. 16 of Command Paper [C. 1119] of 1875.

ultimo,* and as Mr. Shepstone has gone to England to give your Lordship personally any further explanation which may be required, I do not at present consider it necessary to trouble your Lordship with any comment upon these papers.

3. Should, however, on a further perusal, any questions occur to me which may need explanation, I will send them as soon as possible.

I have, &c.

(Signed) BENJ. C. C. PINE.

No. 8.

Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—
(Received September 5, 1874.)

My Lord, *Government House, Natal, August* 3, 1874.

I HAVE the honour to inform your Lordship that I have had under my consideration the punishment inflicted on the tribe of Putili during the recent proceedings.

2. I have no doubt that it was necessary to disarm that tribe, and that the prompt manner in which this was effected prevented them from joining the kindred tribe of Langalibalele.

3. I have no doubt also that they harboured many of the women and the cattle of the more hostile tribe, and that under native, and even under the English law, they thereby rendered themselves amenable to serious punishment. I have, further, no doubt of the necessity of not overlooking such proceedings in this Colony, for if one tribe could harbour with impunity the property of another tribe which is in revolt, it would be utterly impossible effectively to crush rebellion.

4. But considering the small part which this tribe took in actual hostilities, I have resolved to mitigate their punishment as much as possible, and to restore the bulk of the tribe to liberty. I shall also consider whether I can safely restore them to their location. I should not, however, propose to place them again under their own Chief, but put them under the direct and immediate authority of the Superintendent or Magistrate of the locality.

5. I shall address your Lordship further on the subject.

I have, &c.

(Signed) BENJ. C. C. PINE.

No. 9.

Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G., to the Earl of Carnarvon.—
(Received September 5.)

My Lord, *Government House, Natal, August* 3, 1874.

I HAVE the honour to inform your Lordship that, in pursuance of the sentence passed on the Chief Langalibalele and his son by the Supreme Native Court, confirmed by the judgment of the Executive Council, I have sent them by the steamer "Florence" to the Cape under the charge of Mr. Arthur Shepstone.

2. The documents relative to the transportation and imprisonment of the prisoners are herewith inclosed.

3. I considered it absolutely necessary to carry this sentence into effect at once in consequence of the very injurious effect which the delay is exercising on the native mind. This is further increased by the circumstance that Cetywayo has sent another message to me, requesting that Langalibalele may be given up to him as a rain-doctor.

4. As some doubts were raised as to my authority to transport these prisoners, I took the opinion of the Attorney-General on the subject, which is herewith inclosed. I also, when at the Cape, brought the matter under the notice of the Attorney-General of that Colony, but it is clear from his proceedings that he, in common with Mr. Gallwey, entertains no doubt on the subject.

I have, &c.

(Signed) BENJ. C. C. PINE.

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* No. 5.

Inclosure 1 in No. 9.

Government House, Cape Town, July 8, 1874.

Sir,

WITH reference to your Excellency's despatch of the 13th April, requesting the consent of this Government to the transfer of the Chief Langalibalele and his son Malambuli to Robben Island, I have now the honour to communicate to you an Act passed by the Legislature of the Cape Colony authorizing their imprisonment accordingly, together with copy of a Minute addressed to me by my Responsible Advisers on the subject of the arrangements connected therewith.

2. Should it be deemed desirable by the Natal Government that any difference should be made between the treatment of the ex-Chief and his son, and that of other convict prisoners, I shall be prepared, on receipt of information from your Excellency, to give directions in conformity.

I have, &c.

(Signed) HENRY BARKLY, *Governor.*

His Excellency the Lieutenant-Governor of Natal.

Inclosure 2 in No. 9.

Minute.

Colonial Secretary's Office, July 8, 1874.

IN returning the accompanying despatch of the 15th April last, from his Excellency the Lieutenant-Governor of Natal, Ministers beg to submit the copy of an Act which has been passed by the Legislature of this Colony to admit of the legal imprisonment on Robben Island of the ex-Chief Langalibalele and his son Malambuli.

They beg to request that his Excellency may be informed that arrangements will be made for the reception of the prisoners accordingly, on the understanding that the Natal Government provides for the ordinary cost of their maintenance as convicts, about 1*s.* each per diem, as well as for all other necessary expenditure which may have to be incurred on their account; and that the required documents and record of their trial and conviction be forwarded with them.

(Signed) J. C. MOLTENO.

Inclosure 3 in No. 9.

Act No. 3 of 1874.

Act to provide for the Imprisonment in the Colony of certain Criminals sentenced in the Colony of Natal.

[*Assented to July* 6, 1874.]

WHEREAS the Natal Chief Langalibalele and one of his sons named Malambuli, have lately been tried and sentenced by the Supreme Native Court of the Colony of Natal, for certain offences by them committed, to banishment and imprisonment, the former for the term of his natural life, and the latter for the term of five years, and his Excellency the Lieutenant-Governor of the said Colony of Natal has requested that the said criminals may be permitted to be sent to Robben Island in Table Bay, in pursuance of their sentences, and it is advisable that the said request should be acceded to, and that provision be made for authorizing the imprisonment within this Colony, at Robben Island aforesaid, of the said criminals: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

I. From and after the arrival in this Colony of the said Langalibalele and the said Malambuli respectively, in pursuance of their said sentences, they shall and may respectively be imprisoned, detained, and treated in every respect, and shall be deemed and taken to be within this Colony in precisely the same plight and condition as if the said terms for which they have been respectively sentenced as aforesaid, were terms of imprisonment which they had respectively been sentenced to undergo by the Supreme Court of this Colony in respect of some crime or offence committed within the jurisdiction of the said Court.

Inclosure 4 in No. 9.

IN reply to the case submitted by his Excellency's instructions for my opinion whether he has the power to send the prisoner Langalibalele in custody from this Colony to the Cape Colony, there to undergo the punishment of banishment or transportation to which he was sentenced by his Excellency under the provisions of the Natal Ordinance 3, 1849, I have to state that, during this term, an application was made *ex parte* to the Supreme Court of Natal to grant an interdict to inhibit the Lieutenant-Governor from transporting or removing the prisoner Langalibalele out of the Colony on, amongst other grounds, that his Excellency, acting under the provisions of the said Natal Ordinance, had no power to impose the sentence of transportation or imprisonment thereunder, and that there was no power to remove the prisoner even if his Excellency could legally pass the said sentence as the provisions of the Imperial Statute 6 Geo. IV, c. 69, sec. 4, had not been complied with; that Imperial Statute, and the 16 & 17 Vic., c. 99, were the only Imperial Statutes relied upon by Counsel for the prisoner, or noticed by the Bench, the 32 Vic., c. 10, which repeals the 6 Geo. IV, c. 69, sec. 4, was not alluded to; but as the provisions of the repealed Statute were more stringent than those of the 32 Vic., c. 10, the decision of the Court bears equally on both.

The Supreme Court refused to comply with the application.

The Acting Chief Justice, in giving judgment, said: "Transportation under English and Roman-Dutch law had been arranged by Statute, and probably that a place had to be fixed by Her Majesty in Council where that sentence was to be carried out. It had been contended that the sentence was unprecedented and illegal. There was nothing before him to show that the sentence was not in accordance with the powers of a native Chief, and that a native Chief had not the power of transportation under Ordinance 3, 1849.

The Supreme Court having decided that they must presume on the validity of the sentence, in reality decided that the Lieutenant-Governor had the power and authority conferred on him by the Natal Ordinance to pass and carry out the above sentence, and as that Ordinance was confirmed by Her Majesty in Council, while the 6 Geo. IV, c. 69, was not in force and effect, I am bound to accept that interpretation and construction of the Natal Ordinance, and to advise his Excellency that that Ordinance is not so repugnant to the Imperial Statute on transportation as would, under the Imperial Statute 28 & 29 Vic., c. 63, make the said Ordinance or any section thereof void and inoperative.

I advise that the Lieutent-Governor, acting under the provisions of the said Natal Ordinance, had the power to pass the sentence on the prisoner Langalibalele, and to issue an order to have the prisoner sent in custody to the Cape Colony.

The Cape Legislature have, in their present Session of Parliament, passed an Act No. 3 of 1874 to authorize and legalize the imprisonment of Langalibalele within the Colony of the Cape. It enacts that the said prisoner, on his arrival in that Colony shall, in pursuance of his said sentence of banishment or imprisonment for the term of his natural life, passed upon him by the Supreme Native Court of the Colony of Natal, be imprisoned and be deemed and taken to be within the Cape Colony in the same condition as if the term for which he had been sentenced was a term of imprisonment which he had been sentenced to undergo by the Supreme Court of the Cape.

I am of opinion that the prisoner was legally sentenced, and that his Excellency can issue his warrant directing the prisoner to be sent in custody to the Cape Colony, there to undergo that sentence.

I may remark that, I question if transportation to the Cape Colony, which could be effected overland, is included within the meaning of transportation in the Imperial Statutes, namely, transportation beyond the seas.

(Signed) M. H. GALLWEY, *Attorney-General.*

Inclosure 5 in No. 9.

Sir, *Government House, Natal, August* 3, 1874.

I HAVE the honour to acknowledge your Excellency's despatch of the 8th July last, communicating to me an Act passed by the Legislature of the Cape Colony, authorizing the imprisonment of the Chief Langalibalele, and his son Malambuli, in Robben Island, together with a Minute addressed to you by your responsible advisers, on the subject of the arrangements connected therewith.

2. I have to thank your Excellency and your advisers for your prompt action in this matter.

3. By the steam-ship "Florence," which leaves to-morrow, the prisoners Langalibalele and his son Malambuli, also one of Langalibalele's wives, whom it is determined shall accompany him, will be sent down to the Cape, under the charge of Mr. Arthur Shepstone.

4. In answer to the question how the prisoners should be treated, I wish to inform your Excellency that I should like them to receive the best treatment and fare allowed to prisoners at Robben Island, and to be treated with as much consideration as is consistent with their safe custody. This Government will, of course, bear all expenses connected therewith.

5. In accordance with request I forward the required documents and record of prisoners' trial and conviction.

I have, &c.

(Signed) BENJ. C. C. PINE, *Lieutenant-Governor.*

His Excellency Sir Henry Barkly, K.C.B.,
&c. &c. &c.

No. 10.

Governor Sir Henry Barkly, K.C.B., to the Earl of Carnarvon.—(*Received September* 11.)

(Extract.) *Cape Town, August* 14, 1874.

IN my despatch of the 15th January* I informed your Lordship's predecessor that I had, in concurrence with my advisers, promised that an application which had been made to me by the Lieutenant-Governor of Natal for the reception of Langalibalele after trial and conviction, at Robben Island in Table Bay, would be complied with.

The application having been repeated by Sir Benjamin Pine, when sentence had been passed, the Act was introduced to legalize the reception of the Chief and one of his sons, who was then included.

As pointed out by Mr. Jacobs, a precedent already existed on the Statute Book in No. 25 of 1857, under authority of which Macomo and other Kafir Chiefs, sentenced to transportation by the High Commissioner for offences committed beyond the limits of the Cape Colony, were confined for years as State prisoners on this same Island.

I allude to this fact because I have, during the last few days, become aware, through the receipt of the Blue Book on the late outbreak in Natal, laid before Parliament by Her Majesty's command, that your Lordship has intimated to the Lieutenant-Governor of Natal that a sentence of transportation cannot be carried out under a Colonial Law beyond the limits of the Colony, unless an arrangement has been made, under the Colonial Prisoners' Removal Act (32 & 33 Vic. cap. 10), which requires the sanction of Her Majesty in Council to such arrangement.

I presume, however, that this cannot invalidate the legality of the detention of Langalibalele and Malambuli on Robben Island, where they are already located, and where it is assuredly better for the peace of South Africa, as well as for their own security and comfort, that they should remain for some time to come.

Inclosure 1 in No. 10.

Act to provide for the Imprisonment in the Colony of certain Criminals sentenced in the Colony of Natal.

[See Inclosure 3 in No. 9.]

Inclosure 2 in No. 10.

Report upon Act No. 3 *of* 1874 (*Natal Criminals Act*).

THE Lieutenant-Governor of Natal having applied to the Governor of this Colony to allow the Chief Langalibalele and his son Malambuli, who had been sentenced in

* *Vide* No. 39 of Command Paper [C. 1025] of 1874.

Natal to banishment and imprisonment, to undergo their sentences at Robben Island (an island in Table Bay), and the Governor being willing to assist Natal in this matter, this Act was passed to enable the offenders to be legally detained on the said Island. A similar Act was passed in 1857 as to Kafirs sentenced in British Kaffraria, which at that time had not been annexed to this Colony (Act 25 of 1857).

(Signed) J. JACOBS, *Attorney-General.*

Attorney-General, Cape Town, August 13, 1874.

Inclosure 3 in No. 10.

Act to provide for the Imprisonment in the Colony of certain Criminals sentenced in the Colony of Natal.

I HEREBY certify that the "Act to Provide for the Imprisonment in the Colony of certain Criminals sentenced in the Colony of Natal," which has passed both Houses of Parliament, contains nothing which is repugnant to the Law of England, or which requires the Governor to withhold his assent therefrom, in virtue of the Royal Instructions of the 20th August, 1872.

(Signed) J. JACOBS, *Attorney-General.*

Attorney-General's Office, Cape Town, July 4, 1874.

No. 11.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G.

Sir, *Downing Street, September* 18, 1874.

I HAVE the honour to acknowledge the receipt of your despatch of the 10th of July* forwarding a Memorial signed by 1,683 of the inhabitants of Natal respecting the Manifesto of the Peace Society which appeared in the "European Mail" of January 26.

I have, &c.

(Signed) CARNARVON.

No. 12.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin C. C. Pine, K.C.M.G.

Sir, *Downing Street, September* 18, 1874.

I HAVE to acknowledge the receipt of your despatch of the 10th of July† reporting that additional signatures have been obtained to the communication from ministers of religion in Natal to the "Times," a copy of which was originally forwarded in your despatch of the 11th of June.‡

I have, &c.

(Signed) CARNARVON.

No. 13.

The Case of Langalibalele.—(Left by Bishop Colenso with Lord Carnarvon, October 5, 1874.)

THE native Chief Langalibalele was sentenced by a so-called Supreme Native Court of the Colony of Natal to banishment and imprisonment for life.

It is not necessary for the purpose of the present case to inquire into the justice of the charge on which he was tried, nor into the legality of the Court as constituted, though both are denied.

The Natal Government having obtained the conviction of the Chief, procured, through means also not necessary to be detailed, the enactment of Act No. 3 of 1874 from the Cape Parliament (q.v.).

* No. 2. † No. 3. ‡ Not printed.

Under this Act Langalibalele was brought over the sea to Table Bay, and thence conveyed to Robben Island, where he is now confined.

An Imperial Statute, 32 Vict., cap. 10, exists, however, which contains the following provisions:—

"Any two Colonies may, with the sanction of an order of Her Majesty in Council, agree for the removal of any prisoners under a sentence of transportation, imprisonment, or penal servitude from one of such Colonies to the other, for the purpose of their undergoing in such other Colony the whole or any part of their punishment, and for the return of such prisoners to the former Colony at the expiration of their punishment, or at such other period as may be agreed upon, upon such terms and subject to such conditions as may seem good to the said Colonies.

"The sanction of an Order of Her Majesty in Council may be obtained in the case of a Colony having a legislative body on an address of such body to Her Majesty, and in the case of a Colony not having a legislative body, on an address of the Governor of such Colony; and such sanction shall be in force as soon as such Order in Council has been published in the Colony to which it relates.

The agreement of any one Colony with another shall, for the purposes of this Act, be testified by a writing under the hand of the Governor of such Colony."

This "sanction of an Order of Her Majesty in Council" has not been obtained to Act No. 3 of 1874, nor to any arrangement between the Cape and Natal respecting the removal of prisoners, and it is presumed that the Act is consequently illegal, and the imprisonment and detention of Langalibalele under it equally so.

