

SCHOEMANSDAL: LAW AND JUSTICE ON THE FRONTIER

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1 Introduction

In June 1867 a special High Court sitting was held in Schoemansdal, a frontier town in the Zuid-Afrikaansche Republiek (hereafter the ZAR). The alleged commission of crimes was disputed, the accused were government officials, at least one of the judicial officers was unpopular and the town itself was threatened by military unrest. Needless to say, the sitting did not go according to plan and rule of law was not victorious.¹ This article takes a look at the events leading up to the trial, the persons who played a role in the saga, the course of the trials and their far reaching consequences.

2 Background

There had been a Boer settlement at Schoemansdal since 1848,² although it was then

1 EA Walker *A History of Southern Africa* 3 ed (London, 1965) at 322 summarises the events as follows: “There a court of three landdrosts sentenced two local heroes, who were promptly rescued by the mob, and Kruger, hearing that the tribes were rising behind him, fell back to Potgietersrust and dismissed his commando. He was followed by most of the inhabitants of Schoemansdal, whose landdrost and predikant moved to Marabastad. The mountaineers presently burnt the village.” See, also, the scathing description of the events told by “Een Soldaat” in an Orange Free State newspaper (11 Sep 1867 *De Tijd*).

2 The first wagons, under the leadership of Field Cornet Jan Valentijn Botha, arrived in the area in early May 1848 (OJO Ferreira “Schoemansdal: Van voortrekkervoorpos tot volksfeesterrein” (1977) 1 *Contree J for South African Urban and Regional History* 5-10 available at http://dspace.nwu.ac.za/bitstream/handle/10394/5025/Contree_1_1977_5-10.pdf?sequence=1 (accessed 21 Jan 2013) (hereafter Ferreira “Schoemansdal”) at 5). However, the group regarded the Voortrekker leader Andries Hendrik Potgieter as their leader, although he arrived only a year later in 1849: see OJO Ferreira *Montanha in Zoutpansberg – n Portugese Handelsending van Inhambane se Besoek aan Schoemansdal, 1855-1856* (Pretoria, 2002) (hereafter Ferreira *Montanha*) at 44; HJ Grobler “Storie van ‘n vergane Voortrekkerdorp” (1919) *Die Brandwag* 217-222 at 217-218 (I wish to express my

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called Zoutpansbergdorp or merely Zoutpansberg.³ A number of factors⁴ influenced the choice of location of the settlement, the most important probably being the desire to escape the sphere of British influence,⁵ and the hope of finding a northern trade route to Inhambane in Mozambique.⁶ In 1855 Stephanus Schoeman was elected commandant general of Zoutpansberg.⁷ Schoeman renamed the town Schoemansdal after himself,

sincere gratitude to Ms Ria Groenewald of the Department of Library Services at the University of Pretoria for obtaining a copy of this article for me).

- 3 It was named after the salt pan situated some distance from the village: Grobler (n 2) at 218; Ferreira “Schoemansdal” (n 2) at 5. During the early years it was originally referred to as the “Oude Dorp” (Old Town): Ferreira *Montanha* (n 2) at 45; JJ de Waal *Schoemansdal n Voortrekkergrensdorp, 1848-1868* (D Litt et Phil, University of South Africa, 2000) at 27; WL Maree *Lig in Soutpansberg Die Sendingwerk van die Nederduitse Gereformeerde Kerk in Noord-Transvaal 1863-1963* (Pretoria, 1962) at 39.
- 4 Ferreira “Schoemansdal” (n 2) at 5, 7 mentions other factors such as the health risks posed by the environment to the settlement at Ohrigstad, political division between Potgieter and the Volksraad, the beautiful surroundings as well as the fertile soil and abundant wildlife in the Schoemansdal area.
- 5 What heightened the fear of encroaching British influence was, firstly, Justice Menzies’ proclamation on 22 Oct 1842 that all territory from the twenty-second degree of longitude eastward to the Indian Ocean, and from the Orange River northward to the twenty-fifth parallel of latitude was British territory, except those areas in the possession of the Portuguese or of indigenous tribes. Although Sir George Napier disapproved of and repudiated the proclamation in a proclamation of his own on 3 Nov 1842, he still warned the emigrants that they owed allegiance to the British crown. Menzies’ Proclamation is quoted verbatim in Napier’s Proclamation; the latter is published as “Proclamation by His Excellency Major General Sir George Thomas Napier” in W Harding *The Cape of Good Hope Government Proclamations, from 1806 to 1825, as Now in Force and Unrepealed and the Ordinances Passed in Council from 1825 to 1844 With Notes of Reference to Each, and a Copious Index* vol 3 (Cape Town, 1845) at 235-236. See, also, GM Theal *History of South Africa Since September 1795* vol 2 (London, 1908) at 417-418; Walker (n 1) at 220. British influence was also feared because of the British annexation of the formerly independent territory of Natal in May 1844 (see the Letters Patent dated 31 May 1844 in GW Eybers *Select Constitutional Documents Illustrating South African History 1795-1910* (London, 1918) doc 109 at 182-183) which resulted in Natal becoming a separate British colony in April 1845 (see the Letters Patent dated 30 Apr 1845 in Eybers (*supra*) doc 111 at 184-186). These incidents inspired the Boers, who had started the Great Trek a few years previously, to escape from British rule, move further inland, and in particular to settle north of the twenty-fifth parallel of latitude (FAF Wichmann “Die wordingsgeskiedenis van die Zuid-Afrikaansche Republiek 1838-1860” in *Archives Year Book for South African History* vol 4(2) (Cape Town, 1941) v-255 at 35, 42-43; JH Breytenbach & HS Pretorius (eds) *Notule van die Volksraad van die Suid-Afrikaanse Republiek (Volledig met Alle Bylae Daarby) Deel I (1844-1850)* [*South African Archival Records Transvaal No I*] (Cape Town, *sd*) at xxiv (in all further references to the various volumes of Volksraadsnotules, the number and the date of the documents as listed by the editors in the index are provided as well as the page number where they appear in that volume); De Waal (n 3) at 23-24.
- 6 AN Pelzer *Geskiedenis van die Suid-Afrikaanse Republiek Deel I Wordingsjare* (Kaapstad, 1950) at 134; Ferreira *Montanha* (n 2) at 44; FJ Potgieter “Die vestiging van die blanke in Transvaal (1837-1886) met spesiale verwysing na die verhouding tussen die mens en die omgewing” in *Archives Year Book for South African History* vol 21(2) (Elsies River, 1959) at 44, 59.
- 7 Schoeman was elected commandant general on 19 Feb 1855: see De Waal (n 3) at 27. See, also, “Kieslys vir S. Schoeman as komdt.-genl.” (SS Supl Stukke no 7/55) dated 31 Mar 1855 in JH Breytenbach (ed) *Notule van die Volksraad van die Suid-Afrikaanse Republiek (Volledig met Alle Bylae Daarby) Deel III (1854-1858)* [*South African Archival Records Transvaal No 3*] (Cape Town, *sd*) (hereafter *Volksraadsnotule Part 3*) *Bylaag* 35, 1855 at 349. He was sworn in as commandant

and drew up plans and implemented rules pertaining to the development of the town.⁸ However, its great distance from the other Boer settlements,⁹ the poor condition of the roads,¹⁰ the high cost of travel¹¹ and the absence of speedy communication meant that Schoemansdal remained isolated and in later years suffered a decline in the number of its inhabitants.¹²

Inevitably the white inhabitants of Schoemansdal and the surrounding areas came into contact with their black neighbours, since the area was populated by various indigenous peoples.¹³ Schoemansdal itself was situated in territory inhabited by several of these peoples,¹⁴ of whom the Venda¹⁵ are the most relevant for the purposes of this article. De Waal¹⁶ contends that the Boers illegally occupied the land on which the town and the surrounding farms were situated, but this has been disputed.¹⁷ Relations were further strained by the fact that the government expected the indigenous peoples to pay

general on 1 Jun 1855 (see OJO Ferreira *sv* “Schoeman, Stephanus” in *Dictionary of South African Biography* (hereafter *DSAB*) vol 5 (Pretoria, 1987) 685-688 at 685).