Counsel's opinion is therefore required on the following points:—

1. Is not the local Act 3 of 1874 in conflict with the Act 32 Vict., cap. 10? If so, is it of legal force and effect partially? and if so to what extent? or is it wholly void and inoperative?

2. Being a local enactment, and passed with all the formalities required by the constitution of the Colony, and not having been reserved for Her Majesty's approval, but promulgated at once, are our Colonial Judges bound under the circumstances and by their position to recognize the Act as valid, notwithstanding the provisions of the Imperial Act?

3. Has the Supreme Court of this Colony any power express or implied to treat local Acts of Parliament enacted in conflict with or disregard of Imperial measures as illegal and null and void?

4. Presuming Act 3 of 1874 is wholly illegal or inoperative, and that it is not obliged to be administered by the Judges of the Supreme Court, and that the Supreme Court can make an order or decree in the face of the Act, what course should be taken by Langalibalele to procure his release from his present unlawful confinement, or by his friends, if Government persist in refusing, as they have done, personal communication between the Chief and his friends? Does any process analogous to the writ of *habeas corpus* exist under the Roman-Dutch law?

5. If the Supreme Court will not, or thinks it cannot, make any order in the matter, nor entertain any application on the subject, what is the legal remedy of Langalibalele? Has the Court of Queen's Bench authority to issue a writ of *habeas corpus* to have the person of Langalibalele produced before it to have the question of his confinement under the Colonial Act tried and decided before it, or is his only remedy a petition to the Queen?

6. Generally, what steps do counsel recommend the friends of Langalibalele to take to procure his release.

Opinion.

1. If the sanction of Her Majesty in Council has not been obtained by the Legislature of Natal, or that of this Colony, either prior or subsequent to the passing of Act No. 3, of 1874, we should be of opinion that this Act is illegal.

2. Being, however, a local Act, passed with all ordinary formalities, and assented to in Her Majesty's name by the Governor, and there being nothing on the face of the Act to show that Her Majesty's sanction has not been obtained, we think the Judges here would be bound to treat the Act as legal.

3. If the Act were, upon the face of it, and in its terms, in conflict with a prohibitory Imperial Act, having effect in this Colony, we should consider the Judges bound to treat it as illegal; but that is not the case with this Act.

4. For the above reasons we do not think that any application to the Judges of the

Supreme Court on behalf of Langalibalele would be successful. There is no process known to the Roman Dutch law analagous to the writ of *habeas corpus*.

5. Such being the case, Langalibalele, or his friends, must apply to the Imperial tribunals. Whether the Court of Queen's Bench would (we have no doubt it has the power) issue a writ in this case, is a question rather for lawyers at home than for us.

No doubt a petition to Her Majesty in Council would meet with full attention. If the authorities here refuse to allow Langalibalele's signature to be obtained to a petition to Her Majesty in Council, we believe that a petition from his friends, setting forth that fact, and all the circumstances of his case, would be dealt with as if it had come from himself.

6. We are unable to advise any steps to be taken here. And as for the best steps to be taken at home, we submit Engish Counsellors should be consulted.

(Signed) A. W. COLE,
E. J. BUCHANAN.

Chambers, September 3, 1874.

No. 14.

Correspondence between Bishop Colenso and the Local Authorities.—(Left with Lord Carnarvon by the Bishop, October 5, 1874.)

Sir, *Cape Town, September* 2, 1874.

I HAVE the honour to request an order permitting me to have a private interview to-morrow (Thursday) with Langalibalele and his son Malambule, detained as prisoners at Robben Island, for the purpose of preparing a petition to Her Majesty the Queen on their behalf. As access to the said prisoners was granted to me at Natal for the purpose of preparing the Chief's Appeal to the Executive Council, I presume there can be no objection to my being allowed to see them on the present occasion; but I may as well say that I have not asked the permission of the Natal Government in the present instance, not having thought it necessary to do so, as I presumed that, if I found them still in confinement, which I did not expect to be the case, they would be in the hands of the Cape authorities.

I have, &c.
(Signed) J. W. NATAL.

The Hon, J. C. Molteno, Esq.,
Colonial Secretary.

Colonial Secretary's Office, Cape Town,
My Lord, *September* 2, 1874.

IN reply to your Lordship's letter of this day's date, I have the honour to express my regret that your Lordship did not deem it necessary to obtain the permission of the Government of Natal to your visiting the convicts Langalibalele and Malambule, as in the absence of such permission, this Government is not in a position to entertain your Lordship's application for a private interview with the prisoners.

I have, &c.
(Signed) J. C. MOLTENO.

The Right Rev. the Bishop of Natal,
&c. &c. &c.

Sir, *Cape Town, September* 2, 1874.

IN acknowledging the receipt of your letter in reply to mine of this day's date, refusing me permission to visit the prisoners Langalibalele and Malambule, at Robben Island, for the purpose of preparing a Petition to Her Majesty the Queen on their behalf, I can only express my astonishment, as an Englishman, that any British Government should have thought it right to put any impediment in the way of a prisoner approaching the Crown with an appeal for justice and mercy at the hands of his Sovereign, which, as he believes, has been denied to him by her representatives in South Africa, I have now the honour to request that his Excellency the Governor of the Cape

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Colony will be pleased to forward a copy of the correspondence upon the subject to the Right Honourable the Secretary of State for the Colonies.

I have, &c.
(Signed) J. W. NATAL.

The Right Hon. J. C. Molteno, Esq.,
Colonial Secretary.

Colonial Secretary's Office, Cape Town, September 4, 1874.

My Lord,

I HAVE the honour to acknowledge the receipt of your Lordship's letter, dated 2nd instant, expressing surprise at the refusal of the Government to permit your Lordship to visit the prisoners Langlibalele and Malambule, now undergoing sentences of imprisonment on Robben Island, and requesting that a copy of the correspondence which has passed between your Lordship and myself may be forwarded to the Right Honourable the Secretary of State for the Colonies.

Without entering upon a discussion of the other matters alluded to in your communication under acknowledgment, I have the honour to inform your Lordship that I do not feel called upon to advise his Excellency the Governor to transmit the correspondence to the Secretary of State, more especially as I notice that it has already been published in one of the local papers.

I have, &c.
(Signed) J. C. MOLTENO.

The Right Rev. the Bishop of Natal,
&c. &c. &c.

Cape Town, September 5, 1874.

My Lord,

WE inclose original of the Petition prepared for the signature of the native Chief Langalibalele; also the case submitted on his behalf to Messrs Cole and Buchanan, with their opinion.

We have to observe on the last, that instructions for taking opinion were received on the same morning that those gentlemen left town for Circuit, the case was consequently very hurriedly drawn, and has been able to receive but as hurried a consideration.

We have, &c.
(Signed) FAIRBRIDGE AND ARDERNE.

The Right Rev. J. W. Colenso, D.D.,
Bishop of Natal.

No. 15.

Petition which Bishop Colenso would have recommended Langalibalele to sign if he had been allowed to see him in Robben Island.—(Left with Lord Carnarvon by the Bishop, October 5, 1874.)

To the Queen's Most Excellent Majesty.

The Petition of Langalibalele, late native Chief of the Ama Hlubi, in the Colony of Natal,

Humbly shews,

THAT your petitioner is at this present moment a prisoner confined on Robben Island within your Majesty's Colony of the Cape of Good Hope.

That your petitioner, who has recently been tried by an illegal court at Natal for the pretended crime of rebellion against your Most Gracious Majesty, and sentenced to banishment and imprisonment for life (the illegality of which trial, and the injustice of which sentence are about to be otherwise submitted to your Majesty's gracious consideration on your petitioner's behalf), has under the act and proceedings of the Governor of Natal, been conveyed against his will to Robben Island, and there again detained as a criminal and prisoner under the provisions of a certain Act passed by the Parliament of the Cape of Good Hope, intituled an "Act to provide for the imprisonment in the Colony of certain criminals sentenced in the Colony of Natal," assented to by the Governor of the said Colony on the 6th day of July 1874.

Your petitioner humbly craves leave to bring to the notice of your Majesty that the said Colonial Act, No. 3 of 1874, was passed notwithstanding the provisions of the Imperial Act 32 Vict. cap. 10, which enacts that no prisoner shall be removed from one to another of your Majesty's Colonies under sentence of transportation without the sanction of an Order of your Majesty in Council, first had and obtained, which Order was and has not been granted previously to your petitioner's removal.

Your petitioner now humbly submits that said Act 3 of 1874 was passed in derogation of the dignity of your Majesty's Crown, and in defiance of the Imperial Statute referred to, and is illegal and of no force and effect whatever, and that your petitioner is consequently now kept in unlawful duresse and restraint.

Wherefore your petitioner humbly prays that your Majesty will be pleased to exercise your Royal authority and clemency, and to order and direct that your petitioner be set at liberty and released from his confinement on Robben Island.

Dated at Robben Island, Cape of Good Hope, this 3rd day of September, 1874.

No. 16.

W. Shaen, Esq., to Colonial Office.

Sir, 8, *Bedford Row, London, October* 6, 1874.

BY the instructions of the Bishop of Natal, I send you herewith a copy of an extra to the "Natal Colonist" of Tuesday July 21, containing, on the fourth page, a report of an application in the Supreme Court, on behalf of the Lord Bishop of Natal, for an interdict to inhibit the Lieutenant-Governor, from transporting or removing the prisoner Langalibalele, out of the Colony. In forwarding this report, I have to beg your careful attention, and that of the Secretary of State, to the fact that, taking the law to be as laid down by the Chief Justice, it is literally true that the Governor for the time being has absolute power of life and death over every native in the Colony, and cannot be controlled by any safeguards, which it has always been understood are imported from the old common law of England, into every British Colony.

If the law is so, it is not too much to say that no time should be lost in altering it. It can never be the intention of a British Government to place the Governor of a British Colony in a position in which he is not subject to those principles of constitutional law which control the power of the Crown in this country, so far as relates to the right of the subject to the protection of the law.

I would also respectfully call especial attention to the grave inconvenience, which results, as pointed out by the Chief Justice, from the precedent set in this case, of the Governor acting as judge in the first instance; namely, that the Court declines to issue an interdict, because it can only enforce such an order by imprisonment. This result seems conclusively to show that the Governor ought in no case himself to act as a Judge.

In connection with this judgment, upholding the despotic power of the Governor, I would also call attention to the fact that such despotic power has recently been exercized upon more than one occasion. I refer especially to the Proclamation issued by the Governor, on the 10th of April last, and published in the Natal Government "Gazette" of the 14th of April, regulating the employment of convicts, under which the children, male and female, of a convict are practically reduced to servitude, without having been convicted (or even tried), of any offence. I would also refer to the more recent Government Proclamation, calling out the natives to do forced labour for the Colonists, the reference to which I have not at the moment by me.

I am, &c.

(Signed) WM. SHAEN.

Inclosure 1 in No. 16.

Application in the Supreme Court.

IN the Supreme Court on Tuesday morning, before the Acting Chief Justice and Mr. Justice Meller, Mr. Advocate Moodie applied, on behalf of the Lord Bishop of Natal, for an interdict to inhibit the Lieutenant-Governor from transporting or removing the prisoner Langalibalele out of the Colony.

Mr. Moodie said the prisoner was about to be removed to Robben Island by a

process which he believed to be unconstitutional and an infringement of the rights of this Court. The prisoner, a petty Chief, has been tried and sentenced to a punishment unknown to Kafir law, and which could not, therefore, be carried out; in fact, the punishment of transportation must be admitted to be unknown to native law, because the Kafir had no ship to transport prisoners in. He read an affidavit of the Lord Bishop of Natal, appended to which was a copy of the proceedings of the trial of the prisoner, and added that it was an open question whether the principal crime with which the prisoner was charged, was not committed beyond the boundaries of this Colony and in an uncivilized country. He quoted from 26 and 27 Vict., cap. 35, section 1, where it was laid down that crimes committed beyond the bounds of the civilized Government should be tried in the Courts of the Colony; also from 4 and 5 Geo. IV, cap. 69, section 4, showing that before a sentence of transportation can be executed, a place for transportation must be set apart by the Queen in her Privy Council; also from 16 and 17 Vict., cap. 99, section 6, already quoted by Mr. Goodricke in the Executive Council. He stated that the prisoner might be sent away at a moment's notice. He would call their Lordships' attention to Ordinance 3, 1849.

The Acting Chief Justice said the law did not state that prisoners were not to be transported, but that they were to be sent to some place or places as might be directed. A native Chief had power to transport an inferior Chief to any place he pleased; and the Governor, in sentencing Langalibalele to be transported, only did what any native Chief could do. No Act had been quoted excluding an Ordinance of this Colony, which is law here, and which gave despotic power to the Governor.

Mr. Justice Meller said the authority quoted was merely permissive.

Mr. Moodie said surely the prisoner could not be transported till the place of transportation was fixed.

The Acting Chief Justice said it was admitted that there was no statute law against the prisoner's being transported to where the Supreme Chief pleased.

Mr. Moodie contended that the Governor had not the power to transport. He supposed it would be admitted that this Court had full jurisdiction in all cases, and that the only exception thereto, and the only law by which the Governor could take any authority from it, was this Ordinance 3, 1849. People held the case of Macomo out as a precedent to this; but he was not transported, for he was in a part of the same territory as that in which his offence was committed. It has been argued by the supporters of the Governor that he could do almost anything he liked because he was Supreme Chief.

Mr. Justice Meller said surely, if the Governor had the power to pass sentence of death, he could inflict a milder punishment, as had been done in this case.

Mr. Moodie differed from his Lordship, and said it was the business of this Court to pass sentence. Native law, established by this Ordinance, gave the Governor power only to interfere with cases between native and native.

The Acting Chief Justice asked whether, under the 4th section, the Supreme Chief could not remove an inferior Chief for an offence against himself?

Mr. Moodie replied in the negative, as this section must be read with the rest of the Ordinance. When the matter was argued before the Executive, and it was said, "You tried the prisoner and the appeal is to you," it was said in reply, in one breath, "I am Supreme Chief and can do as I like," and, in the next, "I am bound by that section and must take the advice of my Executive Council."

The Acting Chief Justice asked whether the 4th section did not apply to any act of the Supreme Chief.

Mr. Moodie said he argued that the Queen had not the power to sit in judgment. He asked their Lordships to take the whole of this Ordinance together. He referred to the appeal given in the 3rd section.

The Acting Chief Justice said: Suppose, under the 4th section, there was no obligation to allow an appeal, and that the Governor allowed the appeal, how would that act?

Mr. Moodie said by making a crime one against himself, the Governor could bring any case under native law and try it. If he was Supreme Chief, why was he to appoint fit and proper persons to try native cases, and why should there be an appeal to himself?

The Acting Chief Justice pointed out that the 2nd section applied to crime throughout the whole Colony, but the 4th section was quite distinct. The persons to be tried under the 4th section were not natives generally, but only native Chiefs. It was not to be supposed that the Governor was to be constantly travelling over the Colony to try natives, therefore fit and proper persons were appointed to deal with all ordinary cases. If the 2nd section controlled the 4th section, then there were no other persons

to be tried under this law than native Chiefs, whereas only the 4th section was confined to the trial of these Chiefs.

Mr. Justice Meller said there was a machinery given to the Governor under which native law might be administered.

Mr. Moodie said he took an illegal machinery here, because he to whom the Appeal lay tried this case; and he felt sure the learned men who would have to decide this question in England would take a common-sense view of the case, and throw our Ordinance aside.

The Acting Chief Justice said he would do what he believed to be right here, irrespective of what might be done at home.

Mr. Moodie said the indictment would show that the offences were not those which could be dealt with under native law, as their Lordships would see from the report annexed to the affidavit. He quoted the case of the Queen *v.* Mount and Morris, from the "Times."

The Acting Chief Justice said, but Mr. Moodie was to show him that a native Chief could not transport till a place had been fixed.

Mr. Moodie said the prisoner had not been sentenced by the Supreme Chief, but by a Court of Inquiry, composed of "fit and proper persons," such as fathers of those who were killed, and men who fought at the Pass! The Governor had availed himself of the 2nd section in appointing this Court.

The Acting Chief Justice said Mr. Moodie said so, but that did not make it so.

Mr. Justice Meller said he fancied it was a principle of a native Court that every Chief had his own particular way of holding Courts and trying prisoners.

Mr. Moodie submitted again that the Supreme Chief did not try this man.

Mr. Justice Meller said the Governor acted of his own mere notion as a Paramount Chief, in the discharge of what he considered to be a duty.

Mr. Moodie, to show that the Supreme Chief did not sentence this man, alluded to the plural wording of the sentence.

The Acting Chief Justice said there had been a decision under the 3rd section in appeal, and the law said that such decision should be final.

Mr. Moodie said it was begging the whole question to admit that anything connected with this matter was between native and native, or could be dealt with according to native law.

Mr. Justice Meller said Mr. Moodie had shown that the Governor could not transport this man under English law, but he had not shown that it could not be done under native law.

Mr. Moodie submitted that his argument would be borne out by the official record of the trial annexed to the affidavit.

The Acting Chief Justice pointed out that the Governor, according to his own opening speech at the trial, constituted the Court alone, assisted, as he himself stated, by the Secretary for Native Affairs by Magistrates and by Native Chiefs. If he himself has been Supreme Chief, and had called in these gentlemen to assist him at the trial, he did not know that he could more clearly show that he was sitting under the 4th Section than by the words of the Governor's opening address.

Mr. Moodie felt certain the Governor could not be judge in his own Court, and when this matter came to be argued before the Privy Council, they would say that it was the spirit of the Law which should have been acted on, and not the letter. The spirit of it was that the appeal lying to the Supreme Chief———

The Chief Justice said the 4th Section gave no appeal.

Mr. Justice Meller asked how Mr. Moodie showed that the Governor was not competent to try this case?

Mr. Moodie said because even the Queen could not sit in judgment. Besides, the Executive Council did not stand upon the 4th Section, but on the fact that the person who sat in the Court below was not the person who heard the appeal; because in the latter case it was the Governor, with the advice of his Executive Council.

The Acting Chief Justice said Mr. Moodie had not shown him that the Acts he had quoted applied in any way to Native Law.

Mr. Moodie said there was no precedent under Native Law. He asked the Executive Council to show one, and they could not. He supposed Native Law was followed in this instance, though there was an indictment, and a prosecutor, which were unknown to Native Law.

Mr. Justice Meller said it seemed to him that the case was one which had occurred suddenly, and that it was one which was perhaps not entirely provided for by Law; the Governor in this case used the power given him by Law, and supplemented that power to

the best of his ability. But before Mr. Moodie was entitled to the motion, he must show that there had been an infringement of the Law.

Mr. Moodie again submitted that this was no case for trial by Native Law.

The Acting Chief Justice thought one of the fittest crimes to be tried by Native Law would be a case of this kind—rebellion by a petty Chief, against a Supreme Chief. His Lordship asked the Attorney-General whether he had had notice that this application would be made?

The Attorney-General replied in the negative.

The Acting Chief Justice asked whether he appeared without notice?

The Attorney-General replied: "Certainly not."

The Acting Chief Justice said Mr. Moodie had not made it clear to him that the trial of Langalibalele was held under the 3rd section.

Mr. Moodie said that in the judgment the Court continually used the plural pronoun.

Mr. Justice Meller said Mr. Moodie seemed to have first admitted the jurisdiction of the other Court, and then to have denied it. Still it would have been desirable to have heard counsel on the other side.

The Attorney-General said he only came here to see if the Court would entertain the application at all.

The Acting Chief Justice said he had no hesitation in saying that if this case had been tried under the 2nd and 3rd sections, and was not a case between native and native, then this Court would have jurisdiction, and could interfere to prevent the sentence being carried out. But he did not think there was any advantage in letting this case stand over. The application was for an interdict against the Lieutenant-Governor, but he apprehended the Court would never grant that. It had no authority to do so, and could not enforce an interdict except by imprisonment, and the Governor could release himself by his own sovereign power as soon as imprisoned. Therefore, so far as the prohibition against the Lieutenant-Governor was concerned, it could not be granted; the only thing the Court could do would be to interdict the gaoler from parting with the prisoner. He might as well say that he utterly refused to be guided by technicalites in a case of this kind, or to believe that because in the sentence the words "our unanimous judgment," &c., occurred, the Supreme Chief was not acting under the 4th section. If they took Mr. Moodie's interpretation of the 4th section it was utterly absurd; and again, if a special person had been appointed under the 2nd section to try this case, what an outcry there would have been then. He saw nothing in this case, setting aside technicalities and matters of form, to show that the 4th section had not been properly acted upon. By that section the Governor might have put the prisoner to death, but there was nothing in the section to show that he could not banish him. He did not deny that cases might arise under this law in which it would be proper for the Court to interfere; but here there was nothing whatever to show that the Court had any right to interfere with the sentence. He could not suppose that rebellion was a crime which would come under the 2nd section, as being repugnant to the principles of humanity, because now-a-days this crime was not by any means considered in such a light—far from it—but it did seem to be a case in which the 4th section would apply. There was, therefore, nothing before him to show that the sentence was not in accordance with the powers of a native Chief under the circumstances. He had heard nothing whatever to satisfy him that in this case he had any right to interfere. It also had not been shown that a native Chief had not the power of transportation under the 4th section. It having been admitted that a sentence of death could have been passed upon this prisoner, presumption was in favour of the validity of a more lenient sentence, and against that presumption he had heard nothing which would justify him in interfering with the sentence in any way whatever.

Mr. Justice Meller had very grave doubts as to the force or meaning of the Ordinance, and pointed out that the 4th section was utterly inconsistent with the section giving the appellate jurisdiction. But this application was for the issuing of a prohibition against the Lieutenant-Governor, and on that ground alone he thought it must be refused. He added that he had no hesitation in saying that the punishment was a very light one compared with the position in which the prisoner had placed himself by his misdeeds.

The application was therefore refused.

Inclosure 2 in No. 16.

Government Notice No. 117, 1874.

WHEREAS by Law No. 18, 1874, entituled "To make special provision with regard to the employment of Convicts," it is enacted that the Lieutenant-Governor in Executive Council may from time to time frame rules, orders, and regulations for carrying out said Law:

Now, therefore, the Lieutenant-Governor in Executive Council, in pursuance of the powers in the said recited law contained, and of all other powers enabling in that behalf, doth hereby order and direct as follows:—

1. Every native convict who shall, in terms of the 1st section of the said recited Law, be assigned as a servant to any European employer in this Colony, shall be entitled to liberty from the employer for the residence of his wife or wives and children on the place or farm on which the services of such native convict are to be rendered; and at the termination of such period of assignment, every such convict may be remitted back to prison, to undergo the unexpired period of his sentence, or may be again assigned out to service for said period.

2. The employer shall be bound to provide the said convict, together with his wife or wives and children, with good and wholesome food, and to erect on his land the ordinary huts used by the natives for lodging.

3. The employer shall be entitled to the services of the said convict at all reasonable times, and also to the services as domestic servants of any unmarried female belonging to the family of the said convict above the age of ten years, and to the reasonable services of any male belonging to such family above the age of twelve years, at such rate of wages as shall in each case be fixed by the Magistrate, taking into account the obligations of the employer.

4. The employer shall not be entitled to the services of any female belonging to the family of the convict after her marriage, nor to the services of any male belonging to such family not residing with such convict on such land or farm.

5. Any male, not being himself a convict, and being over the age of eighteen years, belonging to the family of the convict, and who may be residing with the family of the convict so assigned on the land of the employer, may at any time leave such family and employer, and enter the service of any other person he may prefer; but he shall not be at liberty to do so until the period has expired for which the convict has been assigned, if the employer is willing and ready to employ and pay him the current rate of wages.

6. The family of any such convict shall not be bound to live on the place or farm of the employer, but may reside on any other place or farm approved of by the Magistrate having jurisdiction in each case: Provided, however, that in every such case of non-residence on the employer's land, the employer shall not be bound to find or to provide them with either food or lodging.

7. Every convict assigned under the said recited law shall, upon such assignment, be registered by the Magistrate of the county in which he is to be employed; and the register shall contain the name and description of the convict, his term of service, and the names and apparent ages of his wife or wives and children.

8. The Magistrate shall stipulate with the employer the amount of wages per month payable for the services of such convict, and shall insert the same in the register hereinbefore required to be made.

9. The wages to be paid by the employer in respect of the services of any such convict shall be paid monthly to the Resident Magistrate of the county in which the employer shall reside, or to the visiting Magistrate, and shall, by such Magistrate, be accounted for and be paid to the Colonial Treasury, precisely as any other public revenue received by such Magistrate: Provided, however, that the Lieutenant-Governor may, by instructions to the Magistrate whenever he shall think fit, direct that the wages aforesaid of any convict or class of convicts shall be paid monthly by the Magistrate, in whole or in part, to the convict himself, instead of to the Treasury.

10. In the event of the non-payment by the employer of such stipulated wages, then, after the expiration of one month after written demand for such wages in arrear, the Magistrate may, without further process, issue the usual writ to levy the amount due by execution and sale of the goods and chattels of the employer.

11. If any employer shall feel himself aggrieved by reason of the Magistrate having so seized in execution and sold his goods and chattels, he may, within six days after such

execution and sale, note an appeal to the Judicial Assessor, whose decision on appeal shall be final.

12. All moneys in respect of wages for the services of convicts assigned under the said recited Law, except such as are specially excepted at the end of Rule 9, shall be paid into the Colonial Treasury, to the credit of an account to be called "The Convict Relief Fund."

13. The Lieutenant-Governor may, from time to time, as he may think fit, by warrant under his hand, draw upon such fund for the purpose of relieving from want or rewarding for good conduct any individual native convict, or for the purpose of enabling any native convict on the expiration of the period of imprisonment to acquire the means of re-establishing himself in the Colony: Provided that in no case shall the amount so granted for relief, reward, or otherwise, exceed the aggregate amount of the wages earned by the said convict during his imprisonment.

14. Every native convict assigned under the said recited Law who shall be found at large on lands not belonging to his employer, or on any road, without a ticket of leave from his employer, may be arrested by any householder, and forwarded to the nearest Resident Magistrate, to be dealt with according to law.

15. Every Law applicable to convicts confined or employed in any gaol in the Colony shall, subject to the provisions of these regulations, be applicable to convicts assigned under the above-recited Law; anything herein contained to the contrary notwithstanding.

16. The employer shall be bound to grant any convict a ticket of leave for the purpose of lodging any complaint to the Magistrate against such employer: Provided that if and when it shall appear that the representation or pretence upon which such ticket shall have been obtained is false or frivolous, such native convict shall be liable to have his term of service extended for such period not exceeding one month for every such offence, as to the Magistrate or visiting Magistrate shall seem fit.

17. Any employer refusing such ticket for such purpose, shall, on conviction, be liable to a fine not exceeding 10*l*.

18. The Lieutenant-Governor may at any time cancel any assignment of the services of any convict under the above-recited Law, or direct any convict to be sent to any gaol, there to undergo his sentence, or any unexpired period thereof, instead of remaining assigned under said Law.

19. Any injury or assault upon the person of any convict by his employer or other person shall be dealt with and punished in the ordinary course of Law.

20. In the event of the death of any employer before the expiration of the period of imprisonment imposed upon any such convict, then the Lieutenant-Governor may re-assign such convict to some other person, and the provisions of these regulations shall apply to such re-assignment.

21. In the event of the death of the convict before the expiration of his period of imprisonment, the employer shall be bound to supply his wife or wives with the necessary food for one month after the death of such convict.

22. No convict assigned under the above-recited Law shall be removed beyond the limits of the Colony.

23. No employer shall have the power to sub-assign the services of any convict under said recited Law, or under these Regulations, to any third person, without the permission in writing of the Resident Magistrate of the country in which he shall reside.

By his Excellency's command,

(Signed) D. ERSKINE, *Colonial Secretary.*

Colonial Office, Natal, April 10, 1874.

No. 17.

The Bishop of Natal to Colonial Office.

My Lord, 37, *Phillimore Gardens, W., October* 16, 1874.

WHEN I had the honour of the interview with your Lordship on Monday the 5th instant, the subject of the release of Putini's tribe was mentioned; and I understood from the remarks of your Lordship and Mr. Herbert, that the Lieutenant-Governor of Natal had reported officially that the whole tribe had been released and restored to their location. I may have misapprehended your Lordship's language with regard to the latter point. But I heard from Colonel Durnford, R.E., repeatedly, before I left Natal, that the Lieutenant-Governor had solemnly promised to a number of Putini's men the release and restoration to their location, as above, of the whole tribe, as a reward for their exemplary conduct while employed under him in the very difficult and trying work of

destroying the Passes of the Drakensberg, and that he did this in the presence of certain officials, including himself and Lieutenant Beaumont, Private Secretary to his Excellency, the words, as uttered by the Lieutenant-Governor, being interpreted to the natives by the Acting Secretary for Native Affairs (Mr. John Shepstone). I expressed at the time, to Colonel Durnford, my doubts, based on my knowledge of certain facts, whether the promise in question would really be fulfilled. And I know that in consequence, Colonel Durnford conferred again with his Excellency on the subject, and, when I left Natal, he was perfectly satisfied that the arrangement to which not only the Lieutenant-Governor's, but his own good faith, in reliance on the Lieutenant-Governor's word was pledged, would be duly carried out. Nevertheless, my past experience had taught me to distrust the proceedings of the Natal Government in these matters. And I ventured to express to your Lordship some doubt as to the correctness of the report, which was current when I left the Colony, that the tribe had been released and restored, until I understood that official information to that effect had reached your Lordship.

I now beg to lay before your Lordship an extract from a letter which I have just received from a thoroughly trustworthy source, dated Natal, September 4, 1874 :—

"Frank Lyell (son of Lieutenant-Colonel Lyell, and nephew of Sir Charles Lyell, who holds an appointment in the Colony under Colonel Durnford), started last Monday for Estcourt, in charge of some more of Colonel Durnford's Putini people. But, alas! all things are wrong there. Frank Lyell found, from Mr. Wheelwright, that only the first ninety young men were allowed to go to their location. All the rest, on arriving, are given passes by Mr. Wheelwright. 'Bearer is allowed (or has permission) to live on a white man's farm,' and are sent off 'to look for a white man;' when they have found him, they tell Mr. Wheelwright, who makes the arrangements with him, the white man undertaking to feed the man's family, if he has it with him, for a certain time. That is all I know; but it was Mr. John Shepstone who sent up the order to Mr. Wheelwright, that they were by no means to go back to their location."

It can scarcely be doubted that the "arrangements" made with the white man, would include the provision that the native and his family should work for him when required. In other words, the great body of this tribe, of 5,000 people, which has never been tried, much less convicted, of any crime, which has been declared, in the quasi-official "introduction," to the official records of the late "trials," to have been "hardly dealt with;" "its dispersal was a grave blunder,"—"a step, apparently unwarranted, which has occasioned great loss and hardship to innocent members of the tribe," and which, it was understood, before I left Natal, though I cannot vouch for the fact, had been pronounced by the Commission appointed to examine into their case, to be free of any serious offence, have been reduced to a state of forced servitude, and made to supply the demands of "farmers and others" for native labour, only being allowed apparently the liberty to choose their own white men. In short, this would seem to be nothing else than the application, on a large scale, to innocent persons unconvicted of any crime, but evicted from their land by a "grave blunder" of the Government, of the Proclamation by which, under a Colonial Law, passed during the recent excitement, not only State convicts, but their innocent families, were to be assigned all over the Colony to work out the time of the sentence pronounced upon their heads, as servants for private individuals.