- 8 Ferreira *Montanha* (n 2) at 45-46; Ferreira “Schoemansdal” (n 2) at 6.
- 9 Distances were measured by the time required to travel by ox wagon from one destination to another: see n 10 *infra*. Eg, a trip from Potchefstroom to Schoemansdal took four weeks (De Waal (n 3) at 36); a trip from Schoemansdal to Grahamstown took five months; a trip from Magaliesberg to Schoemansdal lasted twelve days or two weeks (Potgieter (n 6) at 57); and a trip from Schoemansdal to Inhambane took forty days (Potgieter (n 6) at 47, 57, 59).
- 10 Because of the poor condition of the roads, travelling was usually done in an ox wagon pulled by ten to fourteen oxen, with the estimated travelling time of twenty-five miles per day (Potgieter (n 6) at 56-57). If there were urgent messages to convey or other business to be transacted and no baggage was required, going by horseback reduced travelling time.
- 11 The cost of renting an ox wagon, oxen and a driver for a trip from Schoemansdal to Grahamstown was £15 – a small fortune in those days (Potgieter (n 6) at 59).
- 12 De Waal (n 3) at 33-34, 38-39.
- 13 For a general overview of the early local inhabitants of the area, see Ferreira *Montanha* (n 2) at 36-38; Potgieter (n 6) at 20, 22-23.
- 14 Maree (n 3) at 38. For a list of Boer farms in the Schoemansdal area situated on or near land claimed by the Venda at that time, see JCA Boeyens “Die konflik tussen die Venda en die Blankes in Transvaal, 1864-1869” in *Archives Year Book of South African History* vol 53(2) (Pretoria, 1990) vii-114B at 1-2.
- 15 For the origins of the Venda peoples, see H Giliomee & B Mbenga *New History of South Africa* (Cape Town, 2007) at 31-32.
- 16 (n 3) at 152. He bases his argument on the lack of evidence of peace treaties with the Venda, and the fact that Potgieter did not buy the land from the Venda or obtain it by exchange. GM Theal *History of South Africa Since September 1795* vol 4 (London, 1908) at 212 also takes the view that no land was ever purchased from the indigenous people.
- 17 *Contra* Boeyens (n 14) at 2 who mentions that according to Venda legend, one of their chiefs, Ramabulana, gave a piece of land within the Zoutpansberg to the Voortrekker leader, Louis Tregardt. The legend states that the land was given in exchange for Tregardt’s assistance in dethroning Ramavhoya, Ramabulana’s brother, thus helping Ramabulana to obtain the chieftainship. If this legend is true, it is ironic that the Boers helped Ramabulana to become the chief, since it was Ramabulana’s death almost thirty years later that would spark the final conflict and the eventual abandonment of the town. Even more ironically, Ramavhoya’s death meant that his intended wife, Limani, later gave birth to Makhado, Ramabulana’s favourite to be his successor (n 24 *infra*). In other words, it may be argued that it was the Boers’ involvement with Venda affairs, however well intentioned, that led to the eventual demise of Schoemansdal.

it tribute either by providing labour to the Boers or by paying taxes (known as “opgaaf”) to the ZAR government.¹⁸ Non-compliance normally resulted in punishment, usually through the use of military force.¹⁹ Other factors which contributed to the increasingly hostile relations between the Boers and the indigenous people included the indenture (*inboekeling*) system²⁰ and the refusal of the indigenous people to return to the Boers hunting rifles they had used on their behalf.²¹

- 18 Boeyens (n 14) at 2-5; De Waal (n 3) at 155. The taxes were collected on behalf of the Zoutpansberg district or the ZAR government from all the chiefs who did not provide labourers, and from every hut. Tax was payable in the form of cattle, goats, sheep, ivory, copper, pick-axes or hides. See, also, Walker (n 1) at 277.
- 19 If events called for military intervention, a commando would be constituted by the mustering of all able bodied men, of either a specific field cornetcy or district, or the ZAR in general: see art 98 of the Grondwet van de Zuid-Afrikaansche Republiek, 1858 (hereafter the 1858 Constitution) in Eybers (n 5) doc 182, 363-410 at 384-385. (Unless specified, all references to the 1858 Constitution will be to the version as published in Eybers, and all English translations will be those of Eybers.) Depending on the extent of the territory from which men were mustered, the military force was under the command, from lowest to highest rank, of assistant field cornets, field cornets, commandants or the commandant general (art 99). “Able bodied men” included white males between the ages of sixteen and sixty, as well as “coloured” people able to render service in war whose chiefs were obliged to provide military forces (arts 96-97). In the Zoutpansberg district, the duty of claiming outstanding taxes from the indigenous peoples was sometimes left to João Albasini who had his own army in the form of Tsonga warriors. (For more on Albasini in general, see, also, n 25 and the text *infra*.) Albasini was appointed by the ZAR government on 9 Jun 1859 as tax collector, and on 9 Apr 1863 as superintendent of the indigenous peoples in the area (Boeyens (n 14) at 4, esp n 31). In Sep 1863, for example, a combined force under J Albasini and Commandant FA Geysler was sent against Rambuda because he had refused to pay taxes, had closed the hunting route that ran through his territory and had had some hunters killed. The attack was unsuccessful because Rambuda’s stronghold was well entrenched and it was very difficult to gain access to it: De Waal (n 3) at 156, 170; Boeyens (n 14) at 5. During a second campaign on 28 Oct 1863 (Boeyens (n 14) at 5 mentions the date as 26 Oct 1863), some of Rambuda’s kraals were burned down, cattle were confiscated, and women and children were captured (De Waal (n 3) at 156). However, Boeyens (n 14) at 5 adds that this second campaign did not break Rambuda’s power, but was a key to the agreement made by eight Venda chiefs to support each other in the event of an attack by the Boers. These eight chiefs were Makhado, Madzhe, Neluvhola, Matidza, Maphaha, Tshivase, Lwamondo and Madzivhandila (Boeyens (n 14) at 10). This collaboration agreement would be one of the contributing factors in the build-up of events leading to the High Court sitting of Jun 1867.
- 20 De Waal (n 3) at 157-166; Giliomee & Mbenga (n 15) at 153. See, also, JCA Boeyens “‘Black ivory’: The indenture system and slavery in Zoutpansberg, 1848-1869” in EA Eldredge & F Morton (eds) *Slavery in South Africa Captive Labor on the Dutch Frontier* (Pietermaritzburg, 1994) 187-214; F Morton “Female inboekeling in the South African Republic, 1850-1880” (2005) 26(2) *Slavery & Abolition* 199-215.
- 21 Theal (n 16) at 214 describes the white inhabitants of the Zoutpansberg district as “the most lawless of their colour in all South Africa.” Although Zoutpansberg had its share of law-abiding citizens, many of the white inhabitants came there as fugitives from justice and took up the very lucrative career of elephant hunting; *cf.* also, Maree (n 3) at 39. (In Jul 1863 the magistrate of Potchefstroom writes to the acting president regarding the matter of exchanging persons suspected of committing crimes, asking whether “ons land een toevlugtsoord moet zijn voor allerlei vagabonden en wegloopers” (our country must be a place of refuge for all kinds of vagabonds and runaways): see TAB SS 52 SUPL 86/63 (reference is to the National Archives Repository (Pretoria) followed by the relevant document series) 206-209 at 207-208. This confirms that suspects sought in other jurisdictions really did hide from the law in the ZAR.) Theal (n 16) at 214 condemns the “idleness” of these elephant hunters

However, the main reason for the deterioration in the relationship between the two groups was the involvement of the Boers in the political affairs of the Venda.²² This involvement would eventually result in the High Court sitting that is the topic of this article. These events are too complex and detailed to recount fully here²³ but a brief synopsis is necessary not only to provide the background to the High Court sitting, but also because the events played a role in the crimes for which the accused would stand trial. Briefly, the focus of the conflict was the struggle for succession after the death of the Venda chief, Ramabulana, in 1864. Although his oldest son, Davhana, had the first claim to the chieftainship in terms of Venda law, he was unpopular and had not been favoured as successor by his deceased father. Ramabulana's youngest son, Makhado,²⁴

when they later took to sending out their black employees on hunting trips without supervision. The Boers thus trained the indigenous people in the use of guns and ammunition, of which they later gave them full use. The indigenous people soon discovered that they could make much more profit from illegal trade in ivory than from wages paid by their employers, and so were unwilling to return the weapons, their new source of income and security. (See, also, Boeyens (n 14) at 3; De Waal (n 3) at 166-168). Boeyens (n 14) at 12 points out that this refusal to return the hunting rifles to the Boers had a negative impact on them for two reasons: it took away the Boers' military advantage over the indigenous people, for their own weapons could now be used against them, and it restricted their economic growth, as elephant hunting and the trade in ivory were the main economic activities of the area. Hunting was regulated in terms of the 1858 *Wet tot Beter Regelen der Jagt op Olifanten en ander Wild in de Zuid-Afrikaansche Republiek* (hereafter *Jagwet*, 1858) in *Volksraadsnotule Part 3* (n 7) *Bylaag* 37, 1858 at 599-602; and in F Jeppe & JG Kotzé *De Locale Wetten der Zuid Afrikaansche Republiek 1849-1885* (Pretoria, 1887) at 106-109. This Act imposed a limited hunting season (art 1) and restrictions on the number of animals to be killed (art 9). It also stipulated that no black person could be sent out hunting unless accompanied by his employer (art 2), with certain exceptions (art 10); that all black persons employed as hunters had to be registered at the local magistrate (arts 3, 8); that only two black persons could accompany a hunter (art 5); and that no weapons could be sold, traded or given to any black person (art 13). Non-compliance was apparently rife, since prosecutions in terms of this Act were common. (For example, the magistrate of Schoemansdal himself, Vercueil, was guilty of transgression of this Act: see De Waal (n 3) at 175.) In its report, the commission appointed by the Volksraad to investigate the Zoutpansberg matter also indicated that transgression of the *Jagwet*, 1858 was the main cause of the loss of more than 200 weapons to the indigenous people: "Rapport omtrent de zaak van Zoutpansberg" with art 166 Volksraad Resolution of 15 Nov 1867 in DC Joubert (ed) *Notule van die Volksraad van die Suid-Afrikaanse Republiek (Met Bylaes) Deel VII (1867-1868)* [*South African Archival Records Transvaal No 7*] (Cape Town, 1966) (hereafter *Volksraadsnotule Part 7*) 47-54 (hereafter "Report") at 49.