It is obvious that, if the statement in the above extract is true, as I fully believe it to be, the promise made to the members of Putini's tribe, in the hearing of Colonel Durnford, and the report made to your Lordship, are equally illusory, and that it would be a mockery to speak of this as evincing any desire on the part of the Government, "as restitution is possible, to do what it can to remedy a State blunder, which could only have been committed during a time of panic."—*Introduction to Official Records*, page xxxvii.

Should your Lordship decide to release the Chief and his son, at present illegally detained at Robben Island, there are one or two suggestions, which, with your Lordship's permission, I would venture to submit for your consideration, as to the way in which the two tribes might be dealt with, so as to preserve, as much as possible, the prestige of the Government, and perhaps draw out of the present misery a real future benefit, not only for themselves, but for the other tribes, and for the Colony at large.

I have, &c.

(Signed) J. W. NATAL.

P.S.—Messrs. Spottiswoode will forward to-morrow (Saturday), to your Lordship's address at the Colonial Office, six copies of my pamphlet complete, with the Appendix.

J. W. N.

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No. 18.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin Pine, K.C.M.G.

Sir, *Downing Street, October* 19, 1874.

I HAVE to call your attention to my despatch of the 12th of June.*

In the last paragraph of that despatch I requested you to furnish me with certain explanations and information with respect to the Law No. 18 relating to the employment of convicts.

I shall be obliged by your forwarding to me these explanations as soon as possible.

I have, &c.

(Signed) CARNARVON.

No. 19.

Colonial Office to W. Shaen, Esq.

Sir, *Downing Street, October* 20, 1874.

I HAVE laid before the Earl of Carnarvon your letter of the 6th instant,† and I am directed by his Lordship to assure you that the several matters to which it relates are engaging his most serious attention.

I am to add, as regards the Law No. 18 relating to the employment of convicts, that Lord Carnarvon is awaiting explanations with regard to it from the Lieutenant-Governor.

I am, &c.

(Signed) W. R. MALCOLM.

No. 20.

Colonial Office to the Bishop of Natal.

My Lord Bishop, *Downing Street, October* 23, 1874.

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter to him of 16th instant‡ with respect to the treatment of the members of Putini's tribe.

Lord Carnarvon has written by the present out-going mail to the Lieutenant-Governor of Natal pointing out that the statements contained in your letter are of a very grave character, and he has called upon him to give full and immediate explanations with respect to them.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

No. 21.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin Pine, K.C.M.G.

Sir, *Downing Street, October* 26, 1874.

IN your despatch dated the 3rd of August last,§ you wrote with reference to the tribe of Putini that, looking to the small part which they took in actual hostilities, you had resolved to mitigate their punishment as much as possible; that it was your intention to restore the bulk of the tribe to liberty; and that you would also consider whether you could safely restore them to their location.

2. It has not hitherto been made clear to me what part this tribe took in the recent disturbances. I cannot gather from any of your despatches or reports that there was any overt movement on their part, still less any action in the sense of direct hostilities, but I inferred from your despatch that you considered the punishment inflicted upon them to be unduly severe, and that you would take immediate steps to remove any injustice which in a moment of excitement might have been done.

3. I am now informed by the Bishop of Natal that before he left the Colony you had promised a number of Putini's men the release and restoration to their location of the whole tribe, as a reward for their exemplary conduct while employed under

* No 6 of Command Paper [C. 1119] of 1875. † No. 16. ‡ No. 17. § No. 8.

Colonel Durnford, R.E. This promise it is stated was made by you publicly in the presence of certain officials, including Colonel Durnford and Lieutenant Beaumont, your words being interpreted to the natives by the Acting Secretary for Native Affairs (Mr. J. Shepstone).

4. It is, however, stated that this promise, if made, has not been observed; but that, on the contrary, only a very small number of the young men of the tribe have been allowed to go to their location. The remainder, it is stated, have, on arrival, been provided with passes in the following form:—"Bearer is allowed (or has permission) to live on a white man's farm;" and have then been sent off to look for a white man with whom to live. It is suggested that the terms upon which this is arranged includes, amongst other things, an obligation on the native to work for the white man when required; and that by this means the great body of this tribe, against whom no serious offence is charged, have been reduced to a condition differing very little at all from that of forced servitude.

5. It is obvious that statements such as these coming from and through such an authority, cannot be overlooked, and that they can only be satisfactorily disposed of by a full and circumstantial explanation. It must be superfluous to point out that any promise if made by you should be performed with the most scrupulous fidelity, and that any other course of action would be calculated to bring the Government into the deepest discredit.

6. I therefore hope that you will be able to show that the facts are materially different from the statements embodied in this despatch, and for this purpose I must request you to give, with the least possible delay, a full and precise account of all the measures taken for disposing of the members of the Putini tribe, showing whether any and what number have been restored to their location, and whether any and what number have been sent to live on white men's farms, and, if any have been so sent, stating clearly and fully the different arrangements under which this has been done.

I have, &c.

(Signed) CARNARVON.

No. 22.

Lieutenant-Governor Sir Benjamin Pine, K.C.M.G., to the Earl of Carnarvon.—(*Received November* 2.)

My Lord, *Government House, Natal, September* 24, 1874.

I HAVE the honour to inclose a letter sent to me by Mr. John Bell Moodie, a young advocate of this Colony, for transmission to your Lordship, commenting on the trial and proceedings against the Chief Langalibabele and his tribe. Mr. Moodie was employed by the Bishop as Junior Counsel for the Chief, on the appeal to the Executive Council.

2. It does not seem necessary for me to trouble your Lordship with a repetition of what actually took place on the trial of this man and his tribe for revolt against the authority of this Government, and shooting down Her Majesty's loyal subjects, sent to preserve the peace and enforce obedience to the law. On this subject I have only to refer your Lordship for information as to what actually did take place to my previous despatches; to the evidence and Reports enclosed in these despatches; and to the despatches from the Cape Government, and correspondence and Reports therein referred to.

3. I and my Government differ from Mr. Moodie as to what is, and what is not, Kafir law, and what are equitable and legal proceedings before a native Court. On these two points I would bring to the notice of your Lordship that I was assisted by the knowledge and experience of the Secretary for Native Affairs, some of the oldest resident magistrates and administrators of native law in this Colony, and some of the most intelligent of its native Chiefs.

4. The trial, so called, of Langalibalele, commented on by Mr. Advocate Moodie, was not a trial of a prisoner in the ordinary sense, but was an inquiry to ascertain the whole circumstances of the case, and its ramifications so far as other tribes were concerned. The position of Langalibalele and his leading men was clear from the beginning; they were taken red-handed resisting the Government, assisted by their tribe, all fully armed, and never attempted to deny these facts. By their own law the punishment for such an offence is death. I may here remark that it seems very unreasonable to object that the native law was not exactly followed in these proceedings, because it was not

carried out in all its rigour. If the native law was tempered on this occasion by considerations of mercy and justice, it is certainly not for the prisoner and his supporters to complain of such innovation. Mr. Moodie's assertions that banishment, which I suppose to include imprisonment, is unknown to native law, is unfounded in reason and in fact.

5. The complaints that Government, during the last thirty years, has done little or nothing to civilize and improve the natives residing in Natal; that the past system of governing these people has not been attended with complete success; or, as Mr. Moodie expresses it, that the "whole thing is tumbling to pieces," and that the successors of those who have so governed will get the blame; that these natives are gradually becoming so numerous, wealthy, and powerful, as to be tempted to form combinations and to set Government at defiance; and that no control of these people sufficiently stringent to prevent these evils exists, may be to some extent true, but are wide questions, which it seems unnecessary for me to enter upon in discussing the present inclosure. In answer, however, to Mr. Moodie's question, what could have been easier than to obviate these alleged evils? I would say, that it is much easier to write about them, and to flippantly impugn the policy and conduct of a gentleman of Mr. Shepstone's long experience and knowledge.

6. One chief object of the mission of Mr. Shepstone, the Secretary for Native Affairs, to England, is to submit to your Lordship the ideas of this Government on these important points, and to solicit your Lordship's approval of opening a door of escape and securing a residence in territory under British control beyond the boundary of this Colony, for that portion of the native population who may be disinclined to submit to the alterations in their habits, and to the more direct and efficient control by Government, which their own improvement and the future peace of this Colony alike demand.

7. For any further information as to the real facts of this case, and as to the intentions of this Government as to the future management of the coloured population in this Colony, I have to refer your Lordship to Mr. Shepstone, Secretary for Native Affairs, now in England, who is in possession of its views on this subject.

I have, &c.

(Signed) BENJ. C. C. PINE.

Inclosure in No. 22.

My Lord, *Pietermaritzburg, Natal, September* 13, 1874.

I BEG most humbly to approach your Lordship, and request to lay before you certain facts which I believe you have had no opportunity of learning from the only sources of information at your command. The importance of the subject will, I trust, be a sufficient excuse for trespassing on your Lordship's time.

It is not for me to express any opinion on your Lordship's views regarding the Langalibalele matter, but I nevertheless take the liberty of assuring you of their correctness, and that they would be strongly confirmed had your Lordship the whole, and not one-half, of the facts before you.

I am an Advocate of the Supreme Court of Natal, and the son of the late Colonial Secretary for the Colony, Mr. Moodie, and having mixed much with the natives of Natal, have obtained some considerable knowledge of and influence with them.

The prosecutors of the native Chief Langalibalele, after refusing him counsel, at length resolved to appoint Mr. Escombe, who lived at Durban, fifty miles off, and who was entirely unknown to, and unsympathising with, the natives. On the morning of the trial, and when it was supposed that Mr. Escombe would appear as the prisoner's counsel, the native Chief sent me a stealthy message by a native constable, saying that he would not have an Advocate appointed by his prosecutors, and that he wished me to advocate his cause. He was kept in such close confinement, and was so strictly guarded, that he had great difficulty in sending this message. I at once applied to the Resident Magistrate, the proper person, to see the captive. Permission was refused. Application was then made in writing, and in an official letter I was informed that the matter was referred to the Governor. I have means of knowing that the application was duly forwarded, but from that day have not been favoured with a reply of any sort.

From the tone of your Lordship's despatches, it is evident that these matters have not been brought to your notice.

The Statute laws of this Colony allow the right to any man in prison to see a legal adviser, and by refusing the prisoner this right, the law was abrogated.

Firmly trusting that your Lordship, whom Providence has placed in so responsible a position, will not at the great distance from Natal, and where it is so difficult to judge,

consider it presumptuous, I shall venture to make a few remarks to shew the injustice that has been done, and with confidence ask your Lordship's permission to lay before you what was suppressed at the trial of Langalibalele.

The feeling of this Colony kept the native Chief a close prisoner in strict confinement. He saw no friend. He had no adviser. He had not the chance nor the intelligence to prepare any defence; and I believe that until the morning of his trial he had never heard of the long written indictment against him, and that he had no notice of it.

At the trial itself the strangest anomalies prevailed. It was stated to be by native law. There was not a single element of trial by native law in it. Native law knows nothing of a systematic prosecution, and an indictment or a prosecutor. Yet all these were present. Native law not only permits, but constantly employs in its trials, not one, but twenty Advocates. Here there was no Advocate allowed. In a native trial everyone that the audience will listen to may speak for or against the accused. As at a public meeting in England any one may speak who is competent to obtain a hearing, so in a native trial any of the friends of the accused may argue for him, or call witnesses for his defence. But in the face of the red jackets and the fixed bayonets, no one spoke or dared to speak for this man. All the disadvantages of both systems, English and Kafir, were arrayed against him. He had the advantages of neither. While on the one hand there was a systematic and consistent prosecution, there was, on the other, none of the laxity of native law. While the prosecution availed itself of one of the privileges of native law, namely, to find a man guilty without evidence, it gave him nothing in return.

The punishment was entirely unknown to native law, which knows of nothing but the fine of cattle or death. So that neither the proceedings nor the sentence were legal.

His Judges were composed solely of those against whom he had offended; and of cringing natives, who, the printed report will show, took the whole of the first day in abusing and cowing the prisoner; and who, in all matters, would have cringed to the Supreme Chief as the cur cringes to the mastiff. One of the white judges was the father of a son killed at the Bushman's Pass. Another, a gentleman who had been present at the retreat from that Pass, and who had commanded some of the volunteers. There was also Mr. Shepstone, whose authority, it was alleged, had been set at defiance. And, supreme of all, there was the Supreme Chief: he who was the leader against the conquered man: he whom the Colony was urging on to vengeance; whose person the indictment said the prisoner had wounded: he to whom the Chief's only and final appeal lay by law: he sat as the judge in his own cause.

The Natal Ordinance No. 3, 1849, by which, and by which only, native law is conditionally established in this Colony, says that, when a Court is established for the trial of native cases, that the Supreme Chief shall "appoint fit and proper persons." This Court was constituted under that law, and of all the judges sitting upon the offending Chief, however estimable they may have been as men, there was not one fit and proper person, and not one who possessed the requisite qualities of a judge.

All the evidence against the prisoner was brought forward. Nothing, and it was said there was much at hand, was produced in his favour. But, notwithstanding this, and that there was no cross-examination, there is no intelligent lawyer at a distance who, in reading the indictment and the printed evidence, but will say that no single charge of a serious nature in that indictment was proved againt the accused.

The personal crimes of the prisoner, as compared with the charges in the indictment, were of the most venial kind. The real crimes, such as they were, were tribal, and the Government treated them as such, and, in punishing them, they applied the true principle of native law and punished all—the innocent with the guilty. The mass was held responsible for what the few did. They drove the whole tribe out of the Colony, and confiscated their land and cattle. They took all they could prisoners, men, women, and children, and bound many of them over to the Colonists. The innocent many, and there were thousands, suffered with the guilty few. They then secure the Chief; secure him flying, and after he had given due notice that he meant to fly. The whole principle is then reversed; an unknown system of justice is adopted: the many having been punished, the one is again to be liable for their acts. Not satisfied with having utterly destroyed the tribe for a tribal offence, an individual is to suffer for crimes which the printed evidence shows he never committed and could not control.

I beg to call your Lordship's attention to the fact that, notwithstanding the plain words of the prisoner's plea, and notwithstanding that the printed evidence proves the accused to be guiltless of all the principal charges against him, that the Government of this Colony have asserted, and continue to assert, that this man pleaded guilty.

Few men judge for themselves, and the Colony has been misled by, and believes, this extraordinary assertion. The prisoner, so far from pleading guilty, plainly denied all the principal charges, and excused or justified the rest.

The judgment of the Executive Council, to whom I had the honour to appeal with a senior advocate, an appeal, my Lord, to those who tried the prisoners; this judgment again repeats the bold assertion—an assertion which can be so easily disproved by a glance at the prisoner's printed plea.

Native law, established in this Colony by the Ordinance No. 3, 1849, can only apply to cases between native and native. The plain wording, and the true spirit and intention of that law, and Her Majesty's Royal instructions, was to permit the native law to prevail only in matters between themselves, and then only in certain cases.

The indictment against the native Chief will show that none of his alleged crimes were against natives, and that, therefore, they could not be tried by native law. The offences were against the white man, the Queen, her authority, and the statute laws of the Colony, and the accused could only have been legally tried in the Supreme Court, and by a sworn jury of nine good Englishmen.

To apply the native law, therefore, to the case of Langalibalele, while it secured a certain, and already determined on, conviction, was a wholly illegal act. It is a fair illustration of how a system, which was established only to meet the more harmless crimes and customs of the natives, among themselves only, can be misapplied so as to deprive them of all the rights of British subjects.

The principal charge in the indictment was illegally obtaining possession of guns. This was the true origin of the whole dispute. But it was an offence liable to fine, and it was a contravention of a Colonial law. It could not be dealt with by native law nor tried in a native court. The colonists and other British subjects supplied these weapons as a reward for the sweat of the Kafirs, brow in finding them diamonds at the fields.

Strange to say, notwithstanding that this was the principal charge in the indictment, the Government continually asserted that they were ready to register the guns, and that it was only a question of registration. How utterly absurd then, was it, to prosecute the prisoner for obtaining the guns we were ready to register, and allow them to keep. If such were the case, why was the prisoner not indicted for refusing to register? It was an utter stultification of the indictment.