- 22 See De Waal (n 3) at 170-171; Boeyens (n 14) *passim*.
- 23 For a more detailed description of the conflict, see Boeyens (n 14) *passim*. The summary of the main points that follows is an abridged version of this conflict.
- 24 Makhado, also known as Magato, Makgato or Magadu, was referred to as the "Lion of the North". His mother, Limani, had been promised to Ramabulana's younger brother, Ramavhoya. However, when Ramavhoya died before the wedding could take place, she became Ramabulana's wife. Makhado was the youngest of seven (or twelve, according to some sources) sons, but was favoured by his father as his successor. Because of the jealousy this caused among his brothers, he went to work on a farm, presumably in the Zoutpansberg district, where he also received training in elephant hunting and the use of firearms. For more on Makhado's life, see JH Coetzee *sv* "Magato" in *DSAB* vol 3 (Cape Town, 1977) at 561-562.

on the other hand, was supported in his claim by Ramabulana's sister Nyakhuhu and brother, Madzhie, who, as *makhadzi* and *khotsimunene* respectively, played an important role in the traditional Venda law of succession. In May 1864 shortly after Ramabulana's death, Davhana was recognised as the successor by Albasini²⁵ in his capacity as superintendent of the indigenous peoples of the area.²⁶ However, on 3 June 1864 Makhado's supporters attacked and destroyed Davhana's main village. These supporters, acting on the instructions of Madzhie and Nyakhuhu, included Funyufunyu who worked for Jan Vercueil, the then magistrate (*landdrost*) of Schoemansdal, as well as Tsonga labourers employed by two other inhabitants of Schoemansdal, William Fitzgerald and L Bronkhorst. Superintendent Albasini accused Vercueil of being an accessory to the attack, which led to discord between them.²⁷ Albasini granted Davhana refuge on his farm, Goedewensch. Field Cornet Jan du Plessis also sympathised with Davhana. Clearly there was disunity amongst the Boers on the subject of Ramabulana's successor.

The period between 1864 and 1867 was marked by growing tension between the different groups, which was enhanced by political strife and military attacks on both the Boers and the Venda. Various attempts to calm the upheavals were unsuccessful, arguably because not all parties were invited to air their grievances or because grievances that had been aired had not been investigated and followed up to the satisfaction of all concerned.²⁸ Fear, mistrust and self-interest as well as inadequate communication, geographical isolation and logistical delays further frustrated any attempts to restore the peace.

By 1867 relations between the Boers and the Venda had disintegrated to such an extent that the ZAR government was again called on to intervene after previous attempts

25 JB de Vaal sv "Albasini, João" in *DSAB* vol 2 (Cape Town, 1983) at 5-7; JB De Vaal "Die rol van João Albasini in die geskiedenis van die Transvaal" in *Archives Year Book for South African History* vol 16(1) (Elsies River, 1953) vii-154F (hereafter De Vaal "Die rol van Albasini") *passim*.

26 See n 19 *supra*.

27 Whether because of this incident or for personal reasons, it is clear that Albasini and Vercueil did not get on. The Nov 1867 report of the Volksraad commission states that Albasini accused Vercueil of "roof, verraad, maken van onwettige commando's en hem verder te laste legt, als door zyn gedrag grootelyks schuld te zyn van de bestaande onlusten" (robbery, treason, forming illegal commandos and further alleges that the existing unrest has arisen mostly because of his behaviour). In the vein of tit-for-tat, Vercueil accused Albasini of "dezelfde grove misdaden, waarmede Albasini hem beschuldigd" (the same grave crimes of which Albasini accused him): "Report" (n 21) at 48.

28 These attempts to restore the peace included an investigation into the reasons for the conflict, held at Schoemansdal from 26 to 28 Apr 1865 by a panel led by Field Cornet Abraham Duvenhage, and a former magistrate of Schoemansdal (Grobler (n 2) at 218; Boeyens (n 14) at 13-16); a meeting with most, but not all, of the role players at a village (*stat*) of Madzhie on 5 Jun 1865 (Boeyens (n 14) at 18-19); a Commission of Enquiry, sent by the ZAR government and chaired by Commandant MJ Schoeman of Rustenburg in Jul 1865 (*idem* at 20-21); a Commission of Enquiry chaired by President MW Pretorius himself and accompanied by DFJ Steyn as acting state attorney, which held sittings at Schoemansdal from 16 Dec 1865 to 3 Jan 1866 (*idem* at 46-51); and a High Court sitting chaired by State Attorney AI Munnich held at Schoemansdal on 3 Sep 1866 (*idem* at 57-58).

to do so had failed to alleviate the tension.²⁹ The Executive Council acknowledged that the Zoutpansberg district was in need of assistance³⁰ and gave instructions to the commandant general to raise a commando for this purpose by 15 April.³¹ The commando would be accompanied by a High Court which would punish any person found guilty of a crime.³² In addition, the State President MW Pretorius also established a Commission of Enquiry chaired by Stephanus Schoeman³³ to investigate “aldaar bestaande zaken ... en te handelen volgens instructie” in the hope that “toch eenmaal het district Zoutpansberg

- 29 A deputation, consisting of DS Maré, AP Duvenage and BJ Vorster travelled to Pretoria in Jan 1867 to draw the attention of the government to the situation in Zoutpansberg (Boeyens (n 14) at 60-61). The deputation was appointed at a public meeting: Minutes of Public Meeting held at Goedewensch on 8 Jan 1867, in JH Breytenbach (ed) *Notule van die Volksraad van die Suid-Afrikaanse Republiek (Volledig met Alle Bylae Daarby) Deel VI (1866-1867)* [South African Archival Records Transvaal No 6] (Parow, *sd*) (hereafter *Volksraadsnotule Part 6*) *Bylaag* 3(b), 1867 at 280. See, also, the correspondence between the deputation and the government secretary, JW Spruijt, dated 30 Jan to 1 Feb 1867 arranging for the deputation to be heard by the Executive Council in *Volksraadsnotule Part 6* *Bylaag* 3(g)-(1), 1867 at 282-283. The Executive Council finally heard the deputation at a sitting on 4 Feb 1867 (Minutes of the Sitting of the Executive Council dated 4 Feb 1867 in *Volksraadsnotule Part 6* *Bylaag* 3(m), 1867 at 284-285). This sitting itself was of special significance and attests to the urgency of the matter, since a government notice had declared that the Executive Council would not sit before the first Wednesday in Apr (GN 13 of 29 Jan 1867 in *Volksraadsnotule Part 6* *Bylaag* 3(f), 1867 at 281). This was in accordance with s 87 of the 1858 Constitution which provided that the Executive Council was scheduled to meet on the first Wednesday of every Feb, Apr, Jun, Aug, Oct and Dec. A second deputation, consisting of the same members as the first, was sent to Pretoria in Mar 1867: Boeyens (n 14) at 62.
- 30 Minutes of the Session of the Executive Council held on 4 Feb 1867 in *Volksraadsnotule Part 6* (n 29) *Bylaag* 3(m), 1867 at 284-285.
- 31 Article 2(2) of the Minutes of the Evening Session of the Executive Council held on 4 Feb 1867 in *Volksraadsnotule Part 6* (n 29) *Bylaag* 3(o), 1867 at 286-287. One contributor to the Orange Free State newspaper, *De Tijd*, criticised Paul Kruger for the way he had handled the events of Jun/Jul 1867: see 11 Sep 1867 *De Tijd*.
- 32 Article 14 of the Minutes of the Session of the Executive Council held on 7 Apr 1867 in *Volksraadsnotule Part 6* (n 29) *Bylaag* 3(z), 1867 at 292; see, also, Boeyens (n 14) at 62.
- 33 Being the same Schoeman who was elected commandant general of Zoutpansberg in 1855 and after whom Schoemansdal was renamed (see n 7 *supra*). In the intervening years, Schoeman had been involved in disputes with the ZAR government, and specifically with MW Pretorius himself, and had encountered none other than Paul Kruger in military battle in 1862. As a result of these disputes, Schoeman had been called to appear before three different courts to give account of his actions; his failure to do so led to his dismissal from various positions, including that of commandant general and acting State President. In 1863 a special high court outlawed Schoeman and ordered his property to be confiscated; however, in Oct 1864 the court's sentence was set aside, which arguably removed the stigma of rebel from his reputation. Despite his stormy relationship with the government, MW Pretorius appointed him as chairman of the Commission of Enquiry, probably because it was assumed that Schoeman would do all in his power to save the town named after him. At the time of his appointment, Schoeman was the captain of the Pretoria Rifle Corps. See Ferreira (n 7) at 685-688 for a more detailed description of Schoeman's life and political involvement.

tot rust moge gebragt worden”.³⁴ The Commission arrived in Schoemansdal on 21 May 1867 but its attempts to restore peace failed.³⁵ When it became clear that war with the Venda was inevitable, the Commission prepared for war by mustering an army and arranging for the safety of the inhabitants of Schoemansdal.³⁶

It was amidst these preparations for war that the High Court was scheduled to sit on 17 June 1867. The presiding officers of the Court were the magistrate of Pretoria, C Moll³⁷ (who acted as chairman), the magistrate of Waterberg, JJP Prinsloo, and the magistrate of Zoutpansberg, RA van Nispen.³⁸ SJ Meintjes was appointed as special acting state attorney to institute proceedings against the relevant individuals.³⁹ It is interesting to note that prominent role players, such as Albasini and Magistrate Van

- 34 Correspondence of State President MW Pretorius to Schoeman dated 10 May 1867 in *Volksraadsnotule Part 6* (n 29) *Bylaag 4(a)*, 1867 at 292-293. In his address to the Volksraad on 15 May 1867, Pretorius described the mission of the commission of enquiry “om den waren toedragt der zaken te weten te kommen, en te zien of de zaken niet misschien nog zonder oorlog kunnen worden te regt gebragt” (to find out the real circumstances and to see whether the matters cannot still be settled without war): “Aanspraak van zyn hoog-ed den staats-president der Z A Republiek...” in *Volksraadsnotule Part 6* (n 29) *Bylaag 5*, 1867 at 293-294. The other members of the Commission appointed by Pretorius were Schoeman’s son, HJ Schoeman, and SJ Meintjes (for more on Meintjes, see (nn 39, 41 *infra*). The magistrate of Zoutpansberg was instructed to assist the Commission in accordance with their instructions: Instruction Letter of JW Spruyt to *Landdrost* of Zoutpansberg dated 10 May 1867 in *Volksraadsnotule Part 6* (n 29) *Bylaag 4(b)*, 1867 at 293. Unfortunately the Instruction Letter itself mentioned in both these documents could not be found and the details of the instructions are therefore unknown.
- 35 Boeyens (n 14) at 63-65; De Waal (n 3) at 181.
- 36 Boeyens (n 14) at 65.
- 37 Cornelis Moll was originally a printer by profession and had been involved in various publications in the Cape and Natal, of which *De Patriot* was one. In 1857 Moll set up a press in Potchefstroom after requests from President MW Pretorius himself, and was responsible for printing the first government gazette of the ZAR in Sep 1857. After the government bought his press, he acted in various official capacities, namely as state secretary (1857), state attorney (1863), magistrate of Pretoria (1864 to Nov 1867), member of the Volksraad and magistrate of Waterberg (1875). It is not clear whether Moll had received any legal training. However, he is described as “a flamboyant character who delighted in the parry and thrust of court procedure.” See BJT Leverton *sv* “Moll, Cornelis” in *DSAB* vol 3 (Cape Town, 1977) 624-625 (quote at 625).
- 38 Van Nispen had been an officer in the Dutch army, but settled in the ZAR in 1860. He worked as clerk to the magistrate of Potchefstroom before moving to Schoemansdal to work as a tutor for João Albasini. He also worked as clerk to Magistrate Vercueil, whom he succeeded after the latter’s resignation in 1865. (See, regarding his resignation, a letter dated 18 Dec 1865, TAB SS 72 R1330/65 at 112.) After the abandonment of Schoemansdal, Van Nispen became magistrate at Marabastad and was a member of the commission that investigated the conditions in Zoutpansberg in 1869. Apart from his official duties, Van Nispen was also very involved in musical activities. He was the director of the musical society De Harmonie established in 1863, which performed at the ceremony on 10 May 1864 when MW Pretorius took the oath as State President. Van Nispen also conducted a male choir and composed his own music, including a march, called “Nationale Potpourri”, in which he successfully merged the ZAR, British and Dutch national anthems: see Anon *sv* “Van Nispen, Jonkheer Reginald Alphonse” in *DSAB* vol 3 (Cape Town, 1977) at 813.
- 39 The letter of appointment stated that he was appointed as “fung. Staats Procureur speciaal”: MW Pretorius to SJ Meintjes, 10 May 1867 in *Volksraadsnotule Part 7* (n 21) *Bylae 50*, 1867/68 at 203; Boeyens (n 14) at 67.

Nispen, had reservations about the fact that the Court sitting coincided with the dispatch of a commando to Schoemansdal.⁴⁰ In addition, Meintjes was an unpopular choice for state attorney as there were rumours of misconduct concerning him.⁴¹ The extent of his unpopularity is clear from an incident in Rhenosterpoort, an area south of Schoemansdal and part of the Zoutpansberg district, in which one RJ Strydom was forced to resign as field cornet after he had canvassed votes for Meintjes in his quest to become a member of the Volksraad.⁴²

40 De Vaal "Die rol van Albasini" (n 25) at 100.

41 Boeyens (n 14) at 73 n 54; see, also, the letter to the Executive Council protesting Meintjes' subsequent appointment as member of the Volksraad: KP Minnaar to Executive Council, 3 Sep 1867 in *Volksraadsnotule Part 7* (n 21) *Bylae* 1, 1867/68 at 157. It is not clear exactly what offence if any Meintjes had committed. What is known is that he had held various important positions, and had been amongst other things director of the Graaff-Reinet Bank (according to Meintjes, from 20 Jan 1852 to 1 Aug 1862) and shareholder of the South African Central Bank before a commercial depression hit Graaff-Reinet and its surroundings in 1861. It is alleged that because of Meintjes' actions many businesses declared bankruptcy. Meintjes was charged, but his creditors could not recoup their losses as he had been declared insolvent in 1858. He surfaced again in Pretoria in 1862. In 1863 he was arrested in Potchefstroom but was later released. In Jun 1864 the Cape government issued a warrant for his arrest and an award of £50 for his capture. Possibly because of this, Meintjes then settled in Pretoria for his own protection, even though the warrant for his arrest had been withdrawn (see Meintjes to the Volksraad, 16 Sep 1867 in DC Joubert (ed) *Notule van die Volksraad van die Suid-Afrikaanse Republiek (Met Bylaes) Deel VIII (1868-1869)* [*South African Archival Records Transvaal No 8*] (Pretoria, 1989) (hereafter *Volksraadnotule Part 8*) *Bylae* 33, 1868/69 at 140-141). Meintjes claimed innocence against the "onverdiende aantygingen" (undeserved accusations) and complained that it was "hartgrievend onaangenaam ... dat aan hem gedurig 'getornd' wordt" (grievously unbearable ... that he was being pestered); he provided documentary proof (which has been lost) and called upon the members of the Volksraad, being "mannen en vaders van huisgezinnen" (men and fathers of households) to publish these "ter regtvaardiging van [his] eer, karakter en standplaats in de Z.A. Republiek" (in justification of his honour, character and standing in the ZA Republic) (at 141). The Volksraad accepted his protests but refused to publish the documents (arts 136-137 Volksraad Resolution of 12 Oct 1868 in *Volksraadsnotule Part 8* at 37). I was not able to find a copy of the warrant for his arrest; nevertheless, mention is made of a "warrant tot apprehentie van der Heer Stephanus Jacobus Meintjes" (warrant for the apprehension of the gentleman Stephanus Jacobus Meintjes) in a letter dated 15 Jul 1863 to the acting president by the magistrate of Potchefstroom (TAB SS 52 SUPPL 86/63 at 206-209). This reference must be to the 1863 warrant as it is dated almost a year earlier than the Jun 1864 warrant mentioned above. From the letter it appears that Meintjes, at that point a member of the *heemraad* of Potchefstroom, had personally handed the warrant together with another document to the magistrate by mistake after saying in public and to another member of the *heemraad* that he had torn it up (at 207). It was only by chance that the warrant finally fell into the hands of the magistrate and this dishonesty clearly upset him (the latter). The magistrate asked whether he had to hand over Meintjes to the Cape authorities and wrote (at 209): "Ons hoofdoel moet, mijns insiens, zijn het land schoon te houden en er geen hoofd kwartier van te maken van allerlei culpable frodulous [?] insolventen of van forgerie beschuldigten zoals de warrants meestal aanduiden..." (Our main purpose must, in my view, be to keep the country clean and not to make it a head quarter of all kinds of culpable fraudulent insolvents or of persons accused of forgery as the warrants mostly indicate). It therefore appears that the charges related to fraudulent insolvency and forgery, and seems to confirm the facts mentioned above. Although Meintjes later in his career practised *inter alia* as an advocate, notary public and conveyancer, it is assumed that he never had any formal legal training. For more on Meintjes' life, see C Thornhill *sv* "Meintjes, Stephanus Jacobus" in *DSAB* vol 3 (Cape Town, 1977) at 594-595.

42 De Vaal "Die rol van Albasini" (n 25) at 100.

On 4 June 1867, Meintjes instituted proceedings against Commandant SM Venter and (recently promoted) Acting Commandant JH du Plessis.⁴³ In view of their important military roles, Commandant General Paul Kruger requested that the High Court sitting be postponed until after the war with the Venda.⁴⁴

It is significant that some of the officials who were to play an important role in the impending military campaign against the Venda were also implicated in creating the tension. As might be expected, these conflicting interests would play an important role in the High Court sittings.

3 The trials

Before looking at the individual trials, we need to consider the matter of the status and jurisdiction of the High Court convened for the trials. Although the scope of this article does not allow for a detailed study of this aspect, it should be pointed out that the Court did not fit into any of the three categories of court structures provided for constitutionally at the time. Although article 143⁴⁵ of the 1858 Constitution made provision for a High Court of Justice,⁴⁶ it functioned as a circuit court⁴⁷ and a court of appeal.⁴⁸ The Schoemansdal court apparently did not comply with the requirements for that court as set out in article 143.⁴⁹ It is thus not clear whether it acted as a special sitting of the High Court of Justice as envisaged by the 1858 Constitution or whether it was indeed a Special High Court.

Three different trials took place, which will be discussed separately below. Although a detailed investigation of all legal historical aspects is impossible here, this article would be incomplete if at least some of the more important points were not mentioned at this stage.⁵⁰

43 See par 3 1 *infra*.

44 Boeyens (n 14) at 67-68.

45 Article 143 of the 1858 Constitution (Eybers (n 5) doc 182, 363-410 at 396-397) provides for a court of the *landdrost*, a court of *landdrost* and *heemraden* as well as a High Court of Justice.

46 The translated term as used by Eybers (see n 19). The original Dutch term used in the 1858 Constitution was “een hoog-geregtshof” (art 143) or “een hoog geregtshof” (art 144).

47 The circuit court consisted of two or three magistrates and twelve jurors (art 143 of the 1858 Constitution (Eybers (n 19) at 396); art 23(e) Volksraad Resolution of 21 Sep 1858 in *Volksraadsnotule Part 3* (n 7) at 197). The twelve jurors were picked by lot from twenty-four burghers summoned to appear before the court: see art 23(c) Volksraad Resolution of 20 Sep 1858 in *Volksraadsnotule Part 3* (n 7) at 196.