The averment of the prosecution that it was only a question of registration, was an acknowledgment that the getting of the guns was condoned; and it is not now the question whether it was really confiscation or not. The prisoner had neither the ability nor the opportunity to show it. Counsel was not allowed at the trial, and the matter remains little understood. To say the least, it is strange that the root of the whole matter should remain such a mystery.

For the reasons I have given it is humbly submitted to your Lordship that the Chief has had neither a legal nor an equitable trial; that he has never had any fair opportunity of showing what induced him to refuse to come to head-quarters, and then to fly, no chance of showing the circumstances under which his men got, and were reluctant in registering the guns. These are the only things fixed upon him, and his punishment is entirely beyond his offences—his personal offences, and his tribe have been punished for what they tribally did.

As to the transportation of the prisoner, to a savage it is a terrible punishment. An educated man has his thoughts, his books, and his religion to fall back upon. The native, who has led the most social life, has nothing to console him, or to support him in his misery; to him death would have been preferable, and had the farce of native law been carried out to its full extent, he would have died untried by the order of his supreme Chief; died for crimes for which, in the legal courts of the Colony, he must have received a punishment of 20*l.* fine, or six weeks' imprisonment.

Before concluding this letter, and as the subject is most interesting and of vital importance to a large mass of people, the natives of this Colony, I entreat that I may be allowed to refer to it.

With the most unlimited power, with the support of the Home Government, the Colonists, and the natives themselves, our Government has not during thirty years of peace, my Lord, done one single effective thing, either to civilize the natives, or in any way to diminish or control their growing strength. Because they have had all they wanted, land, cattle, and wives; because who have pampered them, and almost forced the food down their throats, and because they have not rebelled against this delightful state of affairs, and cut the throats of their protectors, we assert that we have governed them, and the Government takes the credit of continued peace.

But, my Lord, we have allowed these unfortunate people to grow in idleness, in

insolence, and in strength, to live in large and powerful masses until they are strong enough to kill every colonist in one night, and eat them for breakfast.

The whole thing is tumbling to pieces. The successors of those who have governed badly, and who have been favoured by circumstances, will thus get all the blame. Tribe after tribe will be shot, because by our mismanagement we have tempted them to set us at defiance. We have done all we could to maintain everything Kafir, and to keep the tribes and locations united.

The history of the contact of savage races with the white man is interesting, but need not now be entered into. It may, however, be safely asserted, and it could be proved, that the Zulu is different from other natives, and that he has every quality necessary to enable him to survive that contact, and that there is no necessity that he should die out. There is not one of the causes existing in Natal which has led to the extinction of native races elsewhere. The Kafir is hardy, healthy, and saving. He can acquire, and retain; and is daily acquiring and greedily retaining landed property. He is too careful of his money to drink. He has no disease; and has nothing to fight for, unless we again give him guns, and then try to retake them!

What an opportunity has thus been lost by our idleness and incapacity. What was easier, my Lord, with thirty years of peace; of leisure; of despotic power; of support on all hands, than to fortify ourselves? To subdivide these tribes? To break up gradually their large locations; and by giving each family or man their lot of land, create an individual stake in the Colony and its welfare. What easier than with the tools at hand to have constructed a system of police at the expense of the natives, that would have ensured their perfect and absolute control. What more simple than to have established a system of industrial education at the expense of the natives? There was nothing, my Lord, to prevent these things being done but the absence of a competent man. The tools and materials were all at hand, but there was no mechanic.

Instead of doing anything good, we seem to be bent upon doing what was stated before—maintaining everything Kafir—keeping every strong tribe united, every location compact, and feeding the natives to shoot them. As was before stated, the whole thing is falling to pieces. Those who mismanaged it, and get all the credit, will slip away from the catastrophe, and their unfortunate successors get all the blame!

My Lord, it is late, very late, but not too late. Let England—do you, save these people. Let their strength be divided. Let their large locations be cut up, and the land portioned out. Let each man have an individual stake in the Colony, if it be possible. Let a sufficient police, and a system of education, be established, at their own cost, for they are wealthy. Let the world know that a black race may exist in peace along side of a white one.

I remain, &c.
(Signed) JOHN BELL MOODIE.

P.S.—What the prisoner pleaded is faithfully recorded in an extra to the "Natal Witness" newspaper, of the 30th January, 1874. That newspaper contains a fair report of the trial, published daily. Comparison with the newspaper report and the report compiled by the Government, will show that the former is far more favourable to the Chief, and it is correct.

J. B. M.

The Right Hon. the Earl of Carnarvon,
Secretary of State for the Colonies.

No. 23.

The Bishop of Natal to Colonial Office.

37, *Phillimore Gardens, Kensington, W.,*
November 13, 1874.

My dear Sir,

BY the late mail I have received letters from Natal, and I inclose some extracts from them, with which I think you will be interested, viz.:—

(i.) A report from the Military Surgeon attached to the troops at Maritzburg upon the scar in Deke's leg.

(ii.) A statement showing the unfitness of the gaol at Maritzburg as a place of detention for prisoners confined for any length of time. I believe that the gaol at Durban is much better.

(iii.) A passage showing the present condition of Putini's people.

(iv.) A passage showing that the old Induna Umhlaba and his family were still deprived of the Government allowance of food when the mail left Natal.

(v.) A printed slip giving an account of Deke's examination by the Indunas and Mr. A. Shepstone.

(vi.) An account (printed) of the treatment of one of the girls of the "Amahlubi," who were given by Captain Lucas to the son of the Chief Pukade, and violently deflowered by him.

I found also that Langalibalele's young sons, Mazwi and Siyepu, are still afraid to go to Bishopstowe, though very desirous to do so.

Please do not trouble yourself to reply to this, but I thought that Lord Carnarvon, as well as yourself, might like to see these extracts, and that possibly directions might be sent—*e.g.*, in the case of Umhlaba and of Mazwi and Siyepu—by the outgoing mail.

Yours faithfully,
(Signed) J. W. NATAL.

I see that, in the printed statement inclosed, the two girls are said to belong to Putini's tribe, not to Langalibalele's, as I imagined. This only intensifies the outrage and wrong committed in the case, if the facts are as here stated, and I do not doubt that they are substantially correct.

J. W. N.

Inclosure 1 in No. 23.

Certificate by S. E. Maunsell, Esq., Surgeon, attached to the Troops at Maritzburg, as to the nature of the wound in Deke's knee, said by himself and others to have been caused by a bullet fired by Mr. John Shepstone, at Matyana.

"I certify that I have carefully examined a cicatrix on the outer and back part of the right thigh of Deke, a Kafir of Matyana's tribe, and I am of opinion that it is the result of a bullet-wound, which passed through the fleshy part of the thigh, at its outer and back part, about 6 inches above the right knee; also that the missile most probably entered from the right front."

(Signed) S. E. MAUNSELL, *Surgeon.*

Peitermaritzburg, September 29, 1874.

Extracts from a Letter dated Natal, October 5, 1874.

Inclosure 2 in No. 23.

"Colonel Durnford says that the day before yesterday, as he passed the gaol, he met a line of some twenty men of Langalibalele's coming out. They walked so strangely that he went up and asked what was the matter, and was told that they were all ill. 'They appeared to be racked all over with rheumatism.' He thinks that they were being sent to, perhaps, Zatshuke's place for a change."

Inclosure 3 in No. 23.

"He has 'done the best he can' for the Putini people, and has got back part of their location, though a large slice of some of the best land (it is all good) has been given to a 'follower' of the Shepstones. In this part he has collected the larger part of the tribe. The order sent up by Government was to allow all to go there who were not already settled on farms. I objected strongly to this when I heard of it, and the Colonel said he was only waiting to let the first party take root again, and he should then press for them. Then about the food. They were at first nearly starving. H. Shepstone had 'no authority' to feed them. The Colonel went up and said to him, 'If you don't feed them, I shall, and that will not look very well for you.' So H. Shepstone promised to feed them, and wrote down for 'authority.' The orders (sent up in reply) were that H. Shepstone should feed the very old and the little children, but should only advance help, to prevent starvation, to the able-bodied men, who are to be 'put out' to work the debt off. That accursed system, which is really slavery, is being quietly worked. Colonel Durnford says he is sure of it, and that at any rate they, the Putini men, shall all work for him, that is, the Government, and get well fed and clothed and well paid; and he has called out 47 young men at once who have no families and

no huts to build. One of them tells him that his little brother was carried off by a white man, and is in Durban; he does not know the white man, but thinks he could find him; the Colonel is going to Durban to-morrow or next day, and he goes with him to try.

"But there's slavery!"

Inclosure 4 in No. 23.

"I have had no answer as yet (October 5) from the Acting Secretary for Native Affairs to my letter of September 19, about Umhlaba's food. But he has been ill with influenza for the last ten days, and is now said to be going to Durban. I said that Umhlaba might send here for some mealies if they were really starving, and I thought that A. must have given some out, since they had not come to me. But the day before yesterday he came to say that they were really starving. It was three weeks since they had been forbidden to receive Government meal. 'He supposed that the authorities wished him to eat up his own Inkos (the Bishop). But he was not going to do that, not if he could help it.' So they had 'done without' all this time, begging, I suppose, and getting roots or arum leaves, &c. He really is very thin with it, and confessed that soon he would be obliged to ask me for food; so his girls are coming to-morrow for some mealies. But I must really send in a reminder to Mr. John Shepstone, considering the urgency of the case, the family consisting of thirty persons. He looks almost as wretched as when he came out of the Tronk. Dear old fellow! Refusing to eat up his own Inkos!

Extract from a Letter dated Natal, September 23, 1874.

COLONEL Durnford has gone up again to see after the Passes and the Putini people. I told you that Mr. Beaumont (the Governor's Private Secretary) agreed that they were ordered to go to their own location, whereas Colonel Lloyd said that he had come late that day to Government House, and did not understand this, and that Mr. Wheelwright was sending them out with their families to work for white men, as he told F. Lyell, by the order of Mr. John Shepstone. Manxele, too, (the Induna of the Secretary of Native Affairs), said they were ordered to go to their old homes. Colonel Durnford hunted Mr. John Shepstone for some days, but could not catch him, till at last he wrote him a note on Sunday, September 20, to say that he should be in town waiting for him until 12.a.m., and would he name his own hour. He did so, and he "had it out." The particulars we don't know, because the Colonel went off that same day, only sending a line to say that he had got an order in his pocket for all the Putini people to return to their old location, "with difficulty obtained, signed and read by me before it was closed. I am glad for these poor ones." So should I be; but I suspect that when he gets up there he will find that his Excellency's order, "of course," will not interfere with those who have bound themselves to the white men for a term of years—that is, the bulk of the tribe—but we shall see. I know that Colonel Durnford had to write to Colonel Lloyd that the present proceedings "involved a breach of faith on the part of the Governing Power, which could never have been intended by his Excellency." I say that it is also acting in opposition to the wishes of the Secretary of State, expressed in disallowing that Convicts Bill; and this brings me to our own proceedings here.

Last Tuesday all the old men of Langalibalele were sent for by Messrs. John and Arthur Shepstone, and were asked how they were getting on, and if they were comfortable. Six of them were asked for by Mahoiza that they might belong to him, and go to his kraal; but, on their refusing to go, they were told that they might stay where they were, and that the Government would still feed them; they belonged to the Government, not to the Bishop. Only Umhlaba and his family were excepted, and were told that they belonged to the Bishop, and would be fed by him. Umtungwana represented that the Government had fed them all along; but Mr. John said that that was a mistake then, the Bishop ought to have fed them, since they had been given to him. So I wrote the following letter, and sent it on Monday morning:—

"Sir, "*Bishopstowe, September* 19, 1874.

"In the absence of my father, the Bishop of Natal, I respectfully request to be informed if his Excellency the Lieutenant Governor has been pleased to make any alterations in the arrangements for the maintenance of Umhlaba and his family. Hitherto,

both before and since the Bishop consented, at his Excellency's request, to "allow Umhlaba and his family to reside on the land at Bishopstowe; they have received, in common with the other captives, an allowance of mealiemeal from Government. But Umhlaba informs me that, as he understands, this allowance is now cut off, because he and his family are in the Bishop's hands.

"As I am not aware of any alteration having been made, I can only suppose that there is some mistake, and I shall be glad if you will authorize me to inform Umhlaba that such is the case, as he and his family are entirely without means of subsistence until they can raise a crop of mealies, some six months from this time; in furtherance of which object I would also request that his Excellency would be pleased to furnish them with the necessary seed-corn and hoes.

"I have, of course, made temporary arrangements for feeding them, but must under the circumstances request from you an early reply.

"I have, &c.
(Signed) "H. E. Colenso."

He has not answered as yet. And, if Government agree to feed them for the six months, it will be all right; if not, I suppose we must feed them under protest until I can hear from you. And if Government try to make out that you took them—asked for them—like other white men, promising to feed them in return for their labour, I shall emphatically deny it, and call their attention to the fact that they are doing exactly what Lord Carnarvon disallowed.

[See p. 279 of "Remarks, &c," for the account of Umhlaba (Mhlaba) and Umnyengeza being sent to live at Bishopstowe.]

Anyhow, if you are in the way of subscriptions, here is one destitute family, and a large one too, at the present moment entirely dependent on you.

Natal, September 23, 1874.

Mazwi and Siyepu sent me a message last Monday by Umlanduli, saying that they were now with their mothers, who with themselves were most anxious that they should come here, but they dared not come of their own accord, because of that word of Mr. Arthur Shepstone, that any one who went to Sobantu (the Bishop) would be put back in prison. Would I please send for them? I am afraid that we should end by getting them sent away from their mothers, so I've told them to be patient awhile.

September 25, 1874.

Malambule's mother brought me another message from Mazwi and Siyepu, that they had been "sent for" the day before—as they understood, to be sent out to work; but they had excused themselves as being "very tired." Would I please ask quickly that they should be alloted to me, without saying that they wished it? Then, if Government refused, there would be no harm done. This, of course, I can't do, nor do I think it at all certain that they are to be sent out to work. But I think that I can stir up Umhlaba to ask for them.

N.B.—Mazwi and Siyepu are the youngest sons of Langalibalele, taken prisoners with their father—mere lads, who were sentenced each to six months imprisonment with hard labour, which terminated at the end of August, when they were released from gaol.

I was told yesterday of a shocking case, if it is true, viz.:—That one of the women given by Captain Lucas to Pakade's son Ngabangaye [who was violently deflowered by him, as reported in my first pamphlet], having refused to live with him and complained bitterly, managed to get down to Maritzburg and state her case. Captain Lucas, being asked, allowed that he had given her to this man, when she was told that the case must be settled at Estcourt, and was sent up there, where she is now kept in gaol until she consents to go and live with Pakade's son as his wife.

Inclosure 5 in No. 23.

Second Examination of Deke by the Indunas of Mr. John Shepstone.

Deke waited as he was told, and went meanwhile to pay a visit to his daughter, who lives some little way off. On his return to Bishopstowe (Friday, September 25), he found that Mr. John Shepstone had already sent for him, so he went the next day and reported himself at the office of the Secretary for Native Affairs, but was told to come again on the

Monday. He did so, and was told again to wait, as Mr. John Shepstone was ill and could not see him. On Friday morning, October 2, there came a policeman from Manxele, the Induna, to the Secretary for Native Affairs, sent to call Deke, who went back with him. When he arrived there were present many Indunas, among others Manxele and Nozityina (he who broke his knee that day when trying to seize Matyana). It was ordered that Nozityina and Manxele should first hear what Deke would say, outside, and then go in with him to the office, to Mr. A. Shepstone.

So Deke repeated the story, according to his former words to which he had sworn, and so came to the end. Then Nozityina and Manxele asked to see the scar of the bullet, and when they had looked at it, Nozityina said at once, "Certainly this scar is that of the bullet of a gun." But Manxele said, "No ; it is a scar made by Matyana's staff, I mean the handle of his assegai, when he started up and climbed over Deke, or it may be just a scar made by a stick ; it is not that of a gun, this scar." And thereupon they all said so, a number who were present agreeing with Manxele, but Nozityina just kept silence, and answered nothing to them. Deke contradicted them all, saying, "I was wounded by a gun, that is all I know." They replied, "A bullet would have gone right through you, and hit other people." They asked also, "Did you see that gun?" Deke replied, "I did not see it, because it went off while I was turning aside looking behind me; no one has eyes behind him." Said they, "Well, then, who says that you were hit by Mr. John?" Said Deke, "I don't know, because I was turning aside; it went off suddenly, and I fell just there; but I believe that Matyana saw it, and others of our party." After this Deke was called with Manxele, and they went in to the room to Mr. A. Shepstone. And when they had come in, Mr. A. Shepstone said that Deke was to tell his story again, he (Mr. A. Shepstone) having pen and ink to write with.

Deke repeated the story in the same words as before, till he finished it. Mr. A. Shepstone asked him "Why did the boys (young men) say 'Tyi, tyi, tyi, will you not die here?'" Said Deke, "That was just a practice of the boys, and they usually did so at home." The Indunas replied, "They were doing it at the Inkos', saying it to him." Deke denied this. Mr. A. Shepstone asked, "Was it not you who snapped off your assegaiheads, to make *izingindi?*" Said Deke, "There was no one who did that; I know of none who did it, and I did not see anyone do it, but perhaps two or three may have done so. I only know of Matyana's own three assegais which we obliged him to take, and which were carried by one of his men, Nomqoza." Said Mr, A. Shepstone, "We see, Deke, that you have been crammed by the Bishop." And now there was a great noise and confusion in the room, and Deke could not hear anything said by Mr. A. Shepstone but only the Indunas, who all set upon him ; truly he would have been like a hunted animal among them all if he had not trusted in the Bishop. But nevertheless, one of Mr. John Shepstone's men, Mhlahlo, son of Manepu, who was present when Deke was wounded, came to Deke and whispered, "We know that it is really as you say, we only contradict you for a purpose. Do not be disconcerted."

And Deke was questioned about Nogobonyeka and Ngudu and Nguza and Ncunjana; and Deke told them all this just as it is written in his paper (statement). After he had finished, he said to Manxele that he wanted to go home. But Manxele said that he must wait a little, and not go home *Kwa'Jobe*. This is the end of that business, and Mr. A. Shepstone wrote down all Deke's words.

Inclosure 6 in No. 23.

Statement of Sikunyana, a near relative of Pakade, concerning the two young women of Putini's Tribe who were given by Captain Lucas to Ngabangaye, a son of Pakade, to be his wives.

One of them got away from him, and went to the authorities at Estcourt to tell them that she did not wish to be the wife of the son of Pakade. But the Magistrate refused her in this matter. Then she came down here to Pietermaritzburg, and prayed to be delivered out of the power of the son of Pakade. The authorities (Mr. Shepstone) wrote a letter for her, and sent her together with the letter to Estcourt, that her case might be tried there.

And when the case was tried the Magistrate asked Ngabangaye how it was that he had taken a wife without a policeman being present to hear the consent of the woman, and also to take the 5*l.* marriage fee ? On this account it was ordered that Ngabangaye should pay 10*l.*, and that this woman should continue to live with him as his wife. The woman refused altogether to do so. But she was with child by him, and the authorities

said, "Why then do you wish to leave him?" She still refused, and the Magistrate being angry put her in the tronk to stay there until she should agree to live with Ngabangaye. But the woman, not wishing to be married to this son of Pakade, agreed gladly to go to the tronk. She was continually being asked while there if she would agree to go to him, but she always refused.

We do not know how this may have ended, because the authorities were firm upon the point that "Captain Lucas said that you were to be his wife, we have no concern in this matter. We cannot release you from this man although you may not like him for a husband."

No. 24.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin Pine, K.C.M.G.

Sir, *Downing Street, November* 20, 1874.

THERE are several subjects connected with the recent proceedings against Langalibalele and his tribe, with respect to which I desire to address you without waiting until I am in a position to deal with the whole question.

2. I am informed by the Bishop of Natal that a communication which he has received from the Colony leads him to doubt whether the order understood to have been given for all the Putini tribe to return to their old location has, in fact, been made applicable to those of them who had been—most unfortunately as I think—bound over to serve on the farms of Colonists for a term of years. I sincerely trust that there is no ground for this apprehension, but should it be otherwise, I have to instruct you to take, without delay, whatever steps may be necessary for extending the order to all of the Putini people who may wish to avail themselves of it, without any exceptions.

3. It is further represented to me that while other old men of Langalibalele's tribe are being fed by the Government, food has been refused to one of them, named Umhlaba, and his family on the ground that being on the Bishop's land, they should look to him for maintenance.

4. I do not understand how this distinction can justly be made, as I presume that it is not because the labour of those on the Bishop's land is being made profitable to him. Unless there is some good reason to the contrary, I am of opinion that the cost of maintaining these people ought not to be throwu upon the Bishop.

5. The Bishop of Natal has further stated to me that, in his letters from the Colony, he is informed that the two youngest sons of Langalibalele, named Mazwi and Siyepu, are desirous, their sentence of six months having been completed, to go to Bishopstowe, but that they are afraid to do so in consequence of general prohibitions to go to the Bishop. I do not perceive any good reason why these young men should not be permitted to locate themselves where they think fit; and unless you are prepared to state to me some strong and clear reason for interfering with their liberty in this matter, I request you to cause them to be informed that they may do as they wish.

I have, &c.
(Signed) CARNARVON.

No. 25.

Colonial Office to the Bishop of Natal.

My Lord Bishop, *Downing Street, November* 21, 1874.

I AM desired by the Earl of Carnarvon to transmit, for your Lordship's information, a copy of a despatch* which has been addressed to the Lieutenant-Governor of Natal on certain points connected with the recent proceedings against Langalibalele and his tribe.

I am, &c.
(Signed) ROBERT G. W. HERBERT.

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* No. 24.

No. 26.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin Pine, K.C.M.G.

Sir, *Downing Street, December* 3, 1874.

I HAVE received and carefully considered your despatch of the 16th July,* inclosing two Minutes by Mr. Shepstone, the Secretary for Native Affairs, and other important documents on the subject of the late revolt of Langalibalele and his tribe. I have also received from the Bishop of Natal a pamphlet which he has printed since his arrival in this country, a copy of which I inclose† for your information. These communications, with many others which I have received, place me in possession of very full information on all points of the case, and I have, in addition, had the advantage of hearing on several occasions full statements and explanations both from the Bishop of Natal and from Mr. Shepstone. I, therefore, no longer entertain any doubt that it is unnecessary (and, being unnecessary, it is, of course, for obvious reasons, highly inexpedient) for me to cause any further inquiry to be instituted in the Colony as to the particulars of the transactions which I have to review.

I shall accordingly at once proceed to examine the circumstances connected with the offence charged against Langalibalele, and with his trial and sentence; and in order to be as brief as possible, I shall not enter into any detailed analysis of the statements made to me on either side, but shall succinctly recapitulate what I believe to be the true history of the case.

The facts of Langalibalele's case, as they appear from the proceedings of the Court which inquired into the charges against him, may be very shortly stated as follows:—

Langalibalele and his tribe were refugees from Zululand in the year 1849. They were received by the Government of Natal, and were allowed to live in the Colony upon 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.

These duties were to close and guard the mountain passes against the inroads of bushmen.

For some time previous to the spring of 1873 there had been disputes between Mr. Macfarlane, the Resident Magistrate, and Langalibalele, and in April of that year a messenger was sent to summon the Chief to appear at Pietermaritzburg, to answer for his conduct before the Colonial Government. On his failure to appear when twice summoned, a third message was sent to him by the Secretary for Native Affairs, dated October 4, 1873, in which he was required, in the name of the Lieutenant-Governor as Supreme Chief, to appear at Pietermaritzburg within fourteen days after the receipt of the message, and to answer for his conduct.

Langalibalele refused to appear in answer to this summons, pleading fear and illness, and it was also alleged that he treated the messengers sent to him with gross indignity.

The Lieutenant-Governor in Council, finding that the Chief did not appear, determined to send a force "to invest the country" occupied by the tribe. A portion of this force, on arriving at the Bushman's River Pass, found a number of the tribe in the act of driving their cattle across the border, under the command of one of Langalibalele's chief men. After a parley, orders were given to the force to retire, and while they were in the act of retiring, they were fired upon, and, most unhappily, five of them were killed, three Europeans and two natives.

Langalibalele, who at the time was in advance with another portion of the tribe, was afterwards taken, and was put upon his trial before a Court composed of the Lieutenant-Governor, sitting as Supreme Chief, the Secretary for Native Affairs, and certain Magistrates, native Chiefs, and Indunas. He was tried under what was stated to be Native Law, though the procedure adopted was, in some degree, modelled upon the forms of an English Court. He was without the assistance of counsel to speak or cross-examine witnesses on his behalf. He was found guilty of certain charges in the indictment against him, and was sentenced to banishment or transportation for life to such place as the Supreme Chief or Lieutenant-Governor might appoint, and this sentence having been confirmed upon appeal to the Lieutenant-Governor in Council, was carried into effect by the prisoner being conveyed to Robben Island, within the limits of the Cape Colony, for confinement therein, the Cape Legislature having passed an Act for the purpose of enabling this course to be taken.

Langalibalele's tribe, the Amahlubi, were broken up and dispersed, their lands were taken away, and many of them, including sons of Langalibalele, were condemned to various terms of imprisonment.

* No. 4. † Bishop Colenso's Pamphlet will be found printed as a separate Parliamentary Paper.

In considering how far the punishment inflicted on Langalibalele and his tribe has been deserved, and whether it ought to be sustained or mitigated, the subject has appeared to divide itself under three principal heads, namely—

1. The conduct of Langalibalele from his coming into Natal up to the spring of 1873.

2. His conduct when summoned to appear at Pietermaritzburg.

3. The circumstances attending the trial.

I regret that, as I have already observed, the prisoner had not the benefit of counsel on his behalf at his trial; and, if in dealing with this matter, I should appear to criticize or question the evidence, it must be borne in mind that I am bound to take notice of the fact that the prisoner was not provided with the means of bringing out all that might have been elicited on his behalf by an able advocate at the time.

It will, however, be right that I should in the first instance refer to the conduct of Langalibalele before 1873. It appears that he and his tribe discharged their duties well and faithfully for many years, guarding the farmers in Weenen county and their flocks from the attacks of Bushmen. If, indeed, from time to time, as is often the case with native Chiefs, it was necessary to check or reprove him for small acts, whether of commission or omission, no serious complaint of his conduct or that of his tribe was ever made to any of my predecessors in this office, nor was any intimation given that a spirit of rebellion had been shown. I do not, indeed, fail to observe that in your despatch to the Earl of Kimberley dated 30th of October, 1873, after these troubles had begun, you made the following statement:—"Some time ago, long before I assumed this Government, Langalibalele and his tribe set the authority of the Government at defiance by repeatedly disregarding the orders of the Magistrate of the county in which they are situated;" and, again, that in delivering judgment, you said—"It appears that for some years past the Magistrate of the county in which the prisoner lived had noticed circumstances which led him to believe that the prisoner and his tribe exhibited an independence and impatience of control which might lead to difficulties:" and again, "The attempts made by the Magistrate to enforce obedience to the law, and even to obtain explanation of the breach, were met by the prisoner and his tribe with indifference, and, in some instances with resistance." But I am bound to say that the evidence does not appear to me fully to support these statements. Mr. Macfarlane, the Magistrate, remarks only that there were "general indications, of which however it is difficult to give special instances, of impatience of control;" and Mr. Shepstone, the Secretary of Native Affairs, says, with respect to the disputes between the Chief and the Magistrate, that "they were mostly of a minor character and on subjects of minor importance." Only two instances are touched upon by Mr. Macfarlane, both of which appear to me to have been explained. In one it is said that Langalibalele wilfully neglected to bring into effect a new marriage law in the year 1869. It appears, however, improbable that he could have actively resisted, as its introduction was in fact a source of revenue to him, and that his offence cannot have been regarded as serious since it was visited by a fine only of 10*l*. The other case, represented to be the immediate cause of the late disturbances, is the alleged refusal of the Chief to send his people to the Magistrate to register their guns. But, on comparing the evidence given at his trial with the evidence given at the trial of the members of his tribe, and with statements subsequently advanced on behalf of the prisoner, it appears that there is much to be said in palliation of his offence. While, moreover, it is true that many guns in possession of the tribe were not registered as was by law required, it is also the fact that similar neglect of this requirement occurred in other tribes: and it is alleged that the official register shows that more guns were registered by this tribe during the years 1871, 1872, and 1873 than by others of equal size.

With respect to the refusal of the Chief to send in his people to register guns when called upon, only three instances are given where he was summoned to do so. On the first occasion he complied; on the second he requested to be furnished with the names of the parties in order to find them, and, though this was refused, he still partially complied; on the third, he alleged that the owners of the guns had become alarmed, had run away, and that he could not find them.

On a review of these circumstances, therefore, I am brought to the conclusion that, though there was probably negligence—it may be more or less culpable—in complying with the law, there was no sufficient justification for the charge in the indictment that Langalibalele "did encourage and conspire with the people under him to procure firearms and to retain them, as he and they well knew, contrary to law, for the purpose and with the intention of, by means of such firearms, resisting the authority of the Supreme Chief."

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I come next to the conduct of Langalibalele when summoned to appear at Pietermaritzburg.

On this point it has not been disputed that Langalibalele was three times duly summoned to appear before the Colonial Government, that it was his duty to have obeyed the summons, and that he knew that in disobeying he was committing a very grave offence, and one that if persisted in must bring him into collision with the authorities. It is further admitted that instead of obeying he sent excuses, and made statements, some of which certainly were false; and that in the end he and his tribe made preparations for flying from the Colony, and endeavoured to carry their design into execution, taking their cattle with them.

Apart from the consideration that the removal of cattle across the border without the consent of the highest authority is a distinct offence in native estimation, I do not doubt that when once matters had come to this serious pass, and the Chief had set at naught the repeated orders of the Government, it was necessary to compel his obedience. To have passed over such a failure of duty would have inflicted severe injury on the prestige of the Executive, and might have been productive of the most serious consequences in a Colony where the natives, exceeding the Europeans in the proportion of twenty to one, were watching the proceedings with close attention, and—it is alleged—were ready to act upon any indication that one of their body could resist the Central Government with impunity. I do not, therefore, attribute blame to you for taking such measures as were necessary for compelling the submission of the Chief and his tribe, nor, though I deeply deplore the unhappy chance by which the collision at Bushman's River Pass came, should I think it right to withold my approbation from the conduct of Colonel Durnford, who was in command on the spot, and whose forbearance and humanity towards the natives has attracted my attention. I also am sensible that the difficulty of your position was enhanced from the fact that you were brought face to face with the delicate questions which were pending between the Government and the Chief at a time when Mr. Shepstone, the Secretary for Native Affairs, whose long experience and great ability in such matters would have been of the utmost value to you, was absent from the country. But giving full weight to these and other considerations, I cannot divest my mind of the conviction that if greater pains had been taken to inquire into the allegations of disobedience and treasonable communications on the Chief's part, and to sift the rumonrs which were rife in the Colony on the subject, a truer conception of his attitude towards the authorities would have been formed; and that by dealing with him in a more frank and reassuring manner, he might have been brought voluntary to render obedience to the Government, and thus the fatal necessity of setting an armed force in motion might have been avoided.