48 JGK “The administration of justice in the South African Republic (Transvaal)” (1919) 36 *SALJ* 128-139 at 132; E Kahn “The history of the administration of justice in the South African Republic” (1958) 75 *SALJ* 294-317 at 304. The High Court of Justice also had jurisdiction to hear charges brought against the President or members of the Executive Council, and to declare such persons, if found guilty, unworthy to continue in office (arts 34 and 53 of the 1858 Constitution).

49 For one, although the Court was presided over by three magistrates, the existing evidence makes no mention of the additional appointment of twelve jurors as required by art 143 of the 1858 Constitution (n 45). Nonetheless, this cannot be viewed as conclusive proof because some documents relating to the trials were lost when the town was abandoned: see n 114 *infra*.

50 At least some of these aspects form part of my doctoral research which will be published at a later stage.

3 1 Trial A: SM Venter and JH du Plessis

As mentioned above, Meintjes instituted proceedings against Commandant SM Venter and Acting Commandant JH du Plessis on 4 June 1867. Because of their military duties in the anticipated military campaign, the High Court sitting was postponed until after the campaign and only took place on 27 June 1867 after a failed attack on Madzhe during the previous week.⁵¹ The charge⁵² concerned the illegal appropriation of livestock belonging to Nthabalala, a Venda leader and son of Ramabulana who refused to recognise Davhana as successor.⁵³ It related to an incident on 2 November 1864 when Venter and Du Plessis⁵⁴ had attacked Magobo, a supporter of Nthabalala. The reason for the attack was Magobo's alleged insubordination vis-à-vis a member of the Volksraad, Jan Jacobs, and apparently concerned a labour dispute.⁵⁵ On the day of the attack, Magobo fled to avoid Venter and Du Plessis. Du Plessis then ordered that 235 cattle and 349 sheep belonging to Nthabalala and his supporters be confiscated and taken to his own farm.⁵⁶ Du Plessis summoned Nthabalala to his farm and informed him that his cattle would be returned if Magobo returned to his employer, Jan Jacobs. Magobo refused. Du Plessis then returned some of the livestock but retained a large number.⁵⁷ Nthabalala later lodged complaints against Du Plessis on two separate occasions, namely on 9 February 1866 to (his then superintendent) Vercueil,⁵⁸ and at the High Court sitting in September 1866.⁵⁹ However, no definite action was ever taken against Du Plessis.

- 51 For a description of the attack on Madzhe's stronghold, see Boeyens (n 14) at 68-69. After the attack, the Boer army, under the leadership of Commandant General Paul Kruger, retreated to Schoemansdal to await the arrival of more ammunition. During this period, the white inhabitants withdrew to the security of four *laers* and the community's normal day-to-day activities were suspended but the inhabitants played jukskei and other games to while away the time (De Vaal "Die rol van Albasini" (n 25) at 99). It was during this time of boredom and frustration that the High Court sitting was held.
- 52 TAB A 779 Dorsland-Trek Documents Band 2 at 29-32. The charge was that of "de misdaad van geweld of geweldadige ... diefstal" (the crime of violence or violent... theft) (at 30) or elsewhere simply put as "roof" (robbery) (at 52).
- 53 As mentioned in par 2 *supra*, Du Plessis sympathised with Davhana in the succession struggle. One can only speculate on whether this played a role in Du Plessis' actions.
- 54 Du Plessis was a field cornet at that time. By the time of the trial, however, he had been promoted to acting commandant.
- 55 Boeyens (n 14) at 9.
- 56 Du Plessis' farm was Palmietfontein Nr 311 (Boeyens (n 14) at 76).
- 57 Boeyens (n 14) at 9. This implies that at least some of the livestock were returned to Nthabalala; however, the sentence Du Plessis received did not mention the exact number of livestock for which he had to compensate Nthabalala.
- 58 *Idem* at 52. Vercueil was appointed as superintendent of the Venda chiefs Madzhe and Makhado on 29 Dec 1865 (*idem* at 50).
- 59 See n 28 *supra*. Munnich, who had chaired that sitting, was later criticised for not finding the culprits responsible for the disturbances in Zoutpansberg. However, Munnich pointed out that this fell outside the scope of his instructions, which pertained specifically to the prosecution of Robert Hines for illegally trading in weapons only. Despite these restrictions, Munnich investigated these accusations and later submitted a report to the ZAR government. Unfortunately, the report could not be found: see Boeyens (n 14) at 57-58.

The High Court found Venter and Du Plessis guilty and ordered them to return the livestock to the rightful owners within three months or alternatively to recompense them at a rate of £3 per head of cattle and 5 shillings per sheep. Venter and Du Plessis were also fined £75 each, payable within three months, and were further ordered immediately to provide guarantees. If they did not provide the guarantees, an inventory of their movable and immovable assets would be drawn up and they would have to serve six months' imprisonment.⁶⁰ Venter and Du Plessis refused to provide the guarantees, but because Schoemansdal did not have prison facilities Van Nispen allowed them to go free. Van Nispen was severely criticised by Moll (the chairman of the High Court) and by Meintjes (the special acting state attorney) for neglecting his duty to ensure that the sentences were carried out. Meintjes unsuccessfully tried to get Van Nispen discharged from his position as magistrate of the district and also charged him with perjury.⁶¹

The first legal question concerns standard procedure regarding prisoners awaiting trial and persons sentenced to imprisonment in the absence of a prison facility.⁶² In a separate incident two years earlier, one Munene, who had been arrested on 15 March 1865 by order of the war council, had indeed been held in custody at Schoemansdal, presumably in the care of one SJJ van Rensburg, but had managed to escape.⁶³ This situation prompted the field cornet of Zoutpansberg to write to the Executive Council requesting that a prison be

60 *Idem* at 71-72.

61 *Idem* at 72 n 49; De Vaal "Die rol van Albasini" (n 25) at 100. It was apparently not unheard of to accuse magistrates of perjury in those days: see correspondence DFJ Steyn to the Volksraad, 3 Mar 1866 in JH Breytenbach & DC Joubert (eds) *Notule van die Volksraad van die Suid-Afrikaanse Republiek (Volledig met Alle Bylae Daarby) Deel V (1864-1866)* [*South African Archival Records Transvaal No 5*] (Parow, *sd*) (hereafter *Volksraadsnotule Part 5*) Bylaag 62, 1865/66 at 377. Mr Steyn publicly accused the then magistrate of Potchefstroom, WJ Otto, of perjury. Steyn was charged with treason and in a petition to the Volksraad he asked whether his actions constituted the crime of treason. After some deliberation, in which it became clear that the state attorney himself was not certain of the answer, the Volksraad decided that accusing a magistrate of perjury did not constitute treason (see arts 255, 260 Volksraad Resolution of 6 Mar 1866 in *Volksraadsnotule Part 5* at 102-103). The only statutory provision I could find that provided for the criminal prosecution of magistrates for perjury was art 23 of the Huwelijks Ordonnantie Law 1 of 1870 (in Jeppe & Kotzé (n 21) 359-365 at 365), and related to the falsification of marriage certificates. However, this Ordinance was only proclaimed three years after the trials at Schoemansdal.

62 One of its former inhabitants could not recollect any indication of a separate prison facility in the rudimentary layout of Schoemansdal, although mention was made of a school, a church, an office, a shop, the (market) square and a rampart: see Grobler (n 2) at 220.

63 For a discussion of the events surrounding the arrest of Munene, see Boeyens (n 14) at 10. During the Dec 1865 sitting of the Commission of the Executive Council on matters in Zoutpansberg, Vercueil was accused of assisting Munene to escape (*idem* at 49). This was the reason why Vercueil's resignation as magistrate was allowed. This accusation was repeated in the Volksraad Commission's report of Nov 1867, although the element of intent was now downgraded to that of negligence ("Report" (n 21) at 47).

built, or alternatively that an existing building be allocated for the detention of prisoners.⁶⁴ It is therefore clear that Munene had not been held in an official prison facility, but had probably been in a makeshift prison from which he had easily escaped because it lacked the necessary security. Although imprisonment was not an uncommon sentence, and was regularly imposed for crimes ranging from theft to assault with intention to murder,⁶⁵ there were no official premises where prisoners could reasonably be secured.⁶⁶ Van Nispen, knowing the popularity of Venter and Du Plessis, probably anticipated that they would attempt to escape, and that they would be aided by the local inhabitants.