It is urged on Langalibalele's behalf that the course taken by him in refusing to appear before the Government was dictated by a fear that so soon as he arrived at Pietermaritzburg he would be taken and put to death. There could, of course, be no real ground for such apprehension, but there are several indications that the prisoner may have been actuated by it. It must be borne in mind that it has been extremely rare for a Chief to be summoned in this way, and he could, therefore, only suppose that it was for an offence of the most serious nature that his presence was required; a supposition likely to be strengthened by the refusal of the messengers to disclose the matter for which he had to answer. His brother had in former times been summoned to the King in Zululand, as Supreme Chief, and killed as soon as he arrived. In reference to this, it will be observed that Gayede and Mahoiza, two of the witnesses against him, both give strong evidence that such a feeling prevailed with the Chief and among his tribe; while the Secretary for Native Affairs, the official prosecutor at the trial, and you yourself in delivering judgment, appear in a greater or less degree to have considered his disobedience to the summons to have been caused by fear.

No doubt, whatever was the motive, the Chief was guilty of an offence, but whether in estimating the gravity of that offence, or in deciding upon the manner of dealing with the offender it was of vital importance to ascertain whether his disobedience was, as is charged in the indictment, a deliberately planned scheme of resistance in concert with others, or the mere effect of an unfounded panic. Unfortunately this was not made clear.

I pass now to the trial and sentence of Langalibalele; and here, after an anxious consideration of all the circumstances and local conditions involved, I feel bound to express my opinion that there are several points open to grave observation and regret.

The Court itself was peculiar and anomolous in its constitution. It consists of two officers of the Government (yourself and the Secretary for Native Affairs), of two Resident Magistrates, and seven native Chiefs and Indunas. During four out of the

five days which preceded the delivery of judgment the other Members of the Executive Council were present, not forming any part of the Court, but, as you say, "to look on and assist with their advice;" the Governor and Executive Council being the body to whom, in conjunction with yourself, an appeal from the decision of the Court would lie, and to whom, in fact, that appeal was subsequently carried. Not less peculiar was the law by which the prisoner was tried. It was what is known as native law, and the procedure adopted differed widely from the ordinary practice of the Courts. Looking to the fact that the crimes charged in the indictment were conspiracy, sedition, treason, and rebellion, it would seem desirable that such grave charges should have been investigated by the highest judicial ability in the country, and under the guidance of such rules as have been decided by the experience of civilized men to be the most fitting for the purpose. But if on the other hand, it could be deemed necessary to have recourse to native law, on the ground that the acts committed by the Chief were not criminal in the view of civilized law, it was to say the least, unfortunate to have imported into his indictment charges which are cognizable and punishable by the ordinary law courts.

Independently of the confusion and unsatisfactory result to which such an anomalous blending of civilized and savage terms and procedure must lead, I find considerable difficulty in deciding upon questions which, in ordinary circumstances, would not be open to any doubt. Thus, the act of "running away" with the cattle, which appears to have been relied on in support of the charge of treason, as understood in native law, is denied by the Bishop of Natal to be capable of that construction.

But further, it was in my judgment a grave mistake to treat the plea of the prisoner as one of guilty, since his intention seems clearly to have been to extenuate or justify his actions, and thus reduce the magnitude of the offences with which he was charged. There is no point which, in any English law court, a prisoner may claim with more absolute certainty; no point which, in the absence of legal assistance, the Court will more firmly insist upon in his behalf than that a plea of not guilty should be entered where there is the slightest doubt as to the meaning of the prisoner. It may, indeed, be said that the decision of the Court was formed not upon this plea, but upon evidence for which you deemed it advisable to call. But where you had decided to retain so much of the procedure and language of English law, it was clearly unfortunate to depart so widely from the spirit of that procedure. Still more serious, because it involved practical consequences of a very grave nature to the prisoner, was the absence of counsel on his behalf. The Court and the prisoner alike were deprived of the necessary assistance in testing the evidence and weighing the nature of the offence. And the weight of your own responsibility was thereby greatly increased, for when no such assistance was forthcoming, you were wholly without assurance that no point has been unduly pressed against the prisoner, and no untrustworthy evidence had been received without undergoing the indispensible sifting of cross-examination.

I am aware that you refused to permit the employment of Mr. Escombe as counsel because he declined to confine himself to cross-examination and the statement of points of law. I regret that he should have come to this decision, as there may have been well-founded objections to the admission of an impassioned speech against the Government and in favour of a native offender, while he could have rendered great service in eliciting facts by examination of witnesses; and I still more regret that, in his default, you did not use every endeavour to provide efficient assistance to the prisoner in the conduct of his case, and, more particularly, in sifting the evidence.

Had, indeed, the guarantees which every English Court of Law desires for its own sake and in the ends of justice to secure, been accorded, it is clearly improbable that the story of the prisoner's treatment of the messenger sent to him would have been accepted in the form in which it was tendered to the Court. The gross indignities to which the witness Mahoiza stated he was forced to submit would naturally have great weight in determining the view taken of the prisoner's conduct in general, since it could hardly be conceived that a messenger from the Lieutenant-Governor, acting also in his character and capacity of Supreme Chief, would be ill-treated by a subordinate Chief, unless the latter had determined deliberately to defy the Government. It is, therefore, much to be regretted that, on this point, the evidence of Mahoiza alone was accepted unsupported and untested, although there were two other witnesses who were present as Mahoiza's companions throughout the whole scene, and who would, therefore, have been of the utmost value, either in support or in correction of his statements. And looking to the behaviour of the witness and the additional evidence produced at the subsequent examination at the office of the Secretary for Native Affairs, on the 27th and 29th January, 1874, I am obliged, with great regret, to conclude that, this very important portion of the evidence given against the prisoner at the trial was so far untrustworthy

as to leave it an open question whether the indignities of which the witness complained may not have amounted to no more than being obliged to take off his coat, which might be a precaution dictated by fear, and nothing else.

I have now noticed the principal points connected with the trial. The material offence actually established against Langalibalele appears to me, after weighing all the circumstances of the case with the most anxious care, to amount to this:—That having been thrice summoned to appear before the Government, he at first neglected, then refused to come, and finally having so disobeyed the orders of the Lieutenant-Governor, he endeavoured to fly from the jurisdiction of the Colonial Government with his tribe and his cattle.

For this, which he knew to be a serious crime according to all the traditions and usages of his people, he has justly deserved punishment, but the sentence passed upon him punishes him for treason, sedition, and rebellion, and is, in my judgment, far too severe, and I have felt it my duty to advise theQueen that it should be mitigated. Her Majesty has accordingly been pleased to direct that he shall, with his son, be removed from Robben Island to a location to be set apart for him within the Cape Colony, under strong restrictions against re-entering Natal.

That the Amahlubi tribe should be removed from its location may have been a political necessity which, after all that had occurred, was forced upon you, and I fear it is out of the question to reinstate them in the position, whether of land or property, which they occupied previously. The relations of the Colony with the natives, both within and without its boundaries, render this impossible. But every care should be taken to obviate the hardships and to mitigate the severities which, assuming the offence of the Chief and his tribe to be even greater than I have estimated it, have far exceeded the limits of justice. Not only should the terms of the amnesty of the 2nd May last be scrupulously observed, but, as far as possible, means should be provided by which the members of the tribe may be enabled to re-establish themselves in settled occupations.

I have already conveyed to you my entire disapproval of any compulsory assignation of prisoners as servants to individuals, and though I have not received your answer to my despatch of June 12, I cannot hesitate to express my condemnation of the practice. I have, therefore, only to impress upon you that, should it be found necessary to keep any members of the Amahlubi tribe to forced labour, they must be employed upon public works, and not assigned to private masters. It is, however, my sincere hope that, after careful consideration with Mr. Shepstone, you will be able to remit all the minor sentences.

With respect to the Putili tribe I have in their case also expressed my opinion that no sufficient cause has been shown for removing them from their location. I can discover no indication of their conspiracy or combination with Langalibalele, beyond the vague and uncorroborated apprehension of some possible movement on their part in connection with the supposed tendencies of his tribe; and therefore I can see no good reason for any punishment on this ground. Indeed, on the facts before me, I am bound to express a grave doubt whether the heavy losses and confiscations to which the tribe has been subjected were warranted by their want of readiness to afford assistance to the Colonial forces. Those losses cannot, I fear, now be entirely replaced or repaired, but as far as reparation can be made without lowering the influence and endangering the authority of the local Government, it must be done.

If this tribe has not been already restored, in conformity with the statements contained in your despatch No. 141 of 3rd August, and with the instructions contained in mine of the 26th ultimo, I have now to direct you to reinstate them without delay, in such manner and under such precautions as will attract as little as possible the attention of the natives generally to the proceedings, and will be least calculated to produce any excitement or misapprehension on their part.

With regard both to this tribe and the Amahlubi, I have to require from you a strict and accurate statement of the moneys which have been paid into the Colonial Exchequer on account of the sale of cattle or other confiscated property.

I am deeply impressed with the necessity of maintaining, in every legitimate way, the prestige of the Government in the eyes of the vast number of natives who inhabit and who surround the Colony of Natal; and I am ready to admit that, when once a tribe has refused to obey the orders of the Governor and has resisted the force sent against it, it may become necessary that it should lose its independent existence as a tribe, and that the Chief should be removed from his Chieftainship; but inordinate punishments inflicted on the guilty, and, still more, punishment inflicted on those to whom no substantial guilt can be imputed, must tend rather to weaken than to increase the credit of the Government and its power for good.

The scenes which followed the flight of Langalibalele have, I need scarcely say, occupied much of my attention. That many of them were painful I cannot but feel, but I have also to bear in mind that the forces employed by the Colonial Government were engaged in a difficult and dangerous task. The tribe, on quitting its location, had left the women and children in strongholds, defended by parties of men, with the view, as it would appear, of returning to these places and using them when the Chief and the cattle had been conveyed out of the Colony. I do not question the necessity of reducing these strongholds, and if, in taking them, certain unhappy casualties occurred, if blood was too freely shed, and if even excesses were committed, such as is too frequently the case in conflicts of this nature, where Europeans, or natives under the orders of Europeans, are engaged in suppressing native disturbances, I cannot find in the accounts which I have received of the conduct of the Colonial forces evidence to sustain or justify any general accusation of wilful cruelty. I have, as far as the evidence before me allowed, considered the various cases of severity or alleged cruelty which have been during the last few months so freely cited, and whilst I must express my deep regret that I cannot absolve all who were concerned in those transactions from this grievous charge, I see no reason to differ substantially from that part of Mr. Shepstone's Minute of June 12, in which he says, "That there were individual acts of unnecessary harshness and cruelty there can be no doubt, but as far as I can judge, I do not believe that there were more than is the natural and, I must add, inevitable consequence of men, white or black, suddenly finding themselves in circumstances which inflame their passions, and, and, for the moment, destroy their self-command and almost obliterate the sense of moral responsbility; in fact, there were but few; but few or many, they can be dealt with only on their own special merits, because they are isolated cases, unconnected with, and contrary to, any authorized course of proceeding laid down for the guidance of those employed to carry it out."

I am glad to be enabled to conclude my observations on this very painful subject by expressing the Queen's appreciation of the general kindness and justice with which the natives of Natal have for many years been treated by the white population. The large and increasing numbers of the Kafirs within the Colony is of itself a refutation of any general charge of unkindly treatment; and nothing can be more undeserved than any allegation that the European Colonists have been in the habit of acting with cruelty or oppression. The system under which the natives are governed has, in fact, depended too much upon the maintenance of friendly relations, and too little upon a firm enforcement upon the Kafirs of the obligations of individual citizenship. If, as I hope, I am able hereafter to propose some material improvements in the system of Native Administration, I shall do so in full reliance upon the ready co-operation of the Legislatnre and people of the Colony.

Her Majesty further commands me to instruct you to make it known to her native subjects in Natal that she has heard with much pleasure the accounts given by Mr. Shepstone of their loyalty and general good conduct, and that she feels a warm interest in their welfare.

I inclose a translation of a Proclamation to the native population which has been prepared by Mr. Shepstone under my instructions, which I desire you to publish for general information with this despatch.

I have, &c.
(Signed) CARNARVON.

Inclosure in No. 26.

Proclamation.

(Literal Translation.)

THE matter of the Amahlubi has been reported to, considered, and decided by the Great Chiefs who rule for the Queen the countries of England, and they say:—

It is said that the Amahlubi refused obedience to the orders of the Governor of Natal, who rules there for the Queen, the owner of Natal and all its people.

It is said also that they deserted against (or outside) the law, and turned their weapons against the great house; that they began to fire with guns upon the Queen's people, those people having been sent to bring them back; and that they fired when the commanding officer of the Queen's people thought that the Amahlubi people were listening to him.

These things brought down great trouble and sorrow upon the Amahlubi; and

Langalibalele, who was their Chief, was taken to an island in the sea; and all men saw that to transgress was to court misfortune.

While hearts were still burning, there appeared a word, saying, that the people of Putili weep for the Amahlubi, they are one with them, they help them in their fighting; and upon this they also entered into great heaviness.

But all salvation and all death are in the hands of the Queen, who says, We have looked into, inquired about, and considered this matter on both sides, and this is Our decision:

Langalibalele We release from imprisonment on the island in the sea, but he shall not return to Natal.

The Amahlubi may, if they choose, when that is prepared which is to be prepared, go to him; but he will not be allowed to go to the Amahlubi.

And the matter of the Amangwe the Queen says, the punishment which has been given to them while the news was still warm has surpassed their sin; heaviness is laid upon people that they may be warned, but not die; the Amangwe may return to the land that they lived upon and were taken from, and may cultivate it, but the Queen's eye will always be upon them; if they are obedient to the laws, and if they have ears to hear, she will say, Let them be protected and assisted that they may flourish and grow fat as before; but if they will not listen, and love to walk the paths which are not right, whom will they question if trouble clings to them?

The great Chiefs who rule for the Queen say, the black people of Natal must know that to contend against and point their weapons at the Chiefs appointed over them is a great transgression; no country can stand and flourish if its laws are not obeyed; because the Queen in this case has turned one punishment in a different direction, and removed another, let them not say sins such as those are lightly looked at, and that to-morrow those sins may be committed and no punishment adequate to them appear.

Let them take warning from what they have seen.

No. 27.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin Pine, K.C.M.G.

Sir, *Downing Street, December 3, 1874.*

THE events which occurred towards the close of last year in the Colony of Natal have directed my attention to the policy of the Government of the Colony towards the native population within its borders, and to the administration of justice under the system known as native law.

In the year 1848 Her Majesty addressed an Instruction to the officer administering the Government of Natal in the following terms:—

"And whereas the said district of Natal is inhabited by numerous tribes, natives of the said district, or of the countries thereunto adjacent, whose ignorance and habits unfit them for the duties of civilized life, and it is necessary to place them under special control, until, having been duly capacitated to understand such duties, they may reasonably be required to render ready obedience to the laws in force in the said district: We do hereby declare it to be Our will and pleasure that you make known, by Proclamation, to Our loving subjects and all other persons residing in the said district that, in assuming the sovereignty thereof, We have not interfered with or abrogated any law, custom, or usage prevailing among the inhabitants, previously to the assertion of sovereignty over the said district, except so far as the same may be repugnant to the general principles of humanity recognized throughout the whole civilized world, and that We have not interfered with or abrogated the power which the laws, customs, and usages of the inhabitants vested in the said Chiefs, or in any other persons in authority among them, but that, in all transactions between themselves, and in all crimes committed by any of them against the persons or property of any of them, the said natives are (subject to the conditions already stated) to administer justice towards each other, as they had been used to do in former times, provided, nevertheless, and We do so hereby reserve to Ourselves full power and authority, as We from time to time shall see occasion, to amend the laws of the said natives and to provide for the better administration of justice among them as may be found practicable."

It would have been clearly inexpedient, looking to the circumstances of the Colony of Natal in the year 1848, to have rudely disturbed the organization existing there, and by breaking up the political and social forms according to which the people were accustomed to live, to have done away with the only means, short of actual force, by

which they could be kept in order. It was, therefore, right that in 1849 an Ordinance should have been passed giving effect to this Instruction, empowering the Governor to appoint fit persons for the administration of native law, and conferring upon him all the powers of a Supreme Chief with respect to the Subordinate Chiefs and the natives. But it is no less clear that the intention of the Instruction was that native law should be continued as a temporary expedient only and until the natives had become habituated to a better system, administered according to English practice. It would further appear to have been the intention of the Instruction that native law should be administered only as between native and native, and it does not seem to have been contemplated that recourse should be had to it in any case to which a white man might be a party. I find, however, that, after a lapse of twenty-six years, far from having been temporary, the system of native law remains more firmly established than ever, and that, instead of being restricted to cases between one native and another, it has only last year been made capable of extension at the will of the Governor to any case in which an offence is alleged to have been committed by a black man against a white.

When it is considered that "native law" is a barbarous system, the procedure of which could scarcely be applied without modification by any person taught to administer justice according to civilized methods, I am forced to consider why it is that the system has flourished so long, and that, as in the case of the Cattle Stealing Ordinance, and the Grass Burning Ordinance of 1865, as amended by the Ordinance of last year already referred to, efforts are made to widen rather than to contract its operation.

The inquiries I have made into the subject have satisfied me that the maintenance of the system is undoubtedly due to the fact that the Government of Natal has deemed it expedient to keep up the old tribal polity of the natives, looking to the hereditary native Chiefs to direct the people, and holding these Chiefs responsible for their good order and government.

Such a course has obvious conveniences; it was, in fact, in earlier days, the only safe and practicable system of rule, since, from old habit and tradition, the people would render ready obedience to their Chief, while they would be ruled in a manner intelligible to themselves and inexpensive to the Government. But, on the other hand, it brings with it many serious dangers, and dangers more likely to increase than to diminish as the Colony grows in wealth and prosperity. By necessitating the maintenance in full force of the tribal organization, it preserves unimpaired the social habits, the customs, and usages of the savage state. Living together, armed and drilled, and accustomed to act together under the command of their head men, the tribe are ready at any moment to take the field. Their chief property being oxen, they have always at hand the means of transporting themselves and their families, and of feeding while on the march, while the location they occupy being the property of the tribe, there is no counteracting sentiment of attachment to the soil, such as the individual possession of property would give. Settlement on the soil, amalgamation with the general population of the Colony, a recognition of its common laws and institutions, even Christianity and religion become very difficult, if not impossible.

But further, such a state of things tends directly to foster a sentiment of dependence upon the Chief. As the head of the tribe, the administrators of justice, the controller and judge of the numberless social questions which must arise among his people, it is only natural that the tribes should feel the strongest allegiance to him to the exclusion of every one beside him. So long as the Chief remains the willing agent of the central power, these sentiments render the government of his tribe an easy matter, but if the Chief should become disaffected, it is obvious that he has, through associations and sentiments, a most dangerous instrument of disorder ready to his hand.

Even the very conditions which ought to be and which ordinarily are the guarantees for tranquility and order may thus, under certain circumstances, become a source of danger. For whilst, by living under British rule, the tribes are prevented from making war upon one another, and are secured in the quiet enjoyment of their different locations, it is natural to expect that they should increase in numbers, power, and wealth. This increase will augment the power of the Chiefs, and thus the prosperity of the Colony must aggravate its difficulties.

Two instances at least have occurred since 1848, which illustrate clearly the danger to which I have referred, namely, the case of the Chief Matyana in 1858, and the case of Langalibalele last year. In each case a Chief having incurred the displeasure of the Government, was summoned to appear before the authorities. He refused wholly or partly on the ground of fear, and having by his contumacy placed himself in a worse position towards the Government, severe measures became necessary in order to compel his obedience.

But those measures were resisted with more or less of violence, and ultimately the Chief had to fly, his tribe was broken up and dispersed, and their cattle were seized after a resistance which entailed considerable bloodshed and loss of life.

It is especially to be remarked that in each of these cases the tribe supported their Chief with enthusiasm; that there was, as might be expected, little if any feeling of allegiance visible to their nominal "Supreme Chief," the Lieutenant-Governor, and no symptom of unwillingness to follow their own tribal Chief wherever he should choose to lead them. Their only fear would seem to be for his safety, and to preserve this they were ready to leave their houses and sacrifice their lives. I cannot see that under such circumstances there is any reason to expect that similar cases will not occur in the future, nor that, as the numbers, wealth, and education of the Kafirs increase they will not, in some respects at least, be far more dangerous and difficult to deal with.

For the foregoing reasons I desire most strongly to urge upon those who are entrusted with the Government of the Colony of Natal, to consider whether the time has not arrived when a strenuous effort should be made to modify the administration of native affairs in the direction contemplated by Her Majesty's Instructions of 1848.

In saying this, I must not be understood to mean that in civil matters all the customs and usages of the natives should be at once swept away. You will observe, on reference to past correspondence, that a certain measure of reform was contemplated about ten years ago, and for this some preparation was apparently made by the Ordinances passed in the years 1864 and 1865, for relieving persons from the operations of native law, and enabling them to dispose of immovable property by will. It is now, however, obvious that resort must be had to a more extended and decided change. Many of the native customs and usages it will be necessary in any event for some time to retain. But in the administration of the law, both civil and criminal, in the provisions of the criminal law, as well as in the form and administration of the Executive Government, it is clear that great changes are required.

Looking to the probability that with increasing wealth and education the natives may be induced more and more to accept the duties of civilized life, the endeavour of the Government should be to make them amenable to the ordinary laws of the land, and to shape the policy of the Colony in native affairs with the view of raising them out of their tribal organization into the condition of private and independent owners of property, and thus ultimately detaching them from their dependence upon their hereditary Chief, and teaching them to look to the white Magistrates alone for the declaration of their rights and their protection against wrong. That the natives are capable of great improvement I cannot doubt after reading the very interesting accounts of the condition and progress of kindred tribes given in the Blue Book on native affairs in the Cape which has lately reached me. And though the change of policy I have indicated, and which I believe to have become necessary, would doubtless involve some expense in the increase of judicial and civil establishments, I cannot doubt that such expense would be amply repaid by the security from lamentable and disastrous outbreaks against which it would guard.

I have, &c.

(Signed) CARNARVON.

No. 28.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin Pine, K.C.M.G.

Sir, *Downing Street, December* 3, 1874.

FROM the despatches which I have addressed to you on the case of Langalibalele, and on various subjects connected with the condition and government of the Kafir population of Natal, you will have learnt that I contemplate the introduction of considerable changes in the administration of native affairs within the Colony.

These changes will have to be gradually and cautiously brought into operation, and must inevitably during some years entail upon the Lieutenant-Goveruor exceptional labour and responsibility. They are also such as, in my opinion, could not be advantageously undertaken by an officer who has administered the government on the system which it is now desired to supersede.

Your health, which I regret to hear has of late been indifferent, and which has, as I understand, led you on more than one occasion to contemplate the resignation of the office which you hold, will probably induce you to feel that it is for the interest of the Colony that its government should now be in fresh hands; and under these circumstances

I think it will be most agreeable to yourself, as it is in my opinion right, that you should retire from the administration of the government of Natal.

I deem it especially important that your successor should enter upon his duties without delay, and I have already taken steps for expediting, as far as possible, his arrival in the Colony. I therefore request you to make your arrangements for returning to this country as soon as you conveniently can after the receipt of this despatch.

In order to obviate any misapprehension on the part of the native population or others in the Colony with regard to the change in the Lieutenant-Governorship of Natal which, at this juncture, I consider to be desirable, you will be pleased to publish this despatch.

I have, &c.
(Signed) CARNARVON.

No. 29.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin Pine, K.C.M.G.

Sir, *Downing Street, December* 3, 1874.

I HAVE received your despatch of the 24th of September,* inclosing a letter addressed to me by Mr. Moodie, an Advocate in Natal, relating to the proceedings against the Chief Langalibalele and his tribe.

2. I have to instruct you to inform Mr. Moodie that I have read his letter with attention, but that I do not answer it at length, as the decision on the case which I have communicated to you renders it unnecessary that I should do so.

3. Mr. Moodie, however, makes a statement which you do not notice in your despatch, and on which I should wish to receive an explanation from you. I refer to that part of his letter in which he alleges that the prisoner was refused permission to see a legal adviser.

4. I request you to inform me whether this statement is correct, and, if so, what considerations were held to justify the course so taken.

I have, &c.
(Signed) CARNARVON.

No. 30.

The Earl of Carnarvon to Governor Sir H. Barkly, K.C.B.

Sir, *Downing Street, December* 4, 1874.

AS the questions connected with the late Kafir revolt in Natal are of much interest to the Colony of the Cape of Good Hope, not only on account of their bearing upon native affairs generally, but also because of the enactment passed by the Cape Legislature to empower the imprisonment and detention of Langalibalele and his son in Robben Island, I lose no time in transmitting to you a copy of a despatch which I have addressed to the Lieutenant-Governor of Natal.† From this despatch you will learn the conclusions at which Her Majesty's Government have arrived upon the whole case, and the act of clemency towards the Chief, his sons, and his tribe, which, upon my recommendation, the Queen has been pleased to approve.

2. Passing at once to the point on which it is most urgent that the co-operation of your Government should be obtained without delay, it will be seen that it has been decided that Langalibalele, with Mahlambule, shall be removed from Robben Island to a location to be set apart for them within the Cape Colony, and shall be prohibited from re-entering Natal. I have not hesitated to assume that your Ministers, who, in promoting the legislation to which I have referred, and in other matters, have shown so strong a desire to assist the Government of the neighbouring Colony at this juncture, will readily aid me in giving effect to this arrangement, even at the cost of some possible inconvenience. But I learn from Mr. Shepstone, the Secretary for Native Affairs in Natal, that, although, of course, he cannot venture to speak in any way for your Government, he is inclined to think that, without much difficulty, a suitable location may be found at no great distance from Cape Town, on which Langalibalele, with those of his family and tribe who may be disposed to join him, may be settled.

3. Mr. Shepstone, whom I have thought it necessary to request to return at once to his Colony, in order to superintend the steps to be taken in respect of the natives

* No. 22. † No. 26.

concerned in the recent troubles, is in full possession of my views and wishes, and will give all requisite explanations to you and to your Ministers on his arrival at Cape Town, and I shall be glad to learn from you, as soon as possible, the action taken by your Government.

4. I desire now to make a few observations with respect to the Cape Act No. 3 of 1874. In your despatch of the 14th August,* transmitting that Act, you refer to an intimation which I had made to the Lieutenant-Governor of Natal, that a sentence of transportation could not be carried out beyond the limits of the Colony, unless an arrangement had been made with some other Colony under the Imperial Act 32 & 33 Vict., cap. 10.

5. When I expressed this opinion, I was not aware of the course contemplated, and subsequently taken, of obtaining an enactment of the Cape Legislature, and I referred only to the terms of the sentence passed upon the prisoner by Sir B. Pine. Under this enactment, I am advised that the prisoners are legally in confinement in Robben Island; so far, therefore, the object which the Cape Parliament had in view has been secured. But the procedure in Natal has been irregular, and the sentence of transportation was, as I then stated, beyond the competency of the Court that pronounced it, and it is obviously of importance that the provisions of the Imperial Act should be followed in such cases. I shall, therefore, after the prisoners have been established on their location, advise Her Majesty to disallow the Act No. 3 of 1874.

6. In tendering this advice, I would wish it to be well understood that I impute no blame to the Cape Government and Legislature, whose feelings on any question connected with actual or possible Natal disturbances I understand, whose willingness to assist a sister Colony I appreciate, and in whose readiness also to co-operate with the Imperial Government, I am sure that I shall not be disappointed.

7. In order that there may be no misapprehension as to the action of Her Majesty's Government in these matters, I think it desirable that you should cause this despatch, with the despatch to Sir B. Pine inclosed in it, to be laid before the Houses of Parliament or otherwise published in the Cape Colony; but, as I desire that my decision should be known first in Natal, I request you to delay its publication until after the despatches by the same mail have reached that Colony.

I have, &c.,
(Signed) CARNARVON.

No. 31.

Colonial Office to Mr. Shepstone.

Sir, *Downing Street, December* 4, 1874.

I AM directed by the Earl of Carnarvon to request that, as soon as possible after communicating with the Government of the Cape of Good Hope and ascertaining that they are able and willing to carry out the wishes of Her Majesty's Government with respect to the settlement of Langalibalele and his son upon a location in the Cape Colony, you will yourself see him and intimate to him the decision which has been arrived at.

You will be careful to make him clearly understand the condition on which it is proposed that he should be released from Robben Island, namely, that he is to reside at the place to be appointed, and is on no account to attempt to re-enter Natal. He should be made to understand that it is expected that he will abide honourably by this condition.

It is further Lord Carnarvon's desire that you will invite the Cape Government to provide the prisoners, at the cost of Natal, with any comforts which in your opinion may reasonably be given to them during the remainder of their confinement. And you should be prepared also to expend on account of Natal such moderate sums as may be required for the purpose of furnishing Langalibalele with a small supply of implements, live stock, &c., when placed upon the location.

His Lordship also desires that Langalibalele may be informed that the Bishop of Natal will visit him shortly on his return to the Colony, and that you will make all necessary arrangements with the Cape Government for affording the Bishop all reasonable facilities of access to the prisoners.

I am, &c.
(Signed) ROBERT G. W. HERBERT.

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* Not printed.

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No. 32.

The Earl of Carnarvon to Governor Sir H. Barkly, K.C.B.

Sir, *Downing Street, December* 24, 1874.

IT has been represented to me by the Bishop of Natal that there are two sons of a Kafir named, I believe, Umneni, who were sent several years ago to be educated at Cape Town, and who may now desire to return to their own country. The Bishop is desirous of communicating with these persons, with the view of ascertaining what progress their education has made, and whether it is their wish to return in his company to Natal; and I shall be obliged by your causing him to be afforded all proper facilities for communicating with them, and by your arranging for their returning home with him if it appears desirable that they should do so.

I have, &c.
(Signed) CARNARVON.

No. 33.

The Earl of Carnarvon to Lieutenant-Governor Sir Benjamin Pine, K.C.M.G.

Sir, *Downing Street, December* 24, 1874.

I TRANSMIT to you a copy of a despatch* which I have addressed to the Governor of the Cape of Good Hope on the subject of two Natal Kafirs who have been for some years at the Cape for the purpose of being educated there.

I take this opportunity of also informing you that the Bishop of Natal has requested that facilities may be given to certain of the wives of Langalibalele who, as he understands, desire to come and live upon his land, to do so.

The Bishop will, upon his arrival, give any further explanations that may be necessary on this subject, and I request you to give effect to his wishes, unless there is any special objection of which I am not aware.

I have, &c.
(Signed) CARNARVON.

No. 34.

The Aborigines Protection Society to the Colonial Office.

My Lord, 3, *Lambeth Terrace, E.C., December* 30, 1874.

ON behalf of the Committee of the Aborigines Protection Society I beg to inform your Lordship that, according to the most recent advices from Natal, it was still believed in that Colony that the Convict Labour Bill No. 18 of 1874, empowering the Government to allot the prisoners of Langalibalele's tribe among the European colonists had not been disallowed.

The Committee were under the impression that your Lordship had disallowed the above Bill, and they would, therefore, be glad if you felt at liberty to give them definite information on that subject.

I have, &c.
(Signed) F. W. CHESSON, *Secretary.*

No. 35.

Colonial Office to the Aborigines Protection Society.

Sir, *Downing Street, January* 8, 1875.

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 30th ultimo.† In June last his Lordship addressed a despatch to the Lieutenant-Governor of Natal, expressing his disapproval of the Convict Labour Bill, No. 18 of 1874, and instructed him to take no further action under it. Before, however, advising

* No. 32. † No. 34.

Her Majesty to disallow the measure, Lord Carnarvon desired to have certain information and explanations which have not yet been received. A further despatch calling for information was sent to the Lieutenant-Governor in October last, and pending the receipt of an answer to this despatch, his Lordship is unable to say what course it will be his duty to take.

I am, &c.

(Signed) W. R. MALCOLM.