A second question in this regard concerns the implication that it was the duty of the magistrate to see to the execution of sentences. In addition to their judicial function, magistrates were expected to perform a myriad of duties. They had to collect taxes and submit regular reports on income and expenditure to the Volksraad.⁶⁷ They also had certain duties regarding sluices and water-furrows⁶⁸ and the payment of salaries;⁶⁹ had to act as heads of villages;⁷⁰ did secretarial work for the courts of *landdrost en heemraden*, the military councils, the commandants general and the Volksraad;⁷¹ and had to distribute the spoils of war to designated persons.⁷² Although there is evidence⁷³ that a prison warden

- 64 TAB SS 72 R1366/65 at 240-241. In a letter dated 26 Dec 1865, Field Cornet D Herbst desperately urged the Executive Council: “Ik heb de eer ur te verzoeken my ... een gebouw, waarin ik menschen die door de hoogere outoriteiten [?] in hechtenis genemen worden kan plaatsen, daar het mij onmogelijk is, prisoniers in mijn huis te houden” (I have the honour to request you to [provide me with] a building where I can place persons arrested by higher authority since it is impossible to detain prisoners in my house) (at 240) and begs that if that is not possible, to “bouden eener tronk of my eene ander plaats te verschaffen waar ik prisoniers kan opsluiten” (to build a prison or to provide me with another place where I can keep prisoners) (at 241).
- 65 Pelzer (n 6) at 25. See, also, art 149 of the 1858 Constitution, which specifies imprisonment as a possible sentence.
- 66 C Van Onselen *Masked Raiders Irish Banditry in Southern Africa 1880-1899* (Cape Town, 2010) at 82 refers to the general unsuitability of the ZAR holding facilities twenty years later. Even the Republic’s finest, the Pretoria prison, could not hold Jack McKeone, the Irish highwayman, who managed to escape from it not once, but twice. Read the fascinating account of the escapes at 58-60 and 68-70.
- 67 Articles 205, 206 of the 1858 Constitution; Wichmann (n 5) at 121-122.
- 68 See the correspondence of DP Taljaard and others to JC Steyn, 15 Feb 1867 in *Volksraadsnotule Part 8* (n 41) *Aanhangsel 1a to Bylae 34*, 1868/69 at 142-143.
- 69 See the reference to the correspondence of AJ van Coller in *Volksraadsnotule Part 3* (n 7) doc (cq) at xix (the document is, however, missing).
- 70 De Waal (n 3) at 27.
- 71 Wichmann (n 5) at 121-122.
- 72 That is, the seriously wounded as well as the widows and orphans of those killed during the war (art 126 of the 1858 Constitution).
- 73 See the notice dated 14 Oct 1864 from Vercueil informing the president that he had appointed J Haagen as “Waterfiscaal, Schout & Marktmeester en Schutmeester ... niet alleen tot bevordering van den bloei en de welvaart van dit dorp [Schoemansdal] en zijne ingesetenen maar ook tot welvaart van dit District en het Gouvernement deser Republiek” (water fiscal, prison warden & market master and pound master ... not only to encourage the growth and welfare of the town and its inhabitants but also for the welfare of the district and the government of the Republic) (TAB SS 60 R903/64 at 396). Jacobus Haagen (not Haager as stated by Ferreira *Montanha* (n 2) at 47) had originally been appointed

(or *Schout*) had been appointed for Zoutpansberg in 1865,⁷⁴ and that he was responsible for the daily care of prisoners,⁷⁵ it was generally the duty of the field cornet to ensure that sentences were executed.⁷⁶ Since the field cornet formed part of the executive,⁷⁷ not the judicial branch of government, it appears that it was indeed not the responsibility of the magistrate to see to the execution of sentences.⁷⁸

3 2 Trial B: SM Venter, J Albasini and FH Geysers

On 5 July 1867 Meintjes instituted proceedings against Commandant SM Venter, Superintendent J Albasini and the former Assistant Commandant General FH Geysers on charges of murder, child abduction and negligent conduct (“moord, kinderroof en onvoorzichtige handelswyze”).⁷⁹ The charges related to a campaign against one of the Venda chiefs, Magoro, in August 1865⁸⁰ when his stronghold was besieged. During the siege, Magoro was invited to negotiations: he was informed that if he settled his outstanding taxes,⁸¹ the safety of his person and belongings would be guaranteed and his people left in peace. Magoro and two of his councillors then went in person to the commando and handed over a number of cattle in lieu of the outstanding taxes. One of the councillors was sent back to the stronghold to arrange for the return of weapons, but Magoro and his other councillor were taken prisoner and bound to a wagon to prevent them from escaping. Although eight weapons and some ivory were handed over to the

as magistrate’s clerk (*landdrostklerk*) in Jul 1864 (TAB SS 57 R460/64 at 138), but Magistrate Vercueil afterwards requested his redeployment after Haagen proved not to have the necessary skills (*bekwaamheden*) required of a magistrate’s clerk. Vercueil complained that Haagen “geen een enkel document kan produceren van eenige bekwaamheid” (could not produce any document with the required skill) and that he was not convinced that Haagen possessed the necessary competency. As a result, Vercueil was of the opinion that Haagen “niet toereikende te zyn voor de gewichtige betrekking van Landdrostklerk op het kantoor alhier” (was not qualified for the important office of magistrate’s clerk of this office): see the letter dated 8 Jul 1864: TAB SS 57 R459/64 at 136-137.

74 A *Schout* had also been appointed for Potchefstroom in 1856: see Pelzer (n 6) at 27.

75 See TAB SS 80 R946/66 at 113-114 for a report dated 15 Sept 1866 from J Haagen to the Executive Council after complaints were received from a prisoner, RW Hines, about the quality of the food he had been given in prison. Haagen denied the accusations and insisted that Hines had been treated throughout with great respect (“met alle respekt behandel geworden”) (at 113).

76 CF Nieuwoudt *Die Ontstaan en Ontwikkeling van die Uitvoerende Gesag in die Zuid-Afrikaanse Republiek* (Cape Town, 1964) at 193.

77 Nieuwoudt (n 76) at 140-141 argues that the executive branch consisted of the Executive Council and the military power.

78 The first statutory provisions regulating the prisons of the ZAR were promulgated by the British administration in 1880 during the occupation of 1877 to 1881. Art 4 of Law 14 of 1880 (in Jeppe & Kotzé (n 21) 824-834 at 825) provided for the appointment by the government administration of a prison warden for each prison. Such a prison warden would have the same powers as a constable and be under the direct supervision of the relevant magistrate. The prison warden was expected to live on the prison premises and could not have any other official duties or business interests.

79 Boeyens (n 14) at 72.

80 The siege lasted from 7-13 Aug 1865: *idem* at 37-38.

81 Whether his taxes were indeed outstanding was uncertain and was denied by the then magistrate of Zoutpansberg district, J Vercueil, and another inhabitant of the area, NT Oelofse: *idem* at 36.

commando, the Venda in the stronghold refused to hand over any remaining weapons; consequently Magoro and his councillor were executed.⁸² The siege continued and the stronghold was eventually seized and Magoro's warriors all slain. The women of the conquered tribe were given to Albasini's Tsonga warriors; the cattle were divided among the Boers; in addition each white member of the commando received two Venda children as indentured labourers.⁸³

The trial date was set for 15 July 1867, but because of subsequent events,⁸⁴ the case was heard only two years later on 20 March 1869 in Pretoria. The charges were dismissed because the Volksraad had already approved Albasini's report in March 1866.⁸⁵ The court further held that the circumstances should be classified as war conditions and that the case should therefore be heard by a military court. No further steps were ever taken against the three accused, even though the matter elicited criticism from contemporary writers⁸⁶ and historians.⁸⁷

A question requiring closer scrutiny relates to the status of Volksraad decisions and approvals.⁸⁸ Constitutionally, resolutions of the Volksraad were regarded as law and could not be questioned by the courts.⁸⁹ This means that if the actions of Venter, Albasini and Geysler during the campaign against Magoro had been disclosed in full in Albasini's reports and had been approved by the Volksraad, not even the special High Court would have had jurisdiction to hear charges brought against them. However, the relevant report by Albasini appears to have gone missing and one can only speculate on its content and what exactly had been approved by the Volksraad. It is significant that although *prima*

82 The Nov 1867 report of the Volksraad commission stated that Magoro was murdered at night: "Report" (n 21) at 48.

83 Boeyens (n 14) at 36-38.

84 See par 4 *infra*.

85 See art 299 Volksraad Resolution of 8 Mar 1866 in *Volksraadsnotule Part 5* (n 61) at 107.

86 Eg, the editor of the *Transvaal Argus* (30 Mar 1869 *The Transvaal Argus*) as cited by Boeyens (n 14) at 39 n 136. Unfortunately I was not able to obtain a copy of this newspaper.

87 See Boeyens (n 14) at 39.

88 See n 85 *supra*: The Volksraad not only approved Albasini's report, but also added that it "blykt, dat die ambtenaar [Albasini] met yver zyne pligten heeft waargenomen" (seems that the official [Albasini] carried out his duties diligently). This same reaction of the Volksraad to Albasini's reports was minuted on more than one occasion: see, eg, art 268 Volksraad Resolution of 6 Mar 1866 in *Volksraadsnotule Part 5* (n 61) at 103-104. However, a reading of the Volksraad's discussion of the monthly statements on the collection of revenue by the various districts in Mar 1866, reveals that the only monies received from Zoutpansberg district were collected and paid over by Albasini himself (art 9 Volksraad Resolution of 21 Mar 1866 in *Volksraadsnotule Part 5* (n 61) *Bylaag* 91, 1865/66, 403-412 at 406). As already mentioned, one of Albasini's duties as superintendent of the indigenous peoples was to collect taxes on behalf of the ZAR (n 19 *supra*); at that time, the ZAR was in dire need of revenue to cover its military and administrative expenses. This raises the question whether the Volksraad, at that time, could afford to query the actions of someone like Albasini who appeared to be fulfilling his duties.

89 Article 2 of add 2 to the 1858 Constitution dated 19 Sep 1859 in Eybers (n 5) doc 185 at 417-418. Art 2 explicitly states that "what has been decided or approved of by the Volksraad may not again be subjected to the cognizance of any court of law". See, also, arts 12 and 29 of the 1858 Constitution which provided that the legislative authority of the ZAR resided with the Volksraad.

facie the 1858 Constitution⁹⁰ guaranteed a separation of powers, this was a fallacy, as events proved: the judiciary patently had no testing capacity and could not question the Volksraad's resolutions.

3 3 Trial C: SM Venter, FH Geysers and JH du Plessis

On 5 July 1867 Meintjes also instituted proceedings against Commandant SM Venter, former Assistant Commandant General FH Geysers and Acting Commandant JH du Plessis for the murder of a certain Slinger. He was a subordinate of Madzhie, who was at war with Schoemansdal during August 1865. Slinger had been arrested after he had approached Mrs Crenney, the wife of his former employer, looking for food and work. He had then been questioned by the war council (*krijgsraad*)⁹¹ consisting of Venter, Geysers and Du Plessis, found guilty of espionage on behalf of Madzhie and executed.⁹²

These charges upset some Boers very much, and a group of them, led by CN Smit, ML Prinsloo and PL van Emmenes, disrupted the High Court sitting by *inter alia* removing Meintjes from the room by force.⁹³ In a letter to the then state attorney, FWH Kleyn,⁹⁴ written a year later, Van Nispen refers to the incident:

Zit het Hoog Geregtschhof mischien te Pretoria, omdat men alhier bang is voor eenige stoornis? Men behoeft daarvoor niet te vrezen. Deze burgers zijn zeer onderworpen en vreedzaam, doch geven niet gaarne het heft in handen aan wegloopers zooals S. J. Meintjes, hoewel het niet de Zoutpansbergers waren, maar het volk uit de verschillende districten, hetzelfde publiek, op wiens verzoek S. J. Meintjes dagvaardde ... dat hem over

90 According to Nieuwoudt (n 76) at 140-141, the 1858 Constitution provided for not three, but four branches of government, namely the legislative authority which vested in the Volksraad (art 12); the executive authority which vested in the President and the Executive Council (art 13); the maintenance of order, entrusted to the military power (art 14); and the judicial power, vested in the magistrates and jurors, leaving "it to their judgment and conscience to act according to the laws of the country" (art 15). See, also, art 62 which explicitly stated that only judicial officers were "entirely free and independent" in the exercise of their duties and not subject to the authority of the President.

91 The translated term as used by Eybers (n 5).

92 Boeyens (n 14) at 40.

93 *Idem* at 72-73. In its Nov 1867 report, the Volksraad commission criticised Smit, Prinsloo and Van Emmenes for their behaviour and for disrupting the High Court sitting ("Report" (n 21) at 51). Art 94 Ordinance 5 of 1864 (in Jeppe & Kotzé (n 21) 271-294 at 288) provided that all criminal proceedings should continue undisturbed until their completion.

94 Frederik Willem Hendrik Kleijn (or Kleyn, as referred to in official documentation) was a native of the Netherlands who came to the Cape in 1856. Although he had received some university education in Leiden, the nature of that education is uncertain. Nonetheless, he received permission to practise as an attorney in the ZAR in 1865. He was state attorney of the ZAR from 11 Jun 1867 until his resignation on 20 Nov 1871, after the controversial Keate Award concerning the western border of the ZAR. Kleyn has been criticized for his presentation to the arbitration court which, it was alleged, caused the Republic to lose land. Kleyn resumed his law career as an advocate and notary in 1877, also serving on the Board of Examiners from 1894 to 1896, and was appointed acting judge of the Supreme Court on 22 Jun 1896: see MH Buys *sv* "Kleijn, Frederik Willem Hendrik" in *DSAB* vol 3 (Cape Town, 1977) at 470-471.

de kantoortafel wilde halen en had ik het zelf niet tegengegaan herhaalde malen, het had stellig gruwelijk met Meintjes afgeloopen.⁹⁵

The animosity of the crowd attending the hearing is further illustrated by an exclamation by one of them as Meintjes was leaving the room: “(W)aarom laat je hem nog regt op gaan, gy moest hem gebukt over straat laten gaan.”⁹⁶

It is clear that the court disruption stemmed not only from Meintjes’ unpopularity, but also from the popularity of the accused.⁹⁷

Of interest here are the powers of the war council and its seemingly unlimited authority in times of war. It is indeed debatable whether the war council had acted within its authority when it executed Slinger. The 1858 Constitution did not define the powers of a war council, but merely provided for the circumstances in which one could be convened; that the war council would consist of all the officers and officials present, with the highest ranking officer presiding as chairman; and that all its members had equal voting rights except for the chairman who had a casting vote when the vote was tied.⁹⁸ These provisions were repeated in the *Instructie voor Commandanten* (Instructions for Commandants).⁹⁹

The only limitation on the authority of the war council appears to be that commandants and field cornets had to obey the magistrates when subject to administrative judicial

95 Translated as: Does the High Court perhaps sit at Pretoria because men here are afraid of disruptions? Men do not have to fear that. These burghers are submissive and peaceful although they do not like to give the upper hand to runaways such as SJ Meintjes; however it was not Zoutpansbergers but folk from different districts, the same public, at whose request SJ Meintjes instituted proceedings, who had wanted to pull him over the desk and had I not personally objected numerous times, it could have gone much worse for Meintjes: Van Nispen to Staatsprocureur der Z. Afrik. Republiek, 31 Jul 1868 in *Volksraadsnotule Part 8* (n 41) *Bylae* 96, 1868/69, 206-207 at 207.

96 Boeyens (n 14) at 73 (translated as: [W]hy do you still let him go up straight, you should have let him go crouching across the street).

97 Public support for two of the accused (Geyser and Venter) is evident from a petition almost a year later to the state attorney. The petition, signed by 140 inhabitants of the Zoutpansberg district, requested that the newly scheduled high court trial be held not in Pretoria, but in Zoutpansberg itself because if the large number of witnesses and families intending to attend the trial did so it would result in the Zoutpansberg district being left defenceless (Vercueil to Kleyn dated 29 Jul 1868 in *Volksraadsnotule Part 8* (n 41) *Bylae* 95, 1868/69 at 205-206). Although the Executive Council supported this request (Resolution of the Executive Council dated 6 Aug 1868 in *Volksraadsnotule Part 8* (n 41) *Bylae* 99, 1868/69 at 209), the Volksraad did not agree and, despite some dissension, decided that the trial would take place in Pretoria and that, if necessary, a commando would be sent to Zoutpansberg for its duration (art 207 Volksraad Resolution of 24 Oct 1868 in *Volksraadsnotule Part 8* (n 41) at 55). During the debate, one of the members of the Volksraad, HT Buhrmann, pointed out very unsympathetically that since 1864 all attempts to solve the Zoutpansberg dilemma had been in vain and that a new approach was necessary (*ibid*).

98 Articles 112, 113 of the 1858 Constitution.

99 As approved by Resolution of the Volksraad of 17 Sep 1858 (art 19) in *Volksraadsnotule Part 5* (n 61) at 194. For the relevant provisions (arts 13, 14) in the *Instructie* itself, see Jeppe & Kotzé (n 21) at 100-103; *Volksraadsnotule Part 3* (n 7) *Bylaag* 34, 1858 at 584-586.

authority;¹⁰⁰ such obedience was assumed “voor zooverre zij volgens de bepalingen der wetten omtrent de regterlijke en administratieve magt, daarmede in aanraking komen.”¹⁰¹ Also, three-monthly reports were required from field cornets.¹⁰² In times of war, these reports were forwarded to the commandant general and eventually to the President himself.¹⁰³ In 1866 it was decreed that in criminal cases, the death penalty could only be imposed by the High Court of Justice¹⁰⁴ and carried out after ratification by the Executive Council.¹⁰⁵ What the jurisdiction of a war council was is therefore uncertain, but it is submitted that its nature was such that it probably had wide ranging (and possibly even unlimited) powers.

Interestingly, almost twenty years later Law 2 of 1883 was promulgated, which provided that the commandant general had *jus gladii et gratiandi* (meaning he could have a death penalty carried out or commuted); it also stipulated that espionage was one of the crimes incurring the death penalty. However, the death penalty could be passed only by a general or great war council (*generaal of groote krijgsraad*) consisting of thirteen members.¹⁰⁶ Moreover, the commandant general was given the authority to act independently without the input of the war council as long as he took responsibility for his own actions.¹⁰⁷ This suggests that although the war council’s seemingly unlimited powers were later restricted to some extent to prevent it from making random and subjective decisions, the final decision ultimately still lay with the person in charge, namely the commandant general. This is understandable, since war conditions often call for speedy decisions and responses and do not always permit the calling of meetings and debates about what action should be taken. The law of 1883 nevertheless stipulated that the war council could only try crimes allegedly committed by members of the commando, in other words persons called up for military service;¹⁰⁸ it does not say anything about the

100 Article 123 of the 1858 Constitution stated that the commandants and field cornets “shall comply with the commands of the Landdrosts in so far as they shall be subject to the administrative judicial authority according to the provisions of the laws relating thereto” (in Eybers (n 5) at 391).

101 In as far as they, in accordance with the laws on judicial and administrative authority, come into contact with it: art 16 of the Instructie voor Commandanten (n 99 *supra*).

102 Article 110 of the 1858 Constitution.

103 Articles 110, 111 of the 1858 Constitution.

104 Article 5 of Ord 5 of 1864 in Jeppe & Kotzé (n 21) 271-294 at 272. The 1864 Ordinance was only approved by the Volksraad on 27 Oct 1866.

105 *Idem* art 89 at 287-288. In addition, persons condemned to death had to be given twenty-four hours’ notice of the date and time of execution by the presiding officer (and in the presence of the state attorney): art 88.

106 Article 29 Wet 2 of 1883 Voor de Krijgsdienst der ZA Republiek in Jeppe & Kotze (n 21) 1164-1177 at 1173-1174. The great war council (*groote Krijgsraad*) sat in times of crisis and debated important matters, including military strategies; it also heard cases where members of the commando were accused of other crimes such as desertion, rebellion, theft, murder, robbery and arson. Decisions regarding day-to-day operations, minor crimes and disciplinary matters were dealt with by the small or normal war council (*kleine or gewone Krijgsraad*) which consisted of seven members: *idem* arts 28, 29.

107 *Idem* art 28.

108 *Idem* art 29. See, also, n 19 *supra*.

jurisdiction of the war council over *other persons* such as prisoners of war. It is submitted that the accused in Trial C acted outside the scope of their authority; Slinger, instead of being executed on the spot, should have been formally charged with espionage and granted a fair trial.¹⁰⁹

4 The consequences of the trials

Following the court disruptions, on 9 July the war council suspended the judicial proceedings since it could not guarantee that any sentences that might be passed would be carried out. This in itself led to further dissension, and the fact that Venter and Du Plessis were allowed to sit as members of the war council despite their convictions in Trial A, added fuel to the fire.¹¹⁰ Shortly afterwards the war council decided to evacuate Schoemansdal, having received word from Pretoria that long awaited ammunition would not arrive soon.¹¹¹

Needless to say, not all inhabitants were happy at this turn of events. Under the leadership of a local minister sixty persons signed a petition, which they submitted to the war council, declaring that they refused to abandon Schoemansdal and would remain to defend the town. The war council welcomed this show of bravery and decided to leave the defence of Schoemansdal to Du Plessis. This decision, however, caused further dissent: half the petitioners did not wish to serve under an officer convicted of an offence and withdrew their support. Du Plessis himself was unwilling to take on such a responsibility: he maintained that the Volksraad's approval of an officer's report did not

109 Indeed, the 1858 Instructie voor de Veldcornetten (art 19 Volksraad Resolution of 17 Sep 1858 in *Volksraadsnotule Part 3* (n 7) at 194) provided that "alle kleurlingen, die onder verdenking liggen van eenige misdaad te hebben begaan" (all coloured persons suspected of having committed a crime) should be taken into custody by the field cornet and sent to the *drostdy* (magistrate's court) of the district: art 19 Instructie voor de Veldcornetten in *Volksraadsnotule Part 3* (n 7) *Bylaag* 35, 1858, 587-595 at 589.

110 Boeyens (n 14) at 73. In its Nov 1867 report, the Volksraad commission expressed surprise that two officers who had been convicted of a criminal offence were allowed to retain their positions as members of the war council ("Report" (n 21) at 53). Although the 1858 Constitution explicitly provided for the dismissal of the commandant general only upon conviction for bad behaviour, embezzlement of state property, treason or other serious crimes (arts 101 and 65), it is submitted that this provision also applied to other military officers such as commandants and field cornets. Indeed, it is unthinkable that lower ranking military officers would be treated more leniently than the President or the commandant general. The 1858 Constitution also stipulated that at least once a year the President would visit all the cities and towns where there were public offices, take note of the officials' behaviour and grant members of the public the opportunity to "lay before him their interests" in this regard (art 78). The President had the power to suspend public officials and to make provisional appointments (art 79).

111 Other factors contributing to this decision included an outbreak of disease among horses and other livestock, which affected the commando's military capacity, a lack of supplies for the besieged town, the fact that some members of the commando wished to return to their homes, as well as the fear that the water supply would be poisoned by the enemy (Boeyens (n 14) at 74; De Vaal "Die rol van Albasini" (n 25) at 101).

guarantee him freedom from subsequent charges.¹¹² The order was accordingly given for Schoemansdal to be evacuated on 15 July 1867.¹¹³ Schoemansdal was abandoned, except by Albasini and a few households that had sought refuge on his farm, and was never inhabited again.¹¹⁴ An immediate consequence of the trials was therefore that the ZAR lost the frontier town of Schoemansdal and the heart of the Zoutpansberg district.

Because of the chaos that ensued from the emergency evacuation, many of the documents relating to the abovementioned events and court proceedings were lost.¹¹⁵

In August 1867 the Executive Council approved Meintjes' actions and questioned the war council's interference in the High Court proceedings.¹¹⁶ Two months later, the Volksraad reversed this finding: it accepted the war council's decision to suspend the High Court proceedings¹¹⁷ and declared all Meintjes' activities in his capacity as acting state attorney at Schoemansdal illegal on technical grounds.¹¹⁸ This decision in effect nullified all the charges brought by Meintjes during the Schoemansdal trials. In February 1868, however, the Volksraad decided to exclude those matters already finalised by the High Court.¹¹⁹ As a result only the convictions for Trial A were upheld, and even then Du Plessis' sentence was mitigated by the deduction from his fine of the losses he had suffered when he abandoned his farm in Zoutpansberg.¹²⁰

- 112 25 Dec 1867 *De Transvaalse Argus* "Brief van een ooggetuige" as cited by Boeyens (n 14) 75 n 69 (unfortunately I was not able to obtain a copy of this newspaper); De Vaal "Die rol van Albasini" (n 25) at 101.
- 113 Boeyens (n 14) at 75-6.
- 114 Grobler (n 2) at 222. Later attempts to regain Schoemansdal were unsuccessful. See, in general, Boeyens (n 14) at 83-109; De Vaal (n 3) at 190-199.
- 115 For a list of the known missing documents, see Boeyens (n 14) at 67 n 13.
- 116 De Vaal "Die rol van Albasini" (n 25) at 104.
- 117 Article 150 Volksraad Resolution of 12 Nov 1867 in *Volksraadsnotule Part 7* (n 21) at 42.
- 118 Article 179 Volksraad Resolution of 19 Nov 1867 in *Volksraadsnotule Part 7* (n 21) at 57; 4 Dec 1867 *De Tijd*. The Volksraad requested a legal opinion from the then state attorney, FWH Kleyn, before reaching this decision (see the correspondence between the Volksraad and Kleyn published as part of art 178 Volksraad Resolution of 18 Nov 1876 and art 179 Volksraad Resolution of 19 Nov 1867 in *Volksraadsnotule Part 7* (n 21) at 56-57). The official reasons for the decision were that Meintjes' appointment as acting state attorney had not been in compliance with art 80 of the 1858 Constitution (and in particular that Meintjes had not taken the required oath of office) as well as the fact that the treasury could not afford the expenses incurred by the state in the court proceedings. Article 80 of the 1858 Constitution required that the President "sign all appointments of public officials, shall read out and explain to them, either in person or through competent officers, their instructions, shall administer and sign the oaths of office and shall cause a copy of their instructions to be handed them on their appointment" (Eybers (n 5) at 380). See, also, De Vaal "Die rol van Albasini" (n 25) at 104.
- 119 Article 284 Volksraad Resolution of 19 Feb 1868 in *Volksraadsnotule Part 7* (n 21) at 89-90. See, also, De Vaal "Die rol van Albasini" (n 25) at 104.
- 120 Boeyens (n 14) at 76-77. The Volksraad commission, in its report, criticised this clemency extended to Du Plessis ("Report" (n 21) at 52-53).

5 Conclusion

The three trials that took place in June/July 1867 in Schoemansdal and the surrounding circumstances can only be understood against the backdrop of the political events of the time. They should not be seen in isolation; they formed part of a complicated chain of events that spanned several years. Similarly, merely to mention the names of the individuals who played a part in the trials cannot explain the drama of the proceedings. After Schoemansdal was abandoned, the Volksraad¹²¹ appointed a commission to investigate and report on the Zoutpansberg matter. In its report,¹²² the commission found that relevant factors were both that officials and officers employed by the ZAR government had abused and exceeded their authority, and that the government had failed to punish those officials and officers accordingly.

Other contributory factors include the prevailing political situation and the fear and frustration of the community amidst warlike conditions; uncertainty about the scope of the officials' authority and about instructions to them;¹²³ the perception that the government was geographically distant and therefore not only unaware of the reality of the situation, but also unwilling and even unable to give assistance at times when immediate responses were necessary; a corresponding perception that the persons called upon to preside over the trials were uninformed, unwelcome and, in the case of Meintjes, unfit to dispense justice; and lastly, the place and time of the trials.

Even though a seemingly fair and just legal system was in place, and the government did attempt to resolve the conflict, justice was frustrated because there was no separation of powers, and politics were allowed to interfere in the courts. At a time when emotions were running high and the inhabitants faced the very real threat of losing everything that they had built up over a period of almost twenty years, the very officials who were responsible for the community's safety in a time of war were accused and convicted of crimes that had ultimately caused the conflict at Schoemansdal. In addition, the fact that the conflict had dragged on for years without any steps being taken against the culprits obviously eroded the community's belief in the rule of law and the officers who were supposed to enforce it. It is no wonder then that the rule of law was not victorious. One can only hope that this lesson from history will be taken to heart.

121 See art 84 Volksraad Resolution of 27 Sep 1867 in *Volksraadsnotule Part 7* (n 21) at 21-22. The members of the commission appointed by that Volksraad Resolution were HT Buhrmann, H Jeppe, FGA Wolmarans, T Steyn and D Steyn.

122 See "Report" (n 21) at 47-54.

123 See, for example, the letter dated 30 Jan 1865 from J Albasini to the Executive Council asking for confirmation of his instructions as superintendent: TAB SS 64 R128/65 at 222.

Abstract

Schoemansdal in the Zoutpansberg district was a frontier town of the Zuid-Afrikaansche Republiek. Various causes contributed to its demise in the late 1860s, of which the special High Court sitting in June/July 1867 was certainly a major factor. To understand the events that unfolded at the High Court sitting, one has to have some knowledge of the background of the town, its surroundings and history, and the various personalities that played a role in the eventual trials. The events illustrate the gap that existed between the ideal state and the practical problems of a frontier town, and the resulting loss of rule of law.